



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
August 6, 2021**

Re: Bill 67 (2021) A BILL FOR AN ORDINANCE AMENDING SECTION 20.18, MAUI COUNTY CODE, PROHIBITING THE SALE, RENTAL, AND DISTRIBUTION OF DISPOSABLE BODYBOARDS

Good morning Chair Lee and members of the Maui County Council. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains, and everyone in between.

We are OPPOSED to Bill 67 (2021) An Ordinance Amending Section 20.18, Maui County Code, Prohibiting The Sale, Rental, And Distribution Of Disposable Bodyboards. Retailers continue to be concerned about our aina and have supported many initiatives that preserve and protect our environment.

Bans are not the simple answer especially during a pandemic. Currently many local residents have been going to the beach with their families during this pandemic. Many keiki learn water sports using these types of body boards as they are easy to ride and are economically priced. Hawaii still has one of the largest unemployment rate in the nation and many local families are looking for family friendly entertainment that is not too costly. The visitors who comes to the islands and purchase these boards often leave them behind. The hotels recycle the boards by allowing other visitors to use them or they are donated to non profit organizations or those less fortunate families who are not able to afford non necessity items beyond food, shelter and clothing.

Retailers have been one of the hardest hit industries during this pandemic through no fault of their own. Government mandates, closing of tourism and more has contributed to many stores not being able to remain stable. In the last year with little or no income from customers, we have seen so many retail stores closing for good and many those that are open have accumulated hundreds of thousands to millions of dollars in debt from being unable to pay for their commercial lease rent, utilities, supplies and other operating expenses. While the customers are starting to come back, the sales are no where near what is was pre-pandemic for many and will take years to recover.

Now is not the time. We should be looking at a coordinated comprehensive litter reduction program. Government, business and the community should work together on the wise management of our resources by reducing, reusing and recycling principles. We should be looking at litter control programs and education and not a ban.

Mahalo again for this opportunity to testify.

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RETAIL
MERCHANTS
OF HAWAII

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TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
August 6, 2021

Re: Bill 68 (2021) A BILL FOR AN ORDINANCE AMENDING CHAPTER 20.26, MAUI COUNTY CODE, RESTRICTING THE USE AND SALE OF FOAM COOLERS

Good morning Chair Lee and members of the Maui County Council. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains, and everyone in between.

We are OPPOSED to Bill 68 (2021) A Bill For An Ordinance Amending Chapter 20.26, Maui County Code, Restricting The Use And Sale Of Foam Coolers. Retailers continue to be concerned about our aina and have supported many initiatives that preserve and protect our environment.

We are unsure when this pandemic will end. As we have seen in the last couple of weeks, the numbers have significantly increased to some of the highest since its inception. Covid-19 is not going away anytime soon. While we understand the want by some organizations to get rid of all foam and plastic items, this is just not the time.

This pandemic has shown the need for disposable items in an effort not to spread Covid-19 and the various variants that are coming into our community. Some of the alternative disposable coolers are not only more expensive, but they also not as efficient in keeping products cool or hot. Some of the ones made of paper do not hold up well when used with ice for cold items as the melted ice saturates the cooler and creates water leakage. Foam cooler are often recycled to be used multiple times and inexpensive in comparison to Yeti, Coleman or others.

Retailers have been one of the hardest hit industries during this pandemic through no fault of their own. Government mandates, closing of tourism and more has contributed to many stores not being able to remain stable. In the last year with little or no income from customers, we have seen so many retail stores closing for good and many those that are open have accumulated hundreds of thousands to millions of dollars in debt from being unable to pay for their commercial lease rent, utilities, supplies and other operating expenses. While the customers are starting to come back, the sales are no where near what it was pre-pandemic for many and will take years to recover.

Now is not the time. We need to really take a look at where the litter coming into Hawaii is actually originating from. We have to take into consideration that much is coming from not Hawaii but being carried to our islands from currents. We should be looking at a coordinated comprehensive litter reduction program. Government, business and the community should work together on the wise management of our resources by reducing, reusing and recycling principles. We should be looking at litter control programs and education and not a ban. And we should also take a look at the various opala receptacles to ensure that the disposed rubbish in them are not easily able to be blown out,

Mahalo again for this opportunity to testify.



3610 Waiālae Ave • Honolulu, HI 96816



(808) 592-4200



tyamaki@rmhawaii.org

**I am writing in strong support of the proposal for an Ordinance by the Maui County Council
August 6, 2021: Re: INTEGRATED PEST AND ENVIRONMENTAL MANAGEMENT ON COUNTY
PROPERTY (CR21-56)**

I have lived and worked on Kaua`i as a pediatrician since 1979 and served as the Wilcox Hospital CEO. I also served for fourteen months in 2014-15 on a state-sponsored task force examining possible health consequences of pesticide use on Kaua`i.

The evidence is rapidly growing that we as physicians, and our regulatory bodies, have greatly underestimated the danger of pesticides. In 2012, the American Academy of Pediatrics published an important policy statement. The opening lines stated that there is growing concern about the adverse health effects of *chronic low-level* exposure to pesticides for the unborn, infants, and children. This was an eye opener for pediatricians. We have all been trained about actual poisoning from drinking or being sprayed with a pesticide, but most of us had little training or sufficient concern about the low levels of exposure a person might get from the spraying in parks and yards or the pesticides found in our food.

In the last five years there has been an alarming explosion of studies presenting strong evidence that chronic low level pesticide exposure is associated with health problems including developmental problems such as autism and ADHD, respiratory problems such as asthma, multiple types of cancer, and adverse changes to the bacteria living in and on our bodies.

Although all pesticides are inherently toxic and should be avoided in areas that people congregate, I am going to use Roundup as an example of the dangers. Roundup is one of the most commonly

used pesticides in the world and in most counties is also the most commonly used pesticide in the maintenance of parks and roadways. Monsanto has stated for years that it is one of safest pesticides available, that its safety has been proven by hundreds of studies, that it passes rapidly and unchanged from the body and that it is also quickly broken down in the soil when sprayed.

