




# HONOLULU CITY COUNCIL

**KE KANIHELA O KE KALANA O HONOLULU**  
530 S. KING ST. STE. 202, HONOLULU, HI 96813

**TYLER DOS SANTOS-TAM**  
HONOLULU CITY COUNCIL  
DISTRICT VI  
TELEPHONE: (808) 768-5006  
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EMAIL: tdossantos-tam@honolulu.gov

## MEMORANDUM

**TO:** All Councilmembers

**FROM:** Councilmember Tyler Dos Santos-Tam   
District VI

**DATE:** September 12, 2023

**RE:** Additional information regarding Bill 20 (2023) "Relating to Restricted Parking Zones"

23SEP12 AM 10:00 CITY CLERK

Thank you for your collaboration as we continue to deliberate regarding the provisions of Bill 20 (2023), "Relating to Restricted Parking Zones" (RPZ).

In response to many of the discussion points addressed in full council on September 6, 2023, I have submitted requests to the Office of Council Services (OCS), the Department of Transportation Services (DTS), and the Department of Corporation Council (COR). Topics include:

1. Traffic schedules;
2. The legal strength of resolutions as a means of establishment;
3. Administrative fines;
4. Mechanisms for the establishment of an RPZ;
5. Fees;
6. The definition of "resident";
7. The number of annual residential permits; and
8. DTS' assessment and determination process.

Accordingly, to facilitate a transparent and meaningful discussion in the Transportation Committee, this memorandum shares the responses my office received - from OCS, DTS, and COR. They are attached as Exhibit A, B, and C, respectively.

Of note: OCS advised that, due to potential impacts to future litigation, interested Councilmembers should reach out to OCS personally if they wish to inquire regarding topic (2): "the legal strength of resolutions as a means of establishment."

Thank you for your attention to this matter. Please reach out to my Policy and Communications Director Richmond Luzar at x85074 if you have any questions.

**COUNCIL COM. 257**

# EXHIBIT A



OFFICE OF COUNCIL SERVICES  
**TRANSMITTAL FORM**

Transmittal Date/Time: 9/11/2023 4:08 PM

**TO: COUNCILMEMBER TYLER DOS SANTOS-TAM**

ATTN: RICHMOND Y LUZAR

FROM: SHARON BROOKS, Esq.  
STAFF ATTORNEY

*SPB*

RE: OCS2023-826 MEMO: Traffic Schedules

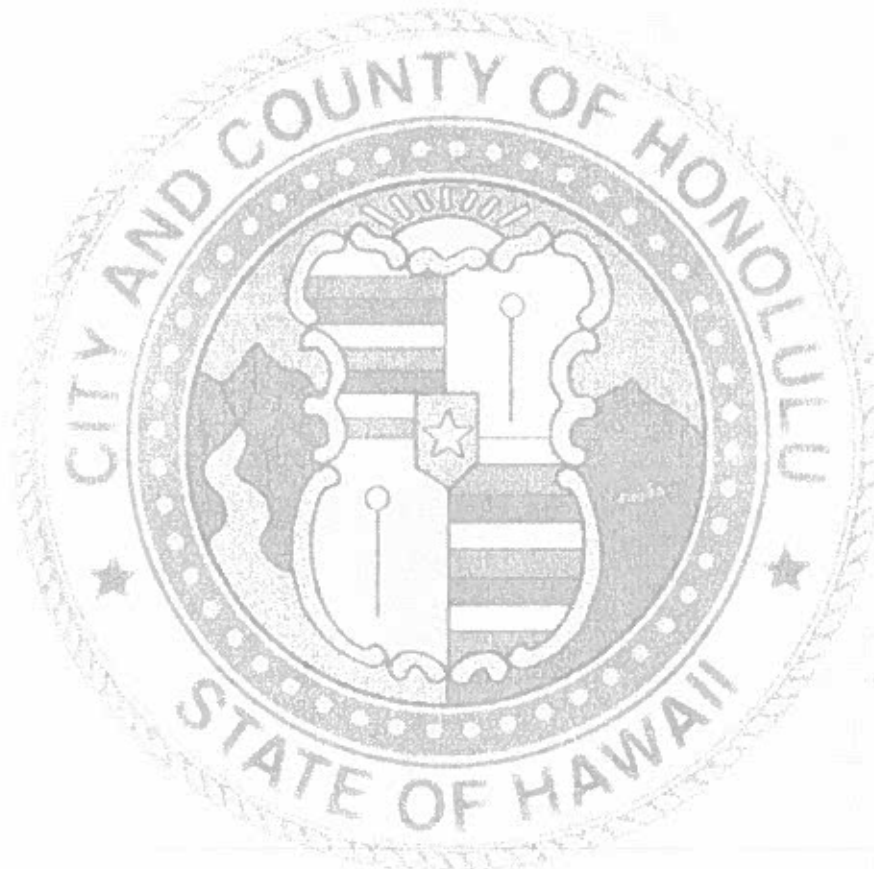
Product(s) Transmitted: Bill:  Resolution:  Memo/Letter/Report:  Other:   
Project Transmittal Code: OCS2023-0826/9/11/2023 4:08 PM

