

MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

November 15, 2021

Honorable Michael P. Victorino, Mayor
County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P Victorino 11/15/21
Mayor Date

For Transmittal to:

Honorable Mike Molina, Chair
and Members of the Government Relations, Ethics, and
Transparency Committee
200 South High Street
Wailuku, Hawaii 96793

Dear Councilmember Molina:

**SUBJECT: BICYCLE-TOUR PUBLIC SAFETY AND RELATED
LITIGATION CONCERNS (GREAT-44)**

Thank you for requesting comments from the Department of Planning (Department) on a proposed bill relating to bicycle tour business regulation.

As your November 9, 2021 transmittal letter notes, the proposed bill includes an appeal process that would be administered by the Board of Variances and Appeals (BVA), which is staffed and supported by the Department. As such, the Department has the following comments:

- The BVA is one of few County boards and commissions that is authorized by the Charter of the County of Maui. Section 8-8.7 states, in part, that the BVA shall "Hear and determine appeals alleging error from any person aggrieved by a decision or order of any department charged with the enforcement of zoning, subdivision, and building ordinances; provided, that the council may by ordinance confer to another county agency the authority to hear and determine appeals from the decisions of the building official in the administration of the county of Maui building code, plumbing code, electrical code, and housing code, and from any order made by the county fire chief in the administration of applicable state law and the county of Maui fire code, and the director of water supply in the administration of the rules and regulations of the department of water supply relating to matters involving any denial of

RECEIVED
2021 NOV 15 PM 3:51
OFFICE OF THE
COUNTY COUNCIL

Honorable Michael P. Victorino
For Transmittal to:
Honorable Mike Molina, Chair
and Members of the Government Relations, Ethics, and
Transparency Committee
November 15, 2021
Page 2

the use of new or alternate materials, types of construction, equipment, devices or appliances” (emphasis added).

This suggests – and long-standing practice has shown – that the BVA’s focus is on issues relating to zoning, building and subdivision. Section 19.520.040, Maui County Code (MCC), relating to appeal procedures and standards, also states that *“the board of variance and appeals shall hear and determine appeals alleging error from any person aggrieved by a decision or order of any department charged with the enforcement of zoning, subdivision, or building ordinances which is within the jurisdiction of the board of variances and appeals”* (emphasis added).

The composition of BVA members has also reflected some degree of experience in or familiarity with these fields, and their duties are generally focused in this area.

- The Department is concerned with assigning new duties to the BVA that are outside its expertise, as proposed new Section 5.22.065 MCC would do. While there are several provisions in MCC that call for appeals to be heard by the BVA that are not directly related to land use or construction, including water allocation, fire alarms and permits for the use of County parks, the Department is concerned with furthering this practice. No such appeals have been filed with the BVA for more than ten years. If or when such an appeal is filed, the BVA will have little familiarity with the applicable laws.
- Pursuant to Section 19.520.040 MCC, when appeals are presented to the BVA, it has the authority to only grant the appeal if one of three criteria is met. It does not have the authority to modify the decision being appealed. Proposed Section 5.22.065 MCC would give the BVA authority to modify the decision; the Department opposes such a change to the BVA’s duties and believes that the BVA should only be authorized to affirm or reverse a decision.
- The proposed criteria of Section 5.22.065 MCC are essentially the same as the existing criteria in Section 19.520.040 MCC, relating to appeal procedures and standards. If this section is enacted, the Department supports using the same criteria.
- Given the above concerns, and noting that MCC contains many other provisions relating to licenses or license-like permits that do not have appeals procedures (e.g., vending, taxicabs), the Department questions whether this appeal process

Honorable Michael P. Victorino
For Transmittal to:
Honorable Mike Molina, Chair
and Members of the Government Relations, Ethics, and
Transparency Committee
November 15, 2021
Page 3

is needed. If it is, perhaps a new board can be established to hear appeals from decisions relating to licensing.

Again, thank you for requesting the Department's comments on the proposed bill. Your consideration of these comments is appreciated. Please feel free to contact me if you have questions or need additional information.

Sincerely, .

A handwritten signature in black ink, appearing to read 'Michele McLean', with a stylized, wavy flourish at the end.

MICHELE MCLEAN, AICP
Planning Director

xc: Jordan Hart, Deputy Director
Jacky Takakura, Acting Planning Program Administrator
Danny Dias, Planner VI

MCM:atw

S:\ALL\Michele\Council\Molina GREAT 44 bike tours.docx