

ORDINANCE NO. _____

BILL NO. 65 (2021)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR
TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT
AMENDING THE MEMORANDUM OF AGREEMENT FOR
LIFEGUARD SERVICES BETWEEN THE STATE OF HAWAII AND
THE COUNTY OF MAUI FOR MAKENA BEACH PARK

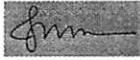
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. On July 3, 2008, the State of Hawaii and the County of Maui entered into a Memorandum of Agreement for Lifeguard Services for the County to provide lifeguard services at Makena Beach Park. The State of Hawaii and the County of Maui have amended this Agreement over the years to continue the practice of providing County lifeguard services at Makena Beach Park. The protections afforded by Act 170, Sessions Laws of Hawaii 2002, as amended, were repealed on June 30, 2017. The removal of these protections affects a significant section of the original agreement and therefore the proposed Fourteenth Amendment to the Memorandum of Agreement, attached as Exhibit "1", has the potential to place a financial obligation on the County. In accordance with Section 2.20.020, Maui County Code, unless authorized by ordinance, the Mayor must not enter into any intergovernmental agreement or any amendment that places a financial obligation upon the County or any department or agency.

SECTION 2. Authorization. The Council hereby authorizes the Mayor or his authorized representative to execute the Amendment to the Memorandum of Agreement, and any further amendments.

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

APPROVED AS TO FORM
AND LEGALITY:



2021.07.07
18:17:42 -10'00'

JENNIFER M.P.E. OANA
Deputy Corporation Counsel
County of Maui
LF 2021-1012
2021-07-06 Ordinance IGA Lifeguard Svcs 14th Amendment

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 25, 2021

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Fire Chief David C. Thyne
Maui Fire Department
200 Dairy Road
Kahului, Hawaii 96732

Dear Chief Thyne:

The purpose of this letter is to serve as the fourteenth written amendment to the Memorandum of Agreement for Lifeguard Services (MOA) made and entered into on July 3, 2008, as amended on July 22, 2009, June 28, 2010, June 16, 2011, June 8, 2012, June 7, 2013, May 14, 2014, June 1, 2015, June 17, 2016, August 22, 2017, October 5, 2017, March 23, 2018, June 10, 2019, and August 6, 2019 between the State of Hawaii and the County of Maui for Makena Beach, Makena State Park.

The available funding is limited to \$1,446,936, subject to availability of funds, to provide lifeguard services under the following conditions:

1. This amendment will be for lifeguard services at Makena Beach, Makena State Park, Island of Maui, from July 1, 2021 through June 30, 2022, provided that the parties may cancel the contract at any time with 30 days written notice.
2. Funding under this amendment can be used solely for Water Safety Officer positions until further discussion and concurrence.
3. The effective date of this amendment is July 1, 2021.
4. Funds to be transmitted to the County under this amendment shall total \$1,446,936, subject to availability of funds.
5. The County will submit a quarterly report of rescues at Makena Beach with the quarterly invoice and financial statement indicating the staffing paid under the invoice for the quarter. Due to the availability of funds, it is important to submit the quarterly invoice and reports in a timely manner.

EXHIBIT "1"

6. All other terms and conditions of the MOA shall remain unchanged with the exceptions of language in Section C. The following language is changed:

2. Scope of Services. During Fiscal Year 2022 from July 1, 2021 to June 30, 2022, the County shall provide lifeguard services at Makena Beach, Makena State Park.

The following language is deleted:


In accordance with Act 170, Session Laws of Hawaii 2002, as amended by Act 152, Session Laws of Hawaii 2007, and Act 81, Session Laws of Hawaii 2009, "a county lifeguard, the employing county, and the State shall not be liable for any civil damages resulting from any act or omission of the lifeguard while providing rescue, resuscitative, or other lifeguard services on the beach or in the ocean in the scope of employment as a county lifeguard. This exception from liability, however, shall not apply when the claim for civil damages results from a county lifeguard's gross negligence or wanton act or omission."

The following language is added:

In accordance with Hawaii Revised Statutes Section 662-1, as amended, "Employees of the State"...includes persons employed by a County of this State as lifeguards and designated to provide lifeguard services at a designated State beach park under an agreement between the State and that County."

Please sign and date below and return the original to us. If there are any questions, your staff may contact Mr. Curt A. Cottrell at (808) 587-0290.

Sincerely,



SUZANNE D. CASE

Chairperson

Board of Land and Natural Resources

APPROVED AS TO FORM:



DEPUTY ATTORNEY GENERAL
Office of the Attorney General

Date June 30, 2021

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel
County of Maui

Date _____

ACKNOWLEDGED:
COUNTY OF MAUI

By _____
Michael P. Victorino
Mayor
County of Maui

Date _____

ACKNOWLEDGED:
COUNTY OF MAUI

By _____
David C. Thyne, Fire Chief
Maui Fire Department
County of Maui

Date _____

DIGEST

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This bill proposes to authorize the Mayor to enter into an intergovernmental agreement to amend the Memorandum of Agreement with the State of Hawaii for lifeguard services at the State-owned Makena Beach Park for the period July 1, 2021 through June 30, 2022.

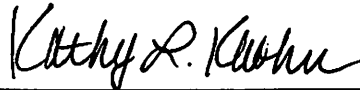
I, KATHY L. KAOHU, County Clerk of the County of Maui, State of Hawaii, DO
HEREBY CERTIFY that the foregoing BILL NO. 65 (2021) was passed on First Reading
by the Council of the County of Maui, State of Hawaii, on the 23rd day of July, 2021, by
the following vote:

AYES: Councilmembers Kelly T. King, Michael J. Molina, Tamara A.M.
Paltin, Shane M. Sinenci, Yuki Lei K. Sugimura, Vice-Chair
Keani N.W. Rawlins-Fernandez, and Chair Alice L. Lee.

NOES: None.

EXCUSED: Councilmembers Gabriel Johnson and Natalie A. Kama.

DATED at Wailuku, Maui, Hawaii, this 27th of July, 2021.



KATHY L. KAOHU, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk,
County of Maui, for use and examination by the public.