

REQUEST FOR LEGAL SERVICES

RECEIVED
CORPORATION COUNSEL

Date: October 28, 2019
From: Yuki Lei K. Sugimura, Chair
Multimodal Transportation Committee

2019 OCT 29 AM 9:09

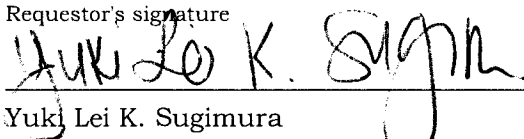
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael J. Hopper, Esq.

Subject: **PROMOTING ROADWAY SAFETY** (MT-33)

Background Data: Please review the attached proposed bill and, if appropriate, approve it as to form and legality. Please provide a signed hard copy with your response.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY
☐ [] OTHER:

Requestor's signature  Yuki Lei K. Sugimura	Contact Person <u>Shelly Espeleta</u> (Telephone Extension: 7134)
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☐ [] ROUTINE (WITHIN 15 WORKING DAYS) ☐ [] RUSH (WITHIN 5 WORKING DAYS)
☐ [] PRIORITY (WITHIN 10 WORKING DAYS) ☐ [] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 1, 2019
REASON: For possible consideration at November 5, 2019 MT Committee meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>MT4</u>	ASSIGNMENT NO. <u>2019-0100</u>	BY: <u>man</u>
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TO REQUESTOR: ☒ [X] APPROVED ☐ [] DISAPPROVED ☐ [] OTHER (SEE COMMENTS BELOW)
☐ [] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date 11/22/19

By MICHAEL J. HOPPER

(Rev. 7/03)

mt:ltr:033acc01:ske

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2019)

A BILL FOR AN ORDINANCE RELATING TO
POLICE AUTHORITY TO HAVE MOTOR VEHICLES TOWED

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

SECTION 1. Purpose. The harmful effects of alcohol and drug use by motorists account for almost two-thirds of traffic fatalities on Maui County's roadways. Therefore, it is important to implement measures to promote safer roadways by allowing for stronger police action when an operator is arrested for driving under the influence of an intoxicant or another violation of State law.

The purpose of this ordinance is to authorize police officers to require the towing of a vehicle when the driver has been arrested for illegal operation of a motor vehicle under one or more of seven listed State laws, including driving while under the influence of an intoxicant.

Immediate repercussions for violating these laws may instill a greater wariness about the illegal operation of a motor vehicle. For instance, drivers who do not have a license or registration may choose to preemptively pay for the required fees rather than have their vehicle towed and stored. Those who refuse to comply with the laws and also refuse to pay for the towing and storage of their vehicle will have their vehicle sold after thirty days of being given written notice by the tow company. In addition, the possibility that committing these violations may deprive the violator's family of the use of the

towed vehicle may cause the potential violator to use other transportation means instead of an unregistered vehicle, operating a motor vehicle without a license, or operating a motor vehicle while under the influence of an intoxicant.

This ordinance will not incur additional cost to the County because vehicles will be impounded at private tow yards at the expense of the violators or registered owners who allow violators to use their vehicles in an illegal manner. As the instance of fatalities and crashes on Maui County's roadways is reduced, the need for first and second responders to respond to the accidents will also be reduced, saving taxpayer money.

Most important, this ordinance will save lives and advance existing County policy objectives for safer roadways, as expressed, for example, in Resolution 19-111 ("the fundamental message of Vision Zero is that all traffic deaths are preventable and unacceptable") and the Countywide Policy Plan ("Ensure that roadway systems are safe").

The effective date is January 1, 2020. This period of time may be used for public service announcements regarding this policy change in the County.

SECTION 2. Chapter 10.08, Maui County Code, is amended to read as follows:

"10.08.010 Authority of police [officials.] officers. A. [It shall be the duty of the] Police officers [of the police department or such officers as] are [assigned by the chief of police] authorized to enforce [the provisions of] this title and all [of the] state [vehicle] laws applicable to street traffic in the [county.] County.

B. [Officers of the police department or such] Police officers [as are assigned by the chief of police, are authorized to] may direct all traffic by voice, hand, or signal, [in conformance with the provisions of this title; provided, however, in the event of] except when there is a fire, special occasion, or other emergency,

[or] a need to expedite traffic, or a need to safeguard pedestrians, [officers of the police department] police officers may direct traffic[,]
as the condition warrants, including through the placing of signs, signals, or other traffic control devices, [as the condition warrants, notwithstanding] regardless of the provisions in this chapter.

C. [Officers of the police department or the designated representatives of the chief of police are authorized to] Police officers may display portable signs within [certain] intersections forbidding operators [of vehicles] to perform specific maneuvers. The portable signs [shall] must only be displayed at [a specified] an intersection [during times of traffic congestion] when[, in the opinion of] the chief of police[, such restrictions] determines the signs are necessary to expedite the movement of traffic through the intersection.

