



ORDINANCE NO. 09 82<sup>A</sup> BILL NO. 66A  
(DRAFT 2)

AN ORDINANCE AMENDING CHAPTER 24, HAWAI'I COUNTY CODE 1983 (2005 EDITION, AS AMENDED), RELATING TO INATTENTION TO DRIVING.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Chapter 24, article 7, division 3, Hawai'i County Code 1983 (2005 Edition, as amended), is amended by adding a new section to be appropriately designated and to read as follows:

**"SECTION 24- . Use of mobile electronic devices while operating a vehicle.**

(a) As used in this section, unless the context clearly requires otherwise:

"Emergency responders" include fire fighters, emergency medical service technicians, mobile intensive care technicians, civil defense workers, police officers, and federal and state law enforcement officers.

"Mobile electronic device" means any hand-held or other portable electronic equipment capable of providing wireless and/or data communication between two or more persons or of providing amusement, including but not limited to a cellular phone, text messaging device, paging device, personal digital assistant, laptop computer, video game, or digital photographic device, but does not include any audio equipment or any equipment installed in a motor vehicle for the purpose of providing navigation, emergency assistance to the operator of the motor vehicle, or video entertainment to the passengers in the rear seats of the motor vehicle.

"Operate a motor vehicle" means to drive or assume actual physical control of a vehicle upon a public way, street, road, or highway.

"Use or using" means holding a mobile electronic device while operating a motor vehicle."

(b) It shall be a violation under this section to operate a motor vehicle while using a mobile electronic device, unless used with a hands-free device. Any person convicted of violating this subsection shall be subject to a maximum fine of \$150.

(c) Whoever operates any vehicle while using a mobile electronic device, unless used with a hands-free device, in a manner as to cause a collision

with, or injury or damage to, as the case may be, any person, vehicle, or other property shall be fined not more than \$500.

(d) The use of a mobile electronic device for the sole purpose of making a "911" emergency communication shall be an affirmative defense to this ordinance.

(e) The following persons shall be exempt from the provisions of subsections (b) and (c):

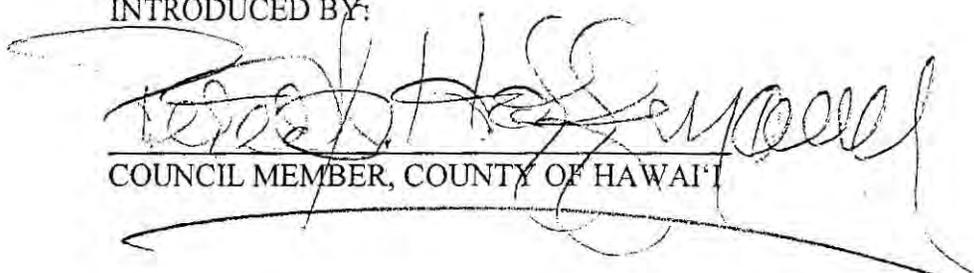
- (1) Emergency responders using a mobile electronic device while in the performance and scope of their official duties;
- (2) Drivers using two-way radios while in the performance and scope of their work-related duties; and
- (3) Drivers holding a valid amateur radio operator license issued by the federal communications commission and using half-duplex two-way radio."

**SECTION 2.** New material is underscored. In printing this ordinance, the underscoring need not be included.

**SECTION 3.** If any provision of this ordinance or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**SECTION 4.** This ordinance shall take effect on January 1, 2010.

INTRODUCED BY:

  
COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i  
Date of Introduction: June 2, 2009  
Date of 1<sup>st</sup> Reading: June 2, 2009  
Date of 2<sup>nd</sup> Reading: August 5, 2009  
Effective Date: January 1, 2010

REFERENCE: Comm. 262.11

OFFICE OF THE COUNTY CLERK  
 County of Hawai'i  
 Hilo, Hawai'i

Introduced By: \_\_\_\_\_  
 Date Introduced: \_\_\_\_\_  
 First Reading: \_\_\_\_\_  
 Published: \_\_\_\_\_

REMARKS: A re-vote for second reading was taken due to lawsuit (W. Hawaii Today v County of Hawaii) re the Council mtg. held on 6-16-09. A copy of the original certification sheet re this measure is attached.

