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December 2, 2015

MEMORANDUM

TO: G. Riki Hokama, Chair
Budget and Finance Committee

FROM: Jerrie L. Sheppard, Deputy Corporation Counsel 

SUBJECT: **ADVERTISING INSIDE COUNTY TRANSIT BUSES (BF-62)**

This is in response to your memorandum dated October 2, 2015.

I. QUESTIONS PRESENTED:

1. Are revisions to the proposed bill required to meet constitutional standards in light of the recent U.S. Supreme Court case, Reed v. Town of Gilbert, Ariz., 135 S.Ct. 2218 (2015)?
2. Is there other case law applicable to limitations on advertising in public transit buses that require revisions to the proposed bill to meet constitutional standards? If so, please advise of any needed revisions. (You attached preliminary research and asked if the proposed bill is consistent with the noted transit advertising cases, and whether the bill creates a public forum.)

The bill in question is attached hereto as Exhibit 1, and is entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 11, MAUI COUNTY CODE, RELATING TO ADVERTISING INSIDE COUNTY TRANSIT BUSES" (hereinafter, "the proposed Bill".)

II. SHORT ANSWERS:

1. No. Reed v. Town of Gilbert, Ariz., 135 S.Ct. 2218 (2015) applies to noncommercial speech, specifically, "directional signs" situated adjacent to roadways. The proposed Bill applies to commercial speech on signs situated inside transit buses. The Reed decision does not apply to the proposed Bill.

2. Yes. The seminal cases applicable to the proposed Bill are Lehman v. City of Shaker Heights, 418 U.S. 298 (1974) (political campaign advertising in metropolitan transit buses) and Central Hudson Gas v. Public Service Commission, 447 U.S. 557, (1980) (“intermediate scrutiny” is the standard applicable to regulation of commercial speech). To withstand a challenge, revisions to the proposed Bill are recommended and are provided in a revised proposed Bill, attached hereto as Exhibit 2.

III. DISCUSSION AND ANALYSIS:

The First Amendment of the United States Constitution, and Article 1, Section 4 of the Hawaii Constitution both provide that no law shall be enacted which abridges the freedom of speech. However, there are some categories of speech which warrant no First Amendment protection at all, such as false and misleading advertising, and advertising that promotes illegal activity, obscenity or pornography. This “unprotected speech” may be regulated without concern for abridgement of First Amendment rights.

Advertising which doesn’t fall into the “unprotected speech” category, is considered “commercial speech.” Although commercial speech does not enjoy as much constitutional protection as other constitutionally guaranteed expression, it is provided some Constitutional protection. That protection turns on the nature of the expression and of the governmental interests served by its regulation. (Central Hudson Gas v. Public Service Commission, 447 U.S. 557, 563, (1980)). When regulating “commercial speech” the “forum” or location where that speech occurs is a significant consideration in determining to what extent government regulation of that speech is allowed.

The proposed Bill seeks to regulate commercial speech inside County transit buses, and therefore we must consider the “forum” of metropolitan transportation systems. The Ninth Circuit U.S. Court of Appeals recently conducted forum analysis in a bus advertising case, Seattle Mideast Awareness Campaign v. King County, 781 F.3d 489, (2015) (hereafter abbreviated as “SeaMAC”). In the SeaMAC case, the County was deemed to have created a “limited public forum” (or non-public forum¹) when it allowed advertising in its transit buses. “Bus advertising creates a forum of some sort because the County has opened the space in its buses to speakers other than the government itself. The more difficult question is determining which type of forum the County has

