

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
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MEMORANDUM

May 31, 2012

T O : Joseph Pontanilla, Chair
Budget and Finance Committee

F R O M: Jeffrey Ueoka, Deputy Corporation Counsel

SUBJECT: WEIGHT TAX PUBLIC HEARING REQUIREMENTS (CC-6) (BF-1)

This memorandum is in response to your memorandum dated May 7, 2012 requesting our Department to provide a response to the following questions:

1. If neither the Mayor nor the Council proposes that the vehicle weight tax rate be different from the rate for Fiscal Year 2012, must the Council hold a public hearing on the vehicle weight tax rate?

Yes, Section 249-13, Hawaii Revised Statutes ("HRS"), states, in relevant part, "[t]he rate and minimum tax shall be established by ordinance, provided that prior to final action thereon a public hearing shall be held on the proposed rate." The section does not make a distinction between the existing rate and an amended rate, only stating "proposed rate"; therefore, we would recommend that the Council hold a hearing on the vehicle weight tax rate.

2. If so, does the public hearing on the Mayor's proposed budget (which incorporates the vehicle weight tax rate in Appendix B) satisfy this requirement? Would the notices published for the public hearing on the Mayor's proposed budget meet the requirement for two notices under Section 249-13 and 92-41, HRS?

We feel that utilizing the public hearing on the Mayor's proposed budget to satisfy the public hearing requirement of Section 249-13, HRS, would survive a legal challenge, provided the notice is posted at least ten (10) days prior to the hearing. However, we would recommend that a separate public hearing on the vehicle weight tax rate be held, or at the very least, the notice for the public hearing on the Mayor's proposed budget specifically

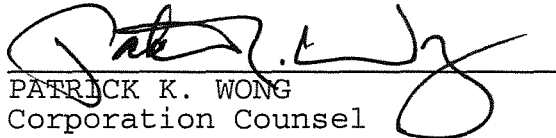
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list the proposed vehicle weight tax rate as an item for discussion.

Should the Council decide to rely on the public hearing on the Mayor's proposed budget to satisfy the public hearing requirement of Section 249-13, HRS, the notice for the public hearing must be posted at least ten (10) days prior to the hearing¹ and inform the public of the, "time, place, and subject matter"² of the hearing.³ We would also recommend that the notice meet the applicable requirements of Section 92-7, HRS.

Should you have any questions or concerns, please do not hesitate to contact me.

APPROVED FOR TRANSMITTAL:



PATRICK K. WONG
Corporation Counsel

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Webpage

¹Section 249-13, HRS

²Section 92-41, HRS

³We are unaware of a requirement for two (2) notices under Sections 249-13 and 92-41, HRS.