

COUNCIL MEETING NOTICE and AGENDA
WEDNESDAY, DECEMBER 17, 2008
9:00 A.M. OR SOON THEREAFTER

COUNCIL CHAMBERS
Historic County Building
4396 Rice Street, Room 201
Lihue, Kaua'i, Hawai'i

MEETING CALLED TO ORDER.

ROLL CALL.

APPROVAL OF AGENDA.

MINUTES of the following meetings of the Council:

Council Meeting of November 6, 2008
Council Meeting of November 19, 2008
Special Council Meeting of November 26, 2008
Inaugural Meeting of December 1, 2008

COMMUNICATIONS:

- C 2009-02 Communication (11/06/2008) from the Chief, Building Division, Department of Public Works, transmitting for Council information, the Building Permit Information Reports for October 2008 that includes the following items:
- 1) Building Permit Processing Report
 - 2) Building Permit Estimated Value of Plans Summary
 - 3) Building Permits Tracking Report
 - 4) Building Permits Status
- C 2009-03 Communication (11/12/2008) from the Director of Finance, transmitting for Council information the Period 1 Financial Reports – Statement of Revenues as of July 31, 2008. (***Statement of Revenues-Estimated and Actual (Listing), Statement of Expenditures and Encumbrances (Listing), Revenue Report (Listing), and Detail Budget Report (Listing) on file in the County Clerk's Office.***)

- C 2009-04 Communication (11/12/2008) from the Director of Finance, transmitting for Council information the Period 2 Financial Reports – Statement of Revenues as of August 31, 2008. (***Statement of Revenues-Estimated and Actual (Listing), Statement of Expenditures and Encumbrances (Listing), Revenue Report (Listing), and Detail Budget Report (Listing) on file in the County Clerk’s Office.***)
- C 2009-05 Communication (11/12/2008) from the Director of Finance, transmitting for Council information the Period 3 Financial Reports – Statement of Revenues as of September 30, 2008. (***Statement of Revenues-Estimated and Actual (Listing), Statement of Expenditures and Encumbrances (Listing), Revenue Report (Listing), and Detail Budget Report (Listing) on file in the County Clerk’s Office.***)
- C 2009-06 Communication (11/12/2008) from the Planning Director, transmitting the Planning Commission’s recommendation of approval for the subject Zoning Amendment petition ZA-2009-1 from Residential District (R-1) to Neighborhood Commercial District (C-N), TMK 2-6-004:004, 2-6-004:034, and 2-6-004:059, Po‘ipū, Kaua‘i. (Richard E. Fuller, Jr. et al., Applicant) (***Applicant’s petition, Staff Report, and Excerpt of the Planning Commission’s public hearing minutes of October 14, 2008 on file in the County Clerk’s Office) (See Proposed Draft Bill No. 2295)***)
- C 2009-07 Communication (11/13/2008) from the Director of Personnel Services, transmitting for Council information the following classification requests which the Department of Personnel Services will be reviewing and taking appropriate action:
- Fire Department, Position No. 735 (Present Class of Fire Fighter to Fire Fighter Trainee)
 - Fire Department, Position No. 776 (Present Class of Fire Fighter to Fire Fighter Trainee)
 - Fire Department, Position No. 614 (Present Class of Water Safety Officer II to Lifeguard)
 - Fire Department, Position No. 2535 (Present Class of Water Safety Officer II to Lifeguard)
 - Fire Department, Position No. 2528 (Present Class of Lifeguard to Water Safety Officer I)