¹ In a footnote in another recent 9th Circuit opinion, American Freedom Defense Initiative v. King County, 796 F.3d 1164 (2015), the court explained that the terms “nonpublic forum” and “limited public forum” mean the same thing. “Footnote 1: We noted in SeaMAC that the Supreme Court and this court have used the terms “limited public forum” and “nonpublic forum” interchangeably to describe areas that fall short of a classification that warrants heightened scrutiny. (SeaMAC, 781 F.3d at 496 n.2.) Noting that “[t]he label doesn’t matter,” we chose to use the term “limited public forum.” *id.* We agree that the label is immaterial, because the relevant question is whether we apply heightened scrutiny. But, in light of the Supreme Court’s recent decision in Walker v. Tex. Div., Sons of Confederate Veterans, Inc., ___ U.S. ___, 135 S. Ct. 2239, 192 L.Ed. 2d 274 (2015), the proper term likely is “nonpublic forum.” See *id.* at 2250-56 (discussing the types of fora). For that reason, we use the term “nonpublic forum.”

created.” The Supreme Court has classified forums into three categories: traditional public forums, designated public forums, and limited public forums (non-public forums). In traditional and designated public forums, content-based restrictions on speech are prohibited unless they satisfy strict scrutiny. “In limited public forums, content-based restrictions are permissible, as long as they are reasonable and viewpoint neutral (citations omitted).” (Id., at 496.)

Public transit buses have been consistently considered non-public forums². In Lehman v. City of Shaker Heights, 94 S. Ct. 2714 (1974), the U.S. Supreme Court noted that advertising space on public transit buses is “incidental to the provision of public transportation” (id., at 303) and does not create a traditional First Amendment “public forum.”³ In Lehman the Court found that the City had a substantial interest in limiting transit advertisements to innocuous and less controversial commercial and service-oriented advertising. The City’s regulation minimized chances of abuse, appearances of political favoritism, and the risk of imposing controversial messages or unwanted propaganda upon a captive audience. Therefore, the City’s regulation banning all political advertisement on city buses directly advanced its substantial interests. Lehman further held that the City’s regulation was no more extensive than necessary, and constituted a reasonable time, place and manner restriction on commercial speech. The Court concluded that the petitioner, a candidate for elective office, had no constitutional right to force his message upon a captive audience which used public transit vehicles, not as a place for discussion, but only as a means of transport. “No First Amendment forum is here to be found”. (Id., at 304.)⁴

In Lehman, the Court further found that “In much the same way that a newspaper or periodical, or even a radio or television station, need not accept every proffer of advertising from the general public, a city transit system has discretion to develop and make reasonable choices concerning the type of advertising that may be displayed in its vehicles.” (Lehman, at 303.)

It is recommended that a purpose statement be added to the ordinance to clearly set forth that authorizing advertising in County buses is not intended to create a public forum or designated public forum, it is intended only as a means to generate revenue to benefit the transit system. Such a statement is provided in Exhibit 2.

² The list of cases provided with your October 2, 2015, memorandum, all held that buses were non-public forums, except one, Coleman v. Ann Arbor Transportation Authority, 904 F. Supp.2d 670 (2012), which was decided upon the vagueness of the restrictions in the regulation, not on the determination of the forum.

³ Traditional public forums, for First Amendment purposes, are “places like streets and parks which have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. (Seattle Mideast Awareness Campaign v. King County, 781 F.3d 489, 496 (2015))

⁴ In concurring with the Lehman decision, Mr. Justice Douglas wrote: “...a bus is plainly not a park or sidewalk or other meeting place for discussion, any more than is a highway. It is only a way to get to work or back home. The fact that it is owned and operated by the city does not without more make it a forum. “Buses are not recreational vehicles ... they are a practical necessity for millions in our urban centers.” “The man on the streetcar has no choice but to sit and listen, or perhaps to sit and to try *not* to listen.” “There is no difference when the message is visual, not auricular. In each the viewer or listener is captive.” “Commercial advertisements may be as offensive and intrusive to captive audiences as any political message...I do not believe that petitioner has any constitutional right to spread his message before this captive audience.”

