

HB2092, HD1

TESTIMONY

March 15, 2016

Subject: **HB2092**

Dear Chair Inouye, Chair Gabbard, and Members of the Committee:

We are **opposed** to HB2092.

First, HB2092 is redundant since HRS 291C-114 already prohibits parking on sidewalks.

Second, HB2092 is apparently confusing. Its intent is to discourage vagrancy on **sidewalks**. However, based on submitted testimony, the Bill gives the mistaken impression that it prohibits parking on the **shoulders of streets**.

For decades various owners of many private Kakaako streets have controlled parking on the shoulders. The Hawaii Supreme Court has upheld that right of private road owners:

*“Owners of private roadways can still assert control over those roadways, even in the face of the Traffic Code, because the Traffic Code does not clearly divest private owners of the right to regulate traffic on private roadways. The owners can determine whether and how to maintain and repair the roadway as discussed supra; for example, **the owners can determine whether to designate certain areas as parking areas or no parking areas, whether to enforce those parking regulations**, and whether to install speed-reducing measures such as speed bumps or signs.”*
{Wemple v. Dahman, 103 Hawaii 385 (2004).}

Third, HB2092 is discriminatory and raises constitutional issues of equal protection because it only applies to private roads in Kakaako instead of equally applying to all private roads in the entire State.

Finally, even though HB2092 does not appear to restrict parking on private **streets**, please be mindful that any bill that does would cripple Kakaako by depriving employees, customers, and residents of much needed parking. (See attached emails.)

Thank you for the opportunity to comment.

Cedric Chun
Kakaako Land Company, LLC



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. NO. 2092, H.D. 1, RELATING TO PUBLIC SAFETY.

BEFORE THE:

SENATE COMMITTEE ON TRANSPORTATION AND ENERGY

DATE: Thursday, March 17, 2016 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lori K. K. Sunakoda, Deputy Attorney General

Chair Inouye and Members of the Committee:

The Department of the Attorney General offers comments on this bill. We note that the underlying intent of this bill is to ensure the safety, health, and welfare of the general public (including specifically, pedestrians, residents, and drivers), by prohibiting the stopping, standing, or parking of vehicles on public sidewalks.

As highlighted below, the wording in the proposed new section 206E-___(a), on page 2, lines 19 - 21, and page 3, lines 1 - 2, is contradictory and undefined:

§206E- Parking on sidewalks. (a) The authority shall, with respect to private streets in the Kakaako community development district that are expressly or impliedly dedicated to the public, prohibit or restrict the stopping, standing, or parking of vehicles on sidewalks. [Emphases added.]

The words “private streets . . . that are expressly . . . dedicated to the public” are contradictory because, if there is an express dedication of a street for public use, the street would not be a “private” street. Further, the term “impliedly dedicated” is undefined and may be subject to differing interpretations as to what is intended by that term.

Our department is available to assist with any amendments to the bill that this Committee may require.



Testimony to the Senate Committee on Transportation and Energy
Thursday, March 17, 2016 at 2:45 pm
Conference Room 229
State Capitol
RE: House Bill 2092 HD1 related to Public Safety

Chair Inouye, Vice Chair Gabbard and Members of the Committee on Transportation and Energy:

Hawaii Gas opposes HB 2092 HD1, which requires the Hawaii Community Development Authority to prohibit or restrict the stopping, standing, or parking of vehicles on sidewalks on private streets in the Kakaako Community Development District.

