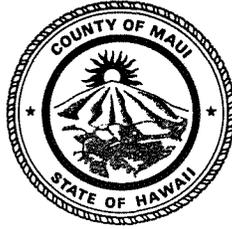


ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

EDWARD S. KUSHI  
First Deputy

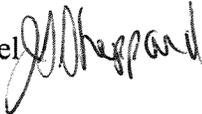
LYDIA A. TODA  
Risk Management Officer  
Tel. No. (808) 270-7535  
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152

July 3, 2014

**MEMORANDUM**

**T O:** Don S. Guzman  
Council Member

**F R O M:** Jerrie L. Sheppard, Deputy Corporation Counsel 

**SUBJECT: A BILL FOR AN ORDINANCE RELATING TO PRESS RELEASE GUIDELINES AND REQUIREMENTS (PAF 14-134)**

After reviewing the proposed bill transmitted to this office on June 30, 2014, entitled "A BILL FOR AN ORDINANCE RELATING TO PRESS RELEASE GUIDELINES AND REQUIREMENTS," we are returning same to you as we are unable to approve it as to form and legality.

The proposed bill seeks to control the content of press releases issued by County administration, and requires compliance with idealistic standards with a civil fine as a penalty for violating those standards, but does not address which body would enforce the ordinance, detail how violations of those standards are to be reported, investigated, or heard, or how the standards are to be uniformly applied to alleged violations. The bill encompasses all press releases to the public and media, which impact the freedom of speech and freedom of the press prohibitions in both the United States and Hawaii Constitutions. The bill is redundant with records access requirements already imposed by Hawaii Revised Statutes Section 92F, and directs that specific categories of press releases be reviewed by the Department of the Corporation Counsel, thereby directing the specific day-to-day responsibilities of various persons within the department.

Section 3-8(2) of the Maui County Charter states, in pertinent part:

"Neither the council nor its members shall give orders to any county employees or county officers other than those appointed pursuant to Section 3-7 or Article 5, either publicly or privately. "

Don S. Guzman  
Council Member  
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The bill may admirably seek to impart gentility into information released to the public and the media, but a Government ordinance that limits speech based on its content is a facial violation of the Constitutional protections of free speech and freedom of the press found in both the Hawaii and United States Constitutions. If the bill is designed to protect the County from libel suits, it should be noted that anyone claiming to be defamed by a communication must show actual malice; honest misstatements of fact are not actionable, and diligence to ensure accuracy in press releases already occurs. The proposed ordinance invites Constitutional challenges and exposes the County to litigation far beyond the litigation it may seek to avoid from someone claiming defamation.

Press releases cover a variety of topics, from missed trash collection or road closures, to water policies, to budget decisions. Press releases are designed to inform the public about many things, including operation of their government. "Public discussion is a political duty, ... a fundamental principle of the American government." (*New York Times v. Sullivan*, 376 U.S. 254 (1964)). "Debate on public issues should be uninhibited, robust, and wide-open, and that may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." (*Times* at 270.) To stifle a press release because it may contain sharp comments or cover a hot topic is an unconstitutional abridgement of free speech. Overbreadth is a sure death-knell for a government ordinance based on free speech challenges.

Enforcement and application of these broad standards are also undeveloped concepts in the proposed ordinance. The County's Charter, Article 10, already provides a Code of Ethics with penalties for violation of ethical requirements, and establishes a Board of Ethics to address violations. Maui County Code, Section 2.56 provides a civil fine of \$1,000, and further addresses Article 10.

As an alternative to the proposed ordinance relating to press releases, it may be worthwhile to review the statutory scheme of Article 10 and MCC 2.56 and develop specific performance standards of conduct pertaining to integrity in government, without abridging speech on topics that may promote debate on public issues.

Please contact our office if further discussion or clarification is needed.

APPROVED FOR TRANSMITTAL:

  
PATRICK K. WONG  
Corporation Counsel

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