



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Hawai'i

BY EMAIL AND U.S. MAIL

October 31, 2023

Richard T. Bissen, Jr.
Mayor
County of Maui
200 South High Street
Kalana O Maui Bldg 9th Fl.
Wailuku, HI 96793
Mayors.Office@co.maui.hi.us

Patrick McCall
Director
County of Maui Department of Parks &
Recreation
700 Halia Nakoia St. Unit 2
Wailuku, HI 96793
parks.dept@co.maui.hi.us

John Pelletier
Police Chief
Maui Police Department
55 Mahalani St.
Wailuku, HI 96793
mpd@mpd.net

Victoria J. Takayesu
Corporation Counsel
County of Maui Office of the Corporation
& Counsel
200 S. High St.
Kalana O Maui Bldg, 3rd Fl.
Wailuku, HI 96793
corp coun@mauicounty.gov

**Re: Maui County's forced eviction of houseless people at public parks
near Lahaina on November 1, 2023**

Mayor Bissen, Director McCall, Chief Pelletier, and Corporation Counsel Takayesu:

The ACLU of Hawai'i Foundation ("ACLU of Hawai'i") has learned that the County of Maui ("County") imminently plans to conduct enforcement actions on or around November 1, 2023 to forcibly evict houseless people who are currently residing in public parks in and near Lahaina, including at or near Hanakao'o Beach Park and Wahikuli Wayside Park ("Lahaina Sweeps").

We write now with a demand: The County must halt the Lahaina Sweeps, which violate the constitutional rights of the many houseless people who have no choice but to live in public spaces in the wake of the devastating fires that destroyed Lahaina. Alternatively, the County should postpone the Lahaina Sweeps by 7 days to allow for discussion of an alternative path forward that mitigates the harm to an incredibly vulnerable community and aligns with the County's stated "Policy on addressing unsheltered residents in Maui County."

Based on our current investigation, we understand the following: About 40 unsheltered individuals are currently living in public beach parks in and near Lahaina, including at or near Hanakao'o Beach Park and Wahikuli Wayside Park. This group of people includes some who were houseless before the Lahaina fire, and some who were not. It includes people who ran barefoot from the flames, people who survived the fires by seeking shelter in a bathroom, people who jumped into the ocean to escape, and people who saved countless others during the horrific tragedy. The common thread with this group is that they were directly impacted by the Lahaina fire, are still experiencing significant trauma from that disaster, and simply have no place to go.

That last point deserves emphasis. Even before the Lahaina fire, the County had a bleak landscape of shelter availability. On any given night pre-disaster, there were about 387 unsheltered individuals (including 113 in Lahaina alone), but few available beds in emergency shelters island-wide.¹ But the landscape post-disaster is far bleaker. Many thousands more have become houseless due to the fire, putting immense strain on existing services. Yet the shelters have no capacity. That the fire destroyed Ka Hale A Ke Ola's entire 78-unit, Lahaina-based Westside Center, did not help matters.² And while laudable efforts have been made to stand up other emergency shelters (including Pu'u honua o Nēnē³), we understand that even with those additions, Maui's shelters are currently at or over capacity.⁴ In short, shelters are full, and people have nowhere to go.

¹ The most recent Point-in-Time Count on January 22, 2023 shows that, before the fire, there were about 387 unsheltered individuals on Maui on any given night, about 29% of whom lived in Lahaina. See Ka Mana O Na Helu, *Bridging the Gap CoC Homeless Point-in-Time Count January 22, 2023* (Apr. 2023), at 26 https://www.btghawaii.org/media/uploads/2023_btg_pit_count_report_final.pdf. Meanwhile, based on our conversations with community advocates, there are generally few to no actual vacancies on any given day island-wide.

² Press Release, *Ka Hale A Ke Ola Homeless Resource Centers confirms loss of its Westside Center shelter*, KA HALE A KE OLA (Aug. 13, 2023), <https://www.khako.org/ka-hale-a-ke-ola-homeless-resource-centers-confirms-loss-of-its-westside-center-shelter>.

