

HLU Committee

From: Alan Lloyd <alanlloydac@gmail.com>
Sent: Friday, August 30, 2024 8:51 AM
To: HLU Committee
Subject: rent stabilization materials
Attachments: Synopsis of rent stabil law- for review-3.docx; Rent Stabilization Proposal for Maui county-skeleton-5.docx; A Defense of Rent stabilization-topic based-3 - Copy.docx; maui popu decrease.jpg; 46-1.5 (20) Co powers to set rent.docx; 1943 Maui ORDINANCE TO REGULATE RENTS AND RENTAL CONDITIONS -1943.docx; Hawaii AG opinion on rent control legisl bill.docx

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BASE RENT: Based on day County Council agrees to set rents.

PERMITTED RENT INCREASES:

- *Annual rent increase: 30 days written notice
- *Can't raise rent without first registering dwelling unit with county
- *Annual rent increases change in CPI over past 12 months ending in September
 - CPI is 8% or higher, increase 8%
 - CPI 3-8%, increase equal to CPI
 - CPI 1-3%, increase 3%
- *Luxury units: (rent \$5000 or more per month)
 - Additional 2% above CPI
 - No more than 10%
- *Only 1 rent increase per HH per year
- *Rent increase calculated and communicated to landlord by Maui Co. Housing Department
- *Tenant moves out, rent for new tenant: Based on previous tenants rent.
- *Exempt from Rent increase Laws:
 - 1)Hotels, Motels, Transient guest
 - 2)institutions
 - 3)Government owned
 - 4)Rooms rented to Boarders, in a single family residence, where Landlord owns the residence & shares kitchen or bath. Any unit on Landlords property with a kitchen and bathroom is not exempt.
 - 5)LL family member occupies and calls it their principal residence
 - 6) New multi family construction completed, as verified by the county, after this bill takes effect.
- *Right of Refusal
 - Can refuse to pay rent increase which is violation of the law

*Any discounts, etc. offered by the landlord, shall not be included in the base rent

*Tenant shall not sublease, that results in more than the gross rental rate

*Tenant cannot sublet without landlord's permission

LL wants Rent Increase beyond CPI/Tenant wants Rent decrease

LL wants Rent Increase:

*LL applies to Dept of Housing. Dept has 30 days to respond with yes or not to increase

*LL has to prove they need additional rent to earn a fair return

*Dept can say yes, lesser rent increase, or no rent increase

*Rent cannot go up more than 8%

Tenant wants rent decrease:

*Tenant applies to Dept of Housing. Dept has 30 days to respond with yes or no to decrease

*Unlawful rent: tenant believes LL charged rent higher than permitted

*Right of Assistance from any person

Annual Registration:

*LL must register each dwelling unit

Fines:

*LL violates this law, fine of \$3000

*LL or tenant may appeal

Education and Outreach:

*Department can educate and outreach

ORDINANCE NO. _____

BILL NO. _____ ()

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

SECTION 1. Title ____, Maui County Code, is amended by adding a new Chapter to be appropriately designated and to read as follows

“Chapter _____ – Residential Rent Stabilization

Chapter ____: Declaration of Purpose and Findings.

The Maui County Council finds that housing insecurity deeply impacts families in the County, and that local families need stabilizing of rent and additional rental protections, especially since the onset of the pandemic in 2020 and the Wildfires in 2023; and

The Maui County Council finds that, while policies encouraging more affordable housing units and ensuring those units remain affordable should continue, equal attention must be paid to providing affordable rentals; and

The Maui County Council finds that, there presently exists a critical shortage of rental housing in the County of Maui (County). Due to this shortage, it is very difficult to find adequate, safe, and habitable rental housing at reasonable rents; and

The Maui County Council finds that, due to the shortage of rental units, rents in Maui County are increasingly excessive. A substantial number of persons in the County who reside in rental units spend a high percentage of their income on rent, (they are rent-burdened or severely rent burdened) and many have been forced to move out of the County because they can no longer afford to pay the increase in rent. Further, low and moderate-income tenants have difficulty finding affordable housing after being displaced due to a rent increase; and

The Maui County Council finds that, there is a need for rent stabilization, pursuant to an emergency arising out of a housing shortage (HRS 666-20) and pursuant to the County's powers under HRS 46-1.5(20) and HRS 46-1.5(13); and

The Maui County Council finds that, the purposes of this Chapter are to promote long-term stability and certainty for tenants in the rental market while providing landlords an ability to receive a fair return on their property. This Chapter regulates rents. It requires landlords to register rental property, creates a new section in county law, and provides for procedures and guidelines for the implementation of this Chapter; and

The Maui County Council finds that, regulation of the rental market is required to ensure that housing units remain affordable and grounded in the Counties local economy; now, therefore,

Chapter ____: Definitions.

The following terms shall have the meaning provided below when used in this Chapter, whether plural or singular.

- A. "Base Rent" means the Rent charged on _____, when Maui County Council declared its intent to regulate rent for residential properties in Maui County.

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- B. "Board" means a Rent Stabilization Board.
- C. "Capital Improvement" means the addition, substantial repair or replacement of any improvements to dwelling units or common areas of the building which materially adds to the value of the building and appreciably prolongs its useful life or adapts it to new uses, and which is the same type of improvement as those allowed to be amortized over the useful life of the improvement in accordance with the Internal Revenue Code and its regulations and as specified in Section 8.52.070.
- D. "Code" means the Maui County Chapter _____.
- E. "Affordable Rent Guidelines". The document produced each year by HHFDC (Hawai'i Housing Finance and Development Corporation)
- F. "County" means the County of Maui.
- G. "Covered Rental Unit" means a Dwelling Unit that is rent-stabilized, located in the County.
- H. "CPI" means Consumer Price Index for all urban consumers of the Maui County, Hawai'i area, or any successor designation of that index that may later be adopted by the U.S. Department of Labor. Calculation of the change in CPI percentage will be determined by the Department and outlined in its procedures and guidelines.
- I. "Department" means the County's Department of Housing.
- J. "Dwelling unit" means a structure, or part of a structure, which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others, as defined under HRS 521-8
- K. "Owner" means one or more persons, jointly or severally, in whom is vested:
- (1) All or any part of the legal title to a property; or
 - (2) All or any part of the beneficial ownership and a right to present use and enjoyment of the property; and includes a mortgagee in possession.
- L. "Person" includes an individual, corporation, government or governmental agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.
- M. "Landlord" means the owner, lessor, sublessor, assigns or successors in interest of the dwelling unit or the building of which it is a part and in addition means any agent of the landlord, as defined under HRS 521-8.
- N. "Landlord's Family Member" means a landlord's parent, child, spouse or civil union partner or reciprocal beneficiary, grandparent, grandchild, or other dependent over which the Landlord has guardianship, the spouse or civil union partner's parent, child, grandparent, grandchild, and other dependent over which the Landlord's spouse or domestic partner has guardianship.
- O. "Luxury Unit" means a Covered Rental Unit that meets all of the following criteria:
1. Has six (6) bedrooms or less;

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2. Is located within a single structure that contains at least twenty-five (25) or more Dwelling Units; and
 3. Landlord received at least twelve thousand dollars (\$12,000) per month in Rent.
- P. "Primary Renovation" means work performed either on a Dwelling Unit or the building containing the Dwelling Unit(s) that improves the property by prolonging its useful life or adding value.
- Q. "Rent" means the consideration paid for the use or occupancy of a Dwelling Unit, but does not include any of the following, each of which shall be separately listed and identified in the lease or rental agreement:
1. Security deposits;
 2. User fees for services or facilities which may be utilized at the option of the Tenant and are expressly not included as Rent in the Rental Agreement;
 3. Utility charges for those Dwelling Units that are billed separately whether or not the Dwelling Units are individually metered;
 4. Any rent discounts, incentives, concessions, or credits offered by the Landlord; or
 5. Any pass-through authorized pursuant to this Chapter.
- R. "Rental agreement" means all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit and premises, under HRS 521-8.
- S. "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single-family residence if it has direct access to a street or thoroughfare and does not share hot water equipment or any other essential facility or service with any other dwelling unit, as defined under HRS 521-8.
- T. "State" means the State of Hawai'i.
- U. "Tenancy" means the legal right of a Tenant or any other occupant who took possession of the Dwelling Unit for the use or occupancy of the Dwelling Unit, including the use of the Housing Services provided by the Landlord, subject to the terms of the Rental Agreement. This includes a lease or a sublease.
- V. "Tenant" means any person who occupies a dwelling unit for dwelling purposes under a rental agreement, as defined under HRS 521-8.
- W. "Normal wear and tear" mean deterioration or depreciation by ordinary and reasonable use but does not include damages to or items that are missing from the dwelling unit.

