

COUNCIL MEETING

JANUARY 13, 2016

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, January 13, 2016 at 9:16 a.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock
Honorable Gary L. Hooser
Honorable Ross Kagawa (*excused at 2:29 p.m. to 4:26 p.m.*)
Honorable Arryl Kaneshiro
Honorable KipuKai Kualii
Honorable JoAnn A. Yukimura (*excused at 3:53 p.m.*)
Honorable Mel Rapozo

APPROVAL OF AGENDA.

Councilmember Chock moved for approval of the agenda as circulated, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: There are two (2) corrections that need to be made on page number 4 of your agenda, C 2016-08, the Division of Vocational Rehabilitation (DVR) Summer Youth Employment. We were notified yesterday that the amount has changed from one forty thousand dollars (\$140,000) to one hundred sixty-one thousand one hundred twenty dollars (\$161,120). I need a Councilmember to make a motion to amend the agenda to reflect that change.

Councilmember Chock moved to amend the agenda as stated by Council Chair Rapozo to reflect the correction in C 2016-08, seconded by Councilmember Kualii, and unanimously carried.

Council Chair Rapozo: The next correction on the agenda is on page number 8, Resolution No. 2016-15, the reappointment of Theodore Blake to the Public Access, Open Space, Natural Resources Preservation Fund Commission. There is a typographical error on the agenda that states that it is a "Mayoral" reappointment, but it should be a "Council" reappointment. I will need another motion to amend that as well.

Councilmember Chock moved to amend the agenda as stated by Council Chair Rapozo to reflect the correction in the title of Resolution No. 2016-15, seconded by Councilmember Kualii, and unanimously carried.

The motion for approval of the agenda as amended was then put, and unanimously carried.

MINUTES of the following meeting of the Council:

December 2, 2015 Public Hearing re: Bill No. 2604 and Bill No. 2606

Councilmember Kualifi moved to approve the Minutes as circulated, seconded by Councilmember Chock, and unanimously carried.

INTERVIEW:

POLICE COMMISSION:

- Michael C. Curtis – Term ending 12/31/2018

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Chair, the next item is an interview for the Police Commission. We received a memorandum from the Office of Boards & Commissions, dated January 8th, informing the Council that they have withdrawn the applicant for consideration as a member of the Police Commission. He is currently being considered for other commission opportunities.

Council Chair Rapozo: Do we need a motion for that?

Ms. Fountain-Tanigawa: No.

Council Chair Rapozo: Okay. Thank you. Next item please.

CONSENT CALENDAR:

C 2016-01 Communication (12/07/2015) from the Director of Finance, transmitting for Council information, the Second Quarter Statement of Equipment Purchases for Fiscal Year 2015-2016, pursuant to Section 17 of Ordinance No. B-2015-796, the Operating Budget of the County of Kaua'i for Fiscal Year 2015-2016.

C 2016-02 Communication (12/07/2015) from the Mayor, transmitting for Council consideration and confirmation, Mayoral appointee Kevin T. Mince to the Police Commission – Term ending 12/31/2018.

C 2016-03 Communication (12/08/2015) from Council Chair Rapozo, transmitting for Council consideration and confirmation, the reappointment of Dorothea K. Hayashi to the Public Access, Open Space, Natural Resources Preservation Fund Commission (Hanapēpē – 'Ele'ele) – Term ending 12/31/2018.

C 2016-04 Communication (12/28/2015) from the Mayor, transmitting for Council consideration and confirmation, the following Mayoral reappointments to the various Boards and Commissions for the County of Kaua'i:

a. Board of Ethics

- Addison C. Bulosan – Term ending 12/31/2018

b. Board of Review

- Dorothy R. Bekeart – Term ending 12/31/2018
- c. Board of Water Supply
- Sherman Tsuyoshi Shiraishi – Term ending 12/31/2018
- d. Charter Review Commission
- Cheryl A. Stiglmeier – Term ending 12/31/2018
- e. Civil Service Commission
- Karen S. Matsumoto – Term ending 12/31/2018
- f. Cost Control Commission
- Laurie Lynn Koike Yoshida – Term ending 12/31/2018
- g. Fire Commission
- Clifton J. Miranda – Term ending 12/31/2018
 - Thomas M. Nizo – Term ending 12/31/2018
 - Bradley M. Maruyama – Term ending 12/31/2018
- h. Kaua‘i Historic Preservation Review Commission
- *Anne K. Schneider – Term ending 12/31/2018
 - **Althea Kalei Lovell Arinaga (Archaeology) – Term ending 12/31/2018
 - **Lawrence Chaffin, Jr. (At-Large) – Term ending 12/31/2018
- i. Liquor Control Commission
- Pauline D. Ventura – Term ending 12/31/2018
- j. Planning Commission
- Louis E. Abrams (Business) – Term ending 12/31/2018
- k. Police Commission
- Mary K. Hertog – Term ending 12/31/2018
- l. Public Access, Open Space, Natural Resources Preservation Fund Commission

- *Karen K. Ono – Term ending 12/31/2018
- **Theodore Kawahinehelelani Blake (Kōloa – Po‘ipū – Kalāheo) – Term ending 12/31/2018
- **Dorothea K. Hayashi (Hanapēpē – ‘Ele‘ele) – Term ending 12/31/2018

m. Salary Commission

- Jo Ann Shimamoto – Term ending 12/31/2018

*Mayoral Reappointment; Council confirmation not needed

**Council Reappointment

C 2016-05 Communication (01/05/2016) from Council Chair Rapozo, transmitting for Council consideration and confirmation, the reappointment of Theodore Kawahinehelelani Blake to the Public Access, Open Space, Natural Resources Preservation Fund Commission (Kōloa – Po‘ipū – Kalāheo) – Term ending 12/31/2018.

Councilmember Kagawa moved to receive C 2016-01, C 2016-02, C 2016-03, C 2016-04, and C 2016-05 for the record, seconded by Councilmember Kualii.

Councilmember Kualii: Chair, I had some questions about C 2016-01 and did send them over to get them answered, but I still want more information and I do not know if we want to deal with that here.

Council Chair Rapozo: Okay.

Councilmember Kagawa withdrew the motion to receive C 2016-01, C 2016-02, C 2016-03, C 2016-04, and C 2016-05 for the record, Councilmember Kualii withdrew his second.

Councilmember Kagawa moved to receive C 2016-02, C 2016-03, C 2016-04, and C 2016-05 for the record, seconded by Councilmember Yukimura, and unanimously carried.

Council Chair Rapozo: Can we take up C 2016-01?

C 2016-01 Communication (12/07/2015) from the Director of Finance, transmitting for Council information, the Second Quarter Statement of Equipment Purchases for Fiscal Year 2015-2016, pursuant to Section 17 of Ordinance No. B-2015-796, the Operating Budget of the County of Kaua‘i for Fiscal Year 2015-2016.

Councilmember Kagawa moved to take C 2016-01 off of the Consent Calendar for discussion, seconded by Councilmember Kaneshiro, and unanimously carried.

Council Chair Rapozo: Did you want this referred to the Budget & Finance Committee?

Councilmember Kualii: I do not know how much time it is going to take.

Council Chair Rapozo: I am just looking at our agenda today and the time, so I would recommend that if there are any big discussions for any of these items that we just refer it to the Committee next week where we will have an opportunity to meet with them prior and hopefully get your questions answered.

Councilmember Kualii moved to refer C 2016-01 to the January 21, 2016 Budget & Finance Committee Meeting, seconded by Councilmember Kaneshiro, and unanimously carried.

Council Chair Rapozo: Thank you. That item has been referred. Ms. Cowden has signed up to speak on C 2016-04. If there are no objections, let me just suspend the rules and have her come up and offer her testimony. That matter has already been received. Clerk, is it correct that we can enter her testimony into the record?

Ms. Fountain-Tanigawa: Yes.

Council Chair Rapozo: Thank you.

There being no objections, the rules were suspended.