In addition to the forum where the speech occurs, constitutional protection of commercial speech depends on the nature of the commercial expression and the government's interests to be served by regulation of that expression. Under the First Amendment, in non-public public forums (such as County transit buses) content-based restrictions are permissible as long as they are reasonable and viewpoint neutral. (SeaMAC v. King County, 781 F.3d 489, 496 (2015).) (Regulation of advertising on public transit buses must be reasonable, not "arbitrary, capricious or invidious." (Lehman, *supra*, at 303.))

To be considered reasonable and viewpoint neutral, the proposed Bill must pass a four-part "intermediate scrutiny" analysis as established by the U.S. Supreme Court in Central Hudson Gas v. Public Service Commission, 447 U.S. 557, 563, (1980))⁵. While government regulation of "unprotected speech" isn't restricted at all, "intermediate scrutiny" requires the Government to assert a *substantial interest* to be achieved by restrictions on commercial speech and requires the regulation of that speech be in direct proportion to that interest.

This four-step intermediate scrutiny analysis requires the following:

1. Determine if the speech or expression is protected by the First Amendment. For commercial speech to come within First Amendment protection at all, it must concern lawful activity and not be misleading.
2. Determine if the government has a substantial interest in regulating that speech. (Traditional free speech would require a "compelling" interest, not the lesser, "substantial" interest" standard applicable to commercial speech.)
3. If both inquiries above yield positive answers, then determine whether the regulation *directly* advances the government's asserted substantial interest; it must be direct, not indirect.
4. Finally, determine if the regulation of commercial speech is no more extensive than necessary to further the government's substantial interest.

Applying this four-step analysis to the proposed Bill:

1. Is the commercial speech (advertising) regulated by the proposed Bill, Exhibit 1, protected by the First Amendment?

Of the five items in Exhibit 1, only Item 1. regulates speech which may warrant First Amendment protection, and will be discussed further below. Items 2. through 5. regulate "unprotected speech," and present no concern for abridgment of First Amendment protection. Exhibit 2 retains regulation of the "unprotected speech", adds definitions for

⁵ Other cases applying intermediate scrutiny to commercial speech include State of Hawaii v. Bloss, 64 Haw. 148 (1981); State of Hawaii v. Hawkins, 64 Haw. 499 (1982); Sea MAC v. King County, 781 F.3d 489 (2015), and American Freedom Defense Initiative v. King County, 796 F.3d 1165 (9th Cir. 2015).

clarity, and organizes these items a little differently. There is no item in the proposed Bill in Exhibit 1 prohibiting false or misleading advertising, and it is recommended that such an item be added, as set forth in Exhibit 2. False or misleading advertising is not constitutionally protected speech, and can be regulated without concern for abridging the First Amendment. “There can be no constitutional objection to suppressing commercial messages that do not accurately inform the public about lawful activity.” (Central Hudson Gas v. Public Service Commission, 447 U.S. 557 (1980)). False advertising is prohibited by Hawaii Revised Statutes Section 708-871. The prohibition of false and misleading advertisement was key to the Ninth Circuit’s decision upholding King County’s bus advertising ordinance in American Freedom Defense Initiative v. King County, 796 F.3d 1165 (2015), and it is therefore prudent to include this in the proposed Bill.

Item 2. of the proposed Bill in Exhibit 1 prohibits advertising which includes “racial, religious, or ethnic prejudice or violence”. This falls into the well-defined and narrowly limited classes of speech which have never been afforded Constitutional protection. This class of speech includes epithets, racial slurs, insulting or “fighting words”, which by their very utterance inflict injury or tend to incite an immediate breach of the peace. Such utterances play no essential part of any exposition of ideas, and are of such slight social value that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. “Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution.” (Cantwell v. Connecticut, 310 U.S. 296 (1940).)