Chapter ____: General Applicability.

This Ordinance shall be effective on _____, and apply to all Landlords and Tenants in Dwelling Units within Maui County or the provisions of this Chapter.

Chapter ____: Base Rent.

A. Except as hereinafter provided, a Landlord shall not demand, accept, or retain Rent for a Covered Rental Unit exceeding the Rent in effect for said Covered Rental Unit on ____ / ____/2024, for all residential dwelling units. This takes effect when the County declares its intent to regulate Rent in Maui County.

Chapter ____: Permitted Rent Increases for Covered Rental Units.

A. A Landlord may impose an annual Rent increase for any Covered Rental Unit, as allowed in this Section, only after providing at least sixty **60** days written notice to the Tenant of the Rent increase.

B. A Landlord may impose an annual Rent increase only upon registering the Dwelling Unit in the County's Registry System each year and providing the tenant with the Registry system number assigned by the County. The County Housing department will enforce the lack of Landlord registering, with a fine of up to \$6,000. Registration information shall not be used to enforce Maui County building codes.

C. If Landlord raises rent without initially and annually registering dwelling unit(s), the County Housing department will subject Landlord to a fine of up to \$6,000.

D. Annual Rent increases shall be limited to reflect the percentage change in the average CPI over the previous twelve (12) month period ending in _____(month/day) with a maximum of eight percent (8%), as specified below:

1. If the change in CPI is eight percent (8%) or higher, the maximum allowable annual Rent increase will be 8%;
2. If the change in CPI is between three percent (3%) and eight percent (8%), the maximum allowable annual Rent increase will be equal to the change in CPI;
3. If the change in CPI is between one percent (1%) and three percent (3%), the maximum allowable annual Rent increase will be equal to three percent (3%);
4. If the change in CPI is between negative two percent (-2%) and one percent (1%), the maximum allowable annual Rent increase will be equal to the change in CPI plus two percent (2%); or
5. If the change in CPI is less than negative two percent (-2%), no annual Rent increase is permitted.

E. Luxury Units.

1. A Landlord may increase Rent on a Luxury Unit annually by an additional two percent (2%) above the allowable annual Rent increase specified in this Section for a Covered Rental Unit.

2. An annual Rent increase for Luxury Units shall not exceed ten percent (10%).

F. Only one Rent increase may be imposed on a Tenant household in any twelve (12) month period, unless otherwise permitted by the Department pursuant to this Chapter.

G. The Landlord is not required to increase rent each year; it is in their discretion.

H. Notice and Calculation of Allowable Annual Rent Increase.

1. Calculation of Annual Rent Increase. The allowable annual Rent increase shall be calculated automatically based on CPI and communicated to the Landlord by mail, by the Department.

2. Notice of Annual Rent Increase. The amount of the annual Rent increase shall be provided in accordance with the Department's procedures and guidelines.

I. Rent Paid Following Vacancy of Covered Rental Unit. When a Tenant voluntarily moves out of a Covered Rental Unit, the initial Rent for the next Tenant, at the commencement of the new Tenancy, shall be determined based on 60% of the median income, as provided in the "Affordable Rent Guidelines", for studio and 1 and 2 and 3 and 4 and 5- and 6- bedroom dwelling units.

J. Exemptions. The following are exempt from this Section:

1. Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, geriatric, educational, religious, or similar services;

2. Residence in a structure directly controlled and managed by:

(A) The University of Hawaii or any other university or college in the State for housing its own students or faculty or residence in a structure erected on land leased from the university or college by a nonprofit corporation for the exclusive purpose of housing students or faculty of the college or university; or

(B) A private dorm management company that offers a minimum of fifty beds to students of any college, university, or other institution of higher education in the State;

3. Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser;

4. Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization;

5. Transient occupancy on a day-to-day basis in a hotel or motel;

6. Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon that employment or by a pensioner of the owner or landlord or

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- occupancy for a period of up to four years subsequent thereto, pursuant to a plan for the transfer of the dwelling unit or the property of which it is a part to the occupant;
7. A lease of improved residential land for a term of fifteen years or more, measured from the date of the commencement of the lease;
 8. Occupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner's rights;
 9. Occupancy by the seller of residential real property after the transfer of the seller's ownership rights;
 10. Occupancy in a homeless facility or any other program for the homeless authorized under part XVII of chapter 346 HRS;
 11. Residence or occupancy in a public housing project or complex directly controlled, owned, or managed by the Hawaii public housing authority pursuant to the federal low rent public housing program;
 12. Residence or occupancy in a transitional facility for abused family or household members; or
 13. Residence or occupancy in a structure or on a property directly controlled, owned, or managed by the Hawaii public housing authority.
- K. Rooms Rented. A Dwelling Unit in a single-family residence, condominium, or stock cooperative where the Landlord owns and occupies the residence and shares kitchen or bath facilities with the Tenant and/or where the Landlord or Landlord's Family Member also occupies the Dwelling Unit, the Landlord resides in, shall not be covered under this ordinance. This only includes the residence that the landlord occupies, not any other residence on the property with its own bathroom and kitchen.
- L. New multi-family construction. New multi-family construction completed, as verified by the county, after this bill takes effect, shall not be covered under this ordinance.
- M. Tenant's Right of Refusal. A Tenant may refuse to pay a Rent increase which is in violation of this Chapter. Such refusal to pay the increased amount shall be a defense in any action brought to recover possession of a Covered Rental Unit or to collect the Rent increase. If tenant has paid a rent increase which is in violation of this chapter, Landlord must refund that amount in violation, to tenant.
- N. Additional Occupants. An addition of occupants in the Covered Rental Unit pursuant to this Section does not authorize a Rent increase.
- O. In determining the base rental rate, pursuant to this section any rent discounts, incentives, concessions, or credits offered by the landlord of the dwelling unit and accepted by the tenant shall be excluded. The monthly gross rental rate and any owner-

offered discounts. Incentives, concessions, charges, or credits shall be separately listed and identified in the rental agreement or any amendments to an existing rental agreement.

Chapter ____: Applications for Rent Increase and Adjustment.

A. Landlord's Application for Rent Increase. A Landlord who believes they are not receiving a fair and reasonable return from the allowable increases for a Covered Rental Unit, as determined in Chapter ____ above, may file an Application for Rent Increase with the Department, to request an increase in Rent for a Covered Rental Unit(s) beyond that which is permitted under Chapter ____ above. The Department has 30 days to approve/deny the request after receiving all documentation, and 15 days thereafter to communicate the approval/denial to the landlord and tenant, via US Mail. Failure to approve/deny the request within 30 days constitutes an automatic denial.

1. Presumption. It shall be a rebuttable presumption that the annual net operating income earned by a Landlord, and Rent increases allowed under Chapter ____, provide the Landlord with a fair and reasonable return on the investment. A Landlord shall have the burden to prove the necessity of any additional Rent increase necessary to earn a fair and reasonable return.

2. Approval of the Landlord's Application for Rent Increase may become effective only after all of the following:

- a. A Landlord has provided written notice to the Tenant of the approved Rent increase for the Covered Rental Unit; and
- b. A Landlord has registered each Dwelling Unit in the rental property, has not lapsed on registration of Dwelling Units in previous years, pursuant to Chapter ____; and
- c. Satisfaction of any other conditions imposed for the Rent increase as determined by the Department's procedures and guidelines.

3. Review and Approval of Application for Rent Increase.

a. The Department shall consider the following factors, in accordance with its procedures and guidelines, as well as any other relevant factors, in reviewing the application and making its determination, and no one (1) factor shall be determinative.

(i) Changes in the CPI. If the Bureau of Labor Statistics subsequently changes the geographic reporting in which the County is located, the Department shall use the most current applicable reporting area established.

(ii) The rental history of the affected Covered Rental Unit(s):

(a) The Base Rent;

(b) The pattern of past Rent increases or decreases;

(c) The Landlord's rental income and expenses as they relate to the rental property.

(iii) Increases or decreases in property taxes.

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- (iv) The length of time since either the last Department review and final determination on an Application for Rent Increase by Landlord or the last Rent increase if no previous Application for Rent Increase has been made by Landlord.
 - (v) The addition of Capital Improvements on the rental property.
 - (vi) The physical condition of the affected Covered Rental Unit and building, including the quantity and quality of maintenance and repairs performed during the preceding twelve (12) months, as well as the long-term patterns of operating, maintenance, and Capital Improvement expenditures.
 - (vii) The need for repairs caused by circumstances other than normal wear and tear.
 - (ix) Any existing Rental Agreement lawfully entered into between the Landlord and the Tenant.
 - (x) A decrease in net operating income.
 - (xi) A fair and reasonable return on the building prorated among the Dwelling Units in the building.
 - (xii) If Landlord received Rent in violation of this Chapter or has otherwise failed to comply with this Chapter.

b. The Department has to approve/deny an Application for Rent Increase and make the following determinations, within 30 days of receiving all required materials stated in this ordinance, in compliance with its procedures and guidelines and all provisions of this Chapter: The Department has 30 days to approve/deny the request after receiving all documentation, and 15 days thereafter communicate to landlord and tenant, via US Mail, the approval or denial. Failure to approve/deny the request within 30 days constitutes an automatic denial.

