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May 27, 2004

MEMO TO: Jack Kulp
Managing Director

FROM: Traci Fujita Villarosa *TFV*
First Deputy Corporation Counsel

SUBJECT: Line Item Veto

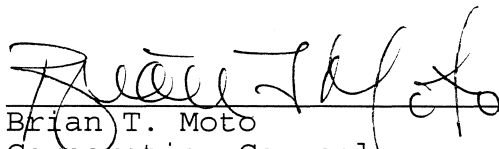
The purpose of this memorandum is to provide you with legal advice regarding the Mayor's line item veto authority with regards to the Fiscal Year 2005 Budget Ordinance. This memorandum is being provided in an abbreviated format so that I may comply with your request for a quick response.

Does the Mayor using the line item veto or any other authority have the power to reduce the appropriated amount on any specific item provided in the budget to less than the full amount but to some level greater than zero?

Yes. With regard to any bill appropriating money, the Mayor may "veto any items or portions thereof by striking out or **reducing** the same."¹ (Emphasis added.) Therefore, the Mayor may exercise his veto authority by reducing an appropriation to any amount less than the full amount of the appropriation.

I am providing for your information a copy of a Department opinion dated May 23, 1994 responding to questions posed by then Mayor Linda Lingle regarding a budget bill and veto authority.

APPROVED FOR TRANSMITTAL:



Brian T. Moto
Corporation Counsel
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¹ Section 4-3.2, Revised Charter of the County of Maui(1983), as amended (emphasis added).

LINDA CROCKETT LINGLE
Mayor



GUY A. HAYWOOD
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
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May 23, 1994

The Honorable Linda Crockett Lingle
Mayor
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Re: **FISCAL YEAR 1995 BUDGET AND VETO AUTHORITY**

Dear Mayor Lingle:

This is in response to your memo dated May 2, 1994, wherein you ask five questions relating to the authority of the Mayor to veto all or portions of the budget ordinance.

"1. If the Council returns the budget to me on May 27, 1994, what is the last date that I may return a disapproved budget? What is the last date if I do a line item veto?"

If the Mayor disapproves the budget ordinance, in whole or vetoes an item or portion of the budget, the bill must be returned to the county clerk on or before June 16, 1994, assuming the Council returns the budget on May 27, 1994. The mayor must return the bill within twenty (20) days after receiving it pursuant to Maui County Charter as follows:

3. Notwithstanding the provisions of Subsection 4-3(1), if the mayor disapproves of any bill passed by the council pursuant to Section 9-5 and 9-6, or any items or portions thereof, the mayor shall return the bill and the statement to the county clerk within twenty (20) days after receiving it. If the mayor does not return it with a disapproval within that time, it shall take effect as an ordinance as if the mayor had signed it. The council may, within ten (10) days after the bill has been so returned, reconsider the vote upon the bill and override the mayor's veto as provided in Subsection 4-3(1). Maui County Charter Section 4-3.3.

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The twenty (20) days are counted as calendar days. Provisions for excluding Saturdays, Sundays and holidays are not included in Section 4-3.3. Only Section 4-3.1 concerning ordinances other than appropriation ordinances, provides for exclusion of Saturdays, Sundays and holidays. Maui County Charter Section 4-3.1.

"2. If I line item veto certain appropriations in the budget, am I required to make recommendations for spending these amounts? Example - If I reduce an appropriation by \$10,000, do I increase another appropriation by \$10,000? Basically, am I required to return a balanced budget after making line item changes?"

