

## MINUTES

### COMMITTEE OF THE WHOLE

July 5, 2017

A meeting of the Committee of the Whole of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Mel Rapozo, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, July 5, 2017, at 9:26 a.m., after which the following Members answered the call of the roll:

Honorable Arthur Brun  
Honorable Mason K. Chock  
Honorable Ross Kagawa  
Honorable Arryl Kaneshiro  
Honorable Derek S.K. Kawakami  
Honorable JoAnn A. Yukimura  
Honorable Mel Rapozo

Minutes of the June 21, 2017 Committee of the Whole Meeting.

Upon motion duly made by Councilmember Chock, seconded by Councilmember Brun, and unanimously carried, the Minutes of the June 21, 2017 Committee of the Whole Meeting was approved.

The Committee proceeded on its agenda items as follows:

Bill No. 2650      A BILL FOR AN ORDINANCE APPROVING A COLLECTIVE BARGAINING AGREEMENT FOR BARGAINING UNIT 11 BETWEEN JULY 1, 2017 AND JUNE 30, 2019  
**(This item was Deferred.)**

Councilmember Kaneshiro moved to approve Bill No. 2650, seconded by Councilmember Brun.

Council Chair Rapozo:            Let me just give the scenario that we have today. The action of today's Committee Meeting will be forwarded over to next week's full Council Meeting, and at next week's Council Meeting, we will only have four (4) members. Three of our members are going to be traveling with the Planning Department. With four (4) members, obviously, we would need a unanimous vote to pass either this measure or the next. I want some discussion as to what the feeling of this body is. This is what I consider one of the important decisions that we have to make. I know the Hawai'i Government Employees Association (HGEA) voiced their

desire to move forward today. The Fire Department is not as willing to move forward today. I just want to get the feeling of the Committee as to the direction. I would like to see this voted on by all seven (7) members. I want to have that discussion, is there any discussion going forward? Councilmember Yukimura.

Councilmember Yukimura: Are you suggesting that the option for the firefighters might be to hold it in the Committee?

Council Chair Rapozo: Yes.

Councilmember Yukimura: I do not have objections to a deferral.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: Chair, I just wanted to check in on the time. I think that we have some absences the following week or at the end of the month. Would that interfere with this moving forward?

Council Chair Rapozo: I do not believe we will have absences in the Council Meeting. The next Council Meeting on the 12<sup>th</sup>, we will only have four (4) members present. If we vote on this today, we cannot approve any of these things today and move it to the full Council in three (3) weeks. It will show up next week. I just want to make sure that everybody is aware of that because of the way the votes have gone.

Councilmember Yukimura: So if it is deferred in Committee, then it will come up in two (2) weeks.

Council Chair Rapozo: Correct, at the Committee level, and then it will come up on the 26<sup>th</sup> of July.

Councilmember Yukimura: Are we expecting a full Council on the 26<sup>th</sup>?

Council Chair Rapozo: Yes.

Councilmember Yukimura: Okay.

Council Chair Rapozo: So far.

Councilmember Kawakami: Or you folks can change your mind.

Council Chair Rapozo: Any discussion? Councilmember Kaneshiro.

Councilmember Kaneshiro: For me, in all fairness, I would rather see everybody vote on it. We have voted on things in the past where we know for the most part that the votes are there. When it is a close call, I think when it went through first reading or we have heard it in Committee, it was a 7:0 vote, and then it gets to Committee and we only have four (4) people, we kind of get a feeling that it is going to pass. For some of these, I think it is going to be a close call and I think the fairest thing to do would be to have everybody here and vote on it altogether. That is just my feeling.

Council Chair Rapozo: Any other discussion? The motion is to approve.

Councilmember Kagawa: Are we going to defer? I am leaning towards what Councilmember Kaneshiro and Councilmember Yukimura had said, that a full Council should vote on this since it is going to be a tight vote. I am willing to defer.

Council Chair Rapozo: I will entertain a motion to defer.

Councilmember Kagawa moved to defer Bill No. 2650, seconded by Councilmember Brun, and unanimously carried.

The Committee proceeded on its agenda items as shown in the following Committee Reports, which are incorporated herein by reference:

**CR-BF 2017-05:** on Bill No. 2656

A BILL FOR AN ORDINANCE APPROVING A COLLECTIVE BARGAINING AGREEMENT FOR BARGAINING UNITS 2 AND 13 BETWEEN JULY 1, 2017 AND JUNE 30, 2019 **(Approved.)**

**CR-BF 2017-06:** on Bill No. 2657

A BILL FOR AN ORDINANCE APPROVING A COLLECTIVE BARGAINING AGREEMENT FOR BARGAINING UNITS 3 AND 4 BETWEEN JULY 1, 2017 AND JUNE 30, 2019 **(Approved.)**

Council Chair Rapozo: We have ES-910 next.