- (i) The Department shall determine if the Rent increase is necessary and appropriate to ensure the Landlord receives a fair and reasonable return on the Landlord's investment, and will not cause an undue financial burden on the affected Tenant.
- (ii) The Department may determine a lesser Rent increase more appropriately ensures a fair and reasonable return on the Landlord's investment and will not cause an undue financial burden on the affected Tenant.
- (iii) The Department can determine a Rent increase beyond that which is permitted under Chapter ____, appropriately ensures a fair and reasonable return on the Landlord's investment and will not cause an undue financial burden on the affected Tenant.

c. An Application for Rent Increase shall not be approved if any Rent increase for that year, plus any amount allowed for a fair and reasonable return on the Landlord's investment, will result in an increase of the Rent from the prior year of an affected Tenant by more than eight percent (8%), or of a Luxury Unit by more than ten percent (10%).

4. Notices Upon Filing Application for Rent Increase.

- a. Within five (5) calendar days after submission of a Landlord's Application for Rent Increase with the Department, the Landlord, at their own expense, shall serve each affected Tenant with a notice of said application via personal service or certified mail return receipt requested. The Landlord, at their own expense, must make the supporting documents reasonably available to each affected Tenant within five (5) calendar days of such request.
- b. Within ten (10) calendar days after submission of a Landlord's application with the Department, the Landlord shall file a proof of service with the Department, on a form approved by the Department, signed under penalty of perjury, stating that a copy of the notice of Application for Rent Increase was served upon each affected Tenant.
- c. Fees and costs incurred by a landlord to prepare, file, or pursue an Application for Rent Increase are not allowable as operating expenses and may not be passed on to Tenants. Such fees and costs include, but are not limited to, attorney fees and other similar professional services costs.

5. Examination and Inspection. A Landlord, at their expense must retain the Application for Rent Increase, any supporting documents, and the final decision, and make reasonably available for review and/or copy for six (6) months following the completion of the appeal process set forth in Section 6.

B. Tenant Application for Adjustment. A Tenant of a Covered Rental Unit who believes they should receive an adjustment in their monthly obligation(s) because of a landlord's violation of this Chapter may file an Application for Adjustment with the Department. A Tenant must file such Application for Adjustment within one hundred eighty (180) days from the date the Tenant knew, or reasonably should have known, of the Landlord's potential violation(s).

1. Unlawful Rent. If a Tenant believes that the Landlord's demand for Rent, is in excess of that permitted for a Covered Rental Unit, or in excess of the Rent permitted, then the Tenant may file an Application for Adjustment with the Department for its determination. The Department must make a decision within 30 days of filing the application for adjustment and within 15 days mail to tenant the Departments decision.
 - a. If a landlord demands, receives, or retains any payment in excess of the maximum allowable Rent, permitted by this Chapter, then a Tenant may withhold the excess amount.
 - b. If the landlord harasses or retaliates against tenant for withholding an excess amount as described herein, the tenant can appeal to the Department, using a form provided by the department, for penalties of up to 6 months rent.
 - c. In any action to recover possession based on nonpayment of Rent, possession shall not be granted where the Tenant has withheld Rent in good faith under this Section.

2. Review and Determination of Application for Adjustment. The Department shall consider the following factors, in accordance with its procedures and guidelines, as well as any other relevant factors, in making its determination and no one (1) factor shall be determinative.

- a. Increases or decreases in Rent in the past year,
- b. The pattern of recent Rent increases or decreases.
- c. Whether the Landlord has received payment in excess of the maximum allowable Rent permitted by this Chapter or has otherwise failed to comply with this Chapter.
- d. The date the Service Reduction was first noticed by the Tenant and when and how notice, orally, or in writing, was provided to the Landlord of the alleged Service Reduction and Landlord's response to such notice and whether it was reinstated or restored by the Landlord, and if so, when and how.

3. Notice upon Filing Application for Adjustment. Within fifteen (15) calendar days after submission of an Application for Adjustment with the Department, the Department shall inform the Landlord, via US mail, with a notice of said application.

C. Application Submittal to Department for Rent Increase or Adjustment. Upon receipt of an application, the Department shall review, evaluate, and determine whether there should be a Rent increase or adjustment in accordance with this Section and its procedures and guidelines, within 30 days of receiving application and supporting materials.

1. The application shall be on a form provided by the Department, signed under penalty of perjury, and if any, and must include the following:
 - a. The specific Rent increase or adjustment requested;
 - b. Copies of any books, records, papers, or other financial information relevant to the review of the application; and
 - c. other documentation required by the Department in accordance with this Section and its procedures and guidelines.

2. The Department shall have the authority to deem an application complete.

D. Right of Assistance. All parties to an Application for Rent Increase or an Application for Adjustment may seek assistance in this application process, from any person designated by said parties.

E. Notwithstanding any other provision of this Section, if the Department has made a determination on an application for a Covered Rental Unit pursuant to this Section within the previous six (6) months, then the Department may refuse to grant an application for such Covered Rental Unit.

Chapter ____: Annual Registration.

- A. Registration of Dwelling Unit. Within 3 months after this ordinance takes effect, a landlord must register each Dwelling Unit that is rented or is available for Rent in the County's Registry System, online or in a form approved by the Department.

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- B. Annually, On or before (month/date) _____ of each year, a landlord must register each Dwelling Unit that is rented or is available for Rent in the County's Registry System, online or in a form approved by the Department. A Landlord must contact the Department or update the County's Registry System within thirty (30) calendar days of any subsequent changes to the Dwelling Unit or the discovery of any errors in the County's Registry System.
 - C. The County Housing department will enforce lack of Landlord registering, after 3 months that ordinance takes effect or annually, with a warning notice mailed to landlord or Landlords representative, outlining the requirement and the fine, via US mail.
 - D. The warning notice shall be mailed within 4 months of ordinance taking effect and 1 month of annual deadline. If landlord does not register after 5 months of ordinance taking effect or 2 months after annual registration due, the Department will issue a fine of \$6,000.
 - E. Registration information shall not be used to enforce Maui County building codes.
 - F. Registration must include, but is not limited to, the following information:
 - 1. Rent for each Dwelling Unit in the rental property and the date of the last Rent increase for the Covered Rental Unit.
 - 2. The name, address, and telephone number of each Landlord for the rental property and the nature of such ownership interest.
 - 3. The number of Dwelling Units in the rental property.
 - 4. The name and mailing address of each Tenant.
 - 6. Move-in dates for each Tenant.

Chapter ____: Procedures and Guidelines.

The Director of the Department, or designee, may develop and publish procedures and guidelines to aid in the implementation of this Chapter.

Chapter ____: Enforcement.

The Department is authorized to take any and all appropriate steps it deems necessary to enforce this Chapter.

If the Department does not carry out its duties and responsibilities of this Act within six months of effective date, the Maui County Council shall nominate and appoint a volunteer rent stabilization board within 9 months of effective date, and hire 2 FTE staff, to carry out this Act.

Chapter ____: Administrative Fines and Judicial Review.

- A. Administrative Fines. Any Landlord who violates any provision of this Chapter, or Department's procedures and guidelines, is subject to an administrative fine of \$1,000.

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- B. Remedies are Cumulative. Each day that a violation continues shall constitute a separate and distinct offense. The remedies set forth in this section are cumulative and in addition to any other penalty provided by law, including any remedies which may be sought in a civil action. The provisions of this Chapter shall not be construed as limiting any party's right to obtain relief to which he or she may be entitled at law or in equity.
 - C. Notices of Violation and Administrative Fine. If the Department determines that a landlord has violated this Chapter, or Department's procedures and guidelines, the Department may issue Notices of Violation and Administrative Fine in accordance with the authority and procedures set forth in Maui County Code, Chapter _____.
 - D. Judicial Review.
 - 1. Judicial Review. Any Landlord or Tenant may seek judicial review of a department's decision pertaining to an approval of a rent increase or adjustment or the imposition of an administrative fine in accordance with HRS 91-14.

Chapter ____: Education and Outreach.

The Department shall have the authority to contract, in accordance with County contracting rules and procedures, with community-based organizations for them to assist in the education and outreach related to this Chapter.

Chapter ____: Waiver Prohibited.

Any waiver of rights under this Chapter shall be void as contrary to public policy.