In SeaMAC v. King County, *supra.*, the Ninth Circuit Court of Appeals held that a county may exclude ads from metropolitan transit buses which contained content that was reasonably foreseeable to threaten the safety and operation of the metro system. “The intended purpose of the property at issue here – Metro buses – is to provide safe and reliable public transportation. Any speech that will foreseeably result in harm to, disruption of, or interference with the transportation system is, by definition, incompatible with the buses’ intended purpose. Restrictions on speech that will foreseeably disrupt the intended function of government property have generally been held reasonable in limited public forums (citations omitted).” (SeaMAC v. King County, 781 F.3d 489, 500, (2015)).

Items 3. and 4. in Exhibit 1 prohibit “obscene, lewd, lascivious or indecent” advertising, and that which promotes “illegal, indecent or immoral activities”. (The proposed Bill does not define the terms “obscene, lewd, lascivious, indecent or immoral.”) It has been long held that obscene speech is not constitutionally protected, and may therefore be regulated by the government. (“We hold that obscenity is not within the area of constitutionally protected speech.” (Roth v. United States, Alberts v. California, 354 U.S. 476 (1957)).⁶ Displaying advertising containing obscenity or pornography is illegal under Hawaii criminal law (see Hawaii Revised Statutes (HRS), Chapter 712, Part II, Offenses Related to Obscenity). The HRS also defines obscenity, pornography, and illicit

⁶ Roth was later affirmed by Miller v. California, 413 U.S. 15 (1973), which held that obscene material is not protected by the First Amendment and such material can be regulated by the States.

material, and those definitions are appropriate to include in the proposed Bill, as reflected in Exhibit 2, so that this ordinance may withstand any challenges based on vagueness. Other terms listed in Exhibit 1 are not included in Exhibit 2 (lewd, lascivious, indecent, or immoral) as those terms are not already defined in the HRS and do not add additional clarity to the proposed Bill.

Items 4. and 5. in Exhibit 1 prohibit advertising that promotes illegal activities and products or services that are illegal for sale to minors. Commercial speech that promotes illegal activity is not constitutionally protected. (Central Hudson Gas, supra., at 564.)

In contrast with Items 2., 3., 4. and 5., which are “unprotected” speech and may be banned outright, Item 1. of Exhibit 1 prohibits advertising that “bears the name, signature, picture, or likeness of any publicly-elected official or of any candidate for elective office.” This Item regulates “political speech” and may warrant constitutional protection. Item 1. in Exhibit 1 restricts only some political speech; ads for political viewpoint messages advocated by a group, business, or coalition are not restricted by Item 1. unless specifically attributed to a candidate or incumbent of elected office. By regulating some but not all political speech, the first step of the Central Hudson analysis is not met, and Item 1. must undergo further analysis to survive “intermediate scrutiny.”

2. Does the government have a “substantial interest” in regulating the protected speech in Item 1.?

Yes. The County has a substantial interest in restricting all political speech, not just some of it, in its advertising space on County transit buses. It is recommended that Item 1. be expanded as reflected in Exhibit 2.

Buses are provided for the public’s transportation needs. The County has a substantial interest in ensuring the public has access to punctual, safe, reliable, convenient, pleasant and affordable transit services. Advertising revenue generated incidental to the provision of public transit may enable the County to expand transit routes or services, improve transit amenities, and even reduce transit system costs to the taxpayer or paying passengers. Revenue earned from long-term commercial advertising incidental to providing transit services would be predictable and manageable. This reliable long-term revenue stream could be jeopardized by short-term political advertisements, whether such ads are by candidates or by political groups, organizations, associations, etc.

The high visibility and limited advertising space available on County buses make this space very attractive to commercial advertisers. During political campaigns, this ad space is not only attractive to commercial advertisers, but also to political candidates, and other political groups, organizations, coalitions, etc., which desire opportunities to broadly disseminate their messages. These political causes may be willing to pay a very high price for this prime ad space, which may make campaign ads more lucrative in the short term, but such ads may provide unpredictable revenue; short-term political ads may also impede negotiating long-term, predictable and reliable revenue from commercial

advertisers. Long-term advertisers may not want to negotiate agreements which block out political “seasons” (which often coincide with high-volume tourist and consumer seasons.) As Item 1. is presently configured, any political message qualifies for ad space on the bus unless it “bears the name, signature, picture or likeness of any publicly-elected official or ...candidate.” It is foreseeable that a political ad may express a candidate’s message without direct attribution to that candidate, and thereby circumvent Item 1.’s prohibition as presently configured. Prohibiting all, not just some, political speech avoids such attempts to circumvent the prohibition of candidate-identified ads.