D. It is unlawful for any operator [of a vehicle] to disobey the instructions of any official traffic signs, signal markers, dividing lines, or other devices [of] allowed by this title in or on any highway, unless otherwise directed by a police officer.

[E. 1. The chief of police of the county shall have the authority to restrict or prohibit vehicular traffic upon any public highway, or any portion thereof, not under the jurisdiction and control of the department of transportation of the state of Hawaii whenever said chief of police determines that such public highway is unsafe for travel. A restriction or prohibition of vehicular travel upon any public highway, or any portion thereof, shall be limited in duration to sixty days. Such sixty day period may be extended by resolution of the council of the county. Said chief of police may, in his discretion, close such highways to all travel, or permit limited travel by residents or other necessary travelers. Said chief of police may cause to be placed gates or other barriers to restrict or prevent travel on such public highways and such signs, signal markers, dividing lines, or other devices as said chief of police may deem proper. The closing of a public highway pursuant to this subsection shall be temporary in nature and shall not be deemed a permanent closing of a public highway as contemplated by Section 264-1, Hawaii Revised Statutes.

2. The chief of police of the county shall notify the council of the county within fourteen days after a restriction or prohibition of vehicular travel is imposed upon any public highway or any portion thereof.

3. The chief of police of the county shall submit a written status report regarding the restriction or closure of a public highway or any portion thereof to the council of the county within thirty days after a restriction or prohibition of vehicular travel is imposed upon any public highway or any portion thereof. Such status report shall include at least the following information:

a. The factual basis for the restriction or closure of a public highway; and

b. The anticipated duration of the restriction or closure of the public highway.]

E. As used in this section, "HRS" means Hawaii Revised Statutes. References to HRS provisions include any successor statute.

F. Any police officer who arrests an operator for one the following violations may have the motor vehicle towed to a private tow yard at the registered owner's expense in accordance with HRS section 291C-165.5(a):

1. Driving without a license in violation of HRS section 286-102;

2. Driving while license is suspended or revoked under HRS section 286-132;

3. Operating a vehicle under the influence of an intoxicant in violation of HRS section 291E-61;

4. Habitually operating a vehicle under the influence of an intoxicant in violation of HRS section 291E-61.5;

5. Operating a vehicle after license and privilege has been suspended or revoked for operating a vehicle under the influence of an intoxicant under HRS section 291E-62;

6. Operating a vehicle after consuming a measurable amount of alcohol, if under the age of twenty-one, in violation of HRS section 291E-64; or

7. Fraudulent use of plates, tags, or emblems in violation of HRS section 249-11.

G. In accordance with HRS section 291C-165.5(b), tow companies must notify the registered owners and lien holders for vehicles towed under this section.

H. In accordance with HRS section 291C-165.5(b), failure to recover a motor vehicle within thirty days of the notice being mailed for any violation of subsection F constitutes abandonment, and the vehicle may be sold or disposed of as junk.

I. This section does not authorize the towing or impoundment of vehicles if:

1. The vehicle is parked on private property that is the lawful residence of the registered owner or the operator or if the owner of the property where the vehicle is parked does not object;

2. The registered owner or a passenger present in the vehicle at the time of the stop has a valid driver's license and is willing and legally able to drive the vehicle at the time of the stop; or

3. The vehicle is legally parked at a time and place where traffic or public safety is not impeded.

J. The police department has no duty to protect any vehicle left on any road or property after the operator has been arrested for a violation under subsection F.”

SECTION 3. Chapter 10.08, Maui County Code, is amended to add a new section to read as follows:

“10.08.015 Authority of chief of police. A. The chief of police is authorized to restrict or prohibit vehicular traffic upon any roadway if it is unsafe for travel for up to sixty days, unless the council extends the period of restriction or prohibition by resolution. The chief of police may prohibit all travel on the roadway or restrict travel to residents or other necessary travelers. To restrict travel on the roadway, the chief of police may install gates, other barriers, signs, signal markers, dividing lines, or other devices. The closing of the roadway must be temporary and does not constitute a permanent closing of a public highway under HRS 264-1.

B. The chief of police must notify the council within fourteen days after vehicular travel is prohibited or restricted in accordance with subsection A.

C. The chief of police must submit a written status report to the council within thirty days after vehicular travel is prohibited or restricted in accordance with subsection A, including the following information:

1. The factual basis for the prohibition or restriction.

2. The anticipated duration of the prohibition or restriction.

D. The authority granted by this section does not apply to any roadway if under the jurisdiction and control of the State of Hawaii department of transportation.”

SECTION 4. 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 5. This ordinance takes effect January 1, 2020.

APPROVED AS TO FORM AND
LEGALITY:

A handwritten signature in black ink, consisting of a series of fluid, connected strokes that form a stylized 'M' and 'J'.

MICHAEL J. HOPPER
Department of the Corporation Counsel
County of Maui
2019-0100
MT-33 2019-11-18 Ordinance Motor Vehicles Towed