- C 2009-08 Communication (11/24/2008) from then Mayor Bill “Kaipo” Asing, transmitting for Council information, a copy of the Kaua’i Humane Society’s First Quarter Report for Fiscal Year 2009, which includes Cash Flow Analysis, Percentage Change report, and Field Services Statistics.
- C 2009-09 Communication (11/25/2008) from the Director of Finance, transmitting for Council information, the Statement of Condition of the County Treasury as of October 8, 2008.
- C 2009-10 Communication (12/2/2008) from Council Vice Chair Jay Furfaro, requesting that the Administration be present to provide the Council with an update of their plans regarding enforcement of Ordinance No. 869 relating to allowing individuals with leashed dogs on a portion of the path for an 18-month trial period.
- C 2009-11 Communication (12/02/2008) from Council Vice Chair Jay Furfaro, requesting agenda time for a briefing from the County Attorney regarding the court order dated November 10, 2008, in the case of Kōloa Creekside Estates, LP versus County of Kaua’i, et al.
- C 2009-12 Communication (12/02/2008) from Council Vice Chair Jay Furfaro, transmitting for Council consideration, proposed amendments to the Fiscal Year 2008-2009 Operating Budget, by transferring \$85,000 from the Surplus and Appropriations estimated in the General Fund for the following:
- KAUA’I POLICE DEPARTMENT**
- Consultant Services (for contracting a professional recruitment firm to conduct background checks, etc.) in the amount of \$65,000; and
 - Advertising (for additional recruitment advertising) in the amount of \$20,000.
- (See Proposed Draft Bill No. 2296)***
- C 2009-13 Communication (12/03/2008) from Vivian Viar, O’ahu Manager, RC Holsinger Associates, P.C., transmitting for Council information, the following final audit reports for the year ended June 30, 2008:
- Comprehensive Annual Financial Report of the County of Kaua’i Hawai’i for the fiscal year ended June 30, 2008;
 - County of Kaua’i Single Audit Reports for the year ended June 30, 2008; and
 - Recommendations Designed to Improve Internal Accounting Controls and Administrative Efficiency for the year ended June 30, 2008.
- (Reports on file in the County Clerk’s Office)***

- C 2009-14 Communication (12/05/2008) from Council Vice Chair Jay Furfaro, transmitting for Council consideration, proposed amendments to Chapter 5A, Section 5A-11.29, Kaua'i County Code 1987, as amended, relating to Kuleana Land. (***See Proposed Draft Bill No. 2297***)
- C 2009-15 Communication (12/05/2008) from Council Vice Chair Jay Furfaro, transmitting for Council consideration, amendments to Council Rule No. 5(c) and Rule No. 12(e)(4)(C). (***See Resolution No. 2009-04***)
- C 2009-16 Communication (12/08/2008) from Council Chair Bill "Kaipo" Asing, transmitting for Council consideration, a resolution amending Resolution No. 2009-03, relating to the appointment of the Chairpersons, Vice Chairpersons, and several standing committees of the Council. (***See Resolution No. 2009-05***)
- C 2009-17 Communication (10/10/2008) from the Chief of Police, requesting Council approval to expend \$929.02 from the Asset Forfeiture account (for reimbursement to the United States Marshals Services expenses) to purchase a 2007 Livingston boat that was forfeited to the United States Marshals Service during a marijuana investigation on Kaua'i, and the United States Marshals Services has received authorization to transfer ownership to the Kaua'i Police Department.
- C 2009-18 Communication (10/21/2008) from the Chief of Police, requesting Council approval to purchase newly designed police badges in the amount of \$18,020 which funds will be from the Asset Forfeiture Funds.
- C 2009-19 Communication (11/07/2008) from the Kaua'i Emergency Management Officer, requesting Council approval to receive and expend grant funds from the U.S. Department of Homeland Security, via State Civil Defense, for the following areas and amounts:
- 1) 2008 State Homeland Security Grant Program in the amount of \$1,077,180 to enhance the capability of State and local units of government to prevent, deter, respond to and recover from incidents of terrorism involving the use of chemical, biological, radiological, nuclear and explosive weapons and cyber attacks, in addition to day to day all-hazards scenarios.
 - 2) 2008 Citizen Corps Program in the amount of \$18,281 to be used to support Citizen Corps Councils with planning, outreach, and management of Citizen Corps programs and activities such as Community Emergency Response Teams and Neighborhood Watch.
 - 3) 2007 Public Safety Interoperable Communications Grant: \$1,275,000 Federal share and \$300,000 State of Hawai'i matching funds to enhance the interoperable capabilities with respect to voice, data, and/or video and encourage the use of innovative cost and spectrum efficient technology solutions.