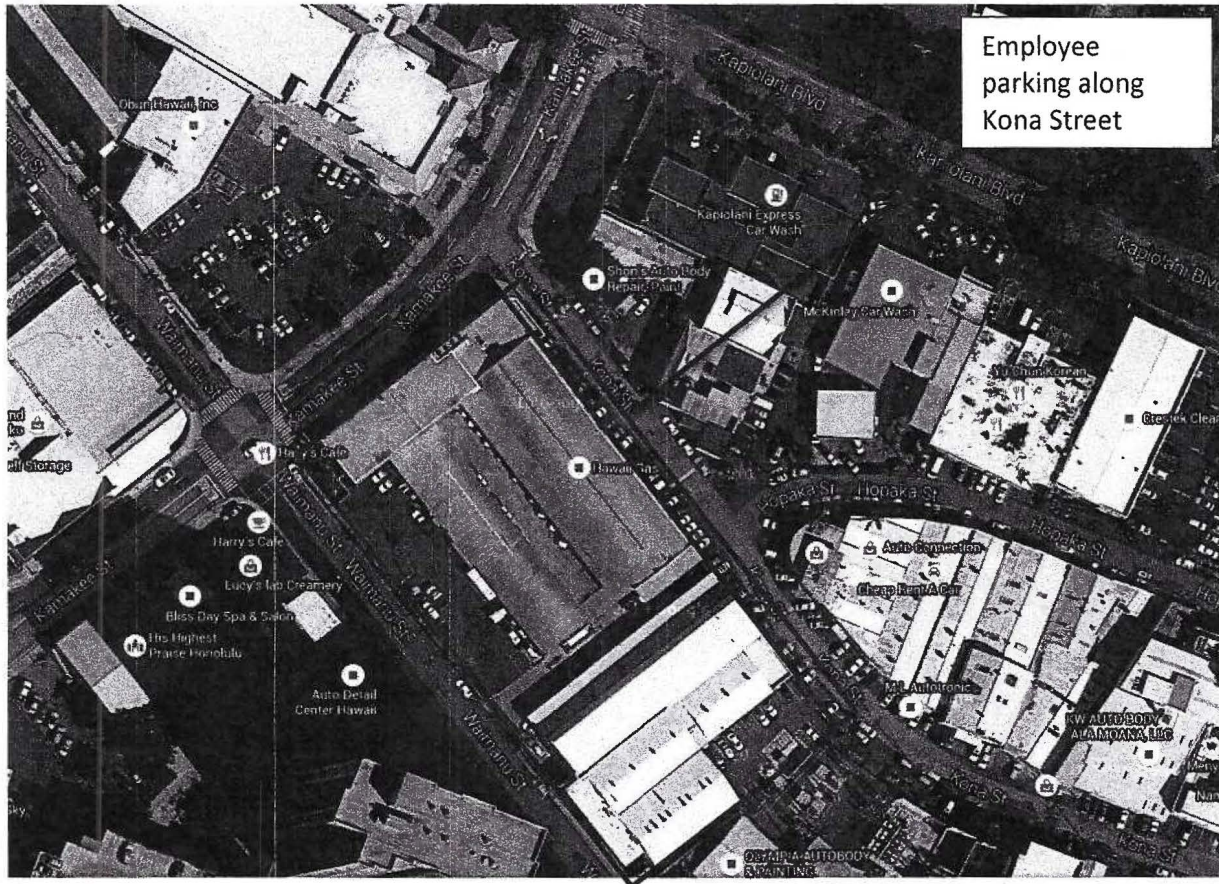
By way of background, Hawaii Gas has owned the parcel of land located at 515 Kamakee Street and a portion of Kona Street since 1904 (as shown in Figure 1 below). Kona Street is privately owned, but accessible to the public. This facility serves as the gas utility's main operations center and employs approximately 150 people. Approximately 42 of those individuals park along the portion of Kona Street that is adjacent to our building. This provides safe and reliable parking for our day time employees and for those employees who must report to work 24 hours a day 365 days a year to serve our customers.

As written, HB 2092 HD1 will force Hawaii Gas to eliminate these parking stalls and relocate employee parking to the next closest and available location. We therefore oppose this legislation for the following reasons:

- 1) Introduces a safety hazard to employees: Relocating 42 parking stalls to the next closest available location will force our employees to walk across at least two and possibly more streets to get to work every day. This is not improving public safety, it is making it worse.
- 2) Adds to the cost of doing business: New parking stalls will increase the cost of business operations by approximately \$100,800 per year (\$200 per stall per month). As a utility, operations costs are passed on to our customers and this is clearly not in the best interest of our rate payers.
- 3) Area is not an inviting open space: The area along Kona Street is populated by light commercial and industrial companies. There are no networked walking paths, retail experiences, or art and cultural displays in the immediate area.