FELICIA COWDEN: Felicia Cowden for the record. I want to speak specifically on the Charter Commission nomination. I like Cheryl Stiglmeier and I am not saying that she is not a quality candidate for it. What I am calling attention to is that the period ends in 2018. I noticed that all of these end in 2018, but when you look at Section 24.03 of the Charter, this Charter Review Commission ends in December 2016 and it is presumptive to say that we can extend it to 2018. The Charter Review Commission is powerful in that they write changes to the power structure of our County and there is almost no oversight with this. These seven (7) individuals are selected with virtually no public vetting. Even in this, I see that the County confirmation is not needed for this reappointment. All seven (7) of them are competent, capable, good people. I have no problem with who they are. But there is very little transparency or oversight for the amount of power that group has. Really, Hō'ike and The Garden Island should be in there. There is very little public attendance. I read through last year's minutes, which was sideways by the way, and was not easy to see it. The suggested changes are substantive and pretty much all removing power from the people and elected officials, like the County Council, transferring those decisions to hired staff. It is almost like a stealth committee and it is becoming self-perpetuating. It is supposed to be three (3) years on and three (3) years off. Last time around it got extended to being a ten (10) year period. These people are really good, but they are making decisions without a campaign or an election or oversight. I was the first person this year that was not invited by them of the public to come in and speak in the entire year. In that meeting the room was dark and the board was blocking the way. It was very concerning to me. I could not even tell that anybody was in there until I was fully in the room. Some of these meetings are forty (40) minutes. A long meeting is two

(2) hours. There have been ten (10) meetings in the last year and the public notices are at such a bare minimum. I get six (6) minutes, right?

Council Chair Rapozo: Three (3) minutes.

Ms. Cowden: If someone else comes, then can I come back?

Council Chair Rapozo: Yes.

Ms. Cowden: The public notice is at a bare minimum. It has been seven (7) weeks since the last meeting, yet those minutes are not posted and they will be deeply embedded in an agenda link placed on the County website. They go on six (6) days before the next meeting. That might be the case for all of these, but it needs to be looked at. I have examples of the type of things that have come in.

Council Chair Rapozo: Anyone else wishing to testify on this matter? Let me just remind you, and you will have another three (3) minutes, Felicia, but this item is on the specific appointments on the candidates. It sounds like you have some issues on the structure and I am not going to stop your testimony, but if you would like to confine your statements to the specific appointments, which is what this item is on. If you have some issues on the structure, then I would be more than happy to either post another item or set up a meeting with Boards & Commissions Administrator. With that, you can proceed with your second three (3) minutes. Can someone turn off your phone, please? Go ahead, Felicia.

Ms. Cowden: Well, are you saying that I cannot testify as I was going to?

Council Chair Rapozo: I said that I am not going to block your testimony. I was just asking you for the courtesy to confine your statements to what is on the agenda.

Ms. Cowden: Okay. With that individual, I am fine with her as an individual. She is new and she barely speaks there, so I cannot get a good sense of what her positions are. I do not really have such a big issue with this individual because I like her. What I have an issue with is the fact that without even blinking an eye, people like this, anybody, anyone in there, gets reinstated, and it is specific because this says up to 2018 and the Charter says 2016. When we look at the power of what goes in there, I am just going to give a couple of examples because I think it is important for the community to know what happens and maybe even the Council does not know that it takes a lot of tenacity to follow something like this. One of the things that will come up is that they have put on the ballot for next time, ten percent (10%) of the registered voters instead of five percent (5%), so they have doubled the amount of people to be able to do exactly what these seven (7) people do. It is like almost four thousand two hundred (4,200) correct signatures will be required, which really means close to eight (8) to ten (10). I am going to give one more example, because I think in these meetings no one looks at what is really happening. Like on the new proposal, there is element 3.07(d) which states that, "Two-thirds of the Council can vote for another Councilmember to be suspended

without pay for no more than a month. They can expel that Councilmember guilty of disorderly, contemptuous, or improper conduct at any meeting.” This is more than a proofread. These things change the structure of power and put them into paid County staff as opposed to elected officials. When we look at even just that one example, two-thirds of seven (7) is four point six seven (4.67), so I guess that rounds up to five (5), but this is ambiguous and so is “contemptuous.” This further disadvantages minority members. There are so many elements like this, but I will say that when we do not look and discuss what goes before these commissions when they have equal power essentially to what the County Council does. You folks all go through a very vetting election. We are not even vetting these people. We just took one big broad stroke and said, “Yes.” I only looked at one (1) issue, but maybe this could be said for all of them. Thank you.

Council Chair Rapozo: Thank you very much. Councilmember Yukimura.

Councilmember Yukimura: Could you explain your statement that confirmation is not required?

Ms. Cowden: I was looking on this here and there are these little dots here, so there is only one (1) asterisk on the majority of these appointments. It says that if there is one (1) asterisk, it says, “Mayoral Reappointment; Council confirmation not needed.” For most of these, the Council does not even confirm it.

