MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
Acting Corporation Counsel

RICHELLE M. THOMSON
First Deputy

LYDIA A. TODA
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

May 12, 2020

T O: Mike Molina, Chair
Governance, Ethics, and Transparency Committee

F R O M: Moana M. Lutey, Corporation Counsel

RE: **GET-1 Litigation Matters**:

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH THE STATE OF HAWAII, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE DEPARTMENT OF FIRE AND PUBLIC SAFETY

Our Department respectfully requests the opportunity discuss possible settlement options of the above-referenced matter. We would like to have the matter heard as soon as possible, as this matter is time-sensitive.

It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

Our Department would also like to request that a representative of the Department of Fire and Public Safety be present at the meeting to answer any questions that may arise.

Thank you for your anticipated assistance in this matter.

cc. David Thyne, Chief, Department of Fire and Public Safety

ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENTS WITH THE STATE OF HAWAII, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION,
FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE DEPARTMENT OF FIRE AND PUBLIC SAFETY

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

SECTION 1. Purpose. The State of Hawaii, Department of Labor and Industrial Relations, Hawaii Occupational Safety and Health Division ("HIOSH"), alleged violations of the Hawaii Occupational Safety and Health Standards at the Department of Fire and Public Safety regarding the training, use of protective equipment, and reporting of employee injuries in January 2020 ("Alleged Violations"), as described in the respective Citation(s) and Notification of Penalty, attached hereto as Exhibit 1.

The County and HIOSH, to avoid incurring expenses and the uncertainty of an administrative and judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of the Alleged Violations by way of a negotiated settlement. The settlement terms, conditions, ramifications, and consequences will be discussed in a duly called executive meeting before the Governance, Ethics, and Transparency Committee.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.

Section 3.16.020(B), Maui County Code, provides that any settlement in excess of $7,500 shall require Council authorization. The Department of the Corporation Counsel has requested authority to settle the Alleged Violations under the terms presented in executive session as described above.

SECTION 2. Authorization. The Council hereby approves settlement of the Alleged Violations under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee. The Council hereby authorizes the Mayor to execute an agreement reflecting those terms, all other necessary documents relating to the agreement, and any amendments thereto as may be imposed, and agreed to, by the Corporation Counsel. The Council further authorizes the Director of Finance to satisfy said settlement in these matters.

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

APPROVED AS TO FORM
AND LEGALITY:

MOANA M. LUTEY
Corporation Counsel
County of Maui
LF2020-0648

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808) 586-9110 Fax: (808) 586-9104

Certified Mail Number: 7017 1450 0000 8422 4290

Citation and Notification of Penalty

To: County of Maui
Dept. of Fire and Public Safety
and its successors
200 Diary Rd
Kahului, HI 96732

Inspection Number: 1466440
Inspection Date (s): 02/12/2020 - 04/14/2020
Issuance Date: 04/24/2020

Inspection Site:
Outside Kihei Boat Launch Ramp
Kihei, HI 96753

The violation(s) described in this Modified Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health (HIOSH) Law. The penalty listed herein is based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you file a contest in the manner described in the section "Employer's Right to Contest" on page 2 of this Citation and Notification of Penalty. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this Citation. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as allowed by Law or, if contested, the Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the HIOSH Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty. If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of

existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may also contest all citation items or only individual items. You may also contest the penalty and/or abatement dates without contesting the underlying violations. To contest you must submit a signed original letter of contest to the Administrator which must be postmarked or, if not mailed, received by the Administrator within 20 calendar days after you receive this Citation and Notification of Penalty. The letter of contest must be a signed original and may not be submitted by facsimile or e-mail. Address your letter of contest to the State of Hawaii Occupational Safety and Health Division at the address shown on the top of page 1 of this Citation and Notification of Penalty. Once a letter of contest is received, it becomes the jurisdiction of the HLRB. If a timely contest is not filed, the Citation and Notification of Penalty will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number found on the front page on the remittance. HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the Citation. For Willful and Repeat violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the Citation is classified as Serious and the Citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the Citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; **2)** the inspection number (found on the front page); **3)** the citation and citation item number(s) to which the submission relates; **4)** a statement that the information is accurate; **5)** the signature of the employer or employer's authorized representative; **6)** the date the hazard was corrected; **7)** a brief statement of how the hazard was corrected; and **8)** a statement that affected employees and their representatives have been informed of the abatement. The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown on the top of page 1 of this Citation and Notification of Penalty.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The signed original contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown on the top of page 1 of this Citation and Notification of Penalty and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

Equal Opportunity Employer/Program
Auxiliary aids and services are available upon request to individuals with disabilities.
TDD/TTY Dial 711 then ask for (808) 586-9116.

ABATEMENT CERTIFICATION

Company Name: County of Maui - Dept. of Fire and Public Safety **Inspection Number:** 1466440
Inspection Site: Outside Kihei Boat Launch Ramp. Kihei, HI 96753 **Issuance Date:** 04/24/2020

List the specific method of correction for each citation item and supporting documentation as appropriate in this **Citation and Notification of Penalty** that does not state "Corrected" and return to: **Department of Labor and Industrial Relations - Hawaii Occupational Safety and Health Division, 830 Punchbowl Street, Room 425, Honolulu, HI 96813.**

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

I attest that the information contained in this document is accurate and that the affected employees and their representative(s) have been informed of the abatement activities mentioned above and of their right to examine and copy this and all other abatement documents submitted to HIOSH.