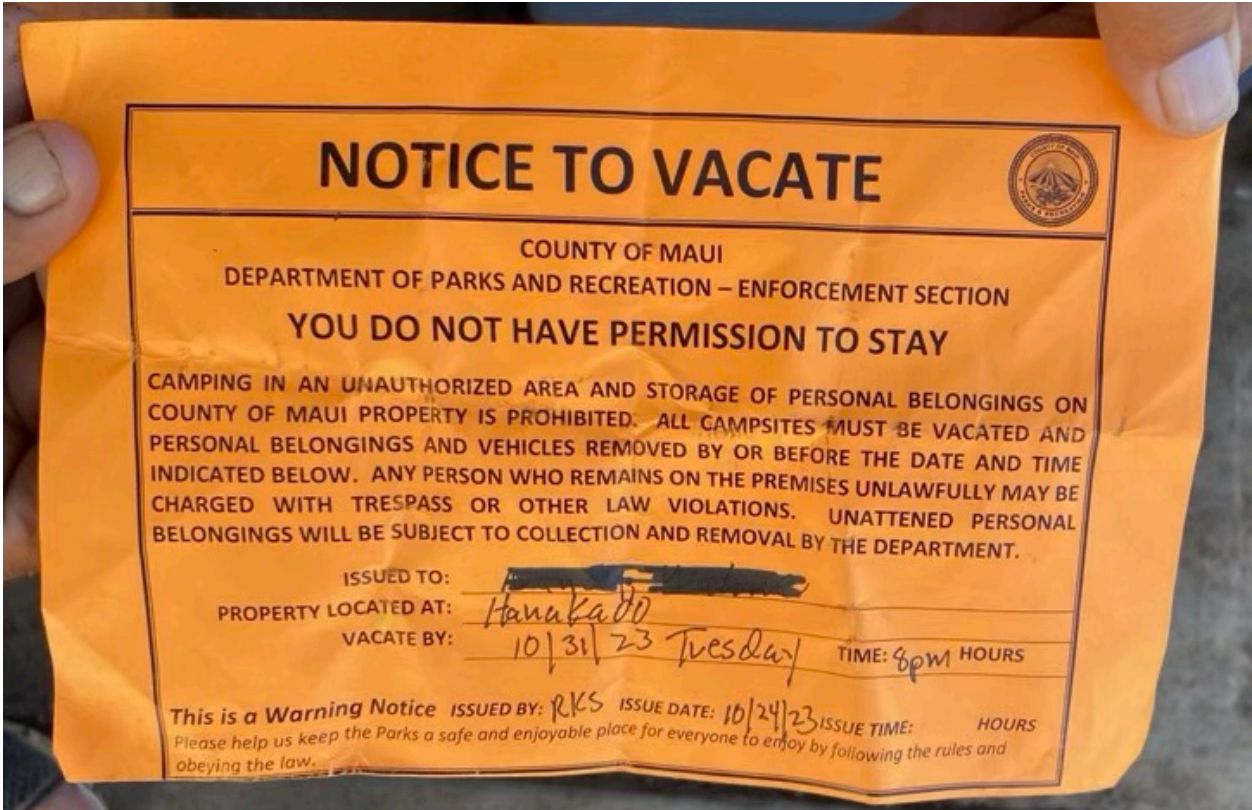
³ *Temporary tent shelters for houseless wildfire survivors opens in Central Maui*, Maui Now (Sept. 30, 2023), <https://mauinow.com/2023/09/30/temporary-tent-shelters-for-houseless-wildfire-survivors-opens-in-central-maui>.

⁴ We understand from conversations with community advocates that, as of October 30, 2023, only about 5 beds were available at Pu'u honua o Nēnē, zero beds were available at Ka Hale A Ke Ola's Central Center in Wailuku, and zero beds were available at Family Life Center in Kahului.

Maui County’s forced eviction of houseless people at public parks near Lahaina on November 1, 2023
Page 3 of 5

Despite knowing full well that there are not enough available shelter space to house those who are currently houseless in Lahaina right now, the County is moving forward with the Lahaina Sweeps.

Indeed, on or around October 24, 2023, some such individuals received a “Notice to Vacate” along the lines of the following:



The Notice threatens “any person who remains on the premises” with *criminal prosecution* for “trespass or other law violations.” The Notice also states that “unattended [sic] personal belongings will be subject to collection and removal” by the County. The Notice provides no information to the recipient about, whether and how to contest or challenge the Lahaina Sweeps, whether and how the County will be storing any seized property, and whether and how individuals can retrieve any seized property.

The County’s execution of the Lahaina Sweeps under these circumstances would violate the Hawai’i and U.S. constitutions in multiple ways. Some of those ways are detailed below.