Chapter ____: Severability.

If any provision of this Chapter or the application thereof to any person, property, or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid provision(s) or application, and to this end, the provisions of this Chapter are declared to be severable.

SECTION 2. This Ordinance takes effect on _____.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel

County of Maui

INTRODUCED BY:

A Defense of Rent Stabilization (Called rent control in this article)

Property Rights are Not the Only Rights

Free market advocates often talk as if property rights are the only rights. And in the context of the housing crisis, free market influencer's focus on landlords' property rights, mistakenly assuming that property rights are the only rights that can be or should be respected and protected in our society.

While property rights should have some reasonable protections in our economic system, they are not absolute. Property rights are not the only rights, nor the most important. In fact, property rights are just one of many values or principles that a fair and just society acknowledges. And there is no legal or philosophical reason that property rights should take priority over other rights, such as the right to decent and affordable housing.

All property use is regulated by the law in some manner, and always has been, and regulating rents is not a new or radical idea.^[1] State and federal courts, for example, have consistently ruled for the past hundred years that rent controls are valid regulations serving legitimate public policy goals.^[2]

There is a growing recognition worldwide of the right to decent and affordable housing.^[3] "Housing has an almost essential importance for people to live in dignity and is valued on par with having a job, good health and enriching social relationships."^[4]

[1] Ambrosius, Joshua D., John I. Gilderbloom, et al, "Forty Years of rent control: Reexamining New Jersey's moderate local policies after the great recession," *Cities* 49 (2015) 121-133, at 121, noting that "[r]ent control – diverse sets of restrictions on landlords' abilities to raise tenants' rent payments – has existed in some form since ancient Rome, making it one of the oldest housing regulations still practice today (internal citation omitted)."

[2] *Id.*, at 122-123, listing numerous federal and state court decisions, the vast majority of which have upheld, and continue to uphold, rent control laws in various jurisdictions and rejecting landlords' property rights or "takings" claims.

[3] Bergenstråhle, Sven, "The importance of affordable rental housing," July 7, 2016, noting that it "is a human right to have a home. A series of international declarations and conventions say so. UN Covenant on Economic, Social and Cultural Rights declares the right to 'adequate housing.'"; http://www.iut.nu/Tillfalliga_artiklar/2016/SB_The_importance_of_affordable_rental_housing2.pdf

[4] *Id.*

Rent Control is Not the Cause of Rising Rental Rates

A 2016 analysis of seventy years of San Francisco rental prices (1956 to 2016) shows that rents have risen fairly consistently at 6.6% per year, and that this is true both before and after rent control was instituted in 1979.^[8] When rent control was eliminated in Cambridge, MA, housing costs rose dramatically, both for formerly rent-controlled and uncontrolled units.^[9]

Many factors drive increases in rental prices, including the recent tech boom and the city's failure to enforce local laws intended to prevent conversion of rental units to short term rentals such as AirBnb.^[10] And if there is any single factor having the most direct effect on rising rents, it is speculative investments by venture capital.^[11]

Factors such as the number of jobs located in San Francisco County; the total amount of housing within the county, and the total amount of money that is paid to everyone who works jobs in San Francisco County, are collectively much better predictors of trends in rental prices.^[12]

[8] Fischer, Eric, "Employment, Construction, and the Cost of San Francisco Apartments," Experimental Geography blog, May 14, 2016; <https://experimental-geography.blogspot.com/2016/05/employment-construction-and-cost-of-san.html>

[9] "Communities Thrive with Rental Control: A Guide for California Cities," Tenants Together, 2017, at 11.

[10] Preston, Dean, and Shanti Singh, "Rent Control Works: A Response to Business School Professors' Misguided Attack on Rent Control," Tenants Together, March 2018, at 7.

[11] "Communities Thrive with Rental Control: A Guide for California Cities," Tenants Together, 2017, at 6.

[12] Fisher, *supra*.

Rent Control Creates Stable Neighborhoods And Communities

The evidence so far on rent control demonstrates that it is “an essential policy to prevent the displacement of working class tenants, seniors, immigrants, and communities of color from hot urban real estate markets.”^[13]

“[Economist Joshua] Mason reports that rent regulations give tenants a greater stake in their community and incentivize them to put time, energy, and even money into their homes. Without that kind of security in their occupancy, there is little return for contributing to the neighborhood and building relationships in the surrounding blocks.”^[14]

There is a “close connection between a right to security of tenure and rent control. Without rent control, rights to security of tenure are easily circumvented by landlords.”^[15]

“The main reason to support rent control is that in the Bay Area the housing market is producing windfall profits for some while driving renters out. Our community thrives on stability and diversity, not constant churning. Stability means you get to know your neighbors, can work with them to make the neighborhoods safe and work together to improve the neighborhood. Diversity means a richness of backgrounds and experiences and valuing of all our residents.”^[16]

[13] Preston and Singh, *supra*, at 2.

[14] Blumgart, Jake, “In Defense of Rent Control,” *Pacific Standard*, April 1, 2015; <https://psmag.com/economics/in-defense-of-rent-control>

[15] Ken Hanly, “The Ethics of Rent Control,” *Journal of Business Ethics* 10: 189-200, 1991, at 195.

[16] Parker, Mike, “ReBUTTAl: The arguments for rent control in Richmond,” San Francisco BayView, May 1, 2015; <http://sfbayview.com/2015/05/rebuttal-the-arguments-for-rent-control-in-richmond/>

Rent Control is Fair to Tenants AND Landlords

Modern rent control laws balance the interests of tenants and landlords.[19] “The balance is obtained by guaranteeing a fair and reasonable return on investment to the landlord while eliminating the practice of excessive annual rent increases (price gouging).”[20] Rent control thus does not prevent landlords from earning a reasonable profit on their residential rental properties. In fact, even under rental control, landlords receive a fair return on their investment because contemporary rent control in San Francisco and other American cities is designed to give landlords consistent increases in rent based on the consumer price index (CPI), which is more or less the overall rate of inflation. Rent controlled property appreciates in value, and the law protects the profitability of rental property [21] .

In New York City, for example, “there is no evidence that owners of rent-regulated buildings – whether they purchased before or after rent regulation went into effect – have received less than fair returns on their properties.”[23]

Moreover, existing law already allows landlords to evict tenants who fail to pay their rent or who otherwise violate the terms of their leases.[24] Landlords may also use “owner move-in” evictions and (taking a building off the rental market) evictions if they want to change the use of the building or leave the rental business.

[19] Gilderbloom, 1996, *supra*, at 411.

[20] *Id.*

[21] Costa-Hawkins is a 1995 California state law that restricts the extension of rent control in cities that already have rent control. This law prevents rent control from covering single-family homes. See California Civil Code §1954.50.

[23] Collins, Timothy L., “Rent Regulation in New York: Myths and Facts,” at 8; <https://mvtenantscoalition.files.wordpress.com/2016/05/myths-and-facts-final-1.pdf>

[24] Preston and Singh, *supra*, at 6.

Building More Market-Rate Housing is Not a Solution to the Housing Crisis

In 2016, the Urban Displacement Project (UC Berkeley and UCLA) studied the theory that just building more housing will eventually create more affordable rental units, and found that there is no evidence to support this claim.[\[25\]](#)

Rent control is an important policy protecting poor and working-class renters, and building more market rate housing will not help these families because market rate housing in many areas is, for all intents and purposes, luxury housing that is unaffordable for people working minimum wage or other low wage jobs. Markets do not respond to poverty, and thus relying solely on free markets to provide affordable housing is misguided at best.[\[26\]](#)

Free market advocates are mistaken in their belief that just building more market-rate housing will solve the housing crisis. In San Francisco, for example, from 1960 to 2010, new housing units constructed exceeded the increase in population, but “many of the units are unaffordable, making the problem less about quantity and more about housing type . . .”[\[27\]](#)

Additionally, the argument that market-rate construction will eventually lower rents and provide more affordable housing is mistaken. By 2016, San Francisco had approved 181% of projected market-rate housing for 2022, but the city only approved 16% of its low-income requirements during the same time period.[\[28\]](#) “In this way, new market-rate construction creates more of a demand for affordable housing than the market supplies.”[\[29\]](#) In a purely free market environment, “the poor will always be outbid; supply and demand logic will continually fail to shelter them.”[\[30\]](#)

[25] “Communities Thrive with Rental Control,” *supra*, at 7.

[26] See, e.g., Woocher, Jacob, and Shanti Singh, “The Market Will Not Fix California’s Housing Crisis,” *Dissent*, March 28, 2018.