_____ _____
Signature of the Employer or Employer's Authorized Representative — Date

_____ _____
Typed or Printed Name — Title

Posting: For posting requirements please refer to Chapter 12-51, Hawaii Administrative Rules.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with the Hawaii Occupational Safety and Health Division (HIOSH) to discuss the Citation and Notification of Penalty issued on 04/24/2020.

The informal conference will be at the HIOSH office located at:

830 PUNCHBOWL STREET
ROOM 425
HONOLULU, HI 96813

on_____at_____. Employees and/or representatives of employees have a right to attend an informal conference.

Citation and Notification of Penalty

Company Name: County of Maui - Dept. of Fire and Public Safety
Inspection Site: Outside Kihei Boat Launch Ramp, Kihei, HI 96753

Citation 1 Item 1 Type of Violation: **Serious**

12-60-2(b)(2)(A)(ii).HAR: Safe Work Practices. The employer shall eliminate or control all existing and potential hazards within the workplace in a timely manner, using one or more of the following:
(i) Engineering and work practice controls designed to control employee exposures to safety and health hazards by modifying the source to reduce exposure.
(ii) Administrative controls designed to control employee exposure to safety and health hazards.
(iii) Requirements for the distribution and proper use of personal protective equipment.
(iv) A program of medical examinations or evaluations conducted by a qualified physician or health practitioner when required by a standard.

Ocean waters outside of Kihei Boat Ramp - A) An employee who sustained serious injuries that required inpatient hospitalization while conducting high speed bail out training on a Yamaha FY1800-7 2010 WaveRunner Rescue Watercraft Ski did not read the Yamaha 2010 WaveRunner FY1800-7 Hull ID US-Yama1907H910 Owner's/Operator's manual.

B) An employee who sustained serious injuries that required inpatient hospitalization while conducting high speed bail out training on a Yamaha FY1800-7 2010 WaveRunner Rescue Watercraft Ski did not complete the required 24 hr. Rescue Watercraft training as stated in the Maui Fire Department Rescue Water Craft T.R.500.02 VI C. 1. Standard Operating guidelines.

C) The Rescue Watercraft Standard Operating Guidelines 05-08-08 that the Maui Fire Department currently have in place do not address on which employees are authorized to be the training instructors conducting the Rescue Watercraft training nor do the current Rescue Watercraft Standard Operating Guidelines address the bail out training that was being conducted on January 22, 2020 the day of the incident. The Maui Fire Department Captain who was in charge and initiated the Rescue Water Craft training on the day of the incident was not aware of or trained in the departments rescue water craft training requirements in order to effectively supervise and evaluate the RWC training.

Date by Which Violation Must Be Abated: **05/29/2020**
Penalty: **$9,831.00**

Citation and Notification of Penalty

Company Name: County of Maui - Dept. of Fire and Public Safety
Inspection Site: Outside Kihei Boat Launch Ramp, Kihei, HI 96753

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.132(a) [Refer to 12-60-50(a).HAR]: Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

Ocean waters off of Kihei Boat ramp - The operator and passengers on a Yamaha WaveRunner 2010 FY1800-7 Hull #US-Yama1907H910 rescue watercraft ski were not wearing wet suit bottoms or clothing that provides equivalent protection as required in the Yamaha 2010 WaveRunner Owner's/Operator's Manual. The swim wear the operator and passengers were wearing at the time of the incident would not prevent severe internal injuries from occurring due to water being forced into body cavities as a result of falling into the water or being near the jet thrust nozzle.

Date by Which Violation Must Be Abated: **05/29/2020**
Penalty: **$6,554.00**

Citation 2 Item 1 Type of Violation: **Other-than-Serious**

12.52.1-1(e), HAR: Within eight (8) hours after the death of any employee from a work-related incident, and within twenty-four (24) hours of the inpatient hospitalization of an employee, employee's amputation, employee's loss of an eye as a result of a work-related incident, or property damage in excess of $25,000 as a result of a work-related incident, you must orally report the fatality, inpatient hospitalization, amputation, loss of an eye, or property damage by telephone, (808) 586-9102, or in person at the HIOSH office in Honolulu.

Establishment - An incident in which a Maui Fire Department Fire Fighter sustained serious injuries while conducting training with a Yamaha 2010 WaveRunner FY1800-7 rescue watercraft ski which required inpatient hospitalization was not reported to HIOSH within the required twenty-four hours. The incident occurred on January 22, 2020 and was reported to HIOSH on January 27, 2020.

Date by Which Violation Must Be Abated: **Corrected During Inspection**
Penalty: **$5,000.00**

BRONSON LUIS, Acting Manager
Occupational Safety Branch

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808) 586-9110 Fax: (808) 586-9104

SUMMARY OF PENALTIES

Company Name: County of Maui - Dept. of Fire and Public Safety
Inspection Site: Outside Kihei Boat Launch Ramp, Kihei, HI 96753
Issuance Date: 04/24/2020

Summary of Penalties for Inspection Number: 1466440

Citation 1 Item 1, Serious	$9,831.00
Citation 1 Item 2, Serious	$6,554.00
Citation 2 Item 1, Other-than-Serious	$5,000.00
TOTAL PENALTIES:	**$21,385.00**

Make check or money order payable to the **"Director of Budget and Finance."** Please indicate the ***inspection number*** **and dba, if company name is different, on the remittance.** A fee of $25.00 will be charged for any returned checks.