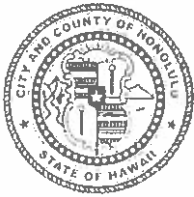
Transmitted by Secretary: JENNIFER M YEE

Approved for Transmittal: JAMES S WILLISTON

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The following comments (if any) are CONFIDENTIAL and should not be circulated.





**JAMES S. WILLISTON**  
DIRECTOR

**LLOYD S. YOSHIOKA**  
DEPUTY DIRECTOR

## OFFICE OF COUNCIL SERVICES

**Ke Ke'ena Lawelawe o ke Kanihela**

CITY AND COUNTY OF HONOLULU  
530 SOUTH KING STREET, ROOM 207  
HONOLULU, HAWAII 96813  
WEB: WWW.HONOLULU.GOV/OCS

September 11, 2023

### MEMORANDUM

**CONFIDENTIAL**  
**ATTORNEY-CLIENT PRIVILEGED**  
**DO NOT CIRCULATE**

**TO:** COUNCILMEMBER TYLER DOS SANTOS-TAM  
HONOLULU CITY COUNCIL

**FROM:** SHARON BROOKS, STAFF ATTORNEY *SB*  
OFFICE OF COUNCIL SERVICES

**SUBJECT:** TRAFFIC SCHEDULES

This memorandum responds to your request for clarification regarding the effects of the City and County of Honolulu ("City") traffic laws enacted by ordinance and those set forth by the City's Administration ("City Administration") in schedules referenced by the City's Traffic and Vehicles ordinances (Chapter 15, Revised Ordinances of Honolulu 2021 ("ROH")).<sup>1</sup> In particular, you have asked whether the proposed Kalihi Valley ("KV") Restricted Parking Zone ("RPZ"), if established by ordinance, may be amended or dissolved by the Director of Transportation Services ("DTS Director") through the submission of an amended Schedule XXXIX to the City Council ("Council") and the City Clerk.

On August 22, 2023, the Council's Transportation Committee approved a second Committee Draft of Bill 20 (2023), which would establish the KV RPZ by ordinance under proposed, new ROH Section 15-30.3(c), and authorize the DTS Director to establish, reduce, modify, or dissolve an RPZ by submission to the City Council and City Clerk of an updated Schedule XXXIX. Following recommission of the measure by the Council on September 6, 2023, a CD2 version (the "proposed CD2"), proposed by yourself is currently before the Council's Transportation Committee.<sup>2</sup>

<sup>1</sup> Until the 2021 ROH recodification, ROH Chapter 15 was titled the "Traffic Code."

<sup>2</sup> Denominated "TDST7," currently before the Council's Committee on Transportation at its September 12, 2023 meeting. The same provisions were proposed in three of four floor drafts of Bill 20 (2023), CD2, submitted for consideration at the Council's September 6, 2023 meeting, prior to the measure's recommitment to the Transportation Committee.

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**DO NOT CIRCULATE**

OCS2023-0826/9/11/2023 4:08 PM

Section 3-201, Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition), as amended ("Charter"), provides, in part, that "[e]very legislative act of the council shall be by ordinance." Nonetheless, from the 1970s, the Council has enacted a number of traffic regulations delegating to the City Administration the authority to implement and detail Traffic Schedules referenced in the ROH and filed with the City Clerk. This delegation followed the use of development plan land use amendment maps and amendments filed with the City Clerk and Department of Land Utilization to detail the development plan boundaries. ROH Section 15-7.2, first enacted in 1978 to set speed limits for Ewa Villages, prescribes speed limits both for streets listed in the codified ordinance itself and for streets designated in specified schedules.