A closer examination of these statements reveals that the vast majority of the studies showing safety were done decades ago, were paid for by Monsanto, were based on technologies which are not nearly as sophisticated as those currently in use, and most of these studies are not even available for public review. The overwhelming evidence in hundreds of recent studies, many done in the past five years, shows toxicity of Roundup to almost all life forms, including humans. Other studies have shown that Roundup can persist in soil for up to a year. Roundup may pass quickly from the body but our exposure to it from spraying and from the food we eat is almost constant so most Americans have some Roundup in our bodies most of the time. The effects of Roundup on our cells and genetic material is just coming to light as well as the effect of Roundup on the billions of bacteria that colonize our bodies. Evidence that Roundup effects these bacteria (it is patented as an antibiotic) is coming at the same time as we are learning that upsetting the ratios of those bacteria can have serious health consequences.

We as physicians and our elected officials need to join forces and do our best to minimize pesticide exposure whenever possible. Our public needs to feel confident that children playing in parks and walking on roadways are not exposed to pesticides. Parks unfortunately have posed a particular danger to small children as they get the pesticides on their hands and clothing, track it into their

houses, put their hands in their mouths and are much more susceptible to harm because of their small size and developing brains and bodies.

The evidence of harm from pesticide exposure is becoming all too clear. Please help protect our keiki.

Lee A. Evslin, MD
Fellow of The American Academy of Pediatrics
Kapaa, HI
levslin@gmail.com

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2021 AUG -6 AM 7:43
OFFICE OF THE
COUNTY CLERK

County Clerk

From: Lii Kualaaau <liikualaaau@yahoo.com>
Sent: Friday, August 6, 2021 8:49 AM
To: County Clerk
Subject: Testimony for CR 21-56

I am writing the testimony in support of bill CR 21-56. We're getting close folks!!! Please submit testimony in support of CR 21-56, determining the categories of pesticide and fertilizers to be used in our public parks and road ways proposed by Council Member Sinenci. I hope you will support it as well as it promotes the health of not only our island but the community that uses the parks and road ways. Mahalo Lii Kualaaau

Sent from my iPhone

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2021 AUG -6 AM 9:01
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COUNTY CLERK

County Clerk

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From: Rita Goldman <inky@hawaii.rr.com>
Sent: Friday, August 6, 2021 9:14 AM
To: County Clerk
Subject: Maui the bell jar

2021 AUG -6 AM 9:38

OFFICE OF THE
COUNTY CLERK

Aloha,

I'm not able to attend today's meeting regarding the moratorium on new visitor accommodations, but hope I'm not too late to submit my testimony. Here goes:

Some forty years ago, I attended a talk by Frank Blackwell, who started the Maui Visitors Bureau back when most folks on the mainland didn't know that Maui was one of the Hawaiian Islands. I've never forgotten the chart he presented, representing what happens to a tourism destination over time. The example he used was for Coney Island, but was just as relevant for Maui. I'm sure this is nothing new to you, but it sure left an impression on me.

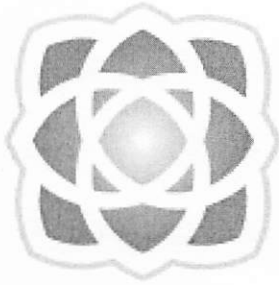
The chart Frank displayed was a bell curve: Tourism begins at the lower left side, when relatively few people visit the destination—typically only wealthy and/or adventurous travelers who appreciate its authenticity. Over time, word spreads, and more and more people come. The destination keeps adding activities and accommodations to attract and serve the soaring numbers of visitors. By the time those numbers reach the top of the curve, the quality and authenticity of the destination have started plummeting. To support those accommodations and activities, rates also decline, and with them the revenue for upkeep. Lower costs, more people. More people, more degradation. By the time you reach the lower right side of bell curve, the destination mostly attracts bargain-hunters; the higher-paying visitor has moved on, and the cycle begins anew somewhere else.

Rita Goldman
Ha'iku

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MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

CC 21-390 & CC 21-391
Acceptance of the Donation of Various School Supplies
Friday, August 6, 2021

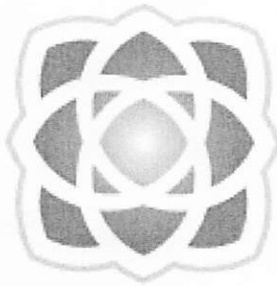
Dear Chair Lee, Vice-Chair Rawlins-Fernandez and
Members of the Maui County Council,

We strongly support the resolutions to accept school supplies from Ian Smith and the
Stable Road Foundation. We applaud groups and members of the community who go
above and beyond to help and appreciate this donation.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment
for business, advocating for a responsive government and
quality education, while preserving Maui's unique
community characteristics.



MAUI
CHAMBER OF COMMERCE
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COUNTY CLERK

CR 21-56
Determining Categories of Pesticide and Fertilizer
Allowed For Use on County Property
Friday, August 6, 2021

Dear Chair Lee, Vice-Chair Rawlins-Fernandez and
Members of the Maui County Council,

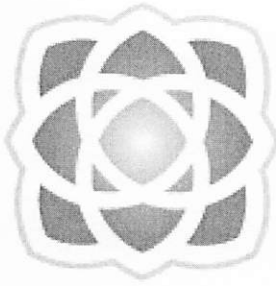
We appreciate the opportunity to provide testimony on this matter. We are concerned given the information shared by Director Rowena Dagdag-Andaya and Director Peters at the July 21st Committee Meeting. It is clear that the County has been making concerted efforts to phase out fertilizer and pesticide use as noted by Directors. Director Dagdag-Andaya even shared some of the organic materials and new technology they have tried to control weeds. However, it seemed from the discussion that the small amount of fertilizers and pesticides they are currently using are necessary and organic alternatives with a comparable efficacy do not exist at this time. Therefore, we feel this bill is premature and unnecessary.

