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Council Member Ann Kobayashi  
Honolulu City Council  
530 S. King Street, Room 202  
Honolulu, Hawaii 96813

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Aloha Council Member Kobayashi,

**RE: WAIKIKI SIDEWALKS – NEW PEDESTRIAN and RENNOVATION PROVISIONS**

Thank you for receiving my email of March 25. Please consider this letter an updated version of the email. Here, I've taken additional time to better inform you and find timely solutions to Honolulu sidewalk matters, particularly in Waikiki, that need addressing. This document is more readable and thorough at this time. It also includes questions which I request you answer.

During 2010 you were the chair of the city Infrastructure Committee. You were also a key mover and overseer, correct me if I'm wrong, in the passage of two far-reaching sidewalk laws:

- Pedestrian Use Zone (Bill 39) and
- Kalakaua Avenue Sidewalk Streetscape Project - the joint private / city renovation project in Waikiki (Project 1995515)

These sidewalk provisions have impacts in the already congested and confused area of Waikiki, an area which appears to have a contentious history of property conveyances and surveying. Yet even apart from that, many immediate issues arose during last year's new sidewalk provisions that would be alarming to a young novice yet ignored or selectively applied by experienced city officials.

How is it, for instance, that you were aware of "Public Forum" (the right of the public to use the sidewalk for free speech) and you were able to integrate this Constitutional right into Bill 39 but ignored it in the design of the "Kalakaua Avenue Sidewalk Streetscape Project" which may totally and negatively impact street artists and public voices?

I saw the video record of the Annual Budget Review – Administrative Overview, March 14, 2011 with the Department of Design and Construction. Here, you made comments on the Waikiki sidewalks and the Pedestrian Use Zone and were pointed at stating for the record that the sidewalks had been "measured".

I say: “With this and others relevant matters, Council Member Kobayashi needs to be updated or at the very least, must clarify conflicting matters to the public”. To this end I have the following statements and information to share:

### **Jon Van Dyke**

You will remember Deputy Corporate Council Dawn Spurlin introduced Jon Van Dyke as legal council at the Public Infrastructure Committee on August 31, 2010 which you attended as Chair and he advised you about sidewalk issues in Waikiki, public rights, and specific matters about Bill 39. He also refers to the metal strip on Kalakaua Avenue as “where the public/private line is”. But goes on to say that it is hard to see or not able to be found in places and hard to prove in certain circumstance.

Van Dyke speaks about the law of Public Forum and right of “Replacement” sidewalk in Kalakaua Avenue. He explains the situation where the sidewalk public property has been landscaped and blocked by plantings and so a “pedestrian easement” is made on private property and the pedestrians “go over the private property”. He says this “Replacement” sidewalk is protected by the Public Forum and is “an area where you can engage in expressive activities and of course you have the right to move through it”.

Thus, as you know, following his recommendation, language was inserted into Bill 39 so that the Pedestrian Use Zone could be fully implemented on private property replacement zone.

The Ninth Circuit court ruling establishing the right of Public Forum is Venetian Casino Resort v. Local Joint Executive Board of Las Vegas.

### **HPD Police executive**

When a HPD senior Police office was called to Council Meeting, September 22, 2010 to provide truthful presentation on PUZ he said that enforcement of the new law such as warnings, citations and convictions of violators would depend on public knowledge of the boundaries and clear marking and signs.

### **Lori Nishimura**

Mayor’s aide, Lori Nishimura, in her presentation to Waikiki Neighborhood Board, March 8, 2011, said the city had not measured the Waikiki sidewalks. She said the city had purchased 250 sidewalk plaques to install along sidewalk to define the PUZ boundaries. Later, she told me that the city is afraid that some private property sits on public land. This is of major concern in the systematic erosion of public property and lands in Hawai`i to private holdings.

