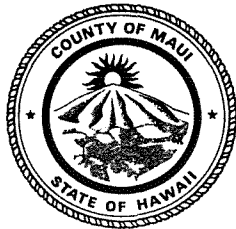


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December 9, 2014

T O: Donald S. Guzman, Council Member

F R O M: Jeffrey Ueoka, Deputy Corporation Counsel *JU*

S U B J E C T: AUTHORITY OF COUNCIL TO AMEND A PROPOSED FY-15 BUDGET AMENDMENT TRANSMITTED TO THE COUNCIL BY THE ADMINISTRATION

We are in receipt of your Request for Legal Opinion dated December 5, 2014, posing the following questions:

1. Does the Council have the authority to propose amendments to the Bill specifically to delete any of the 5 proposed proviso items listed on the attached bill? (The intent is to discuss & vote on each proviso separately on its own merit, rather than all- or-non comprehensive Bill.)

If Council does not have the authority to vote separately on each proviso, please explain how this Bill for an Ordinance and the process and authority for adoption would be any different from the proposed annual fiscal budget Bills the Council reviews, amends and authorizes which includes amendments to the initial Bill as submitted.

For clarification purposes, the "Bill" references a proposed bill for an ordinance amending the Fiscal Year 2015 Budget that sets forth appropriations from the Economic Development Revolving Fund ("EDRF"). The EDRF was created by Section 3.81, Maui County Code ("MCC"). For reasons which will be explained below, the Council does not have the authority to propose amendments to the Bill.

The necessity for a budget amendment to appropriate funds from the EDRF is set forth in Section 3.81, MCC. The Section is specific in setting forth the methods for which appropriations from the EDRF can be made. Section 3.81.030(C), MCC, states:

Any proposed appropriation shall be submitted to the Council for approval as a budget appropriation in either the annual budget or a proposed amendment to the budget ordinance. In adopting each fiscal year's budget and capital program, the council may make appropriations to the fund.

Any appropriation from the EDRF that is not included in the annual budget must be a, "proposed amendment to the budget ordinance," therefore, it is necessary to treat the Bill as a proposed budget amendment. Section 9-10(3) of the Revised Charter of the County of Maui (1983), as amended ("Charter"), states, "[t]he mayor or the council may initiate changes to their respective operating budgets[.]" however this language does not appear to allow for the council to initiate changes to the Mayor's operating budget. Any amendment to the proposed Bill by the Council would in essence be initiating a change to the Mayor's operating budget, which is not authorized by the Charter. It is important to note that this situation is different from a supplemental appropriation for additional certified revenues pursuant to Section 9-9(1) of the Charter.

In response to the inquiry regarding the difference between this proposed budget amendment and the approval of the annual budget it is important to analyze the Financial Procedures set forth in Article 9 of the Charter. The Council's authority to amend the budget is contained in Section 9-5 of the Charter, however this authority is limited to the budget submitted by the Mayor in accordance with Section 9-2 of the Charter and not changes to the operating budget authorized by Section 9-10(3) of the Charter. The Council's authority contained in Section 9-5(1) of the Charter expires upon the passage or enactment of the budget in accordance with Section 9-5(2) of the Charter.

2. Does the Council have the authority to re-draft the initial Bill containing 5 proposed provisos into 5 separate Bills containing 1 proviso each per Bill?

The Council does not have the authority to re-draft the initial Bill containing 5 proposed provisos into 5 separate Bills containing 1 proviso each per Bill. This change would allow for a result that is different from the change to the Mayor's operating budget proposed by the Mayor. This could be interpreted as a deviation from the process set forth in Section 9-10(3) of the Charter.

APPROVED FOR TRANSMITTAL:


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Corporation Counsel