

ORDINANCE NO. _____

BILL NO. 88 (2023)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT HOMELAND SECURITY INVESTIGATIONS

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

SECTION 1. Purpose. The US. Immigration and Customs Enforcement Homeland Security Investigations (“ICE”) and the County of Maui, Department of Police (“MPD”) wish to enter into a mutually beneficial agreement that would permit ICE to designate MPD officers as custom officers and provide appropriate training to any designated officers as more fully described in the Memorandum of Understanding (the “Agreement”), attached hereto as Exhibit “1” and incorporated herein by reference. The agreement specifically excludes “the authority to enforce administrative violations of immigration law.”

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval. All action heretofore taken, not inconsistent with the provisions of this ordinance, is hereby ratified, approved and affirmed.

APPROVED AS TO FORM
AND LEGALITY:

/s/ Mimi Desjardins
MIMI DESJARDINS
First Deputy Corporation Counsel
County of Maui
LF2023-0332
2021-07-23 Authorizing IGA.docx

MEMORANDUM OF UNDERSTANDING

between

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS**

and

Maui Police Department

regarding

**THE DESIGNATION OF Maui Police Department EMPLOYEES
AS CUSTOMS OFFICERS (EXCEPTED)**

1. **PARTIES.** The Parties to this Memorandum of Understanding (MOU) are U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) and Maui Police Department.
2. **AUTHORITY.** Title 19, United States Code (U.S.C.), Section 1401(i); 19 U.S.C. § 1589a. This MOU is also authorized under the provisions of Maui Police Department G.O. 304.12.
3. **PURPOSE.** The Parties agree that effective enforcement of the laws relating to HSI jurisdiction requires close cooperation and coordination between the two Parties. The Parties have therefore entered into this MOU to govern the use of HSI designations by certain employees of Maui Police Department.

Pursuant to section 401(i), Tariff Act of 1930, as amended (19 U.S.C. § 1401(i)), the Secretary of Homeland Security is authorized to designate persons as Customs Officers (Excepted) to perform the duties of a Customs Officer. Within ICE, this authority has been delegated to the HSI Special Agents in Charge. Pursuant to 19 U.S.C. § 1589a, customs officers are authorized to enforce the full range of federal offenses. However, in designating Customs Officers (Excepted), *HSI is not conveying the authority to enforce administrative violations of immigration law.*

There may be instances when HSI determines that it is desirable for certain sworn law enforcement employees of Maui Police Department to perform certain HSI duties. This MOU sets forth the agreement and relationship between the Parties with respect to this determination.

4. RESPONSIBILITIES.

The Parties agree as follows:

HSI agrees to:

- a. Designate certain employees of Maui Police Department as Customs Officers (Excepted), without additional compensation, to perform the duties as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). This form is attached and is hereby made part of this MOU;
- b. Issue a "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) to each qualified and designated employee;
- c. Provide appropriate training in laws, policies, and procedures to each designated employee;

- d. Advise the designated Customs Officers (Excepted) about court proceedings concerning seizures or arrests made by them in accordance with the authorities granted by HSI contemplated under this MOU; and
- e. Process, under appropriate regulations, any injury claim submitted as a result of injuries occurring to the designated Customs Officers (Excepted) while such individuals are acting pursuant to this MOU, for compensation under the Federal Employee Workers Compensation Act (5 U.S.C. § 8101, *et seq.*).

Maui Police Department agrees:

- a. That only sworn law enforcement officers of Maui Police Department who successfully complete the appropriate HSI Task Force Officer cross-designation Training Course and receive an approved "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) will be designated as Customs Officers (Excepted);
- b. That each law enforcement officer will be bound by the Authorities Granted and the Endorsements and Restrictions as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001);
- c. To advise HSI of each court proceeding in which the validity of a Customs Officer (Excepted)'s enforcement authority becomes an issue, and allow HSI to provide legal memoranda or other assistance as deemed necessary by HSI;
- d. That agency employees designated as Customs Officers (Excepted) will follow HSI directives and instructions when utilizing enforcement authority conveyed by HSI;
- e. To provide to HSI, before designation of each officer and on an ongoing basis, any derogatory information, or information that may call into question the officer's truthfulness or ability to testify in court; and
- f. To return all HSI-issued equipment and identification when a cross-designated officer terminates employment or when his or her cross-designation expires.

Both Parties agree:

- a. That any abuse of HSI cross-designation authority may lead to the revocation of such cross-designations by HSI; and
 - b. To schedule periodic meetings to review this MOU, as required.
5. **REPORTING AND DOCUMENTATION.** HSI SAC offices will maintain the original signed "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). Copies of this form will be held by the Contraband Smuggling Unit at HSI Headquarters, the designated Customs Officer (Excepted), and Maui Police Department.

If applicable, the HSI office will maintain documentation of designated Customs Officers (Excepted) approved to use HSI vehicles and certification that the designated Customs Officers (Excepted) have completed the ICE Fleet Card Training in Virtual University and any other fleet related training.

6. POINTS OF CONTACT.

HSI Office: SAC Honolulu
Name: Gary Bell
Title: Management Program Analyst
Address: 595 Ala Moana Blvd.,
Honolulu, HI 96813
Telephone Number: +1 (808) 260-5962
Fax Number: +1 (808) 522-5852
E-mail Address: gary.bell@hsi.dhs.gov

Maui Police Department :
Name: Clifton Perreira
Title: Acting Captain
Address: 55 Mahalani Street
Wailuku, HI 96793
Telephone Number: +1 (808) 244-6472
Fax Number: +1 (808) 244-6458
E-mail Address: clifton.perreira@mpd.net

- 7. OTHER PROVISIONS.** This MOU is an internal agreement between the Parties and does not confer any rights, privileges, or benefits to any other party or the public.

Nothing in this MOU is intended to conflict with current laws, regulations, or policies of either Party. If a term of this MOU is inconsistent with such authority, that term shall be invalid but the remaining terms and conditions of this MOU shall remain in full force and effect.

Nothing in this MOU is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519.

The forms and authorities referenced herein may be renamed or replaced by HSI without prejudice to this MOU.

- 8. EFFECTIVE DATE.** The terms of this MOU will become effective on the date the last Party signs the MOU. The Designation Form of each Customs Officer (Excepted) is effective per the date on that document.
- 9. MODIFICATION.** This MOU may be amended by the written concurrence of both Parties.
- 10. TERMINATION.** This MOU may be terminated by either Party upon a 30-day written notification to the other Party.

APPROVED BY:

John F. Tobon
Name of HSI Official

Special Agent in Charge
Title of HSI Official
Homeland Security Investigations
U.S. Immigration and Customs Enforcement

Date: _____

John Pelletier
Name of Maui PD 's Official

Chief of Police
Title of Maui PD 's Official
Name of Maui PD 's Agency

Date: _____

INTRODUCED BY:



ALICE L. LEE

Upon the request of the Mayor.