Maui County's forced eviction of houseless people at public parks near Lahaina on November 1, 2023

Page 4 of 5

First, the Lahaina Sweeps would very likely violate the prohibition on “cruel or unusual punishment” enshrined in article I, section 12 of the Hawai‘i Constitution and the Eighth Amendment to the U.S. Constitution. In 2019, in *Martin v. City of Boise*, the federal Ninth Circuit Court of Appeals affirmed the well-established principle that a municipality’s enforcement actions against houseless individuals “violates the Eighth Amendment [to the U.S. Constitution] insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them.”⁵ And in *Johnson v. City of Grants Pass*, the Ninth Circuit—in a separate published opinion—re-affirmed the principle that a municipality “cannot, consistent with the Eighth Amendment, enforce its anti-camping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, *when there is no other place in the City for them to go.*”⁶ Here—when houseless people in the County have no safe place to go without being subjected to the County’s laws that punish sheltering in public spaces—enforcement actions like the Lahaina Sweeps (if the County chooses to move forward with them) violate the mandates of the U.S. and Hawai‘i constitutions.

Second, the Lahaina Sweeps would also very likely deprive houseless individuals of due process rights guaranteed to them under article I, section 5 of the Hawai‘i Constitution and the Fourteenth Amendment to the U.S. Constitution. It appears the County has failed to provide adequate notice or any opportunity to be heard about its plans to seize and destroy houseless people’s personal property. If the County carries out its plan, its actions would violate procedural due process rights. *See, e.g., Lavan v. City of Los Angeles*, 693 F.3d 1022, 1032 (9th Cir. 2012) (“Because homeless persons’ unabandoned possessions are ‘property’ within the meaning of the Fourteenth Amendment, the City must comport with the requirements of the Fourteenth Amendment’s due process clause if it wishes to take and destroy them.”).

In light of the County’s legal obligations to its houseless residents, the County must stop its plans to conduct the Lahaina Sweeps. At very least, we ask that the County postpone the Lahaina Sweeps so that it considers alternative paths forward. Instead of using the weight of the criminal legal system to criminalize and punish people who are already traumatized by unspeakable tragedy, the County should adhere to its own policy of ensuring that people’s basic needs are met and that

⁵ 920 F.3d 584, 604 (9th Cir.), *cert. denied*, 140 S. Ct. 674 (2019).

⁶ 50 F.4th 787, 813 (9th Cir. 2022) (emphasis added).

Maui County's forced eviction of houseless people at public parks near Lahaina on
November 1, 2023
Page 5 of 5

forced evictions do not happen when shelter beds are unavailable. Instead of telling houseless people where they are *not* allowed to stay, the County should set up safe parking and camping spaces and tell them they are free to go to those spaces without being threatened. The bottom line: the County should prioritize the needs of its residents, especially in times of crisis.

The ACLU of Hawai'i has a history of challenging unconstitutional enforcement actions in court.⁷ In fact, we are currently litigating very similar issues in a pending lawsuit against Maui County.⁸ This makes it doubly surprising why the County would move forward with the Lahaina Sweeps. While litigation is our last resort—and we would like to avoid that outcome—we will consider all options available to us if the County ignores our concerns and proceeds to violate the constitutional rights of Maui residents.

We request a response from the County **by 5 p.m. on Tuesday, October 31**. We are open to discussing alternatives with you. If you have any questions or comments regarding this letter, please contact me at 808-522-5905 or wkim@acluhawaii.org.

Sincerely,



Wookie Kim
Legal Director
ACLU of Hawai'i

⁷ Rui Kaneya, *Lawsuit Filed Over Seizure of Homeless People's Property*, HONOLULU CIVIL BEAT (Sept. 16, 2015), <https://www.civilbeat.org/2015/09/lawsuit-filed-over-seizure-of-homeless-peoples-property>; Sabrina Bodon, *ACLU of Hawai'i files lawsuit against city for homeless sweeps, enforcement actions*, HAWAII PUBLIC RADIO (July 27, 2023), <https://www.hawaiipublicradio.org/local-news/2023-07-27/aclu-of-hawaii-challenges-sweeps-sit-lie-bans-lack-of-shelter>.

⁸ Jack Truesdale, *Lawsuit Challenges Maui County Homeless Sweep*, HONOLULU CIVIL BEAT (Nov. 2, 2021), <https://www.civilbeat.org/2021/11/lawsuit-challenges-maui-county-homeless-sweep>; 'A'ali'i Dukelow, *Maui county officials face lawsuit over homeless encampment sweep*, KITV ISLAND NEWS (Nov. 2, 2021), https://www.kitv.com/news/local/maui-county-officials-face-lawsuit-over-homeless-encampment-sweep/article_7bd403ac-3c1c-11ec-a299-cf4e95feb12a.html.