[27] McElroy, Erin, Andrew Szeto, "The Racial Contours of YIMBY/NIMBY Bay Area Gentrification," *Berkeley Planning Journal*, 29(1), 2017; <https://escholarship.org/uc/item/4sw2g485>

[28] *Id.*, at 16-17, citing San Francisco Planning Department 2016, "Residential Pipeline Entitled Housing Units, 2016 Q3."

[29] *Id.*, at 17.

[30] *Id.*

Rent Control Does Not Cause Poor Maintenance Or Abandonment Of Rental Units

Urban planner John Gilderbloom showed that modern rent control laws in 100 American cities “have not negatively impacted the quality and quantity of rental units and actually motivated landlords to increase maintenance of rental housing.”^[31]

A 1988 study determined that “there is no basis for economists’ strongly-held belief that rent control leads to worse maintenance.”^[32]

[31] McElroy, Erin, Andrew Szeto, “The Racial Contours of YIMBY/NIMBY Bay Area Gentrification,” *Berkeley Planning Journal*, 29(1), at 12.

[32] Blumgart, Jake, “In Defense of Rent Control,” *Pacific Standard*, April 1, 2015; <https://psmag.com/economics/in-defense-of-rent-control>.

Rent Control Does Not Decrease New Housing Construction

Cities with rent control have some of the highest per capita construction rates in California.^[33] And this is true not only in California, but elsewhere. For example, “housing construction in New Jersey fell by 52 percent in cities that enacted rent control regulations in the early 1970s—but fell 88 percent in those that didn’t.”^[34]

“Moderate rent control has no impact on new construction primarily because of the non-restrictive nature of moderate rental controls which guarantee a landlord a fair return on investment, and exempt newly constructed buildings.”^[35]

Manitoba, Canada has moderate rent control similar to that in San Francisco and other California cities, and one researcher has found “no evidence that Manitoba’s rent regulation program has a negative impact on the supply of rental accommodation, either in the conversion of existing units to condominium ownership, or in slowing the rate of construction of new rental units.”^[36]

California’s Costa-Hawkins law exempts housing built after 1995 from rent control, and thus guarantees that rent control does not apply to new rental units. And a “glance at San Francisco, Oakland and Berkeley should be proof that rent control does not stop development.”^[37]

[33] McElroy, Erin, Andrew Szeto, “The Racial Contours of YIMBY/NIMBY Bay Area Gentrification,” *Berkeley Planning Journal*, 29(1), at 9. 2017; <https://escholarship.org/uc/item/4sw2g485>

[34] Blumgart, Jake, “In Defense of Rent Control,” *Pacific Standard*, April 1, 2015; *supra*. <https://psmag.com/economics/in-defense-of-rent-control>.

[35] Gilderbloom, 1996, *supra*, at 424.

[36] Grant, 2011, *supra*, at ii.

[37] Parker, *supra*

Criticism Of Rent Control Is Often Misguided and Ideologically-Motivated

Several scholars who have spent years studying it have concluded that “much of the criticism of rent control is misdirected and misguided. Most studies [critical of rent control] examine extreme or unusual cases while ignoring typical rent control cities. A comprehensive review of numerous studies of the effects of rent control indicates that the criticism is based on highly restrictive forms of rent control [e.g., absolute rent freezes] which are rarely found among the 180 localities that currently have some form of rent control.”[\[5\]](#)

One economist recently determined that many criticisms of rent control “are ill-founded on both theoretical and empirical grounds. Well-worn myths about rent regulations—that they reduce the quantity and quality of rental accommodation—derive from a simple textbook model of ‘rent controls’ applied to first generation programs [i.e. ‘rent freezes’] that existed in the 1950s. More sophisticated analysis of second generation programs—such as that which exists in Manitoba [similar to the rent control laws currently in place in San Francisco and other California cities]—indicate that well-designed rent regulations can improve the economic security of tenants and, at the same time, have a beneficial effect on the market’s efficiency.”[\[6\]](#)

Efforts to weaken or end rent control in cities throughout America are typically led by real estate, commercial landlord interests, all of whom are seeking to maximize their profits in residential rental properties.[\[7\]](#) These special interests are inherently biased, of course, and their arguments are largely based on outdated economic studies that dealt with absolute price ceilings or “rent freezes,” which are not the same as the modern, moderate forms of rent control currently in place in many California cities.

[5] Gilderbloom, John I., John Markham, “Moderate Rent Control: Sixty Cities Over 20 Years,” *Journal of Urban Affairs*, Vol. 18, No. 4, 1996, at 413.

[6] Grant, Hugh, "An Analysis of Manitoba's Rent Regulation Program and the Impact on the Rental Housing Market," Department of Economics, Faculty of Business and Economics, The University of Winnipeg, January 2011;
http://www.gov.mb.ca/cca/pubs/rental_report.pdf

[7] See, e.g., Ambrosius, Joshua D., John I. Gilderbloom, et al, "Forty Years of rent control: Reexamining New Jersey's moderate local policies after the great recession," *Cities* 49 (2015) 121-133, at 130-131.

Rent Control is Good Public Policy

In addition to helping create stable neighborhoods and communities, including protecting our most economically vulnerable citizens from unpredictable and erratic rent increases and arbitrary evictions, rent control serves other important social values.[\[17\]](#)

For example, rent control creates a high level of transparency between landlords and tenants. Tenants under rent control have greater rights and security of tenure, making “rent controlled cities more desirable when choosing a city of residence.”[\[18\]](#) This suggests the existence of benefits to local economies more widespread than just protecting stable neighborhoods.

[17] Ambrosius, 2015, *supra*, at 131, stating that “Rent Control cannot be measured solely by its ability to keep rents low, but also by its protections from extreme rent increases and arbitrary evictions, and mechanisms for tenants to challenge unreasonable rent increases and landlord practices.”

[18] *Id.*

Residents are leaving



§46-1.5 General powers and limitation of the counties. Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

- (1) Each county shall have the power to frame and adopt a charter for its own self-government that shall establish the county executive, administrative, and legislative structure and organization, including but not limited to the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office;
- (2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures that may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property;
- (3) Each county shall have the power to enforce all claims on behalf of the county and approve all lawful claims against the county, but shall be prohibited from entering into, granting, or making in any manner any contract, authorization, allowance payment, or liability contrary to the provisions of any county charter or general law;
- (4) Each county shall have the power to make contracts and to do all things necessary and proper to carry into execution all powers vested in the county or any county officer;
- (5) Each county shall have the power to:
 - (A) Maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters;
 - (B) Remove from the channels, and from the shores and beaches, any debris that is likely to create an unsanitary condition or become a public nuisance; provided that, to the extent any of the foregoing work is a private responsibility, the responsibility may be enforced by the county in lieu of the work being done at public expense;
 - (C) Construct, acquire by gift, purchase, or by the exercise of eminent domain, reconstruct, improve, better, extend, and maintain projects or undertakings for the control of and protection against floods and flood waters, including the power to drain and rehabilitate lands already flooded;
 - (D) Enact zoning ordinances providing that lands deemed subject to seasonable, periodic, or occasional flooding shall not be used for residence or other purposes in a manner as to endanger the health or safety of the occupants thereof, as required by

the Federal Flood Insurance Act of 1956 (chapter 1025, Public Law 1016); and

- (E) Establish and charge user fees to create and maintain any stormwater management system or infrastructure; provided that no county shall charge against or collect user fees from the department of transportation in excess of \$1,500,000 in the aggregate per year; provided further that no services shall be denied to the department of transportation by reason of nonpayment of the fees;
- (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so;
- (7) Each county shall have the power to exercise regulatory powers over business activity as are assigned to them by chapter 445 or other general law;
- (8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for;
- (9) Each county shall have the power to provide by ordinance assessments for the improvement or maintenance of districts within the county;
- (10) Except as otherwise provided, no county shall have the power to give or loan credit to, or in aid of, any person or corporation, directly or indirectly, except for a public purpose;
- (11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend rules the county deems necessary for the public convenience and necessity;
- (12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove public nuisances and to compel the clearing or removal of any public nuisance, refuse, and uncultivated undergrowth from streets, sidewalks, public places, and unoccupied lots. In connection with these powers, each county may impose and enforce liens upon the property for the cost to the county of removing and completing the necessary work where the property owners fail, after reasonable notice, to comply with the ordinances. The authority provided by this paragraph shall not be self-executing, but shall become fully effective within a county only upon the enactment or adoption by the county of appropriate and particular laws, ordinances, or rules defining "public nuisances" with respect to each county's respective circumstances. The counties shall provide the property owner with the opportunity to contest the summary action and to recover the owner's property;
- (13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the

order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State;