ES-910 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a) (2) and (4), and Section 3.07(E) of the Kaua'i County Charter, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing regarding the pay adjustment request for the County Clerk

and related matters. This briefing will be followed by discussion and decision making by the Council regarding the adjustment in pay for the County Clerk effective July 1, 2017. 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. Furthermore, this agenda item pertains to the evaluation including setting of salary, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held.

Councilmember Yukimura moved to convene into Executive Session for ES-910, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: There are no members of the public. Discussion? Councilmember Kagawa.

Councilmember Kagawa: I thought that we resolved what we wanted to do, which is we were going to follow Mauna Kea's advice and just post it, and agreed that past practice could be changed and it would not be too painful. I do not know if there is a need to discuss what we had decided at the last meeting, not saying that I do not want to go in and spend more time, but I thought that we resolved it, knowing that there was a solution and it was not going to be too painful and the Council felt that we can do it and go along with his recommendation.

Council Chair Rapozo: Real quick, because we have a pending item, we have to be real careful with what we discuss here because Councilmember Yukimura is recused from the discussion from last week. What I understood from Mr. Trask last week was that this would be the right way or the correct way. I do not want to get into the discussion because there is pending litigation involving Councilmember Yukimura, so I do not want to discuss...

Councilmember Yukimura: Chair, I do not think there is anything about my involvement on this issue.

Council Chair Rapozo: No, there is not, but he is reaching into the discussions that we had last week, which you are. Mr. Trask, I will suspend the rules and maybe you can give us some guidance.

There being no objections, the rules were suspended.

MAUNA KEA TRASK, County Attorney: *Aloha.* For the record, Mauna Kea Trask, County Attorney. Just regarding the Sunshine aspect of it, there is a potential. We just want to keep those totally separate.

Council Chair Rapozo: I do not want to discuss the Sunshine issue today.

Mr. Trask: Correct.

Council Chair Rapozo: What we are discussing today is the pay.

Mr. Trask: Understood. Councilmember Kagawa is right. Today was a posting in order to establish via the draft memo sent by the Department of Human Resources (HR) that at this agenda meeting, this action was taken. The vote can be taken without going into Executive Session; however, if you want to, we provided that language. The question is yours, the motion is yours. If you understand where you are going to go, you do not have to go in.

Council Chair Rapozo: No one knows where anyone is going to go until someone makes a motion, unless someone needs to discuss this pay increase in Executive Session. Councilmember Yukimura, do you have a question for Mr. Trask? If not, I am going to release him.

Councilmember Yukimura: Yes.

Council Chair Rapozo: Okay. Go ahead.

Councilmember Yukimura: Is it not a requirement of all boards that we do evaluations? I thought an evaluation is tied-in to this, because past practices, we have been doing annual evaluations and I do not think we have done one for at least one (1) year, but I was going to find out in Executive Session.

Mr. Trask: What I learned was that in 2009, I believe, the Salary Commission Ordinance, part of that Resolution...they attempted to mandate that all appointing authorities perform evaluation or to substantiate that raise. However, later on, it was opined that that was beyond their chartered authority. They do not tell the appointing authority what to do, so that was removed from all subsequent Salary Commission resolutions. The Council, as the appointing authority, makes the decision, because it is a board and commission, via majority vote. So you can do an evaluation if you like. This body does not have to do an evaluation if it does not like. Because this is not a board and commission on the executive branch, the executive branch has different practices, but respecting the separation of powers. For the record purposes, the memorandum is required, but how you do it is not...there is not a requirement. That is why there is no evaluation attached. That is not indicated on the memorandum, so the decision is yours. You can do it if you want to, but there is no reason you have to.

Councilmember Yukimura: I agree with that. I think it is best practice and it has been past practice in recent years that we do evaluations, just because I think that is how the County does it with every employee. I believe HR sends out notices for annual evaluations. So I thought that was what we were going to do together with the pay raise issue.

Council Chair Rapozo: Any other questions for Mr. Trask? If not, thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Does anyone want to go into Executive Session?

Councilmember Yukimura: There is a vote pending on it.

Council Chair Rapozo: There is no vote. I am just going to...

Councilmember Yukimura: There is a motion pending on it, so the vote is pending.

Council Chair Rapozo: To go into Executive Session, right.

Councilmember Yukimura: Right.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: I think we can go in and answer questions. I want to put this thing to rest and have a resolution as far as what we are going to do and let us just move forward on it. If answering questions in Executive Session will satisfy that, then I do not mind.

Council Chair Rapozo: Okay. Roll call.

The motion to convene in Executive Session for ES-910 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 7,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: With that, we will reconvene in Executive Session in five (5) minutes. This meeting is adjourned. Thank you.

There being no further business, the meeting was adjourned at 9:51 a.m.

Respectfully submitted,



Codie K. Yamauchi  
Council Services Assistant I

APPROVED at the Committee Meeting held on July 19, 2017:



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MEL RAPOZO  
Chair, COW Committee