The Charter states that the Mayor may veto any items or portions of an appropriations bill by "striking out or reducing the same". Maui County Charter Section 4-3.2. The Charter says nothing about redesignating those portions so stricken in order to balance the budget. Apparently this problem was not considered by the Charter Commissions. All of the language in the Charter regarding a mayoral veto is negative, providing for reducing or striking, and that items, so vetoed, "shall not take effect unless passed notwithstanding the mayor's veto." The negative characterization of the power may be seen in a reading of the Charter section as a whole:

2. If any bill is presented to the mayor appropriating money, he may veto any item or portions thereof by striking out or reducing the same. Such veto power shall extend to conditions, limitations or restrictions imposed with respect to the disbursement of any appropriation. In the case of such a veto, the mayor shall append to the bill at the time of signing it a statement of the items or portions thereof to which the mayor objects and the reasons therefor, and the items or portions thereof, so vetoed, shall not take effect unless passed notwithstanding the mayor's veto. Each item so vetoed may be reconsidered by the council in the same manner as bills which have been disapproved by the mayor. Maui County Charter, Section 4-3.2.

The veto authority is intended as a safeguard and not as an opportunity for the executive branch to exercise

legislative authority by making specific appropriations. The Hawaii Supreme Court discussed the function of a veto in light of the separation of powers in City Council v. Fasi:

It is evident from a careful reading of the charter, together with the reports of the charter commission, that such provisions were not designed as departures from the principle of separation of powers to enable one branch to exercise some power vested in the other, but are safeguards against improvident legislative or executive actions.

For instance, the mayor's veto power does not enable the mayor to legislate. Its function is to prevent precipitate action on any proposed legislative measure which the mayor may deem not to be in the public interest by having the council take a good second look at the measure before it becomes law. City Council v. Fasi, 52 Haw. 3, 6, 466 P2d 420 (1960)

The provisions of the Charter regarding a balanced budget apply only to the original submission of the budget by the Mayor (Maui County Charter Section 9-3.2) and the passage of the budget by Council on or before May 31st (Maui County Charter Section 9-5.1). Therefore, the balanced budget requirement would not require the Mayor to reappropriate monies that had been stricken by a veto.

The Mayor is not authorized to add anything to the budget after Council passage and the Mayor is not required to return a balanced budget with any veto. When an appropriation is stricken or reduced by a line item veto, the monies that are thus left unappropriated may then be added to the self-insurance fund as in Section 22 of the Budget Ordinance:

SECTION 22. If any appropriation set forth in this ordinance is held invalid by a court of competent jurisdiction, the self-insurance fund appropriation shall be adjusted to the extent necessary to maintain the equality of estimated revenues, proposed expenditures and total appropriations as required by Charter Section 9-5.

In the alternative, these monies may be left unappropriated and then presented to Council as a transfer pursuant to Maui County Charter Section 9-10.2.

- "3. Will a line item veto be treated the same as disapproving the entire bill? Will they need 6 votes to override a line item veto?"

A line item veto is the same as vetoing the entire bill insofar as six votes are required to override the veto. However, if six votes are not obtained to override the veto of the whole bill, the Mayor's original proposal shall take effect as the budget ordinance. Maui County Charter, Sections 9-5.2, 9-6.4, 4-3.2. (See also Opinion Letter 83-15, Department of Corporation Counsel, June 14, 1983). If a line item veto is not overridden, the Council's budget, as revised by the line item veto, takes effect as the budget ordinance. Maui County Charter Section 4-3.2.

- "4. May I change the language in the budget ordinance?"

The Mayor may change the language of the budget ordinance by striking out language which is a condition, restriction or limitation or by reducing an appropriation. The Mayor may not add language to the budget as part of a veto. This is in line with the logic of the arguments enunciated above and the limits of the veto power.

- "5. May I make any changes to the budget for Council/Council Services? If an item is appropriated in lump sum in the Council Services budget, may I reduce and line item a portion of the appropriation?"

The Mayor may strike out or reduce portions or items in the section for the Office of Council Services, in the same manner as for any other section of the budget. The line item veto cannot conflict with other sections of the Charter, laws or agreements which require funding, such as the Salary Commission provisions or Union agreements. Where an appropriation is in lump sum, the Mayor may reduce the lump sum, but cannot add conditions or limitations on its expenditure.

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If you have any further questions, please do not
hesitate to contact me.

Sincerely yours,

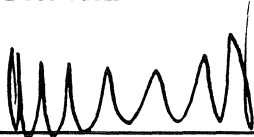
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APPROVAL:



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