- (14) Each county shall have the power to:
 - (A) Make and enforce within the limits of the county all necessary ordinances covering all:
 - (i) Local police matters;
 - (ii) Matters of sanitation;
 - (iii) Matters of inspection of buildings;
 - (iv) Matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; and
 - (v) Matters of the collection and disposition of rubbish and garbage;
 - (B) Provide exemptions for homeless facilities and any other program for the homeless authorized by part XVII of chapter 346, for all matters under this paragraph;
 - (C) Appoint county physicians and sanitary and other inspectors as necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of the department of health, subject only to limitations placed on them by the terms and conditions of their appointments; and
 - (D) Fix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law;
- (15) Each county shall have the power to provide public pounds; to regulate the impounding of stray animals and fowl, and their disposition; and to provide for the appointment, powers, duties, and fees of animal control officers;
- (16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal property within the defined boundaries of the county and to dispose of the real and personal property as the interests of the inhabitants of the county may require, except that:
 - (A) Any property held for school purposes may not be disposed of without the consent of the superintendent of education;
 - (B) No property bordering the ocean shall be sold or otherwise disposed of; and
 - (C) All proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes;
- (17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the

laws of the State under the authority of the attorney general of the State;

- (18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of:
 - (A) Community promotion and public celebrations;
 - (B) The entertainment of distinguished persons as may from time to time visit the county;
 - (C) The entertainment of other distinguished persons, as well as, public officials when deemed to be in the best interest of the community; and
 - (D) The rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance;
- (19) Each county shall have the power to:
 - (A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, waterworks, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings, and manage, regulate, and control the same;
 - (B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephone, and telecommunications service to the county;
 - (C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways, and for flushing the sewers; and
 - (D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways;
- (20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance;
- (21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of succession of county officials in the event of a military or civil disaster;
- (22) Each county shall have the power to sue and be sued in its corporate name;
- (23) Each county shall have the power to:
 - (A) Establish and maintain waterworks and sewer works;
 - (B) Implement a sewer monitoring program that includes the inspection of sewer laterals that connect to county sewers, when those

- laterals are located on public or private property, after providing a property owner not less than ten calendar days' written notice, to detect leaks from laterals, infiltration, and inflow, any other law to the contrary notwithstanding;
- (C) Compel an owner of private property upon which is located any sewer lateral that connects to a county sewer to inspect that lateral for leaks, infiltration, and inflow and to perform repairs as necessary;
 - (D) Collect rates for water supplied to consumers and for the use of sewers;
 - (E) Install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises;
 - (F) Take over from the State existing waterworks systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same; and
 - (G) For purposes of subparagraphs (B) and (C):
 - (i) "Infiltration" means groundwater, rainwater, and saltwater that enters the county sewer system through cracked, broken, or defective sewer laterals; and
 - (ii) "Inflow" means non-sewage entering the county sewer system via inappropriate or illegal connections;
- (24) (A) Each county may impose civil fines, in addition to criminal penalties, for any violation of county ordinances or rules after reasonable notice and requests to correct or cease the violation have been made upon the violator. Any administratively imposed civil fine shall not be collected until after an opportunity for a hearing under chapter 91. Any appeal shall be filed within thirty days from the date of the final written decision. These proceedings shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court;
- (B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges, with the exception of fees or charges for water for residential use and sewer charges, collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges, with the exception of water for residential use and sewer charges, collected by the county. The ordinance shall

specify the administrative procedures for the addition of the unpaid civil fines to the eligible taxes, fees, or charges and may require hearings or other proceedings. After addition of the unpaid civil fines to the taxes, fees, or charges, the unpaid civil fines shall not become a part of any taxes, fees, or charges. The county by ordinance may condition the issuance or renewal of a license, approval, or permit for which a fee or charge is assessed, except for water for residential use and sewer charges, on payment of the unpaid civil fines. Upon recordation of a notice of unpaid civil fines in the bureau of conveyances, the amount of the civil fines, including any increase in the amount of the fine which the county may assess, shall constitute a lien upon all real property or rights to real property belonging to any person liable for the unpaid civil fines. The lien in favor of the county shall be subordinate to any lien in favor of any person recorded or registered prior to the recordation of the notice of unpaid civil fines and senior to any lien recorded or registered after the recordation of the notice. The lien shall continue until the unpaid civil fines are paid in full or until a certificate of release or partial release of the lien, prepared by the county at the owner's expense, is recorded. The notice of unpaid civil fines shall state the amount of the fine as of the date of the notice and maximum permissible daily increase of the fine. The county shall not be required to include a social security number, state general excise taxpayer identification number, or federal employer identification number on the notice. Recordation of the notice in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in land court under chapter 501. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing, and delinquent and may be collected in any lawful manner. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts;

- (C) Each county may impose civil fines upon any person who places graffiti on any real or personal property owned, managed, or maintained by the county. The fine may be up to \$1,000 or may be equal to the actual cost of having the damaged property repaired or replaced. The parent or guardian having custody of a minor who places graffiti on any real or personal

property owned, managed, or maintained by the county shall be jointly and severally liable with the minor for any civil fines imposed hereunder. Any such fine may be administratively imposed after an opportunity for a hearing under chapter 91, but such a proceeding shall not be a prerequisite for any civil fine ordered by any court. As used in this subparagraph, "graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances;

(D) At the completion of an appeal in which the county's enforcement action is affirmed and upon correction of the violation if requested by the violator, the case shall be reviewed by the county agency that imposed the civil fines to determine the appropriateness of the amount of the civil fines that accrued while the appeal proceedings were pending. In its review of the amount of the accrued fines, the county agency may consider:

- (i) The nature and egregiousness of the violation;
- (ii) The duration of the violation;
- (iii) The number of recurring and other similar violations;
- (iv) Any effort taken by the violator to correct the violation;
- (v) The degree of involvement in causing or continuing the violation;
- (vi) Reasons for any delay in the completion of the appeal; and
- (vii) Other extenuating circumstances.

The civil fine that is imposed by administrative order after this review is completed and the violation is corrected shall be subject to judicial review, notwithstanding any provisions for administrative review in county charters;

(E) After completion of a review of the amount of accrued civil fine by the county agency that imposed the fine, the amount of the civil fine determined appropriate, including both the initial civil fine and any accrued daily civil fine, shall immediately become due and collectible following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrual of civil fine prior to correcting the violation, shall immediately become due and collectible following reasonable notice to the violator, at the completion of all appeal proceedings; and

(F) If no county agency exists to conduct appeal proceedings for a particular civil fine action taken by the county, then one shall be established by ordinance before the county shall impose the civil fine;

- (25) Any law to the contrary notwithstanding, any county mayor, by executive order, may exempt donors, provider agencies, homeless facilities, and any other program for the homeless under part XVII of chapter 346 from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate and grant the exemptions granted by this paragraph;
- (26) Any county may establish a captive insurance company pursuant to article 19, chapter 431; and
- (27) Each county shall have the power to enact and enforce ordinances regulating towing operations. [L 1988, c 263, §2; am L 1989, c 338, §1; am L 1990, c 135, §1; am L 1991, c 212, §2; am L 1993, c 168, §§1, 5; am L 1994, c 171, §§3, 4; am L 1995, c 236, §1; am L 1996, c 19, §§1, 2; am L 1997, c 350, §17; am L 1998, c 212, §3; am L 2001, c 194, §1; am L 2003, c 84, §2; am L 2005, c 163, §1; am L 2007, c 249, §6; am L 2010, c 89, §3; am L 2015, c 42, §2; am L 2018, c 130, §1; am L 2023, c 234, §1]

Cross References

Alternative dispute resolution board of advisors, see §613-3.

Construction projects; recycled glass requirements, see §103D-407.

Glass container recovery, see §§342G-81 to 87.

Graffiti:

- Criminal property damage, see §§708-820 to 823.6.
- Parental responsibility, see §577-3.5.

Graywater recycling program, see §342D-70.

Liability for promoting ridesharing, see §279G-2.

School construction, renovation; off-site improvement exemption, see §103-39.5.

Law Journals and Reviews

"Property" and Investment-Backed Expectations in Ridesharing Regulatory Takings Claims. 39 UH L. Rev. 301 (2017).

Capturing Excess in the On-Demand Economy. 39 UH L. Rev. 315 (2017).

Turning Homeowners into Outlaws: How Anti-Home-Sharing Regulations Chip Away at the Foundation of an American Dream. 39 UH L. Rev. 395 (2017).

Poisons in Our Communities: Environmental Justice's Role in Regulating Hawai'i's Biotechnology Industry. 40 UH L. Rev. 155 (2018).

Knick in Perspective: Restoring Regulatory Takings Remedy in Hawai'i. 42 UH L. Rev. 136 (2019).

Case Notes

State Constitution's conservation clause may obligate counties to use their authority to conserve public-trust resources, but it does not permit counties to exercise power that the State has not granted them. Therefore, it is irrelevant whether county ordinance is beyond the county's police power under this section because it is impliedly preempted by state law. 842 F.3d 669 (2016).