Placing political advertisements in County operated transit buses may also create the appearance that the County endorses a political viewpoint, and risks the appearance of favoritism in parceling out limited space to certain political messages.

It is foreseeable that hotly contested ballot initiatives as seen in recent past elections may desire bus ad space, disrupting the comfort and endangering the safety of bus patrons who may voice disagreement with such ads. Well-financed political causes have a distinct advantage in buying ad space. While short-term, expensive, political ads might generate more revenue than long-term ads, they are not predictable from year to year, and would subject bus patrons, a virtual captive audience, to the “blare of political propaganda.” (Lehman, supra, at 304.) If this limited bus advertising space is made available to the highest political ad bidder, the County’s transportation system could become a billboard monopolized by the political advertiser with the best financial means, frustrating advocates of poorly funded causes and inciting disruption of transit services due to the intense and sometimes volatile reactions to posted opposing campaigns. Bus riders should not be subjected to this potential blow-back. Posting well-funded campaign ads sets the stage for voicing opposing viewpoints by bus patrons, which invites opposing voicing of viewpoints by other bus patrons.

Instead of prohibiting just candidate-identified political speech, prohibiting all political speech has been found to serve the substantial government interest of providing safe, reliable public transit services and eliminates the possibility that ad space can be monopolized by well-financed causes or organizations. It eliminates the appearance of favoritism in determining which political ads get space; it eliminates the appearance of endorsement by the County of political messages posted in County buses. A complete prohibition of political speech on County buses, whether attributable to candidates or political organizations, enables the County to seek long-term commercial advertising which may generate a predictable revenue stream that can be relied upon when planning the transit system’s operations.

It’s important to re-emphasize that the bus is not a public forum intended for airing political messages; the purpose and intent of providing advertising space on county buses is merely to obtain revenue incidental to providing transit services, which may enhance and augment those services. It is recommended that there be a “purpose and intent” statement in the ordinance that clearly shows the intent in allowing advertising on buses is to generate revenue while preserving the transit system’s interests, not to create a public

forum or provide a political platform for discussion of political causes. The County has the authority to make “the managerial decision to limit car card space to innocuous and less controversial commercial and service oriented advertising” and such regulation “does not rise to the dignity of a First Amendment violation.” (Lehman, supra, at 304.)

Therefore, it is recommended that Item 1. of Exhibit 1 be expanded to prohibit all political advertising.

3. Does the regulation directly advance the government’s substantial interest in obtaining revenue incidental to providing safe, reliable transit services without subjecting patrons to political blare?

Yes. Prohibiting all political speech directly preserves the County’s ability to obtain advertising revenue incidental to providing transit services. It directly removes competition for election season ad space which may impede long-term commercial advertising agreements, precludes any suggestion of favoritism or the appearance of endorsement of political causes or candidates, and allows revenue benefits of commercial advertising without being inundated with political, often controversial, messages. As noted above, political speech ads would occupy space inside these buses, where the public is basically a captive audience. Prohibiting all political advertising avoids the blare of “political propaganda” on patrons who simply want a pleasant, affordable ride to their destination.

4. Is the regulation no more extensive than necessary to further the government’s interest in regulating the commercial speech in question?