Given the lengths that the Departments of Public Works and Parks and Recreation are going to try new products and reduce the use of fertilizers and pesticides, we feel this should be a recommendation by resolution instead of legislation.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



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2021 AUG -6 AM 9:38

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Bill 69
Short-Term Rental Home Permits
Friday, August 6, 2021

Dear Chair Lee, Vice-Chair Rawlins-Fernandez and
Members of the Maui County Council,

Mahalo for the opportunity to provide testimony on the reduced caps for Short-Term Rental Home permits. We appreciate that the Council ensured those who currently have a permit are protected in this cap reduction bill and wanted to share some additional thoughts.

We are hearing that some people are concerned that this process was arbitrary and that while Councilmembers are having discussions with some of their constituents, they are not necessarily engaging with the broader community and all impacted by this change. We strongly believe a public hearing and/or community meetings specifically addressing this and reaching all impacted individuals, as recommended by the Maui Planning Commission, would help address these concerns, ensure industry voices are heard, and reach those who intended to rent their property but were in the 5-year waiting period.

Lastly, we would like to again suggest that the Council allow for family members to will their permit to their heirs, especially in areas like Hana and West Maui where the permit cap is being significantly lowered. We know many local families who use their STRH as a business and plan to pass it down to their loved ones to continue. We understand this may not be an appropriate amendment for the section of the code in Bill 69 and recommend the Council take swift action to address this elsewhere.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



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COUNTY CLERK

CC 21-377
Bill 60 Veto
Friday, August 6, 2021

Dear Chair Lee, Vice-Chair Rawlins-Fernandez, and
Members of the Maui County Council,

We have come before you many times to share our concerns on Bill 60 and we appreciate that the Mayor shares our concerns.

We all agree that we need to better manage tourism, work on infrastructure improvements, mitigate traffic, increase our stock of affordable housing and rentals and more, but we strongly believe this moratorium is not the tool to solve these issues and may negatively impact the industry.

The purpose of this bill began as an attempt to preserve the status quo in these two areas while the community plan updates were completed, but shifted to blaming the visitor industry for environmental impacts. It put a bad spin on the visitor industry and pitted them against the environment. The Council should have worked with the industry and created a TIG prior to considering a moratorium. We believe many of the concerns could have been discussed and solutions proposed before jumping to extreme measures.

Additionally, we and others have consistently shared our apprehension on this bill because of the potential for legal challenges. The last thing the County needs is to spend time, money, and resources on a legal battle that impacts residents and takes away from the progress that could be made on critical issues. This concern was heightened when we learned the final bill did not include a signature from Corporation Counsel. We feel Corporation Counsel's approval should be paramount, given the issues brought up on this bill. Therefore, we strongly encourage you to let the Mayor's veto stand and protect our County.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

County Clerk

From: Madison McGain <madisonmcgain@gmail.com>
Sent: Friday, August 6, 2021 9:40 AM
To: County Clerk
Subject: Testimony for bill 60

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2021 AUG -6 AM 9:41

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If the reason for not passing bill 60 is because it won't solve our tourism problem I'd like to say this: To say that the hotel moratorium doesn't solve the tourism problem is a total cop out. Of course the tourism problem is one that is very multifaceted, but a break from development, a break from creating more places on an already overflowing island to house visitors seems like a pretty rational solution to something that appears way out of hand and absolutely unsustainable. If there are not places for prospective visitors to sleep, they cannot book travel here. It's fairly simple.

If we are feeling already overwhelmed, already very limited in resources, already crowded out of our towns, public spaces, roadways and beloved beaches, why on earth would we not stop building places for visitors to stay?? We are seeing the ugly face of an economy that wasn't planned with sustainability in mind and the public is asking you to take the steps necessary towards a more sustainable future for Maui.

If the concern is our economy: we are already at ABOVE capacity for the island. That means we've surpassed what has been determined Maui needs for a prospering economy.

County Clerk

From: David Dorn <daviddorn808@gmail.com>
Sent: Friday, August 6, 2021 9:49 AM
To: County Clerk
Cc: Tamara A. Paltin; Tasha A. Kama; Gabe Johnson; Kelly King; Keani N. Rawlins; yuki.lee@mauicounty.us; Yukilei Sugimura; Mike J. Molina; Alice L. Lee
Subject: Testimony for County Meeting 8/6/2021 CC-21-377

Testimony for County Meeting
8/6/2021
CC-21-377

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Hello Councilpersons, my name is David Dorn,
And I support the moratorium and I am against the Mayor's veto.

The proposed Mayoral Veto of the Visitor Accommodation Moratorium goes against the will of the community.
And it undermines the Authority of the County Council.
The proposed veto undoes all the work of the rulemaking process. Including all of the public testimony and the hard work of the various Committees.

This veto is a shameful waste of our time and resources.

Maui cannot support more hotels at this time.

There is no water for more hotels,
We already have water shortages and restrictions for local families while hotels continue to build more pools and use enormous amounts of water on landscaping. They are unnecessarily wasting our precious and limited drinking water.

We do not have the infrastructure for more hotels:

We do not have enough roads or amenities, inadequate sewerage facilities, not enough beach parking, and not enough Lifeguards.

As we all know, Maui is drowning in tourism.

And unprecedented numbers of Tourists are drowning on our island as our island is drowning in tourists. We have more ocean rescues and tourist rescues than ever before, heavily taxing our emergency services.

Over-tourism is no joke, this is a crisis.

We need this moratorium so that we can catch our breath, and have a chance to strengthen our infrastructure, and get our island back into balance.

Sustainable tourism will take time to develop.

It is the responsibility of you the Council to protect our community from the harms of over-tourism. And you are required by your own rules to set these limits.

And to stop the degradation of our island and protect our resident's quality of life.
This moratorium is the legitimate tool for achieving this.

With this Moratorium:

No one is harmed, No jobs are lost, no hotels will close. There is no negative impact on any existing business. But this moratorium will; Protect our future, and our fragile island, from more Harm, by regulating tourism-related overdevelopment,
For 2 years. While we reset and regroup, and bring our island back into balance.
And help protect our island community.

