

## HFC Committee

---

**From:** Melody Andrion <Melody.Andrion@co.maui.hi.us>  
**Sent:** Thursday, July 30, 2020 3:01 PM  
**To:** HFC Committee  
**Cc:** Karla Peters; Michael Hopper; Mimi Desjardins  
**Subject:** HFC-13(10) Concessions at County Facilities  
**Attachments:** HFC-13(10) 2020-07-30 Response Memo to HFC Chair.pdf

Attached Advisory Opinion dated July 30, 2020 to HFC Chair Riki Hokama.

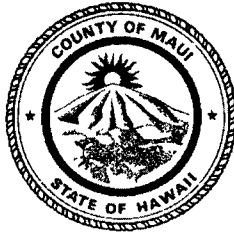
**NOTICE:** The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of, the intended recipient. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.

MICHAEL P. VICTORINO  
Mayor

MOANA M. LUTEY  
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, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV

---

### ADVISORY OPINION

MEMO TO: Riki Hokama, Chair  
Healthy Families and Communities Committee

FROM: Michael J. Hopper *mjh*  
Deputy Corporation Counsel

DATE: July 30, 2020

SUBJECT: **CONCESSIONS AT COUNTY FACILITIES** (HFC-13(10))

This correspondence responds to your letter dated June 26, 2020 (attached). You request advice on whether a department may allow additional time to comment on proposed administrative rules after the public hearing held by the Department.

Hawaii Revised Statutes ("HRS") Chapter 91 governs the adoption of administrative rules by county agencies. Section 91-3 states, in pertinent part:

"(a) Except as otherwise provided in this section, prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall:

- (1) Give at least thirty days' notice for a public hearing. The notice shall include:
  - (A) A statement of the topic of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved; and

- (B) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed to any interested person who requests a copy, pays the required fees for the copy and the postage, if any, together with a description of where and how the requests may be made;
- (C) A statement of when, where, and during what times the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed may be reviewed in person; and
- (D) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal.

The notice shall be mailed to all persons who have made a timely written request of the agency for advance notice of its rulemaking proceedings, given at least once statewide for state agencies and in the county for county agencies. Proposed state agency rules shall also be posted on the Internet as provided in section 91-2.6; and

- (2) Afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. **The agency shall fully consider all written and oral submissions respecting the proposed rule. The agency may make its decision at the public hearing or announce then the date when it intends to make its decision.** Upon adoption, amendment, or repeal of a rule, the agency, if requested to do so by an interested person, shall issue a concise statement of the principal reasons for and against its determination.”

(emphasis added).

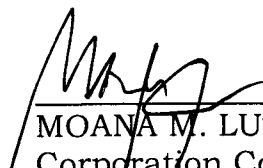
Based on this section, a county department may “make its decision at the public hearing or announce then the date when it intends to make its decision...”. If the department does not make its decision at the meeting, this

section does not prohibit receiving additional written comments from the public following public hearing. However, this section also does not prohibit changes to the draft rules after the public hearing.

It is important to note, though, that the Hawaii Supreme Court has held that substantial changes made to a draft rule after public hearing may require a new hearing. Ala Moana Boat Owners . v. State of Hawaii, 50 Haw. 156, 434 P.2d 516 (1967)(“to permit the original proposal to be completely ignored and adopt another proposal which was not advocated or discussed at the public hearing may destroy the statutory requirement for a public hearing”), Id. at 160, 519.

Thus, if the department decides to receive written comments after the public hearing, it may not be able to make substantial changes to the rules based on those comments without holding another hearing. Whether a new hearing is required would be based on the nature of the proposed changes, and would need to be reviewed in each case.

APPROVED FOR TRANSMITTAL:

  
\_\_\_\_\_  
MOANA M. LUTEY  
Corporation Counsel  
LF2019-0099  
HFC-13(10) 2020-07-30 Response to Chair

cc: Karla Peters, Director of Parks & Recreation

Attachment