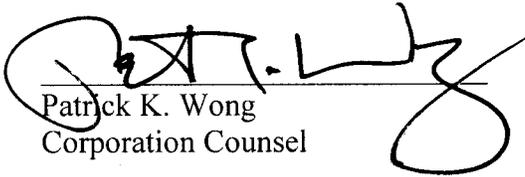
Yes. Regulation of commercial speech is constitutionally permissible when such speech concerns lawful activity and is not deceptive or misleading; the regulation seeks to implement a substantial governmental interest; the regulation directly advances that interest; and reaches no further than necessary to accomplish the given objective. (State v. Bloss, 64 Haw. 148 (1981)). As revised in Exhibit 2., the prohibition of all political advertising is narrowly drawn; there can be no selectivity about which political messages get advertising space -- none will get to compete for that space. No one will have to guess whether a political message is actually the viewpoint of a political candidate or incumbent elected official. This restriction advances the County’s substantial interests in revenue generation from long-term commercial advertisers as opposed to short-term candidacy or issue-oriented political ads; assures the appearance of impartiality by the County toward political campaigns (be it a candidate for office or a measure on a ballot), and promotes comfortable, pleasant, safe and reliable transportation for its patrons without exposure to controversial political propaganda which could spark unrest and disrupt safe transit services. The regulation doesn’t impact a public forum where political messages are traditionally discussed and debated, and alternative channels of communication, essentially all traditional public forums and all other media, remain available to communicate political messages.

IV. CONCLUSION:

The proposed Bill regulates commercial speech on County transit buses which are intended for public transport. County buses are not public forums for political discussions, expressions, or campaigns. Restricting all political advertising is a reasonable means to promote a safe, pleasant and affordable experience for transit users and provides the County the opportunity to obtain advertising revenue from long-range commercial advertisers, enhancing the ability to plan for and use that revenue. Prohibiting all political advertising avoids any appearance of favoritism toward the proponent of the political message or the ability to obtain ad space, and avoids imposing political propaganda on transit users. Exhibit 2 is offered in lieu of Exhibit 1.

Please contact me if further advice on this matter is needed or should you have additional questions.

Approved for transmittal:


Patrick K. Wong
Corporation Counsel

cc: Edward S. Kushi, First Deputy, Corporation Counsel
JoAnne Johnson Winer, Director, Department of Transportation

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AMENDING TITLE 11, MAUI COUNTY CODE,
RELATING TO ADVERTISING INSIDE COUNTY TRANSIT BUSES

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 11.02.040, Maui County Code, is amended to read
as follows:

"11.02.040 Advertising inside County transit buses. A.
The department may rent or let advertising spaces inside County
transit buses[;], provided that the following types of advertising
shall not be accepted:

1. Advertising that bears the name, signature,
picture, or likeness of any publicly-elected official or of any
candidate for elective office[;].

2. Advertising that, by reason of design, format, or
subject matter, promotes or appeals to racial, religious, or
ethnic prejudice or violence[;].

3. Advertising that contains pictures, words, or
symbols of an obscene, lewd, lascivious, or indecent
character[;].

4. Advertising that promotes illegal, indecent, or
immoral activities[; and].

5. Advertising of any product or service that is
prohibited by law to be sold or offered for sale to minors.

B. A tax-exempt organization shall not be denied the use
of advertising space in a County transit bus solely because the
announcement or advertisement refers to the location of an event
sponsored by the tax-exempt organization, even if the location of
the event is not owned or operated by the tax-exempt organization.
All such advertising shall be provided on a space available basis, in
consideration of revenue generating advertisements described
under subsection 11.02.040C.

C. [Rates for renting or letting of advertising spaces in
County transit buses shall be set forth in the annual budget.]The
department is authorized to enter into contracts for advertising
with private vendors provided that all procurement laws are met
and in accordance with the following:

EXHIBIT " 1 "

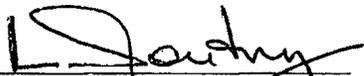
1. The County's share of the revenues generated shall be placed in the County highway fund.

