COUNCIL OF THE COUNTY OF MAUI COMMITTEE OF THE WHOLE

June 4, 2010	Committee	
	Report No.	

Honorable Chair and Members of the County Council County of Maui Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on February 18, 2010, and May 12, 2010, makes reference to County Communication No. 09-290, from Councilmember Joseph Pontanilla, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 10.52, MAUI COUNTY CODE, PERTAINING TO THE USE OF MOBILE ELECTRONIC DEVICES WHILE DRIVING".

The purpose of the proposed bill is to prohibit the use of certain mobile electronic devices while operating a motor vehicle.

Your Committee acknowledged that the State Legislature considered similar bills during this year's legislative session; however, the Legislature did not pass any of the proposed measures.

The Chair of your Committee explained that the three other counties have enacted legislation addressing the use of mobile electronic devices while driving. As of February 11, 2010, the Honolulu Police Department had issued more than 3,000 citations for violations of the law.

Your Committee discussed safety concerns for pedestrians, bicyclists, and motorists, highlighting the need to pass legislation swiftly in order to address these concerns.

A Deputy Corporation Counsel advised that the applicable penalty provision for violations of the proposed bill is Chapter 10.72, Maui County Code (MCC). Section 10.72.020, MCC, provides for a maximum fine of \$100 for a first offense and a maximum fine of \$250 for every subsequent offense. Your Committee compared the penalties imposed by the other counties. Your Committee contemplated whether higher fines, the establishment of minimum fines, or even jail time may be necessary to deter the use of mobile electronic devices while driving; however, your Committee agreed to leave

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the penalties as they are in order to determine their effectiveness over a period of time. Your Committee noted that the issue can be revisited at a later date, if necessary.

The First Deputy Prosecuting Attorney assured your Committee that State law imposes stronger penalties for negligent or reckless operation of a vehicle, including jail time.

Your Committee agreed to revise the proposed bill to exempt drivers using two-way radios while in the performance and scope of their duties and who: (1) are operating fleet vehicles; (2) possess a commercial driver's license, pursuant to Section 286-239, Hawaii Revised Statutes; or (3) possess a commercial driver's instructional permit pursuant to Section 286-236, Hawaii Revised Statutes.

Your Committee noted that the Department of the Prosecuting Attorney of the City and County of Honolulu, which had the benefit of almost a year of experience with enforcement of the law, supported similar language that was proposed in a State bill during the 2010 Legislative Session. The additional language will enable police officers to easily identify drivers who are using two-way radios while in the performance and scope of their work-related duties.

Your Committee recognized that the proposed bill prohibits persons from operating a motor vehicle while holding a mobile electronic device, but will allow hands-free technology to assist with the use of mobile electronic devices, such as cell phones. Your Committee expressed concern, however, that young and inexperienced drivers should be further prohibited from using any hands-free device, as it can provide an added distraction. Your Committee agreed to revise the proposed bill to add a new section to read as follows: "Drivers who hold an instructional permit pursuant to section 286-110, Hawaii Revised Statutes, or a provisional license pursuant to section 286-102.6, Hawaii Revised Statutes, shall be further prohibited from using any hands-free technology to assist with the use of a mobile electronic device."

Your Committee recommended that the proposed bill be further revised to extend the effective date of the bill from January 1, 2010 to July 1, 2010 and to change the parenthetical reference to the year from "(2009)" to "(2010)".

Your Committee voted 7-0 to recommend passage of the proposed bill on first reading and filing of the communication. Committee Chair Molina and members Baisa,

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	ala, Medeiros, Nishiki, Pontanilla, and Victorino voted "aye". Committee lateo and member Johnson were excused.	
	Committee is in receipt of a revised proposed bill, approved as to form and the Department of the Corporation Counsel, incorporating your Committee's directions.	
Your	Committee of the Whole RECOMMENDS the following:	
1.	That Bill No(2010), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 10.52, MAUI COUNTY CODE, PERTAINING TO THE USE OF MOBILE ELECTRONIC DEVICES WHILE DRIVING", be PASSED ON FIRST READING and be ORDERED TO PRINT; and	
2.	That County Communication No. 09-290 be FILED.	
This report is submitted in accordance with Rule 7 of the Rules of the Council.		
	MICHAEL J. MQLINA, Chair	

cow:cr:10028aa:kmh

ORDINANCE	NO.	
BILL NO.		(2010)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 10.52, MAUI COUNTY CODE, PERTAINING TO THE USE OF MOBILE ELECTRONIC DEVICES WHILE DRIVING

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

SECTION 1. Chapter 10.52, Maui County Code, is amended by adding a new section to be designated and to read as follows:

- "10.52.260 Mobile electronic devices. A. No person shall operate a motor vehicle while using a mobile electronic device.
- B. The use of a mobile electronic device for the sole purpose of making a "911" emergency communication shall be an affirmative defense to this ordinance.
- C. The following persons shall be exempt from subsection A:
 - 1. Emergency responders using a mobile electronic device while in the performance and scope of their official duties;
 - 2. Drivers using two-way radios while in the performance and scope of their work-related duties, and who:
 - a. Are operating fleet vehicles;
 - b. Possess a commercial driver's license, pursuant to section 286-239, Hawaii Revised Statutes; or
 - c. Possess a commercial driver's license instructional permit, pursuant to section 286-236, Hawaii Revised Statutes; and
 - 3. Drivers holding a valid amateur radio operator license issued by the federal communications commission and using a half-duplex two-way radio.
- D. Drivers who hold an instructional permit pursuant to section 286-110, Hawaii Revised Statutes, or a provisional license pursuant to section 286-102.6, Hawaii Revised Statutes, shall be further prohibited from using any hands-free technology to assist with the use of a mobile electronic device.
 - E. As used in this section:
- "Emergency responders" include fire fighters, emergency medical technicians, mobile intensive care

technicians, civil defense workers, police officers, and federal and state law enforcement officers.

"Mobile electronic device" means any hand-held or other portable electronic equipment capable of providing wireless or data communication between two or more persons or of providing amusement, including a cellular phone, text messaging device, paging device, personal digital assistance device, laptop computer, video game, or digital photographic device, but not including any audio equipment, navigation equipment, or equipment installed in a motor vehicle for the purpose of providing emergency assistance for the operator of the motor vehicle or video entertainment for passengers in the rear seats of the vehicle.

"Motor vehicle" has the same meaning as in section 291E-1, Hawaii Revised Statutes.

"Operate" has the same meaning as in section 291E-1, Hawaii Revised Statutes.

"Use or using" means holding a mobile electronic device while operating a motor vehicle."

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This ordinance shall take effect on July 1, 2010.

APPROVED AS TO FORM AND LEGALITY:

DAVID A. GALAZIN

Deputy Corporation Counsel

County of Maui

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