*Even the Hotel lobbyist from HHA agreed that there are too many tourists on Maui, and there are problems that we need to address. (we just have different ideas on how to fix the problem of over-tourism.

This moratorium, (Bill 60) is just the first step we need to take as we begin to deal with the problems and harms of over-tourism, and we start the process of “managing tourism”, so that we can achieve our ultimate goal of “sustainable tourism”.

Please reject the mayor’s Veto, and support this important moratorium.

Mahalo,
David Dorn



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2021 AUG -6 AM 10: 04

County of Maui Council Members
200 S. High Street
Kalana O Maui Bldg 8th Floor
Wailuku, HI 96793

OFFICE OF THE
COUNTY CLERK

CC: Honorable Michael Victorino

August 6, 2021

Aloha Maui Council Members;

My name is Darla Palmer Ellison, and I am submitting this testimony on behalf of the Climate Action Advisory Committee, or CAAC in support of overriding the veto on Bill 60. The Climate Action Advisory Committee (CAAC) provides community input and proposals to the Maui County Council and Administration on issues related to the effects of the climate crisis on Maui County and actions to mitigate and adapt to them.

There is a plain and simple fact that Bill 60 addresses. If you build more visitor accommodations, more visitors will come. Maui Hotel and Lodging Association Executive Director Rod Antone was quoted in Maui Now saying, "The industry, government and the community must work together to come up with legislation that helps us better manage tourism." Over Tourism, including overcrowding and overtaxing of natural resources and diminishing the island way of life, was already out of control before the pandemic, but nothing was done during that time, or since to make a better plan. Bill 60 is legislation that does that.

Regarding our economic recovery, Bill 60 does not affect any projects already approved. It does give us a future pause to make better tourism plans, including more closely aligning with community plans.

Our post pandemic economic recovery has exceeded expectations. We are back to pre-pandemic levels. Over tourism is killing the environment and our way of life, and is going to kill tourism without action. Tourism should be a healthy and appropriate mix of our economy. **It is not**, as evidenced by how far it is exceeding community plans. We are at a tipping point, facing diminishing returns where Maui is no longer be "No Kai Oi". If you keep allowing more visitor accommodations to be built, more visitors will come.

The effects of increased tourism in worsening the climate crisis and eventually making Hawai'i unable to support human life are even more profound. The Hawaii State Legislature recognizes this urgency, declaring a climate crisis for the state. An increase in visitor lodging will inevitably result in an increase in visitor traffic and other environmental impacts. We therefore ask that this item be under the purview of the County of Maui Climate Action Resiliency and Environment (CARE) committee.

A 2010 study at UH Mānoa, published in Energy Economics, writes that "emission rates generated by visitor demand are estimated to be higher than that of residents by a factor of 4.3 for carbon, 3.2 for methane, and 4.8 for nitrous oxide." That is mostly due to the huge amounts of greenhouse gas emissions from trans-pacific flights and from intense use of rental ground transportation. 18M tons of CO2 equivalent emissions were generated by air travel in 2019 to and from Hawai'i. That can be compared to a total of 7.8M tons from all power plants and refineries, and 4M tons from all ground transportation. Do you want to continue to increase these climate killing emissions? This data does not begin to address the impacts of tourism once visitors are on island, where tourist far outnumber residents and exceed community plans. Maui does not need more visitor accommodations and more visitor traffic. On the contrary, we desperately need to reduce them for climate change reasons and to increase resident housing.

The CAAC urges the County Council to consider preserving our island culture, support resident housing and embrace potential climate crisis benefits by supporting an override of the Mayor's veto, and create a MORATORIUM ON BUILDING PERMITS FOR VISITOR ACCOMMODATIONS.

Respectfully,
Darla Palmer-Ellingson
Climate Action Advisory Committee
808-280-0949
360socialbiz@gmail.com

County Clerk

From: Rowena Dagdag-Andaya <Rowena.Dagdag-Andaya@co.maui.hi.us>
Sent: Friday, August 6, 2021 10:49 AM
To: County Clerk
Cc: Jill-Anne Ono
Subject: DPW Testimony re CR 21-56 (August 6, 2021)

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2021 AUG -6 AM 10:52
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COUNTY CLERK

August 6, 2021

Aloha Chair Lee and members,

For the record, name is Rowena Dagdag-Andaya from the Department of Public Works.

Thank you for the opportunity to testify regarding CR21-56 relating to pesticide and fertilizer use on County Property.

During the CARE Committee meeting on July 21, 2021, the department suggested revising the proposed bill for an ordinance to clarify the definition of County property and asked if the proposed ordinance would have an impact on property owners who are required to maintain County sidewalks and shoulder areas in accordance with section 12.02.020 of the code, or non-profit organizations who maintain or lease County property. I understand from the discussion, that the proposed ordinance would not affect these groups.

The Department suggests the following revisions for greater clarity:

1. Revise the definition of County property to mean any real property owned or under the County of Maui including any county highway, drainage way, sidewalk, right-of-way, park, building, community center or other facility.
2. Add the definition of sidewalk to mean that portion of a street between a curb line or the pavement of a road, and the adjacent property line, including any setback area acquired by the county for road-widening purposes.
3. Add an Exclusions section. This would help clarify the type of conditions that this chapter of the code will not apply to.
 - a. Use of pesticides or fertilizers on property subject to state executive order, County agricultural parks, or County Property used for agricultural purposes. (This language is currently in the proposed ordinance.)
 - b. Use of pesticides or fertilizers on County property leased by non-profit organizations.
 - c. Use of pesticides or fertilizers by non-County employees on County sidewalks maintained in accordance with section 12.02.020 of this code.

The Department of Public Works remains committed to reducing our use of pesticides and herbicides on our County roadways. We have reduced our usage of herbicides from 111 gallons of concentrated herbicide in 2014 to 3.1 gallons 2020. We have also increased our use of mechanical cutting and have implemented the use of weed steam equipment in our operations. We will also continue to work with the administration, other departments, and with the County Council on how to improve our integrated pest and vegetation management program.