Councilmember Yukimura: So you are not questioning that confirmation is needed for the item you spoke on for the Charter Review Commission?

Ms. Cowden: I am. I am saying that when they said to 2018...

Council Chair Rapozo: Okay, I am not going to allow any further discussion. This matter has been received and as a courtesy we brought you up, but I am not going to allow a debate here on the floor.

Councilmember Yukimura: It is not a debate.

Council Chair Rapozo: You have made your testimony and if Councilmembers have any questions, they can ask you.

Ms. Cowden: Alright. Well, it is out of alignment with the Charter. This thing that is confirmed is out of alignment of the Charter.

Council Chair Rapozo: Well, I am just going to say that the discussion is on specific appointments.

Ms. Cowden: And that specific appointment is out of alignment with the Charter.

Council Chair Rapozo: Okay. Thank you. Can we move on to the next item, please?

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

Councilmember Hooser: Chair, I just have a brief question. I know this item is going to come up later, but are we going to have the Administration come up and respond to the question that was posed on whether or not it is out of alignment?

Council Chair Rapozo: If we are going to go down that road, then we need to do a motion to reconsider because that matter has been tabled. I took the public testimony because it was an oversight on our part. If we want to have a discussion, we need a motion to reconsider, open that item back, and take it out of the Consent Calendar if that is what you want to do. Right now, that matter has been received.

Councilmember Hooser: Just a follow-up to be clear, we will still be voting on the confirmations.

Council Chair Rapozo: Correct.

Councilmember Hooser: So at that point...

Council Chair Rapozo: We can bring the Administration up.

Councilmember Hooser: Okay. That is fine. It is a valid question and it does seem to be out of sync, so I wanted the question answered before we vote.

Council Chair Rapozo: It is, but I know that the actual Resolutions are coming up later. Again, I did that because it was our oversight.

Councilmember Hooser: I understand. As long as we resolve that question before we vote today.

Council Chair Rapozo: Trust me, I wrote that question down because that needs to be asked of the Administration when they come up during the Resolution.

Councilmember Hooser: Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Just so that the Administration knows the question now so that they do not need time to figure it out when we ask it...

Council Chair Rapozo: Well, I suspect that someone from the Administration is either watching this or they are here. If they are not paying attention, then I do not think we need to call them and say, "Hey, this is what we are going to ask." Someone should be watching this. They know it is for the Resolutions. It is a big day for Boards & Commissions, so someone should be here or should be watching. If we want to babysit them, Staff why do we not send over a

little E-mail saying, "This is what we are going to ask you so be prepared." Can I have the next item, please?

COMMUNICATIONS:

C 2016-06 Communication (11/30/2015) from the County Engineer, transmitting for Council consideration, amendments to Chapter 14, Kāua'i County Code 1987, as amended, relating to the Plumbing Code for adoption of the 2012 Uniform Plumbing Code based on the State Building Code Council's recommendation to assure minimum health and safety standards for plumbing work: Councilmember Kagawa moved to receive C 2016-06 for the record, seconded by Councilmember Kualii.

Council Chair Rapozo: Anyone in the public wishing to testify on this matter? You may come up. The rules are suspended if there are no objections.

There being no objections, the rules were suspended.

MATTHEW BERNABE: Matthew Bernabe for the record. I am going to have to tell you that I am ignorant on what this is. Is this just for your buildings or is this for the whole County as a whole? I guess my second question is what are we doing? Is this just a standard, stamp it and go on? I think as someone who is interested in water, when I see plumbing as a whole, I want to see a little bit more than just...I do not even know what this means. I am just going on record saying that this is kind of confusing and I would like to see something more than what this is. Thank you.

Council Chair Rapozo: Thank you. Anyone else? We will call the meeting back to order. This is the Bill that is going to amend the Plumbing Code, which is the entire code for the entire County of how we treat our Building Code and Plumbing code. This is only first reading, so it will go to a public hearing and a committee meeting. The Administration will be here to talk about every part of this Bill at the committee meeting. That is the same for the Electrical Code coming up as well. Any further discussion?

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

The motion to receive C 2016-06 for the record was then put, and unanimously carried.