### **Greg Hee**

Greg Hee of the Department of Design and Construction told street artist Michael Daly that the Kalakaua Avenue sidewalk where the artists work at night is surveyed, and the property line is the metal strip that runs down the middle of the sidewalk on Kalakaua Avenue, Mauka side. At a viewing of project blue prints on March 16, 2011 Greg Hee told Michael Daly that the blue prints and design for the sidewalk

renovation were drawn up by a city contractor, R.M.Towill, and that the corporation had the responsibility to survey the property lines for this project and had done so. Hee also said that he had never been made aware of any Public Forum needs in any discussion or brief in time he has been associated with the Kalakaua Av sidewalk project and that Public Forum was never part of the design.

With this, the Waikiki sidewalk streetscape project began excavation in March 2011 in front of Bank of Hawai'i (from Saratoga Road and almost to Lewers Street), which is actually on the ocean side of Kalakaua; it was not included in the original design of September 2010.

### **Assistant to Greg Hee, DDC**

I have a copy of the comment from the young man at the Annual Budget Review, March 14, 2011 who was with Greg Hee. He said "It is probably hard to find the property lines".

### **Greg Hee at Waikiki Neighbourhood Board**

At the one and only DDC "Kalakaua Avenue Streetscape Project" presentation - made to the Waikiki Neighborhood Board in September 2010 - Greg Hee told the board that the private property owners are paying for new sidewalk tiling on their side of the property line - that would mean from his statements, from the metal strip to the building line. But, the pavement cut-line and sidewalk excavation undertaken in March is at odds to this narrative too.

Allow me to sight the first such private re-tiling work in this project, and which, is well underway. This section butts up to the old Guess Jeans store at Waikiki Shopping Plaza on the corner of Kalakaua and Seaside Av. On the Seaside Avenue site the work extends the full width of the sidewalk from the building to the curb. But the cut-line on Kalakaua Avenue falls short of the metal strip by some three feet! In other words the property owner is tiling from the building line (shop window) to some other project line; it is not extending to the full perimeter up to the metal strip at any rate. Also, the building overhang extends over the metal strip into the public side which is curious. This area is confusing - add to this, the First Amendment problems looming in from the street side where contiguous planter boxes some 8 to 15 feet wide are being constructed on the same sidewalk as part of the same project. This is severely displacing the established "Public Forum" used by artists and the public at large.

### **Michael Daly**

On March 22, Michael Daly was disrupted as a street portrait artist as a result of sidewalk project barricades in front of Waikiki Shopping Plaza and other barricades in front of Waikiki Business Plaza where conditions were becoming cramped. So at 6:45pm he set up his easel on the other side of Kalakaua Avenue by Royal Hawaiian Avenue. At approximately 7:00pm he was told by private Security Guards contracted by Royal Hawaiian Shopping Center that he had to move and that the whole sidewalk from the street to the building running the full length of the shopping centre was owned by Kamehameha Schools and that if cited by them, Daly would be trespassing and prohibited from the full property.

This all brings up many questions, some of which are written out below for you to answer, please.

**Q 1**

Exactly where are the property lines in Waikiki?

**Q 2**

What is the true cost of the Pedestrian Use Zone project and the Kalakaua Avenue Sidewalk Streetscape project?

**Q 3**

What is the history, basis and implications of having a private property sidewalk easement in a commercial zone that is confused with conflicting aspects of being a public sidewalk subject to the rights of access and "Public Forum", on one hand and that of private property rights subject to kupu and trespass on the other?

**Q 4**

And with regard to the matter of public and private cost share of the sidewalk renovation project, in the case of Waikiki Shopping Plaza (the first to break dirt so far) I ask: If the taxpayer is paying for streetscape costs on the public side only, why is it that WSP is not paving up to the metal strip? If indeed the metal strip follows some legal property line, is the public expected to pay for work on the private property or any part of it?

**Q 5**

With regard to the same site, on the Seaside Avenue section why is WSP paving all the way to the curb and what affect does this have on public ownership and the "Public Forum"?