- C 2009-20 Communication (11/12/2008) from then Housing Director Kenneth Rainforth, requesting Council approval to decline repurchase of Unit No. 101, Hookena at Puhi, located at 2080 Manawalea Street, Līhu‘e, Kaua‘i, Hawai‘i 96766, and provide the owner with a one-year waiver of the resale restriction.
- C 2009-21 Communication (11/17/2008) from then Prosecuting Attorney Craig DeCosta, requesting Council approval to apply for, receive, and expend Federal funds in the amount of \$75,000 for the period commencing December 1, 2008 to December 31, 2009 which funds will be allocated to begin a Drug Prosecution Unit.
- C 2009-22 Communication (11/18/2008) from the Chief of Police, requesting Council approval to accept donated equipment valued at \$14,790.57 from David and Gina Moore of Princeville which will be used by the Hanalei Substation for everyday operations.
- C 2009-23 Communication (12/03/2008) from Shaylene Iseri-Carvalho, Prosecuting Attorney, requesting Council approval to expend \$1,504.05 of State Asset Forfeiture Funds for the purchase of a fax machine to replace an existing broken machine which was purchased in 2001.
- C 2009-24 Communication (12/04/2008) from Councilmember Daryl W. Kaneshiro and Hawai‘i State Association of Counties Kaua‘i Alternate, requesting Council consideration to approve Derek Kawakami to replace Ronald Kouchi as the Kaua‘i Representative to the Hawai‘i State Association of Counties for the term ending June 30, 2009.
- C 2009-25 Request (12/11/2008) from the Office of the County Attorney for authorization to expend funds up to \$50,000 to retain special counsel to represent County of Kaua‘i and Kaua‘i Liquor Commission, Jane Doe v. County of Kaua‘i, Kaua‘i Liquor Commission, EEOC Charge No. 486-2007-00476 and/or related matters and/or subsequent legal proceedings resulting in any way from this matter.
- C 2008-26 Request (12/11/2008) from the Office of the County Attorney for settlement authority in County of Kaua‘i vs. Norman Caris, Civ. No. 06-1-0017 (Fifth Circuit Court) and related matters.

- C 2008-276 Communication (undated, received on 09/02/2008) from the Director of Personnel Services, transmitting for Council information the following classification requests which the Department of Personnel Services will be reviewing and taking appropriate action:
- Water Department, Position No. 2429 (Redescription review of Present Class of Automotive Mechanic II)
(Deferred 11/19/2008)
- C 2008-280 Communication (09/12/2008) from then Council Chair Jay Furfaro, requesting that the Administration be present to provide an update on the Department of Personnel Services' policies on recruitment, hiring, and retention plan. ***(Deferred 11/19/2008)***
- C 2008-311 Communication (10/07/2008) from D.Q. Jackson, Malama Pono, requesting agenda time for three (3) Kaua'i community service agencies (YWCA of Kaua'i, Kaua'i Hospice, and Malama Pono) to present an update on the status of their organizations. ***(Deferred 11/19/2008)***
- C 2008-340 Request (11/20/2008) from the Office of the County Attorney for authorization to expend funds up to \$25,000 for special counsel to represent Respondents Department of Finance, County of Kaua'i in CUSHNIE CONSTRUCTION CO., INC. V. DEPARTMENT OF FINANCE, COUNTY OF KAUA'I, PCH-2008-18, Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawai'i and related matters. ***(Deferred 11/26/2008)***

LEGAL DOCUMENTS:

- C 2009-27 Communication (11/20/2008) from then Housing Director Kenneth Rainforth, recommending for Council approval a Second Amended Agreement for Kaua'i Lagoons Affordable Housing to allow an extension of time up to June 18, 2009 for the developer to complete 82 of the required affordable housing units:
- Second Amended Housing Agreement (Kaua'i Lagoons Affordable Housing) to describe the Affordable Housing Units which will have to be provided, and to define the manner and timing of the development of such Affordable Housing Units in order for the Developer to fulfill its obligations under Ordinance No. PM-2006-383.
- C 2009-28 Communication (12/04/2008) from Eugene K. Jimenez, Housing Director, recommending for Council approval the following:
- Right-of-Entry Agreement between Kukui'ula Development Company (Hawai'i) LLC and the County of Kaua'i (TMK 2-6-15:por.4 Pa'anau Village Phase 2, Kōloa, Kaua'i, Hawai'i) to allow access for predevelopment activities, such as the environmental assessment.