Hawaii Gas Testimony

Figure 1: Hawaii Gas facility on Kona and Kamakee Streets.



Thank you for the opportunity to testify.

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HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



KAKAOKO
KALAELOA

David Y. Ige
Governor

John Whalen
Chairperson

Aedward Los Banos
Interim Executive Director

STATEMENT OF

AEDWARD LOS BANOS, INTERIM EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE

SENATE COMMITTEES ON TRANSPORTATION AND ENERGY

ON

THURSDAY, MARCH 17, 2016

2:45 P.M.

State Capitol, Conference Room 229

in consideration of

HB 2092 HD1 – RELATING TO PUBLIC SAFETY

Purpose: Requires the Hawaii Community Development Authority (HCDA) to prohibit or restrict the stopping, standing, or parking of vehicles on sidewalks on private streets in the Kakaako Community Development District.

Position: While the HCDA supports the complete streets principle and improving public safety on the streets, we offer the following comments.

The term "impliedly dedicated" in HD1 is not defined and may be open to interpretation. We defer to our deputy attorney general on how this loose phrasing may cause legal concerns over the enforcement of this bill.

From an organizational standpoint, the HCDA is primarily a planning, permitting, and re-development agency. Our current rules relative to enforcement and fine structures are limited to these aspects. Operationally, the HCDA also lacks the necessary staffing and resources to enforce such rules in the Kakaako Community Development District. Without additional resources, enforcement would be a challenge. The State and Municipal traffic codes are otherwise generally enforced by local law enforcement such as police or sheriff's deputies.

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Lastly, but perhaps of greatest concern, the prohibition of parking in the unimproved sidewalks of Central Kakaako would have a major impact on area businesses. Currently, nearly all businesses utilize the unimproved shoulder or row for customer or tenant parking. This bill would leave such businesses without street parking and would potentially yield unintended consequences.

Thank you for the opportunity to provide our comments on this measure.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committee on Transportation & Energy
Thursday, March 17, 2016 at 2:45 P.M.
Conference Room 229, State Capitol**

RE: HOUSE BILL 2092 HD 1 RELATING TO PUBLIC SAFETY

Chair Inouye, Vice Chair Gabbard, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **provides comments on** HB 2092 HD 1, which proposes to amend Chapter 206 E, Hawaii Revised Statutes by adding a new section to Part II to be appropriately designated and to read as follows:

"§206E-Parking on sidewalks. (a) The authority shall, with respect to private streets in the Kakaako community development district that are expressly or impliedly dedicated to the public, prohibit or restrict the stopping, standing, or parking of vehicles on sidewalks.

(b) For purposes of this section, "sidewalks" and "streets" shall have the same meaning as in section 291C-1."

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

It appears that HB 2092 HD 1 attempts to address a situation in Kakaako where there may be private ownership of public roads. With respect to the ownership of public roads, it is our understanding that Hawaii, unlike any other State in the U.S., was originally a sovereign nation – a kingdom. There were certain preexisting laws that were passed on and incorporated into what became laws of the U.S. Territory, and then ultimately, of the State.

The Highways Act of 1892:

In October of 1892, Queen Liliuokalani approved a law that determined that the ownership of all public highways and the land, real estate and property of the same, shall be in the Hawaiian Government in fee simple. The definition of public highway includes all existing roads and trails at the time "or hereafter opened, laid out or built by the Government, or by private parties, and dedicated or abandoned to the public as a highway, are hereby declared to be public highways." Furthermore, "All public highways once established shall continue until abandoned by due process of law".



Chamber of Commerce HAWAII

The Voice of Business

We understand that Chapter 264 HRS provides a definition of State and County highways, roads, etc., which include situations where ownership is acquired by the State or County through dedication or surrender.

Not knowing the exact circumstances of the situation in Kakaako, it would appear that if the road ownership issue falls outside of what is provided in the existing laws, perhaps rather than amending Chapter 206E HRS, the government entity responsible for oversight of the public roads in this area should acquire the public roads by purchase or eminent domain.

The proposed amendment to the Statute seems to add more confusion to a complicated situation. We appreciate the opportunity to provide our comments on the matter.

Thank you for the opportunity to testify.