2. An annual report of revenues received shall be transmitted to the county council during the annual budget process."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



LINDEN H. JOESTING
Deputy Corporation Counsel
County of Maui
2013-2594 Version 2

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AMENDING TITLE 11, MAUI COUNTY CODE,
RELATING TO ADVERTISING INSIDE COUNTY TRANSIT BUSES

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 11.01.010, Maui County Code, is amended to read
as follows:

“11.01.010 Purpose and intent. The purpose and intent of this title is to regulate the public transit system for the County of Maui to provide reliable transportation services while protecting the health, safety, and welfare of the people. The display of advertising on interior or exterior of County buses, or on County bus passes is intended solely to generate revenue incidental to the operation of the public transit system; it is not the County’s intent to allow or cause any of its buses or bus passes to become a public forum for the dissemination, debate, and/or discussion of public issues.”

SECTION 2. Section 11.01.020, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

“Advertising” means signage, stickers, posters, flyers, brochures, banners, videos, displays, or any other means of promotion of any product or service.

“Copyright infringement” means the use of works protected by copyright law without permission, infringing certain exclusive rights granted to the copyright holder, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works.

“False or misleading” means untruthful, inaccurate, misleading, or deceptive commercial speech.

“Libelous speech” means any written matter, pictures or depiction injurious to the reputation of another.

EXHIBIT " 2 "

“Minors” means any person less than eighteen years old.

“Obscene” or “illicit” means any material as described in section 712-1211(1), Hawaii Revised Statutes.

“Political or campaign speech” means any material that (1) refers to or supports a specific ballot question, initiative, petition, or referendum, or (2) refers to any candidate for public office, or (3) bears the name, signature, picture, or likeness of any publicly elected official or of any candidate for elective office.

“Pornographic” has the same meaning as “pornographic” as defined in section 712-1210, Hawaii Revised Statutes.

“Profanity” means vulgar, irreverent, or coarse language.

“Trademark” means a mark used by a person to identify goods and to distinguish them from the goods of others.”

SECTION 3. Section 11.02.040, Maui County Code, is amended to read as follows:

"11.02.040 Advertising inside County transit buses. A. The department may rent or let advertising spaces inside County transit buses[;], provided that the following types of advertising shall not be accepted:

1. Advertising that [bears the name, signature, picture, or likeness of any publicly-elected official or of any candidate for elective office;]contains political or campaign speech.

2. Advertising that, by reason of design, format, or subject matter, promotes or appeals to racial, religious, or ethnic prejudice or violence[;].

3. Advertising that contains pictures, words, or symbols of an obscene, illicit or pornographic [lewd, lascivious, or indecent] character[;].

4. Advertising that promotes illegal[, indecent, or immoral] activities[; and].

5. Advertising of any product or service that is prohibited by law to be sold or offered for sale to minors.

6. Advertising that contains profanity or depicts violence.

7. Advertising that contains false or misleading information, copyright or trademark infringement, or is otherwise unlawful.

8. Any material that implies or declares an endorsement by the County of any service, product or point of view, without prior written authorization by the department.

9. Advertising that contains libelous speech.

10. Advertising that is harmful to or disruptive to the transit system.

11. Advertising that emits lights, noise, or special effects.

B. A tax-exempt organization shall not be denied the use of advertising space in a County transit bus solely because the announcement or advertisement refers to the location of an event sponsored by the tax-exempt organization, even if the location of the event is not owned or operated by the tax-exempt organization. All such advertising shall be provided on a space available basis, in consideration of revenue generating advertisements described under subsection 11.02.040(C).

C. Rates for renting or letting of advertising spaces in County transit buses shall be set forth in the annual budget. The department is authorized to enter into contracts for advertising with private vendors provided that all procurement laws are met and in accordance with the following:

1. The County's share of the revenues generated shall be placed in the County highway fund.

2. An annual report of revenues received shall be transmitted to the county council during the annual budget process."

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
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JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
2013-2594