C 2016-07 Communication (11/30/2015) from the County Engineer, transmitting for Council consideration, amendments to Chapter 13, Kāua'i County Code 1987, as amended, relating to the Electrical Code for adoption of the National Electrical Code, 2014 Edition based on the State Building Code Council's recommendation to assure minimum health and safety standards for electrical work: Councilmember Kagawa moved to receive C 2016-07 for the record, seconded by Councilmember Kualii.

Ms. Fountain-Tanigawa: Chair, we have one (1) registered speaker.

Council Chair Rapozo: I will suspend the rules with no objections.
Can we have the first speaker?

Ms. Fountain-Tanigawa: The first registered speaker is Ryan Takahashi.

RYAN TAKAHASHI: Good morning Chair and Councilmembers. Ryan Takahashi with the Hawai'i Electricians Market Enhancement Program, representing IBEW Local Union 1186 and the Electrical Contractors Association of Hawai'i. We are here just to say that we support the intent of this Bill and we support a passing to this first reading. We do have some concerns in Section 13-2.3 with some of the language that wants to be removed and added, so we want to continue with this process. Ultimately, we do support the County in pushing through the 2014 Electrical Code, which is in the best interest of public safety for workers and the public. We do want to support this and deal with that matter at the appropriate time through the public hearing process. Thank you.

Council Chair Rapozo: Thank you very much. Anyone else wishing to speak? Please come up.

RANDALL NISHIMURA: Good morning. Happy New Year. For the record, Randall Nishimura. I am here to represent Ron's Electric Inc., as well as the Electrical Contractors Association. Like Ryan, we are in general support of this Bill and we also have concerns regarding Section 13-2.3 that we would like to address at the time of public hearing. I would like to commend both the Administration, in particular Mr. Haigh, for pushing this along, as well as the County Council for taking this matter up. The 2014 Code...actually, we skipped one code update and this is really long overdue. With that, we urge passage on first reading. Thank you.

Council Chair Rapozo: Thank you very much. Anyone else wishing to testify? Seeing none, I will call the meeting back to order. Further discussion? Councilmember Kagawa.

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

Councilmember Kagawa: I just want to encourage the Administration to work with the electrical union representatives to make sure that we have a smooth committee meeting so that everyone can get on-board on what is best for our workers, as well as our public. Thank you, Chair.

Council Chair Rapozo: Thank you. Any further discussion?

The motion to receive C 2016-07 for the record was then put, and unanimously carried.

Council Chair Rapozo: We have the Barking Dog Nuisance Bill today and there has been a request from Councilmember Yukimura to take up this Bill earlier than later. If there is no objection from the Council, then I am going to do that. Councilmember Kagawa.

Councilmember Kagawa: I know there are some workers from the State that are here, so if we could see what item they are here for so that we can clear off that item and let us go to your recommendation. We could also check with the firemen, too, so they can get back to work if they have an item that they are waiting for.

Council Chair Rapozo: Let us take the next item.

Councilmember Kagawa: Thank you, Chair.

C 2016-08 Communication (12/03/2015) from the Director of Economic Development, transmitting for Council approval and authorization to:

1. Receive funds from the State Division of Vocational Rehabilitation (DVR); and
2. Expend funds for the County of Kaua'i Workforce Innovation and Opportunity Act (WIOA) / Division of Vocational Rehabilitation Summer Youth Employment Program, subject to availability via the Title 4 – WIOA / DVR Federal grant, for an estimated total of \$161,120 for a three-year contract, for the County of Kaua'i to conduct a Summer Youth Employment Program for vocational rehabilitation participants (with special needs) with subsidized summer jobs to acquire work experience in a safe environment in addition to helping them develop good work habits.

Councilmember Chock moved to approve C 2016-08, seconded by Councilmember Kualii.

Council Chair Rapozo: I see a lot of hands going up, so if there are no objections, I will suspend the rules. Do we have registered speakers?

There being no objections, the rules were suspended.

ALICE PARKER: Alice Parker. I think this is a tremendous idea and we definitely need this. Vocational rehab helped me after I got divorced so that I was able to go to college despite my disabilities and it really helps. The young folks really need incentive and training; otherwise it is drugs and a lost life. Thank you.

Council Chair Rapozo: Thank you. Anyone else? Mr. Bernabe.