Where county passed an ordinance regarding pesticide use, court found that the State's statutory scheme for pesticides was comprehensive. Specifically, as with the county ordinance, the State's statutory scheme addressed permissible areas of pesticide application and warnings regarding the application of restricted use pesticides. Generally, the Hawaii pesticides law and its implementing rules addressed the entire life cycle of pesticides, including research/experimentation, transportation, storage, sale, use, and disposal. 842 F.3d 669 (2016).

While no statute or agency rule specifically mentioned genetically engineered (GE) crops, the State's statutory scheme for regulation of potentially harmful plants was comprehensive, where, among other things, it governed the importation, sale, and eradication of potentially harmful plants; and disclosed a clear inference that the legislature intended for the State's regulation of potentially harmful plants to be exclusive of supplemental local regulations. Thus, court found that county ordinance was unenforceable and impliedly preempted by state law. 842 F.3d 688 (2016).

County ordinance banning genetically engineered organisms was preempted by state law, where the ordinance's ban covered the subject matter embraced within a comprehensive scheme of state statutes and regulations intended to be exclusive and uniform throughout the State. Also, the ordinance's civil fine provisions were unenforceable, exceeding the maximum fine authorized by the county charter. 111 F. Supp. 3d 1088 (2015).

Preemption of a county ordinance by state law does not turn on whether the ordinance addresses local, rather than statewide concerns. 111 F. Supp. 3d 1088 (2015).

Public utilities commission's regulatory powers over public utilities preempted power of counties to regulate height of utility poles. 72 H. 285, 814 P.2d 398.

Counties' general power of eminent domain as set out in paragraph (6) not limited by §§46-61, 46-62, and 101-2; when a municipal ordinance may be preempted pursuant to paragraph (13), discussed. 76 H. 46, 868 P.2d 1193.

Financial responsibility law was not preempted by chapter 294, part I (chapter 294 is predecessor to chapter 431,

article 10C), where plaintiff's preemption theories were grounded in §70-105 (predecessor to §46-1.5(13)). 76 H. 209, 873 P.2d 88.

Where city ordinance did not require that funds generated by a "convicted persons" charge be used to defray the city's investigative and prosecutorial costs associated with the individual payor's case, leaving open the possibility that the charge could be used for general revenue raising purposes, ordinance was not a "service fee" under paragraph (8), but a tax, which the State did not empower the city to impose; thus ordinance was invalid. 89 H. 361, 973 P.2d 736.

Paragraph (16) does not prohibit the condominium lease-to-fee conversion mechanism prescribed by Revised Ordinances of Honolulu chapter 38 with respect to oceanfront property. 98 H. 233, 47 P.3d 348.

As the plain language of paragraph (24) (A) establishes that its notice requirements apply under circumstances in which a county seeks to impose civil fines, where defendant was charged with criminal offenses and was sentenced to criminal penalties relating to a dog owner who negligently fails to control a dangerous dog, this paragraph did not apply to defendant's case. 120 H. 486 (App.), 210 P.3d 9.

Pursuant to the statutory grant of authority under this section, the city had the power to enact and enforce Revised Ordinances of Honolulu §7-7.2, which makes it a crime for a dog owner to negligently fail to control a dangerous dog. 120 H. 486 (App.), 210 P.3d 9.

Where a Hawaii county ordinance made the enforcement of marijuana laws the lowest enforcement priority in the county, the ordinance conflicted with the Hawaii Penal Code and covered the same subject matter that the legislature intended to govern under chapter 329, and, therefore, was preempted. 132 H. 511 (App.), 323 P.3d 155 (2014).

AN ORDINANCE TO REGULATE RENTS AND RENTAL CONDITIONS OF PROPERTY FOR PLACES OF ABODE, CREATING A RENT CONTROL COMMISSION DEFINING ITS POWERS, DUTIES AND FUNCTIONS, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF. BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF MAUI.

Section 1. DEFINITIONS. As used in this ordinance:

(a) The term "administrator" means the administrator of rent control.

(b) The term "board" means the board of supervisors of the County of Maui.

(c) The term "commission" means the rent control commission.

(d) The term "housing accommodations" means any building, structure or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes in the County of Maui, (including, but without limitation, houses, apartments, hotels, rooming houses, boarding houses and other properties used for living or dwelling purposes) together with all services supplies in connection with the use or occupancy of such property.

(e) The term "landlord" includes an owner, lessor, sub-lessor or other person entitled to receive rent for the use or occupancy of any housing, accommodations.

(f) The term "maximum-rent ceiling" means the maximum-rent which may be demanded or received for the use or occupancy of any house or the furnishing of any housing accommodations.

(g) The term "minimum-service standard" means the minimum service which may be supplied with the renting or leasing of any house or the furnishing of any housing accommodations.

(h) The term. "person" includes one or more individuals, firms, partnerships, corporations or associations and any agent, trustee, receiver, assignee or other representative thereof.

(i) The term "rent" means the consideration, including any bonus, benefit or gratuity, demanded or received per day, week, month, year or other period of time, as the case may be, for the use or occupancy of housing accommodations or the transfer of a lease for such accommodations.

(j) The term "services" includes the furnishing of light, hot or cold water, telephone, furnishings, furniture, window shades, screens, awnings, and storage, kitchen, bath and laundry facilities and privileges, maid service, janitor service, yard service, removal of refuse, and the making of all repairs suitable to the housing accommodations or necessitated by ordinary wear and tear, and any other ordinary privilege connected with the use and occupancy of housing accommodations.

(k) The term "nuisance" means nuisance in the broadest sense of the word and includes any injury, damage or waste to the property of the landlord.

Section 2. RENT CONTROL COMMISSION. There is hereby created a rent control commission of five members any three of whom are empowered to act, who shall be appointed by the Chairman & Executive Officer of the Board of Supervisors, for a term coexistent with the term of Chairman & Executive Officer of the Board of Supervisors. Any vacancy shall be filled by appointment for the remainder of the unexpired term. The Chairman of the Board of Supervisors shall name one of the members to act as chairman of the commission.

The commission shall appoint an administrator of rent control who shall act as executive secretary for the commission and who shall perform the duties and exercise the powers imposed upon him by this ordinance. The commission shall have the power to appoint and employ such clerks, stenographers and other assistants as may be required and for which appropriations shall be made by the Board. The salary of the administrator shall be fixed by the board. Members of the commission shall receive no compensation for their services.

Section 3. MAXIMUM-RENT AND MINIMUM-SERVICE STANDARDS: Maximum-rent ceilings and minimum-service standards for housing accommodations in the County of Maui shall be such as shall afford a fair and reasonable return to the landlord for rentals and services, giving due consideration to the value of the properties, the condition thereof, the nature of the services rendered, the term and nature of the occupancy and rentals generally prevailing for comparable housing accommodations in the vicinity, subject however to such adjustments as may be made by the commission pursuant to the provisions of this ordinance.

Section 4. PETITION FOR ADJUSTMENT OF RENT

(a) Any landlord or tenant may petition the commission to adjust the maximum-rent ceiling applicable to his housing accommodations on the ground that such maximum-rent ceiling is, due to peculiar circumstances affecting such housing accommodations, substantially higher or lower than the rent generally prevailing for comparable housing accommodations; whereupon the commission may by order adjust said rent ceiling to provide the rent generally prevailing for

comparable housing accommodations as determined by the commission.

(b) Any landlord may petition the commission to adjust the maximum rent ceiling or minimum-service standard, or both, applicable to his housing accommodations to compensate for (1) a substantial rise in taxes or other maintenance or operating costs or expenses, or (2) a substantial capital improvement or alteration; whereupon the commission may by order adjust such maximum-rent ceiling or minimum-service standard in such manner or amount as it deems proper to compensate therefor, in whole or in part, if it finds such adjustment necessary to carry out the purposes of this ordinance; provided, however, that no such adjustment in maximum-rent ceiling or minimum-service standard shall permit the receipt of rent in excess of that generally prevailing for comparable housing accommodations as determined by the commission*

(e) Any tenant may petition the commission on the ground that the services supplied to him are less than the services established by the minimum-service standard for his housing accommodations; whereupon the commission may order that the services be maintained at such minimum-service standard or that the maximum-rent ceiling be decreased to compensate for a reduction in services, as it deems necessary or appropriate to carry out the purposes of this ordinance.