Thank you for the opportunity to testify.

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August 6, 2021

2021 AUG -6 AM 10: 55

Council of the County of Maui
Councilmember Alice Lee, chair
Councilmember Keani Rawlins-Fernandez, Vice-Chair
Members of the Maui County Council

OFFICE OF THE
COUNTY CLERK

RE: CC 21-377 – Veto of Bill No. 60 (2021), entitled, "A BILL FOR AN ORDINANCE AMENDING THE BUILDING CODE TO ADD CHAPTER 40 RELATING TO A MORATORIUM ON BUILDING PERMITS FOR VISITOR ACCOMMODATIONS"

Aloha Chair Lee, Vice-Chair Rawlins-Fernandez, and Honorable Members of the Maui County Council:

I am writing in **OPPOSITION** to Bill 60 which imposes a two-year moratorium on building permits for visitor accommodations in South and West Maui.

2020 has taken us down a path that no one was well-prepared for. This global pandemic crippled our daily lives, we've experienced loss of loved ones, loss of jobs and a severe economic impact. In preparation of opening our islands doors, the tourism/visitors industry took the appropriate steps to assure to open safely; keeping its rooms at the adjusted capacity to maintain a safe limit within covid restrictions. With that being said, due to the UNEXPECTED influx of visitors, illegal rentals became more available and rampant. Just as prior comments on efforts to put a cap on the amount of rental cars being available to visitors, we have and continue to see that even without the availability of rental cars through rental car agencies, community members, as well as neighbor island and out-of-state car owners, have found the ability to fill and maximize that shortage by promoting their vehicles on TURO, on Craigslist, and/or through personal accounts. With this action, it is clear that although not done through a county bill, a moratorium, a forced halt, that with the rental car shortage, there was a still a way to accommodate visitors throughout their stay here on Maui.

Tying the car rental shortage into my reason for opposition, is that if we reduce the number of hotel rooms, there is no guarantee that tourists and visitors will stop traveling to Maui. Unfortunately, I don't believe we can control the airlines who will continue to carry passengers to our islands, specifically Maui. In fact, with record setting numbers of visitors, with a lack of hotel room accommodations, the county will continue to see illegal STR's and TVR's. I don't believe the county has the appropriate staffing to monitor illegal STR's and TVR's, which will eventually result in having visitors/tourists staying in our local neighborhoods. We are currently hearing complaints regarding vehicle rentals in our local neighborhoods, imagine the number of complaints if there is an increase in illegal TVR's and STR's.

I understand and hear the concerns of the community on the high number of tourists and their negative behaviors. I believe that there are ways that this can be addressed. I don't believe this will be addressed adequately through Bill 60. The economic impact will be severe on our

recovering hotel industry. The focus should be on shutting down illegal rentals, maintaining the south side and the west side, as it was designated, for tourism accommodations, and prioritizing RESPONSIBLE hotel development in those areas. The funding that these developments benefit its surrounding communities with vary from new bike paths, road improvements, to workforce housing.

In closing, I support the Mayor's veto of Bill 60 and oppose the measure. As we tread through these untouched, but unstill waters, I would be more than happy to engage in further discussion on working together in finding a fair and equitable solution in resolving these issues and concerns.

Mahalo for your time and consideration of my comments.

Mahalo nui,



Lahela Aiwohi

County Clerk

From: Axel I. Beers
Sent: Friday, August 6, 2021 10:16 AM
To: County Clerk; Kathy L. Kaohu; James G. Krueger; Delfin Yoshida
Subject: August 6th testimony Fw: Is Bill 60 a "land use ordinance"?
Attachments: 060302.txt; cairns opinion.pdf

Aloha,

CM King requests that this email and attached material regarding CC 21-377 on today's agenda be added to the testimony record and sent to all councilmembers.

Thank you,
Axel

Axel Beers
Executive Assistant
he/him/his
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Axel.Beers@mauicounty.us



Office of Councilmember Kelly T. King
South Maui Residency
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200 South High Street, 8th Floor
Wailuku HI 96793
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2021 AUG - 6 AM 10: 54
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From: David M. Raatz <David.Raatz@mauicounty.us>
Sent: Friday, August 6, 2021 8:13 AM
To: Axel I. Beers <Axel.Beers@mauicounty.us>
Cc: James B. Forrest <James.Forrest@mauicounty.us>; Nicole A. Siegel <Nicole.Siegel@mauicounty.us>; Richard E. Mitchell <Richard.Mitchell@mauicounty.us>; Traci N. T. Fujita <Traci.Fujita@mauicounty.us>; Shelly K. Espeleta <Shelly.Espeleta@mauicounty.us>; Wilton A. Leuanae <Wilton.Leuanae@mauicounty.us>
Subject: Is Bill 60 a "land use ordinance"?

Good morning, Axel,

I want to briefly follow up on our conversation from late yesterday. You informed me that there's a member of the public advising Councilmember King that Bill 60 is a "land use ordinance."

The Charter requires the relevant planning commissions to formally review any proposed "land use ordinance" before passage by the Council. Bill 60, which is up for a veto-override vote today, hasn't been reviewed by the Maui Planning Commission. When is an amendment to the County Code a land use ordinance? We don't have a precise definition.

But the Council has always followed Corp. Counsel's advice that amendments to Title 19 (Comprehensive Zoning Ordinance) are land use ordinances and that amendments solely to other parts of the Code are not. OCS has questioned that advice from time to time because, in some circumstances, it arguably elevates form over substance.

Still, the Council has never referred an amendment to Title 16 (Building Code) to the planning commissions. Bill 60 (2021) is an amendment to the Building Code. So it would be unprecedented and contrary to longstanding Council practice to regard a bill like Bill 60 as a "land use ordinance."

