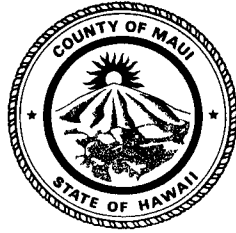


ALAN M. ARAKAWA  
Mayor



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MEMO TO: Elle Cochran  
Councilmember

FROM: Edward S. Kushi, Jr.  
First Deputy Corporation Counsel

A handwritten signature in black ink, appearing to be "E. Kushi, Jr.", is written over the name and title in the "FROM:" field.

DATE: September 21, 2016

SUBJECT: **COMMUNICATIONS FROM DEPARTMENT HEADS TO THE  
COUNCIL** (PAF 16-084)

After reviewing your Request for Legal Services dated July 8, 2016, together with the attached proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 2.60.010, MAUI COUNTY CODE, RELATING TO COMMUNICATIONS BETWEEN COUNCIL AND DEPARTMENT HEADS", and pursuant to subsequent discussions with Council Services staff member Sharon Brooks, we have returned said proposed ordinance unsigned due to the following:

**THE PROPOSED ORDINANCE SUBSTANTIALLY DEVIATES FROM THE ORIGINAL INTENT THAT CREATED SECTION 2.60.010, MAUI COUNTY CODE ("MCC"), AND FURTHER, MAY BE IN VIOLATION OF THE MAUI COUNTY CHARTER.**

The existing Section 2.60.010, MCC, was enacted in 1977 by Ordinance No. 873<sup>1</sup>, which stated:

Sec. 5-1.4. Communications.

All communications to the council from department heads shall be made through the mayor, except, however, the corporation counsel may respond directly upon requests made by the council relative to an investigation by the council of the operations of any department or function of the county, and any subject matter upon which the council may legislate.

A review of the August 18, 1977 Council meeting minutes beginning at page 77-396, that passed Ordinance No. 873 on second and final reading reveals that the intent behind the ordinance was expressed as follows:

COUNCILMAN AIONA: Mr. Chairman. That refers to communications.

CHAIRMAN HOKAMA: Yes, requests from the Council that the Corporation Counsel can directly respond to the Council.

COUNCILMAN NEMOTO: Dealing with investigations of various County functions or departments.

. . .

COUNCILMAN MEDINA: As I understand that, this means that any request for bills would be routed directly to the Council from the Corp Counsel and would not have to be transmitted from the Mayor's Office to the Council Office.

COUNCILMAN AIONA: Yes.

. . .

COUNCILMAN AIONA: It refers to any reports regarding investigation and also legislation.

COUNCILMAN MOLINA: Mr. Chairman. Maybe I can add some . . . to it. . . .

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<sup>1</sup> Prior code section 5-1.4.

It started because I had asked the Attorney then to draw up an ordinance pertaining to some subject matter and before that ordinance came to us it went up to the Mayor's Office and I felt that when this Council requests Corporation Counsel, or Attorney then, to draw up an ordinance for us, we should approve it before it goes up to the Mayor. And if he doesn't like what we do, then he has the prerogative to veto it. And the Council is not a department of the County. And I think that was the opinion that was rendered by the Attorney then. All communications from department heads shall go through the mayor, but the Council is a different body altogether and that is the intent of this ordinance.

. . .

COUNCLMAN MEDINA: Mr. Chairman. That's why I wanted my comment read into the minutes that what we meant to do here was that any request for legislation to be drafted by the Corp Counsel's Office should be directly transmitted to the Council rather than being transmitted through the Mayor's Office and then to the Council. That is our intent.

COUNCILMAN MOLINA: That's right.

COUNCILMAN AMARAL: That's what the intent is.

Based on the above-referenced legislative history, it is clear that the intent behind Ordinance No. 873 was to solely exempt or exclude the Corporation Counsel's Office from the general directive that all communications to the Council shall go through the Mayor's Office. The proposed amendment to Section 2.60.010, MCC, which in certain situations, would mandate direct communications to the Council from department heads, goes way beyond said original intent. We believe and opine that such "written requests for information" from the Council, let alone any of its members individually, may subject all executive branch officers to orders and/or directives from the Council or its members, which would then be in violation of the Maui County Charter.<sup>2</sup>

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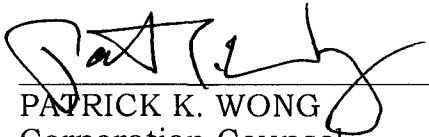
<sup>2</sup> Revised Charter of the County of Maui (1983), as amended, Section 3-8.2:

"2. 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. . . ."

Elle Cochran, Councilmember  
September 21, 2016  
Page 4

Call if further clarification and/or discussion is needed.

APPROVED FOR TRANSMITTAL:



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PATRICK K. WONG  
Corporation Counsel

2016-0902

201-09-21 Memo to Cochran

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2016)

A BILL FOR AN ORDINANCE AMENDING SECTION 2.60.010,  
MAUI COUNTY CODE, RELATING TO COMMUNICATIONS  
BETWEEN COUNCIL AND DEPARTMENT HEADS

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

SECTION 1. Chapter 2.60, Maui County Code, is amended by amending  
Section 2.60.010 to read as follows:

**“2.60.010 - Communications.** [All communications to the council from department heads shall be made through the mayor; except, however, the corporation counsel may respond directly upon requests made by the council relative] A. Relative to all written requests for information from the council or councilmembers relating to an investigation by the council of the operations of any department or function of the county, and any subject matter upon which the council may legislate, department heads shall respond in writing by the due date indicated on the request or five days from the date of the request, whichever is later. If no due date is indicated on the request, department heads shall respond in writing within ten days from the date the request is received. In the event a response is not received in the stated time period, the corporation counsel, to the extent possible, shall provide the information to the requester within five days of being notified that the response was not received.

B. Except as otherwise provided by this section, all communications to the council from department heads shall be made through the mayor; except, however, the corporation counsel may respond directly upon requests made by the council.”

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:

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Department of the Corporation Counsel  
County of Maui

paf:scb:16-084f