(d) Any landlord may petition the commission to reduce the services upplied by him in connection with any housing accommodations;

whereupon the commission, if it deems that the reduction of such services is to be made in good faith for valid business reasons and is not inconsistent with carrying out the purposes of this ordinance, may by order reduce the minimum-service standard applicable to such housing accommodations, and adjust the maximum-rent ceiling downward in such amount as it deems proper to compensate therefor. Any adjusted maximum-rent ceiling or minimum-service standard ordered pursuant to this section shall be the maximum-rent ceiling or minimum-service standard for the housing accommodation subject thereto.

Section 5. PROCEEDINGS INSTITUTED BY THE COMMISSION ON ITS OWN

INITIATIVE: In any case where the commission may think it advisable to institute proceedings on its own initiative it shall, before taking such action, serve notice upon both the landlord and the tenant of the housing accommodation involved stating the proposed action and the grounds therefor, Thereafter the proceedings shall be in accordance with Section 6.

Section 6, PROCEDURE: Any petition filed by a landlord or tenant under section 4 or proceeding initiated by the Commission, shall be referred to the administrator. Notice of such action, in such manner as the commission shall prescribe, shall be given the tenant and landlord of the housing accommodation involved. If the petition presents a bona fide case, the administrator shall grant a hearing

which shall be conducted in accordance with the procedure prescribed by the commission. The landlord and tenant shall be given an opportunity to be heard or to file written statements and the common law rules of evidence shall not be controlling at such hearing. The administrator after a hearing shall make findings of fact and recommend an appropriate order, copies of which shall be served upon the parties to the proceeding. Within five days after such service any such party may request that the proposed order be reviewed by the commission, and if there be no such request, the findings and proposed order of the administrator shall thereupon be the findings and the order of the commission; Provided, however, the commission may review such proceedings on its own motion at any time within ten days after service of the administrator's findings and proposed order upon the parties. Upon the request of any such party, or upon motion by the commission, the record in the case shall forthwith be transferred to the commission for review and it may, in its discretion, grant a new hearing. After such hearing or review, the commission shall state its findings of fact and shall make an appropriate order in the case.

Section 7. APPEALS. Nothing in this ordinance shall be construed to prohibit an appeal to any court having jurisdiction to entertain an appeal from any order or ruling of the administrator or the commission. In the event of an appeal, it shall be the duty of the commission to

forthwith transmit to the court to which such an appeal has been perfected, a certified copy of the record had before the commission in regard to the matter in which the appeal was taken,

Section S. PROHIBITIONS. It shall be unlawful for any person to demand or receive any rent in excess of the maximum-rent ceiling or refuse to supply any service required by the minimum-service standard excepting as may be authorized under the terms of a written agreement.

Section 9. UNLAWFUL TO REMOVE TENANT, WHEN: It shall be unlawful for any person to remove or attempt to remove from any housing accommodations the tenant or occupant thereof, or to refuse to renew any lease or agreement for the use of such accommodations, because such tenant or occupant has taken or purposes to take any action authorized or required by this ordinance, or any order issued under the authority of this ordinance.

Section 10, RECOVERY OF POSSESSION BY LANDLORD, NOT PERMITTED.

No action shall be maintained to recover possession of housing accommodations so long as the tenant continues to pay the rent to which the landlord is entitled under this ordinance, unless:

1. The tenant is (a) violating any obligation of his tenancy (other than an obligation to pay rent higher than the rent permitted under this ordinance, or any order thereunder, applicable to the housing accommodations involved, or an obligation to surrender possession of such accommodations) or (b) committing a nuisance or using the housing accommodations for immoral or illegal purposes or for other than living or dwelling purposes: or (c) allowing more

persons to live in such housing accommodations than the accommodations would normally permit: or

2. The landlord seeks in good faith to recover possession of

the property for his immediate and personal use and occupancy

as a dwelling: or

3. The landlord has in good faith contracted in writing to sell the property for immediate and personal use and occupancy as a dwelling by the purchaser and that the contract of sale contains a representation by the purchaser that the property

is being purchased by him for such immediate or personal use

and occupancy: or

4. The landlord seeks in good faith to recover possession for

the immediate purpose of substantially altering, remodeling or demolishing the property: or

5. Upon the termination of the term of a written lease covering the property.

Section 11. SUB-TENANTS An ADDITIONAL OCCUPANTS. No tenant shall

let or sub-let any part of the rented housing accommodations without

the written consent of the landlord.

In, the event that there are more occupants in the particular housing accommodations than there were at the time the tenancy was

created (other than Increases in the family of the tenant by birth) the

tenant shall notify the landlord in writing of such fact within ten

days after the enactment of 'anis ordinance or thereafter within ten

days after such additional occupant or occupants have begun to dwell

in such housing accommodations stating in such notice the number of

such additional occupants.

Section 12. FENLLTY. Any person who wilfully violates any provision of this ordinance, or any order made pursuant to the provisions of this Chairman and 4cutive Officer ordinance, and any person who wilfully makes any statement or entry false in any material respect in any petition or report required to be kept or filed hereunder, and any person who wilfully participates in any fictitious sale or any device or arrangement with intent to evade this ordinance, or any order thereunder, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

Section 13. DECLARATION 02 LEC;ISLATIVE INTEFT. It is hereby declared that a public emergency exists within the county of Maui because of the National Ewergency and the National Defense Program. The large numbers of armed forces and personnel of the United States and civilian workers upon defense projects have aggravated the congested situation with regard to housing accommodations in the county of Maui and have made it increasingly difficult for persons whose duties and obligations require them to live in this community, as well as local and permanent residents, to obtain such accommodations at a fair rate of rental. Instances of rent-gouging practices by some landlords have been disclosed and it is the intention of this board that in the interests of National Defense rents charged for housing accommodations must be regulated and controlled

so as to prevent speculative and manipulative practices by landlords,
while at the same time allowing to the landlords a fair return on the value of their housing accommodations.

Section 14. SEVERABILITY. If any provision of this Ordinance or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of the provision to other persons or circumstances shall not be affected thereby.

Section 15. EFFECTIVE DATE. This Ordinance shall take effect upon its approval.

THE BOARD OF SUPERVISORS OF The COUNTY
OF MAUI, TERRITORY OF HAWAII, 1943.

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024
ON THE FOLLOWING MEASURE:**

S.B. NO. 2762, RELATING TO RENT CONTROL.

BEFORE THE:
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Wednesday, January 31, 2024 **TIME:** 9:50 a.m.
LOCATION: State Capitol, Room 229 and Videoconference
TESTIFIER(S): Anne E. Lopez, Attorney General, or
Christopher T. Han or Bryan C. Yee, Deputy Attorneys General
Chair Keohokalole and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill prohibits a landlord from renting or leasing a dwelling unit at a rate higher than the going rate on the bill's effective date. This bill essentially applies to the County of Maui, which includes the islands of Maui, Molokai, and Lanai.

This blanket prohibition on rent increases, without any exceptions, may be susceptible to constitutional challenges on legal grounds such as the impairment of contracts under the Contract Clause of the U.S. Constitution. Therefore, we recommend amending the bill to incorporate the exceptions contained in section 127A-30(b), Hawaii Revised Statutes (HRS).

Section 1 of the bill should be amended by amending subsection (a) as follows:

“(a) Notwithstanding any other law to the contrary, no landlord shall rent or lease, or offer to rent or lease, a dwelling unit in a rent-controlled county at a rate that exceeds the rate for which that dwelling unit was rented or leased or was offered for rent or lease on the effective date of this Act[.], unless:

(1) The landlord incurred additional operating expenses, which can be documented, because of an emergency, disaster, or

severe weather in the rent-controlled county, and passes such additional operating expenses on to the tenant; or

(2) The rent increases are contained in a written instrument that was signed by the tenant prior to the effective date of this Act.”

We also recommend inserting a statement of purpose to further bolster the bill against potential Contract Clause challenges. Even where a law is found to impair a pre-existing contract, the court looks to whether the state law is drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose. See *Galima v. Ass'n of Apartment Owners of Palm Ct. by & Through Bd. of Directors*, 453 F. Supp. 3d 1334, 1355 (D. Haw. 2020). In *Galima*, the U.S. District Court for the District of Hawaii struck down Act 282, Session Laws of Hawaii 2019, as it found that not only did the act impair the obligation of pre-existing contracts, the act did not appear to be for the public good, as it benefitted a favored group as opposed to a basic societal interest. See *Id.* at 1356. Therefore, the purpose of the bill should provide that it is either for the benefit of a vulnerable group or the advancement of a basic societal interest.

Additionally, the use of session laws as a vehicle for the prohibition on rent increases, as opposed to incorporating the provision in a chapter of HRS may create notice issues for the bill. Thus, we recommend amending the bill to add an appropriate part within chapter 521, HRS, the Residential Landlord-Tenant Code.

Based on the above, we respectfully request that the Committee pass this bill with the recommended amendments.

Thank you for the opportunity to offer comments.