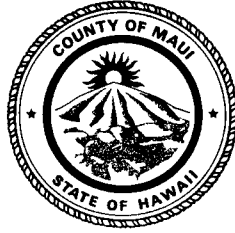


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MEMO TO: Riki Hokama, Chair
Budget and Finance Committee

FROM: Jeffrey Ueoka, Deputy Corporation Counsel *JU*

DATE: April 13, 2016

SUBJECT: **FISCAL YEAR ("FY") 2017 BUDGET** (CC-9) (BF-1)

We are in receipt of your memorandum dated April 7, 2016, requesting that we provide the Budget and Finance Committee with language that will require the Mayor to abide by representations made in the Budget Proposal, including the information contained in the capital improvement project sheets ("Sheets") provided as part of the document. It is our recommendation that the Council amend the Sheets, as necessary, and attach the Sheets, as amended, to the Fiscal Year 2017 Capital Program as an appendix. If the Council desires that the Budget Ordinance also incorporate the Sheets, as the Capital Improvement Project Appropriations are set forth in Section 4 of the Budget Ordinance to provide a clear picture of total appropriations, we recommend that Section 10 of the Fiscal Year 2017 Budget specifically reference and incorporate the project sheets attached as an appendix to the Capital Program. In regards to other portions of the Budget Proposal which the Council would like to include in the Adopted Budget, we recommend that the portions be amended to account for any inconsistencies between the Budget Proposal and the Adopted Budget and attached to the Adopted Budget; or if the Council prefers, specifically referenced in the Adopted Budget with any inconsistencies between the Budget Proposal and the Adopted Budget being identified in the Adopted Budget.

To clarify, Section 10 of the Fiscal Year 2016 Budget Ordinance is adequate to allow for the Budget Proposal to provide broad, general guidance in regards to appropriations, however due to the specific language traditionally used in Section 10 we are not comfortable in stating that the entire Budget Proposal is made a part of the Adopted Budget by Section 10. We recognize that the Committee relies on the Sheets provided in the Budget Proposal when making decisions on appropriations in the Adopted Budget, however while they are a useful reference, they are not required to be a part of the Budget Proposal by the Revised Charter of the County of Maui (1983), as amended ("Charter"). The lack of a Charter identified title for the Sheets increases the difficulty in creating a specific reference in Section 10. An interpretation of the language of Section 10 that leads to the inclusion of the entire Budget Proposal in the Adopted Budget may be difficult to support, in regards to enforceability, as the language, "[a]ll program objective and performance plans[,]" tends to limit the extent of inclusion and is not descriptive enough to assist in ascertaining what was specifically intended to be included by the language, leaving us to recommend, since the Council desires increased enforceability in regards to the provisions of the Budget Proposal as it relates to the Adopted Budget, more specific reference language or direct incorporation of the relevant portions of the Budget Proposal in the Adopted Budget. As there is no Charter requirement to provide the Sheets it is difficult to specifically identify the Sheets as they are only part of the Budget Proposal in the General Budget Provisions

The enforceability of the portions of the Budget Proposal, especially those portions that are amended in the Adopted Budget or effectively amended through changes in the Adopted Budget, is limited in the sense that it is difficult to prove that an individual "intentionally or knowingly" violated the Adopted Budget when there is no specific reference to or the direct incorporation of those portions of the Budget Proposal. While the language in Section 10 states, "except as otherwise provide for in other sections of this ordinance[,]" and accounts for any inconsistencies between the Budget Proposal and the Adopted Budget, a specific identification of the inconsistencies in the Adopted Budget increases enforceability, and ultimately the ease of compliance, as it limits the assumptions that an individual must make in interpreting the Adopted Budget.

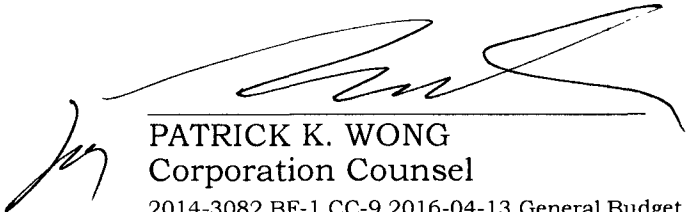
Nothing in this opinion is intended to have any effect on the enforceability of the Council's ability to place restriction on the budget and capital program in accordance with Section 9-7(1) of the Charter.

Riki Hokama, Chair
Budget and Finance Committee
April 13, 2016
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If you have any further questions or need further clarification please feel free to contact our office.

JTU:lk

APPROVED FOR TRANSMITTAL:



PATRICK K. WONG
Corporation Counsel

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