Here's a common type of exchange on the issue, excerpted from the attached minutes from 2006, with then-Councilmember Michelle Anderson questioning then-Deputy Corporation Counsel Edward Kushi

19 COUNCILMEMBER ANDERSON: Thank -- thank you.

20 Mr. Kushi, just to distill it down to

21 one sentence, basically, only amendments to

22 Title 19 require Planning Commission review?

23 MR. KUSHI: Simply, yes.

In that meeting, Mr. Kushi cited the attached 1998 opinion from Deputy Corporation Counsel Kelly A. Cairns, advising that a moratorium on building permits didn't require review by the planning commissions. The Cairns opinion was discussed in CARE and cited in the committee report recommending passage of Bill 60. The bill wouldn't exist in its current form without reliance on the Cairns opinion, which provides a conceptual foundation for the bill.

It's fine to question whether the Cairns opinion is correct. But it wasn't publicly challenged in Bill 60's lengthy deliberations.

Please let me know if you or Councilmember King have any questions or comments. I've taken the liberty of copying OCS colleagues who may have an interest in this discussion.

Thanks,

David

David Raatz
Deputy Director of Council Services
he, him, his
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MauiCounty.us

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI

200 South High Street

Wailuku, Hawaii 96793

INTEROFFICE CORRESPONDENCE

January 9, 1998

MEMO TO: Sol P. Kaho'ohalahala, Chair
Land Use Committee

F R O M: Kelly A. Cairns, Deputy Corporation Counsel

SUBJECT: Agricultural Zoning Ordinance (LU-32): Moratorium

This is in response to your memo dated December 17, 1997, inquiring into the County's options with respect to imposing a "moratorium" on subdivision of agricultural lands until the new agricultural zoning ordinance is adopted.

Briefly, the most effective option for the County is to impose a moratorium by ordinance enacted by the Council. The effect of a moratorium possibly may be accomplished administratively as well, by delaying the processing of subdivision applications until the pending agricultural bill is passed. However, we do not believe this latter approach would be appropriate at this time.

The most common means to maintain status quo and stop further development under a land use system that is undergoing improvements is through the enactment of an ordinance imposing a moratorium on the approval of development applications. Such ordinances are often referred to as "stop-gap" or "interim" zoning ordinances. Rathkoph, The Law of Zoning and Planning §11.01 (1979).

Courts have generally upheld the authority of a government body to impose a moratorium by ordinance so long as there are valid reasons justifying the ordinance, it is imposed without discrimination and is in place for a reasonable length of time. Almquist v. Town of Marshan, 245 N.W.2d 819, 824-826 (Minn. 1976); Collura v. Town of Arlington, 329 N.E.2d 733, 737 (Mass. 1975). A legitimate purpose for imposing a moratorium is to avert a "race of

Sol P. Kaho'ohalahala, Chair
Land Use Committee
January 9, 1998
Page 2

diligence" by developers to obtain necessary land use approvals under the old system before new legislation passes. A reasonable length of time for the moratorium may vary depending on the circumstances. In Collura, two years was found to be a reasonable amount of time. Id. at 736. On the other hand, a moratorium imposed in 1977 and reenacted several times to extend until 1983 was held to be too long in Lakeview Apartments v. Town of Stanford, 485 N.Y.S.2d 801, 802 (1985). In any event, there must be continuous and active efforts to enact the new legislation in order to support the reasonableness of the moratorium.

The Supreme Court of the State of Hawaii reviewed an ordinance imposing a moratorium on the acceptance of building permits in certain zoning districts on Oahu in Life of the Land v. City and County of Honolulu, 61 Haw. 390 (1980). In the Life of the Land case, the Court expressed its general approval of such interim control measures. Id. at 417-422. In addition to prohibiting the acceptance of building permits, the subject ordinance provided that a land developer could seek a variance or modification of the ordinance from the City Council as it applied to a particular project if, in the City Council's sole discretion, the project was deemed consistent with the pending legislation. Id. at 395. The Land Use Committee may want to consider including a like provision which would provide relief from the moratorium for subdivision applications determined by the Council to be consistent with the pending agricultural bill.

A moratorium which applies solely to the processing of subdivision applications would not be considered a "zoning ordinance." In Life of the Land, the ordinance placing a moratorium on building permits was determined not to be a zoning ordinance, therefore the requirements for processing such ordinances did not apply. Id. at 427-428. A moratorium on subdivision approvals therefore would not necessitate an amendment to Title 19 of the Maui County Code, which requires public hearings before the planning commissions. Instead, it could be imposed by ordinance enacted after two readings by the Council.

Some jurisdictions across the country have also approved of moratoriums of limited duration imposed by administrative delay of

Sol P. Kaho'ohalahala, Chair
Land Use Committee
January 9, 1998
Page 3

the processing of land use applications. In the opinion of one court, "[w]hile you cannot arbitrarily or unreasonably refuse or delay the issuance of a permit, the issuance may be delayed when there is under consideration or pending an ordinance under which the issuance of the permit would be prohibited." Chicago Title & Trust Co. v. Village of Palatine, 160 N.E.2d 697, 699 (Ill. 1959). However, there is a split of authority on this approach. Many jurisdictions have required the administrative agency to issue the permit in a diligent manner despite any anticipated changes in the law. See Ben Lomond, Inc. v. City of Idaho Falls, 448 P.2d 209, 214-215 (Idaho 1968); State ex rel. Ogden v. City of Bellevue, 275 P.2d 899 (Wash. 1954); and cases cited therein.

Even those cases which have upheld administrative delay of permits did so under circumstances where the passage of the new law was imminent. In Cohen v. Incorporated Village of Valley Stream, 189 N.Y.S.2d 110 (1959), the amended ordinance was passed one month after the time the applicant would have been entitled to his permit. In Chicago Title, the ordinance was enacted twenty-four days after the application was submitted. 160 N.E.2d at 700 (see also cases cited therein). In the case of the agricultural bill, it likely will not be enacted within the next month or two. Even once it is passed out of committee, it is difficult to predict how long it will be before enactment, as often bills are sent back to committee after first reading. Thus, we advise that, at this stage, administrative delay would not be appropriate.

