

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 270-7740

MEMORANDUM

April 20, 2012

**T O :** Joseph Pontanilla, Chair  
Budget and Finance Committee

**F R O M:** Jeffrey Ueoka, Deputy Corporation Counsel *JU*

**SUBJECT:** FISCAL YEAR 2013 BUDGET; REQUEST FOR LEGAL OPINION  
RELATING TO CAPITAL IMPROVEMENT PROJECT APPROPRIATION FOR  
UNIDENTIFIED PROJECT (CC-3) (BF-1)

This memorandum is in response to your memorandum dated April 18, 2012 requesting our Department to provide a legal opinion to the following question:

Does the Revised Charter of the County of Maui (1983), as amended, allow for capital improvement project appropriations to be made for unidentified projects? Specifically, can a capital improvement project appropriation be made to serve as a reserve to cover the costs of other capital improvement projects that exceed their funding appropriation? (GRH)

The Revised Charter of the County of Maui (1983), as amended ("Charter"), does not expressly prohibit the Council of the County of Maui ("Council") to allow capital improvement project appropriations to be made for unidentified projects. Section 9-3(1) of the Charter requires that the budget, "present a complete financial plan for the operations of the county and its departments for the ensuing fiscal year." Depending on the specifics of the appropriation the "unidentified projects" could be part of the complete financial plan. An appropriation for "unidentified projects" does not violate Section 9-3(2) of the Charter in that it may be expending during the fiscal year therefore the, "estimated

revenues, proposed expenditures and total appropriations for the ensuing fiscal year shall be equal in amount."

A capital improvement project appropriation for unidentified projects may not satisfy the requirements of Section 9-6 of the Charter, which states, in relevant part:

1. The capital program shall contain at least the following:
  - a. A simple, general summary of the **detailed contents of the program.**
  - b. The **capital improvements pending or proposed to be undertaken within the ensuing fiscal year**, together with the estimated cost of each improvement and the pending or proposed method of financing it.

...  
(Emphasis added)

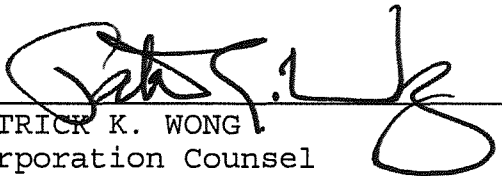
An appropriation more specific than "unidentified projects" would better meet the requirement to provide, at a minimum, the "detailed contents of the program[,]" and a listing of the, "capital improvements pending or proposed to be undertaken within the ensuing fiscal year[.]" We would recommend, if the Council prefers to authorize the appropriation, that it place restrictions or limitations on the disbursement of the appropriation for "unidentified projects". The Council is authorized to place restrictions and limitations pertaining to an appropriation, Section 9-7(1) of the Charter states, "[a]ny condition, limitation or restriction to be controlled by the council with respect to the disbursement of any appropriation shall be set forth in the budget or in the capital program, as the case may be."

In addressing the specific situation of a capital improvement project appropriation intended to serve as a reserve to cover the costs of capital improvement projects that exceed their funding appropriation, the issue of whether the appropriation satisfies Section 9-6 of the Charter would depend on the specific language of the appropriation. Again, it is within the Council's discretion to place restrictions and limitations on the appropriation that could limit the disbursement of the appropriation to certain capital improvement projects and even limit the percentage of the fund that could be applied to the specific capital improvement projects.

Joseph Pontanilla, Chair  
Budget and Finance Committee  
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Should you have any questions or concerns, please do not  
hesitate to contact me.

APPROVED FOR TRANSMITTAL:

A handwritten signature in black ink, appearing to read 'Patrick K. Wong', is written over a horizontal line. The signature is stylized and cursive.

PATRICK K. WONG  
Corporation Counsel

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xc: Alan M. Arakawa, Mayor  
Sananda K. Baz, Budget Director  
Patrick K. Wong, Corporation Counsel  
Webpage