CLAIMS:

- C 2009-29 Communication (11/18/2008) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Kelly E. Meek-Koga for damages to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

RESOLUTIONS:

Resolution No. 2009-04 – RESOLUTION AMENDING RESOLUTION NO. 2009-02, RELATING TO ADOPTING RULES OF THE COUNCIL OF THE COUNTY OF KAUA'I FOR THE ORGANIZATION OF COMMITTEES AND THE TRANSACTION OF BUSINESS (Rule No. 5(c) and Rule No. 12(e)(4)(C))

Resolution No. 2009-05 – RESOLUTION AMENDING RESOLUTION NO. 2009-03, RELATING TO THE APPOINTMENT OF THE CHAIRPERSONS, VICE CHAIRPERSONS, AND MEMBERS OF THE SEVERAL STANDING COMMITTEES OF THE COUNCIL OF THE COUNTY OF KAUA'I

BILLS FOR FIRST READING:

Proposed Draft Bill No. 2295 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUA'I COUNTY CODE 1987, RELATING TO ZONING DESIGNATION IN PO'IPŪ, KAUA'I (Richard E. Fuller, Jr., et al., Applicant)

Proposed Draft Bill No. 2296 – A BILL FOR AN ORDINANCE TO AMEND ORDINANCE NO. B 2008-672, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2008 THROUGH JUNE 30, 2009, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL FUND (Police Department: \$65,000 for Consultant Services and \$20,000 for Advertising)

Proposed Draft Bill No. 2297 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO KULEANA LAND

EXECUTIVE SESSION: Pursuant to Haw. Rev. Stat. (“H.R.S.”) §92-7(a), the Council may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4, H.R.S. §92-5(a), and Kaua‘i County Charter §3.07E. (Confidential reports on file in the County Attorney’s Office and/or the County Clerk’s Office. Discussions held in Executive Session are closed to the public.)

- ES-366 Pursuant to Haw. Rev. Stat. §§92-4 and 92-5(a), (4), and (8) and Kaua‘i County Charter §3.07(E), the purposes of this executive session is to provide Council a briefing in the case of Kōloa Creekside Estates, L.P. v. County of Kaua‘i, et al., Civ. No. 07-1-0191 and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.
- ES-367 Pursuant to Haw.Rev.Stat. §§92-4 and 92-5(a)(4) and (8), and Kaua‘i County Charter section 3.07(E), the Office of the County Attorney requests an executive session with the Council to provide the Council a briefing on Jane Doe v. County of Kaua‘i, Kaua‘i Liquor Commission, EEOC Charge No. 486-2007-0076 and/or related matters and/or subsequent legal proceedings resulting in any way from this matter. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.
- ES-368 Pursuant to Haw.Rev.Stat. §§92-4 and 92-5(a)(4) and (8), and Kaua‘i County Charter section 3.07(E), the Office of the County Attorney requests an executive session with the Council to provide the Council a briefing on COUNTY OF KAUA‘I VS. NORMAN CARIS, CIV. NO. 06-1-0017 (FIFTH CIRCUIT COURT) and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.
- ES-365 Pursuant to Haw.Rev.Stat. §§92-4 and 92-5(a)(4) and (8), and Kaua‘i County Charter section 3.07(E), the Office of the County Attorney requests an executive session with the Council to provide the Council a briefing on the petition for administrative review claim filed against the Department of Finance, County of Kaua‘i and County of Kaua‘i entitled CUSHNIE CONSTRUCTION CO., INC. V. DEPARTMENT OF FINANCE, COUNTY OF KAUA‘I, PCH-2008-18, Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawai‘i and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item. (*Deferred 11/26/2008*)

NOTE: If the Council is not finished with this meeting by approximately 1:30 p.m., it will recess for public hearings on the following. After the public hearings, the Council will reconvene to complete any unfinished business.

Bill No. 2292 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX APPEALS

Bill No. 2294 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (Transient Vacation Rentals)

For complete information, including a summary of the item, please refer to the official Notice of Public Hearing. The official Notice of Public Hearing has been published, posted on the bulletin board, and filed in the County Clerk's Office as required by law. Notwithstanding this Council Agenda, the Council may hold a public hearing on any item which has been posted in advance in compliance with the Sunshine Law.

ADJOURNMENT.

NOTE: SPECIAL ACCOMMODATIONS AND SIGN LANGUAGE INTERPRETER AND INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS ARE AVAILABLE UPON REQUEST FIVE (5) DAYS PRIOR TO THE MEETING DATE, TO THE COUNTY CLERK, 4396 RICE STREET, ROOM 206, LĪHUʻE, KAUAʻI. TELEPHONE NO. 241-6371.