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CITY AND COUNTY OF HONOLULU

February 13, 2025

**RE: BILL 7; RELATING TO THE FIRE CODE**

Chair Waters, Vice-Chair Weyer, and members of the Honolulu City Council, the Department of the Prosecuting Attorney for the City and County of Honolulu offers the following comments on Bill 7 (2025).

- (1) **The bill does not provide an enforceable definition for cases where the firework has already exploded.**

Section 1 of the bill remarks the lack of citation and prosecution for violations of the municipal prohibitions on illegal fireworks.

The City and County regulates fireworks under Chapter 20, Article 6, of the Revised Ordinances of Honolulu (ROH). Many of its provisions are patterned after the state Fireworks Control Law, codified at Hawai'i Revised Statutes (HRS) Chapter 134D.

Both Article 6 and Chapter 134D have a common weakness for effective prosecution of fireworks offenses: these laws use common definitions for regulation and prohibition. But these are two different problems. Regulating the legal and licensed use of fireworks focuses on commercial vendors possessing unexploded materials. Prohibiting illegal use usually involves individual consumers igniting fireworks.

The problem can be best illustrated by examining the definition of an "aerial device."

Under ROH § 20-6.1, "fireworks" must contain more than one-quarter grain<sup>1</sup> of explosive substance. In turn, an "aerial device" contains 130 milligrams (approximately two grains) or less of explosive materials. Thus, one requirement for an aerial device is that it contain more than one-quarter grain but less than 130 milligrams of explosive material.

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<sup>1</sup> A grain is a unit of measurement for mass equivalent to around 64.8 milligrams or  $\frac{1}{7,000}$  avoirdupois pound.

This technical specificity in defining “aerial device” is useful for regulating the legal and licensed trade in fireworks. For example, specifying the maximum amount of explosive material prevents the licensing of a bomb or a cannon or a space rocket as an “aerial device.”

But a police officer who witnesses the ignition and combustion of an aerial device cannot testify regarding the mass of explosive material that item once contained. In other words, the prosecution cannot prove the item qualifies as an “aerial device.” That evidence has literally been destroyed. So even in cases where an officer directly witnesses the explosion, a prosecution for the offense will not result in a conviction.

**(2) The City and County lacks the power to enact felony penalties.**

Section 2 of the bill proposes increased penalties for violations of Article 6 to a class C felony in certain cases where the total weight of the illegal fireworks exceeds 25 pounds.

Article VIII, § 1, of the Hawai‘i Constitution only permits a county to exercise those powers expressly conferred by a general law.<sup>2</sup> And HRS § 46-1.5(14)(D) only grants each county the power to “[f]ix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law[.]”

Because no law authorizes a county to enact felony offenses, the proposed grading of a class C felony for certain violations of Article 6 would not be enforceable.

Nor can a county use HRS § 132D-14(2)(A) to graft felony penalties onto the violation of a municipal ordinance. The state statute addresses a narrower range of conduct than the broader ambit of potential violations under Article 6.<sup>3</sup> Thus, only the conduct already prohibited under HRS § 132D-14(2)(A) would qualify for sentencing as a class C felony.

Thank you for the opportunity to testify.

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<sup>2</sup> See *State v. Pickell*, 154 Hawai‘i 50, 54, 544 P.3d 1287, 1291 (2023) (observing county powers are limited to those conferred by the legislature under general laws).

<sup>3</sup> See *State v. Lora*, 147 Hawai‘i 298, 312, 465 P.3d 745, 759 (2020) (“Under the rule of lenity, a penal statute must be strictly construed against the government and in favor of the accused.”).