**Q 6**

As you know the joint streetscape project provides for some sidewalk sections to be laid with "specialty" tiles designed to differentiate between the general sidewalk "quartzite-look" and a grander sidewalk "foyer-look" leading into main private shop building entrances. The specialty tile is ordered and chosen by private property owners. Further, in the case of Duty Free Galleria, Waikiki Shopping Plaza, and Waikiki Business Plaza the specialty tiles don't stop at the metal strip, but go well beyond into the public side, in one case exceeding 17 ft wide by 40 feet long. The questions arise: Assuming the metal strip is a legitimate boundary, is the encroachment of permanent private design on the public sidewalk legal, how would this affect others who want to do the same thing, and thirdly, at this point who is expecting to have to pay for those specialty tiling sections on the public side anyway?

**Q 7**

Has the physical and intellectual value of the public interest and ownership in the sidewalk been assessed and has such assessment been applied to agreements between city and private entities in the joint Kalakaua Avenue Sidewalk Project, where public benefits of the sidewalk have been eliminated, discouraged, confused, diminished or even changed because of the project while the design concurrently transferred or provided sidewalk property, benefits and value to private entities?

**Q 8**

Since the "Kalakaua Avenue Sidewalk Streetscape Project" is a joint venture and since the project is designed to install long curb side sections of the sidewalk with plantings which will block all public use, and these sections have been "Public Forum" used by street artists and public voices for two decades and since the planters will intrude from the curb 8 to 15 feet along the affected area of Kalakaua Avenue, AND since the Pedestrian Use Zone must comply with Americans with Disabilities Act (ADA) requiring some eight feet of sidewalk pedestrian throughway, AND the metal strip indicates a presumed private property line coming from the other direction, has sidewalk "replacement" been discussed or ensured so that ongoing and equal Public Forum conditions apply for street artists and public voices and the project parties are not in violation of the First Amendment?

**Q 9**

Were the street artists consulted in developing the Kalakaua Avenue Streetscape Project? If not, why not?

**Q 10**

In the case of Luxury Row, King Kalakaua Plaza, Royal Hawaiian Shopping Center, Waikiki Kuhio Beach Park, and Lewers Street (Beach Walk) and other places where private corporations have changed the sidewalk in the county, could you specifically show me the replacement sidewalk area on record and the language that protects those areas for Public Forum? And why are those areas not marked in all places consistent with PUZ regulations?

As you know street artists suffer systemic city police, private security and property owner harassment regarding the apparent importance of this metal strip on Kalakaua Avenue. It can result in crippling humiliation and loss: arrest, finger printing, jail time, loss of property, strip search and court appearances. On the makai side (Royal Hawaiian Shopping Center) artists and free speech voices have for many years been threatened in such a way as to be forced off the sidewalk all together and held and detained illegally!! This would imply that no replacement sidewalk is recognized there. The laws and hearsay rules are by no means unimportant to the welfare and benefit of the public. Yet it seems the artists, providing lawful and visitor services are discriminated against, criminalized,

harassed and dismissed as even being stakeholders in these fundamental engineering developments that impact them.

I viewed Waikiki maps from circa 1818 at the state survey office. I also viewed recent maps at Department of Planning and Permitting and additionally property tax maps at Real Property Assessment Division, Bethel Street and found them to be very simple; no typical architectural denotations of any sort that provide reference when it comes to actual footage or metric measurements to today's landmarks. The original maps I found were hand drawn and have no reference to fixed landmarks. I intend to visit another office and view all that is available.

It appears that the Lori Nishimura, yourself and the taxpayers are being kept out of the loop, which I find strange since Bill 39 was your bill and the Mayor's Office and Council are in the end, responsible for the sidewalk renovations and the PUZ.

You will see I hope, as I do, that however cautionary some are in their words about Waikiki sidewalk property issues, they will not mislead the public. On the other hand others are playing ignorant, shirking their inherent duty or attempting to cover up a city mess with city lies without understanding the career fall out as the truth bubbles up.

There is a determined and talented group of people working on this issue as a committed campaign of importance with experienced legal observers and media representatives watching things unfold. Website [www.SaveWaikikiSidewalk.com](http://www.SaveWaikikiSidewalk.com) provides information.

Please call me at home if you have questions after 11 am at  as I intend to be quite vocal on this in the media and on TV and on the Internet real soon.

Yours truly,

David Moskowitz