

DEPARTMENT OF THE CORPORATION COUNSEL  
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July 26, 2011

**MEMO TO:** Mike White, Chair  
Economic Development, Agriculture, and Recreation Committee

**F R O M:** Adrienne N. Heely, Deputy Corporation Counsel *Adrienne N. Heely*

**SUBJECT: ESTABLISHMENT OF AN ECONOMIC DEVELOPMENT SPECIAL REVOLVING FUND (EDR-16)**

I. Introduction.

This memorandum is in response to your memorandum dated July 11, 2011, requesting review of the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 3, MAUI COUNTY CODE, PERTAINING TO THE ESTABLISHMENT OF AN ECONOMIC DEVELOPMENT SPECIAL REVOLVING FUND."

Your memorandum also requests our responses to five questions. Our comments and responses to your five questions are as follows:

1. Section 3.81.030(B)(1) is deleted;
2. The last sentence of the proposed Section 3.81.020, is incorporated into Section 3.81.030(B) Administration. The new proposed Section 3.81.030 is proposed as follows, with new text underlined and deleted text, bracketed:

**"3.81.030 Administration.** The director of finance shall establish:

A. A separate account to record all revenues derived from fees for licensing and expenses incurred from the economic development programs established in the County of Maui.

B. There shall be deposited into the economic development special revolving fund any council appropriations to the fund and all moneys donated to the County for economic development programs.

C. The revenues received either by way of transfer from the general fund or as a result of 3.81.020 and/or 3.81.030.A., are hereby appropriated upon receipt and are authorized to be expended for the purpose of this fund.

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[1. Any balance remaining in the fund as the end of each fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year.]

D. The director of finance with the Coordinator for the Office of Economic Development may adopt administrative rules necessary to carry out the purpose of this chapter."

3. In response to your Question No. 3, we offer:

Section 46.1.5(10), HRS, states in pertinent part that "*Except as otherwise provided*, no county shall ..." (Emphasis added). Given the first three words, if some other law is provided, this would give exception to the remaining clause of 46-1.5(10).

There exists authority and case law that explain: "[p]romoting economic development is a traditional and long-accepted governmental function, and there is no principled way of distinguishing it from the other public purposes the Court has recognized."<sup>1</sup> It is within the Committee's authority to suggest language and/or specify that the funds shall be used for a "public purpose" in this section and/or in the public purpose section.

Lastly, the proposed bill as currently drafted does not restrict the granting of a loan for a public purpose. It would be up to your Committee and the Council, as the legislative body to incorporate and approve such language and make it a legislative act or policy. Well established case law holds that "the degree of particularity with which expenditures are authorized is a matter of legislative policy ... and statutory provisions are a legitimate exercise of the power to appropriate money to promote the general welfare."<sup>2</sup>

In the event greater detailed analysis and research is needed, feel free to submit another written request.

4. Currently, Council approval is not required for expenditures from the Fund. There is no specific section language that states: "Council approval is needed prior to any expenditures from the fund." Section 3.81.030(B) provides that revenues received either by transfer from the general fund or from the application of Sections 3.81.020 and/or 3.81.030A are hereby

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<sup>1</sup> See Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98 (1954).

<sup>2</sup> See Duke Power Co. v. Greenwood County, 1936 WL 64961, Supreme Court of the United States.

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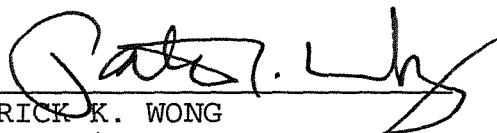
appropriated upon receipt and authorized to be expended for the purpose of this fund. Section 3.81.040 provides that the Council may make appropriations.

5. In response to your Question 5.a., I confirmed with the Budget Office that the Administration is requesting the fund be entitled a revolving fund. Per the Budget office, within the Maui County Code, there are different funds of which four are revolving funds. Generally, revolving fund means a fund that conducts continuing cycles of business-like activity, in which the fund charges for the sale of products or services and uses the proceeds to finance its spending, usually without requirement for annual appropriations.<sup>3</sup>

In response to your Questions 5.b. through 5.k., we agree that these non-substantive revisions should be made in accordance with your suggestions.

Mahalo for the opportunity to comment and respond to your questions. Our office looks forward to working with you and your Committee regarding Item No. EDR-16.

APPROVED FOR TRANSMITTAL:

  
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PATRICK K. WONG  
Corporation Counsel

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xc: Alan M. Arakawa, Mayor  
Keith A. Regan, Managing Director  
Sananda K. Baz, Budget Director  
Jock Yamaguchi, Executive Assistant  
Webpage

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<sup>3</sup> See "Revolving Fund," p. 8 Office of Management of the Budget (2009), OMB Circular No. A-11 (2010), Section 20-"Terms and Concepts".