Second Reading: August 5, 2009  
 To Mayor: August 13, 2009  
 Returned: August 20, 2009  
 Effective: January 1, 2010  
 Published: August 28, 2009

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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~~ROLL CALL VOTE~~

	AYES	NOES	ABS	EX
Enriques				
Ford				
Greenwell				
Hoffmann				
Ikeda				
Naeole				
Onishi				
Yagong				
Yoshimoto				

ROLL CALL VOTE

	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann	X			
Ikeda	X			
Naeole	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
	9	0	0	0

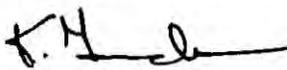
I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO  
 FORM AND LEGALITY:

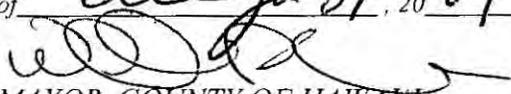
  
 DEPUTY CORPORATION COUNSEL  
 COUNTY OF HAWAII

Date 8/15/09

  
 COUNCIL CHAIRPERSON

  
 COUNTY CLERK

Bill No.: 66A (Draft 2)  
 Reference: C-262.11/PSPRC-11  
 Ord No.: 09 82 A

Approved/Disapproved this 19th day  
 of August, 2009  
  
 MAYOR, COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK  
 County of Hawai'i  
 Kona, Hawai'i

RECEIVED

Introduced By: Pete Hoffmann  
 Date Introduced: June 2, 2009  
 First Reading: June 2, 2009  
 Published: June 12, 2009

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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Second Reading: June 16, 2009  
 To Mayor: June 17, 2009  
 Returned: June 26, 2009  
 Effective: January 1, 2010  
 Published: July 3, 2009

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2009 JUN 26 AM 10:30

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann	X			
Ikeda	X			
Naeole		X		
Onishi	X			
Yagong	X			
Yoshimoto	X			
	8	1	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell			X	
Hoffmann	X			
Ikeda	X			
Naeole	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
	8	0	1	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO  
 FORM AND LEGALITY:

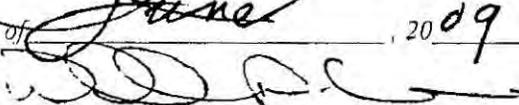
  
 DEPUTY CORPORATION COUNSEL  
 COUNTY OF HAWAII

Date 6/17/09



COUNCIL CHAIRPERSON

  
 COUNTY CLERK

Approved/Disapproved this 25<sup>th</sup> day  
 of June, 2009  
  
 MAYOR, COUNTY OF HAWAII

Bill No.: 66 (Draft 2)  
 Reference: C-262.11/PSPRC-11  
 Ord No.: 09 82

**Ordinances Numbered 09-82A, 09-83A, 09-84A, 09-85A, 09-86A, 09-87A, & 09-88A**

I hereby certify that the following Ordinances passed second and final reading at the meeting of the County Council on August 5, 2009, by vote, as listed below:

**Ordinance 09-82A (Bill 66A, Draft 2):** An Ordinance Amending Chapter 24, Hawai'i County Code 1983 (2005 Edition, as Amended), Relating to Inattention to Driving. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

**Ordinance 09-83A (Bill 77A):** An Ordinance Amending Chapter 24 of the Hawai'i County Code 1983 (2005 Edition, as Amended), Relating to Motor Vehicle Driver's Permit and License Fees. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

**Ordinance 09-84A (Bill 78A):** An Ordinance Amending Ordinance No. 08-79, as Amended, Relating to Public Improvements and Financing Thereof for the Fiscal Year July 1, 2008 to June 30, 2009. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

**Ordinance 09-85A (Bill 79A, Draft 2):** An Ordinance Amending Ordinance No. 08-79, as Amended, Relating to Public Improvements and Financing Thereof for the Fiscal Year July 1, 2008 to June 30, 2009. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

**Ordinance 09-86A (Bill 93A):** An Ordinance to Amend Ordinance No. 08-78, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2009. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

**Ordinance 09-87A (Bill 94A, Draft 2):** An Ordinance to Amend Ordinance No. 08-78, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2009. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

**Ordinance 09-88A (Bill 95A):** An Ordinance to Amend Ordinance No. 08-78, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2009. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

  
Kenneth G. Goodenow  
County Clerk

(Hawai'i Tribune-Herald – August 28, 2009)

(West Hawai'i Today - August 28, 2009)

**Note:** The original Digest/Affidavit is attached to Ordinance 09-82A.