Currently, ROH Chapter 15 refers to 38 Traffic Schedules, listed in Table 15 of that chapter, which particularize traffic laws for various purposes, including designating locations for traffic signal lights, speed limit zones, no-turns, one-way and through streets, reserved parking stalls, tow zones, bus stops, marked crosswalks, parking meter zones, and bicycle lanes. The schedules are not set out in the ROH, but referenced in the ordinance regulating the subject matter of the schedule.<sup>3</sup>

While some traffic ordinances explicitly delegate to the City Administration the authority to implement the ordinance through amendment of a referenced schedule, filed with the City Clerk,<sup>4</sup> others delegate that authority implicitly through reference to a schedule alone.<sup>5</sup> In either instance, the Hawaii District Courts have long recognized the validity of the City's Traffic Schedules. Arguably, particularizing traffic regulation locations and other details in schedules rather than in an ordinance serves to provide flexibility and efficiency in the administration of the laws, as well as economy in the publication of the ROH. Ultimately, the choice of specifying details of a traffic regulation by ordinance or in a schedule is a policy decision.

With regard to the proposed KV RPZ, in our opinion, the authority to implement traffic regulation details through schedule amendment by the City Administration does not extend to amending or dissolving an RPZ established by ordinance under the proposed CD2. Consistent with Charter Section 3-201, such an RPZ must be amended or dissolved by ordinance, despite generalized language in the same section providing the DTS Director with the authority to "reduce, modify, or dissolve an RPZ by submission to the council and the city clerk of a revised Schedule XXXIX indicating the changes thereto."

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<sup>3</sup> For example, ROH § 15-6.2 states: "[t]he installation and use of traffic signal lights on federal-aid highways is authorized at the streets and intersections described in Schedule II attached to the ordinance codified in this section and made a part hereof."

<sup>4</sup> See ROH § 15-3.1, delegating the authority to locate, select, install, and maintain traffic control devices through amendment of existing schedules referenced in Chapter 16, Article 6 ("Traffic Control Devices").

<sup>5</sup> See ROH § 15-13.9(a), providing for the authority to store vehicles left unattended on streets listed in specific Traffic Schedules.

COUNCILMEMBER TYLER DOS SANTOS-TAM

September 11, 2023

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If desired, the authority of the DTS Director to amend or dissolve the KV RPZ may be specifically delegated by adding the following language to the proposed new ROH Section 15-30.3(c):

"The director may also reduce, modify, or dissolve an RPZ, including the Kalihi Valley RPZ, by submission to the Council . . . ."

Conversely, to clarify that the KV RPZ may be amended or dissolved by ordinance only, we recommend the following language:

"The director may also reduce, modify, or dissolve an RPZ by submission to the council and the city clerk of a revised Schedule XXXIX indicating the changes thereto; provided that the Kalihi Valley RPZ may be reduced, modified, or dissolved only by ordinance."

If you have questions, please do not hesitate to contact me at X83895 or [sharon.brooks@honolulu.gov](mailto:sharon.brooks@honolulu.gov).

SB:jy

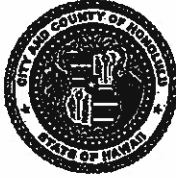
**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED  
DO NOT CIRCULATE**

# EXHIBIT B

DEPARTMENT OF TRANSPORTATION SERVICES  
KA 'OIHANA LAWELAWE 'ŌHUA  
CITY AND COUNTY OF HONOLULU

711 KAPI'OLANI BOULEVARD, SUITE 1800  
HONOLULU, HAWAII 96813  
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RICK BLANGIARDI  
MAYOR  
*Mela*



J. ROGER MORTON  
DIRECTOR  
*PO'O*

JON Y. NOUCHI  
DEPUTY DIRECTOR  
*HOPE PO'O*

TP9/23-899813

September 11, 2023

Councilmember Tyler Dos Santos-Tam  
Councilmember Esther Kia'āina  
Honolulu City Council  
530 South King Street, Room 202  
Honolulu, Hawaii 96813

Dear Councilmembers Dos Santos-Tam and Kia'āina,  
and Members of the Council:

**SUBJECT: Bill 20 (2023) CD2 – Relating to Parking**

The Department of Transportation Services (DTS) cautiously supports Bill 20 (2023), which proposes changes to the City's Restricted Parking Zone (RPZ) program. DTS provides the following comments on the proposed Bill 20 (2023) CD2 related to DTS operation and expansion of the RPZ pilot as requested in Council Communications 253 (23):

**1. Mechanisms for establishment, modification, and, dissolution of an RPZ:**

The administrative effort and staff labor costs of the proposed FD1-TW2 (OCS2023-0811/9/5/2023 11:53 AM) would be the most costly of the versions proposed as it requires departmental rule making for fee increase and schedule updates. The second highest level of administrative effort would be preparation of the DTS Director's determination, evaluation of criteria and factors, and successful adoption of a Council resolution. The least amount of administrative effort and complexity would be the DTS Director's determination, evaluation of criteria and factors, and establishment by updating the proposed Schedule XXXIX.

