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January 10, 2008

MEMO TO: G. Riki Hokama
Council Chair

F R O M: David A. Galazin, Deputy Corporation Counsel

A handwritten signature in dark ink, appearing to read "D.A. Galazin", is written over the printed name of the Deputy Corporation Counsel.

SUBJECT: **COUNCIL AUTHORITY TO PASS THE PROPOSED BILL, "A BILL FOR AN ORDINANCE AMENDING CHAPTER 10.48, MAUI COUNTY CODE, PERTAINING TO STOPPING, STANDING AND PARKING ON ULUMAU PLACE, PAIA" WITHOUT PRIOR REFERRAL TO THE TRAFFIC SAFETY COUNCIL**

This memorandum is in response to your request for an opinion relating to review by the Traffic Safety Council of a proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 10.48, MAUI COUNTY CODE, PERTAINING TO STOPPING, STANDING AND PARKING ON ULUMAU PLACE, PAIA", that would prohibit parking on both sides of Ulumau Place, in Paia.

Specifically, you have asked whether Chapter 2.36, Maui County Code ("MCC"), requires that the bill be referred to the Traffic Safety Council for its review and recommendation before the County Council takes final action on the bill. To date, the bill has not been reviewed by the Traffic Safety Council.

1. Background.

According to information provided by the Department of Public Works ("Department"), the Department's policy has been to recommend referral of proposed legislation to the Traffic Safety Council when the legislation directly implicates vehicular and pedestrian safety, such as the establishment of mid-block crosswalks and prohibitions against large commercial vehicles on certain roadways. We are informed that the Department is of the position that, although any legislation involving a County right-of-way could conceivably raise safety issues, review by the Traffic Safety

Council of all such legislation is unnecessary, unduly cumbersome, and not warranted under the Maui County Code. The Department's current practice is to forego Traffic Safety Council review when the impetus for a proposed bill is something other than traffic safety and when traffic safety issues play only a peripheral role.

At the Public Works and Facilities Committee meeting on December 5, 2007, the Director of Public Works and representatives from the Department of Police recommended that the proposed bill be passed due to the substandard width of Ulumau Place and the problems that emergency vehicles currently face in attempting to maneuver on the road when cars are parked on either side of the road.¹ The Director of Public Works described the roadway width as varying between 8 and 20 feet, and the Committee "discussed the importance of maintaining adequate clearance for emergency vehicles, and noted that the Department of Fire and Public Safety generally requires a minimum roadway width of 20 feet for their vehicles, and that prohibiting parking will improve access along this nonconforming street."² In accordance with the recommendations of the Director and the Department of Police, the Committee voted to recommend passage of the proposed bill.

2. Chapter 2.36, MCC, requires that matters relating to traffic safety be first reviewed by the Traffic Safety Council.

Chapter 2.36, MCC, establishes the County Traffic Safety Council, and delineates its powers and responsibilities. Section 2.36.020, MCC, states:

Traffic safety measures - Procedure.

All matters referred to the County council on traffic safety measures shall first be referred to the traffic safety council for its recommendation.

Chapter 2.36, MCC, does not define the term "traffic safety measures".³

¹ Committee Rep. No. 07-163, at 2-3 (Dec. 21, 2007).

² Committee Rep. No. 07-163, at 2-3 (Dec. 21, 2007).

³ §286-6, Hawai'i Revised Statutes, which establishes county traffic or highway safety councils, does not provide a definition of "traffic safety" or "highway safety", either.

3. Under state law, the County may prohibit parking for either traffic safety reasons or for regulation of the free flow of vehicles.

Section 291C-111(a), Hawai'i Revised Statutes, pertaining to the Statewide Traffic Code, states, in part:

With respect to highways under their respective jurisdictions, the director of transportation is authorized to and the counties by ordinance may prohibit or restrict the stopping, standing, or parking of vehicles where the stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would interfere unduly with the free movement of traffic....

The statute clearly contemplates that some ordinances prohibiting parking may be for safety reasons, where to allow parking would be "dangerous to those using the highway", and other parking prohibitions may be for reasons related to the "free movement" of vehicles on a roadway. Distinguishing between such reasons is often difficult, in practice.

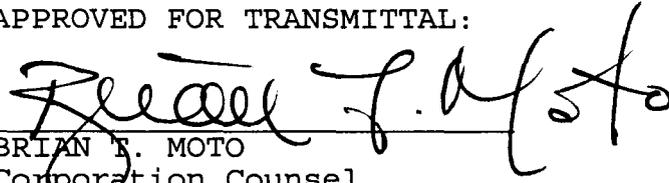
4. The final determination as to whether the subject bill is or is not a traffic safety measure rests with the Council, and if the Council determines that the bill is intended to address or correct a traffic safety issue (a determination that would appear to be supported by the Committee Report), then the bill should be referred to the Traffic Safety Council.

Chapter 2.36, MCC, does not elaborate as to what constitutes a "traffic safety measure". As reflected in Committee Report No. 07-163, however, the Public Works and Facilities Committee was concerned with the substandard width of Ulumau Place and the inability of vehicles, especially emergency vehicles, to easily navigate their way along the entire length of Ulumau Place. Based on the Committee's findings, there appears to be sufficient facts and reasons to characterize the bill as a traffic safety measure. We further observe that the fact that the bill concerns parking along a roadway does not mean that it is not a "traffic safety measure". Indeed, if Council's intent is to address or correct traffic safety issues, the bill should be referred to the Traffic Safety Council pursuant to Chapter 2.36, MCC. This referral may be prudent in light of the Director's testimony that Ulumau Place is

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only one of a number of existing roadways in the neighborhood that are "substandard in many cases".⁴

APPROVED FOR TRANSMITTAL:



BRIAN F. MOTO
Corporation Counsel

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cc: Milton Arakawa, Director of Public Works
Michael Miyamoto, Deputy Director of Public Works
Michele White, Legal Assistant

⁴ Committee Rep. No. 07-163, at 2 (Dec. 21, 2007).