There are additional reasons to favor a council-imposed moratorium over administrative delay. Because there is a split in authority on the validity of administrative delay, we cannot predict whether the Hawaii courts would support such an approach. Also, a moratorium imposed by ordinance offers a clear policy for the entire County that subdivision applications shall not be processed.

- If a moratorium is imposed, the question as to which applications the moratorium shall apply will likely be raised. We provide some general principles here.

The moratorium would not affect a subdivision application wherein the landowner has vested rights or where the County would be

Sol P. Kaho'ohalahala, Chair
Land Use Committee
January 9, 1998
Page 4

equitably estopped from refusing the application. The analysis for whether either of these concepts applies in any given case is similar. Allen v. City and County of Honolulu, 58 Haw. 432, 435 (1977). In order for either to apply, the following must exist:

. . . a change of position on the part of a land developer by substantial expenditure of money in connection with his project in reliance, not solely on existing zoning laws or on good faith expectancy that his development will be permitted, but on official assurance on which he has a right to rely that his project has met zoning requirements, that necessary approvals will be forth coming in due course, and he may safely proceed with the project.

Life of the Land v. City Council, 61 Haw. 390, 453 (1980). Where a discretionary permit, such as a Special Management Area permit, is required before final subdivision approval can be obtained, estoppel will not apply. County of Kauai v. Pacific Standard Life Insurance Co., 65 Haw. 318, 328-332 (1982). Particular circumstances of the individual subdivision applications will have to be examined to determine whether final subdivision approval can be obtained under the existing laws.

If the Land Use Committee decides to enact an ordinance imposing a moratorium, it may also wish to consider including a provision that specifies the stage of the application process at which the moratorium will apply. This would shift the burden to an applicant to prove vested rights in a subdivision.

If you have any questions regarding this matter, please feel free to contact me at ext. 7740.

Council Chair
Patrick S. Kawano

Council Vice-Chair
James "Kimo" Apana

Council Members
Alan M. Arakawa
J. Kalani English
Sol P. Kaho'ohalahala
Alice L. Lee
Dennis Y. Nakamura
Wayne K. Nishiki
Charmaine M. Tavares




Ken R. Fukuoka
Director of Council Services

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

December 17, 1997

MEMO TO: Mr. J. P. Schmidt
Corporation Counsel

F R O M: Sol P. Kaho'ohalahala, Chair 
Land Use Committee

SUBJECT: AGRICULTURAL ZONING ORDINANCE (LU-32)

Enclosed, please find a copy of a recent editorial from the *Haleakala Times* concerning a moratorium on granting subdivision approvals of agricultural lands until new agricultural zoning standards are enacted.

As you know, over two years ago, the prior Council's Planning Committee considered a bill to impose a moratorium on the subdivision of agricultural lands. Soon thereafter, your Department issued Opinion 96-5, the "interim zoning opinion", which imposed a *de facto* moratorium on the subdivision of most of our agricultural lands, as they are zoned interim.

It is now clear, however, that there are substantial lands which are, in fact, zoned agriculture and which can be subdivided without any discretionary review. This is the concern that prompted the moratorium bill introduced in 1995.

What are the County's options to impose a "moratorium" on the subdivision of agricultural lands until the new agricultural zoning ordinance is adopted? Can the Department of Planning and the Department of Public Works and Waste Management take such action administratively, *i.e.*, denying or suspending subdivision applications, through the authority of the Mayor? Or must the Council adopt an ordinance amending Title 18 of the Maui County Code? It is my understanding that a "moratorium" can be imposed administratively when a pending change in the law is imminent in order to prohibit prospective applicants from obtaining approvals under the current law.

Council Chair
Patrick S. Kawano

Council Vice-Chair
James "Kimo" Apana

Council Members
Alan M. Arakawa
J. Kalani English
Sol P. Kaho'ohalahala
Alice L. Lee
Dennis Y. Nakamura
Wayne K. Nishiki
Charmaine M. Tavares



Ken R. Fukuoka
Director of Council Services

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

September 5, 1997

MEMO TO: Mr. J. P. Schmidt
Corporation Counsel

F R O M: Sol P. Kaho'ohalahala, Chair
Land Use Committee

A handwritten signature in dark ink, appearing to be "SK" or similar, written over the name Sol P. Kaho'ohalahala.

SUBJECT: AGRICULTURAL ZONING ORDINANCE (LU-32)

At the September 2, 1997 Land Use Committee meeting, we continued our discussion of the proposed Agricultural Zoning bill.

As you know, one of the primary concerns over existing County Agricultural zoning is its failure to prohibit or restrict the development of agricultural land for nonagricultural uses, specifically "gentlemen's estates" and other luxury residential subdivisions. Some of these developments are even governed by Covenants, Conditions and Restrictions (CC&Rs) prohibiting many types of agricultural activities *on agricultural lands*.

During the course of the Committee discussion, it was suggested that the Committee include a provision in the proposed Agricultural Zoning bill to prohibit the adoption of CC&Rs (or similar private, homeowners' by-laws) which seek to regulate agricultural activities.

I would appreciate your Department's advice on this matter. Can, or should, the County prohibit these types of CC&Rs in the Agricultural District? If so, can you please recommend language to amend the proposed bill?

Thank you for your attention to this request. A written response by September 30, 1997 would be greatly appreciated. Please feel free to contact me or the Committee staff, Michele, Wayne or Camille, if you have any questions.

lu:lfr:32acc02:mnc

County Clerk

From: Mark Joiner <joinertrust@hotmail.com>
Sent: Friday, August 6, 2021 11:03 AM
To: County Clerk
Subject: Testimony for County Council Meeting, 8/6/2021

Bonjour, Council Members

Just wanted to add my strong voice to those advocating an override of Mayor Victorino's veto.

There is no need to take this before the Planning Commission as erroneously stated in testimony this morning. Please refer to the protocols of the Council.