DTS believes that preparation of the DTS Director's determination, evaluation of criteria and factors, and successful adoption of a Council resolution will provide the greatest opportunity for the public to be informed about the proposal and offer their comments.



Councilmember Tyler Dos Santos-Tam  
Councilmember Kia'āina  
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## **2. Fees**

The fees proposed in § 15-30.5, Revised Ordinances of Honolulu 2021, must be balanced to consider tradeoffs including equity, adoption, and fiscal responsibility. Fees in other cities vary widely from San Francisco's high of \$170 to a low of \$9 in San Diego. Since 1963 public roadways are highly subsidized by the general public in the United States and user fees have covered a shrinking share of costs. This is documented in US PIRG Education Fund's 2015 report "*Who Pays for Roads?*". DTS is unaware of any jurisdiction where residents outside of the RPZ boundary are eligible for a permit.

During fiscal year 2023, the cost to administer the RPZ pilot program in Kalihi Valley was more than \$124,000. This cost included \$18,000 for office supplies, printing, hang tags, and signs. Planners, traffic technicians, police officers, and clerical staff also spent an estimated 2,080 hours on the program. Establishment of the Kalihi Valley RPZ as proposed in TDST6 (OCS2023-0782/8/24/2023 11:54 AM), which already has signs posted, would be sustainable under the proposed fee structure

Under both CD2 proposals TDST6 and FD1-EK1 (OCS2023-0794/8/31/2023 11:05 AM), DTS estimates that the proposed fees would generate approximately \$100,000 in revenue if half of the current pilot participants continued. Higher base fees would result in less participants, but higher fee generation per resident.

## **3. The definition of "resident," as it relates to RPZs**

The administrative effort and staff labor costs would be less for the proposed TDST6 where only residents within the RPZ would be eligible than the proposed FD1-TW2 where residents of the entire council district are eligible. This would require vetting to ensure automobiles are registered to a home within the RPZ. If parking were in short supply immediately outside of the RPZ district, it would be presumed that some percent of people outside of the RPZ would take up space. The proposed \$100 annual fee is about \$8.50 per month. Market rates might be \$100 per month if available.

## **4. The number of annual residential permits**

DTS supports a limit of two annual permits per dwelling unit with an allowance for waver requests considering the availability of on-street parking in the requester's residential area and the number of licensed drivers residing in the requester's dwelling unit.

Councilmember Tyler Dos Santos-Tam  
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**5. DTS' assessment and determination process for RPZs**

Creation of authority for an island wide program, as proposed, is DTS' preference. Careful evaluation of the criteria and factors for each area proposed is essential prior to DTS Director's determination. Creation of an RPZ in an area without a non-residential traffic generator as defined in the ITE Trip Generation Manual is not appropriate.

Thank you for the opportunity to respond to your concerns. Your consideration is appreciated. Should you have any questions, please contact me at (808) 768-8303.

Very truly yours,



J. Roger Morton  
Director

APPROVED:



Michael D. Formby  
Managing Director

# EXHIBIT C

Questions from Councilmember Tyler Dos Santos-Tam and responded to by Honolulu City and County Deputy Corporate Counsel, Duane W. H. Pang

RE: Administrative fines for Restricted Parking Zones

1. Can administrative fines be legally integrated into Bill 20 (2023)?

Regarding administrative fine, I need to correct my statement at the September 4, 2023 Council meeting. I had forgotten that COR had refused to sign off on Ordinance 04-13, which amended the City's traffic code to allow for administrative fines.

<https://www4.honolulu.gov/docushare/dsweb/Get/Document-4264/-mj-ks98.pdf>

HRS Chapter 291D, Adjudication of Infractions, provides that "[n]otwithstanding any other provision of law to the contrary, all traffic infractions and emergency period infractions, including infractions committed by minors, shall be adjudicated pursuant to this chapter. . . This chapter shall be applied uniformly throughout the State and in all counties." (Section 291D-3; emphases added); and broadly defines "traffic infraction" as "all violations of statutes, ordinances, or rules relating to traffic movement and control, including parking, standing, equipment, and pedestrian offenses, for which the prescribed penalties do not include imprisonment and that are not otherwise specifically excluded from coverage of this chapter" (Section 291D-2; emphases added). If Bill 20 were to pass final reading with administrative fine provisions, COR would likely be unable to approve the resulting ordinance as to form and legality.

2. If integrated, who would be the enforcing body?

Pursuant to ROH §15-26.2 HPD issues traffic citations.

3. How would language be crafted to work in accordance with state law?

As mentioned above, traffic citations are governed by HRS §291D. The current Traffic Code provision for administrative citations and fines, if challenged, would likely be found to be preempted by State law.