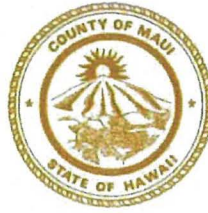


MICHAEL P. VICTORINO
Mayor

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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 Michael J. Molina, Chair
Government Relations, Ethics, and Transparency Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

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OFFICE OF THE
COUNTY COUNCIL

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

Dear Chair Molina:

This letter is in response to the Government Relations, Ethics, and Transparency Committee's letter dated November 9, 2021. The Department of the Prosecuting Attorney shares the public safety concerns outlined in the Maui Police Department's (MPD) September 3, 2021, letter to your Committee.

With respect to the proposed revisions to Maui County Code (MCC) section 5.22.060, we provide the following comments:

- a. **We recommend that the Committee consider adopting a penalty structure other than the misdemeanor violations currently proposed.** While we are of the opinion that a large, mandatory financial penalty would provide sufficient deterrence and adequate accountability for violations, we also understand that the Council is limited by the County Charter to legislating a maximum of a \$1,000.00 fine. However, making violations of Chapter 5.22 a misdemeanor would provide offenders with the right to a jury trial. This would have the effect of prolonging any criminal litigation, unnecessarily clogging the criminal justice system at greater expense to taxpayers. In addition, misdemeanor violations cannot be justified as it is unlikely that an offender would ever receive a

Honorable Michael P. Victorino
For Transmittal to:
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November 15, 2021
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sentence close to the maximum penalty of one-year incarceration, even for the most serious of violations. When sentencing offenders, courts must ensure that disparate sentences are avoided. When you consider that repeat, violent misdemeanants who are sentenced to serve jail terms are often sentenced to terms of incarceration less than one year, it is extremely unlikely that courts would consider sentencing offenders to one-year of incarceration for violations of MCC Chapter 5.22.

- b. **We recommend that the Committee consider revising MCC Chapter 5.22 so that offenders who violate sections 5.22.020(A), 5.22.025, and 5.22.050 are guilty of violations.** As currently drafted, the misdemeanor penalties described in the revisions to section 5.22.060 apply to any violation of Chapter 5.22, including violations of the permit application process described in section 5.22.020(B) in its entirety. We recommend that the Committee consider clarifying the revisions so that violations of only designated sections carry criminal liability: sections 5.22.020(A), 5.22.025, and 5.22.050. For violations of section 5.22.020(A), we recommend that the Committee consider setting a mandatory minimum fine of \$1,000.00. For violations of section 5.22.025, we recommend that the Committee consider setting mandatory minimum fines of \$500.00 for a first offense, and a mandatory minimum fine of \$1,000.00 for any subsequent offense within a one-year time period. However, should the Committee determine that the possibility of jail time is appropriate for certain violations of Chapter 5.22, we recommend that violations are punishable as petty misdemeanors. This would expose offenders to up to thirty (30) days in jail without giving them the right to a jury trial. All litigation would therefore take place in the District Court, with all trials being heard by judges. This is a more efficient use of criminal justice resources and would still achieve the deterrent effect desired by the Committee.

Thank you for giving us the opportunity to comment on the proposed bill. Should you have any questions, please feel free to contact me at (808) 270-7777.

Sincerely,



ANDREW H. MARTIN
Prosecuting Attorney