Among many other reasons, a second strong point is the lessening of impact on resources and the environment of our small island county.

Thanks so much for standing strong with the citizens of Maui County in overriding the veto. It means more than even you guys can imagine. Mahalo nui loa!

Malama Maui County,

Mark Joiner
Homeowner
Kihei

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County Clerk**RECEIVED**

From: Darlene Rayhill <darlene@ohanafilms.com>
Sent: Friday, August 6, 2021 11:13 AM
To: County Clerk
Cc: Yukilei Sugimura
Subject: Darlene Lesiak's Written Testimony for CC 21-392

2021 AUG -6 AM 11:16**OFFICE OF THE
COUNTY CLERK**

Aloha to all of the Councilmembers, and thank you so much for listening to my testimony today.

Councilmember Sugimura requested that I submit a written testimony, and what I said during the meeting today is below in blue.

The links to the referenced Post Closure Plans for the Makani and Central Maui Landfills are linked below my testimony as well as some data on the emissions of the landfills (Makani Landfill is currently emitting 0!) and a link to the Makani Landfill Remediation funding plans which seems to cut off funding of the Makani Landfill as of 2017 (maybe this is why the Department of Highways and Transportation lost it's staging area?)

Thank you, thank you, thank you for reviewing all of this and I look forward to working together to find a lasting solution! Whether it be at the Makani Landfill or wherever it is as long as it is not an environmental and health hazard to residents, we will all be very happy.

Finally, I thought you might like to listen to the song about the Old Makawao Dump/Makani Landfill while reading though everything :)

Throw the record on and enjoy:

Bottles & Cans 

8/6/21 Darlene Lesiak on CC 21-392

Aloha and good morning everyone! First off, thank you to Councilmember Molina and his office for meeting with us the past several months, listening to us, and for making this meeting happen. We are beyond grateful to testify on CC 21-392.

I am sure you have heard about the problems of the activities of the baseyard from the community report we've submitted plus from the other people testifying, so I am going to use my couple of minutes talking about the solution:

We were told that the increase of activity behind our house was due to "losing another staging area" which we have come to find out was the Old Makawao Landfill. The increase of activities include the use of heavy machinery, so much so that it shakes our houses and fills our homes with exhaust.

Now, back to the Old Makawao Landfill, also known as the Makani Landfill. We were told that due to the "post closure plan" that the county could no longer use that site as a staging area for this heavy machinery and piles of gravel, asphalt, storm debris, etc.

As a resident, my research is limited to the internet, but I was able to find copies of the post closure plan for the Makani Landfill as well as the post closure plan for the Central Maui Landfill.

The Central Maui Landfill's post closure plan, last amended in 2019, prepared by A-Mehr, Inc., reads as this:

"Portions of the closed landfill areas may be developed for permissible activities associated with the County's solid waste management program, including equipment storage, or use as a maintenance and vehicle storage yard for refuse collection vehicles"

The Makani Landfill post closure plan, prepared by Parametrix, Inc. in August of 1991, which has no amendments, reads as this:

"final land use will be natural open space, with the inclusion of passive recreational facilities possible in the future"

My request is simple: for County Council to vote to amend the Makani Landfill post closure plan to include verbiage of the Central Maui Landfill's post closure plan:

"equipment storage, or use as a maintenance and vehicle storage yard for refuse collection vehicles"

That way, the heavy equipment and staging can move back to Makani Landfill as soon as the amendment is made. Storage of garbage trucks can move there, too. It would be a win-win for everyone.

Perhaps the existing baseyard remains a place for some county activity - the current offices can stay, but perhaps other county office activity could be there as well, which is much more appropriate for a residential neighborhood. Or best yet, it could provide a much needed place for children, like a playground.

Again, I am begging you to vote to amend the Makani Landfill Post Closure Plan and to move the heavy machinery back there. If the space has been used before it seems like this is an easy solution for everyone. We've tried all other avenues, we have prepared reports and letters and although some amazing changes have been made big ones still need to take place. Please work your County Council magic to make this happen.

Thank you for your time.

Reference links:

[Makani Landfill Post Closure Plan](#)

[Central Maui Post Closure Plan – Jump to Section 6.4](#)

[Makani Landfill Remediation – Page 9](#)

[Greenhouse Gas Emissions for Landfills in Maui County](#)

Lots of aloha,
Darlene

Darlene Rayhill
Ohana Films
808.446.6442
ohanafilms.com

August 6, 2021

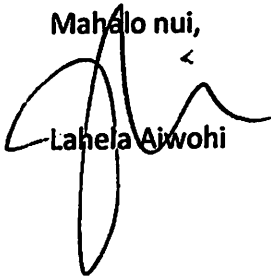
Council of the County of Maui
Councilmember Alice Lee, Chair
Councilmember Keani Rawlins-Fernandez, Vice-Chair
Members of the Maui County Council

**RE: CC 21-390 – SUPPORT of a proposed resolution entitled, "AUTHORIZING ACCEPTANCE OF THE DONATION OF VARIOUS SCHOOL SUPPLIES FROM IAN SMITH TO THE COUNTY OF MAUI, PURSUANT TO CHAPTER 3.56, MAUI COUNTY CODE" and
CC 21-391 – SUPPORT of a proposed resolution entitled, "AUTHORIZING ACCEPTANCE OF THE DONATION OF VARIOUS SCHOOL SUPPLIES FROM STABLE ROAD FOUNDATION TO THE COUNTY OF MAUI, PURSUANT TO CHAPTER 3.56, MAUI COUNTY CODE"**

Aloha Chair Lee, Vice-Chair Rawlins-Fernandez, and Honorable Members of the Maui County Council:

I am submitting testimony in SUPPORT of the above-cited resolutions authorizing acceptance of the donation of various school supplies from Ian Smith and Stable Road Foundation to the County of Maui. I believe this donation is to benefit those needing assistance with back to school supplies and will help ease the financial burdens families may be feeling at this time.

Mahalo nui,



Lahela Aiwahi

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