Mr. Bernabe: Matthew Bernabe for the record. I support this one hundred percent (100%). When I first went to nursing school, I took a job helping this sector of the community just to see if I could hang with it and I had a blast and learned a lot. These are the kinds of programs that they need to get out there and intermingle, the same stuff regular kids and regular humans need. They need the same thing. I had an unorthodox method and basically I just treated them

like they were from Kapahi and they loved it. I support this one hundred percent (100%). Thank you.

Council Chair Rapozo: Thank you. Anyone else? If not, I will call the meeting back to order. The motion is to approve. Any further discussion? Councilmember Yukimura.

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

Councilmember Yukimura: Regarding this Vocational Rehabilitation Summer Youth Employment program, this is a marvelous thing and I commend the Administration for putting it together, so that these young people will have an opportunity to learn what it is like to be an employee and to work with the kind of support that they need. I wholeheartedly support this and I think it will be a model for even kids without particular disabilities. This is a really good place to start. Thank you to all of you who have worked on this.

Council Chair Rapozo: Thank you. Any further discussion? It helps us when the application or the request comes in with the proper support documentation and explanation. You folks did a great job which is why we did not bring you up. I appreciate you being here and I agree with everything that Councilmember Yukimura said.

The motion to approve C 2016-08 was then put, and unanimously carried.

Council Chair Rapozo: If everyone could just take a look at C 2016-10, there is a request from the Civil Defense Agency for a donation of a utility trailer from the State for the Kaua'i Fire Department's search and rescue operations. Is there going to be any questions? If not, I am going to release the Kaua'i Fire Department. If there are, then we are going to take that up. No? Okay. With that, you folks can leave. Thank you. At this point, we are going to deviate from the agenda because of a request from Councilmember Yukimura due to her having to leave early today. We want to make sure that she is here for the barking dog discussion. We are going to move on to that.

There being no objections, Bill No. 2604, Draft 1, was taken out of order.

BILLS FOR SECOND READING:

Bill No. 2604, Draft 1 – A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE IN THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO BARKING DOG NUISANCE: Councilmember Kuali'i moved for adoption of Bill No. 2604, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion before I open it up for public testimony? If not, anyone here registered to speak on this Bill?

Ms. Fountain-Tanigawa: We have one (1) registered speaker, Alice Parker.

Council Chair Rapozo: With that, I will suspend the rules if there are no objections. Ms. Parker.

There being no objections, the rules were suspended.

Ms. Parker: Alice Parker for the record. I lost my place. Is this about the lobbyists?

Council Chair Rapozo: No, barking dogs.

Ms. Parker: Oh, barking dogs. I think what you presented lately is terrific. Thank you (inaudible) for my new term councilor with a “ci” not a “se.” I do not think there is a problem with financing. The people who are not treating their dogs and possibly not educated in the treatment of dogs should be fined if they do not want to treat the dogs in a reasonable, fair, and humane way. This looks good. We need relief from barking dogs. As Lonnie Sykos pointed out, our houses are thin because we do not need thick buildings to protect us from the climate, so we do hear everything that goes on. I think out in the agricultural area if hunting dogs are barking—as I mentioned in earlier testimony about my daughter living next door to hunting dogs that barked all the time because they were thirsty, hungry, did not exercise, and were not treated humanely. Anyway, this looks terrific. Thank you. Please continue on.

Council Chair Rapozo: Thank you. Mr. Bernabe.

Mr. Bernabe: Matthew Bernabe for the record. I was here for the process to get to that end amendment, and I like it. I just want to go on record to say that if we do get the Kaua‘i Humane Society to be the enforcers of this, I would like to have some serious oversight and maybe even a public review of how they run things that consist of across the board residents, from hunters to whatever sector you can get. I really believe that at the end of the day, the park rangers should fill this void. That is my opinion. It is amazing because a lot of people watched that and came up to me and talked to me about this. The thing about for me is whenever I think of a chronic barking dog in my life, it is usually accompanying other offenses of abuse. It is usually got emaciation, chaffing to the point where it is bleeding, ribs showing, dehydration, ticks, and all of that. There is a certain amount of ticks and fleas that you pass and that is already considered abuse. My logic of why an officer needs to be the only avenue of starting a citation process is because what if an elderly person has fallen and cannot get up and that is the reason the dog is barking? What if the people are on vacation and that chronic dog barking for four (4) days is somebody who is squatting in their house or perhaps maybe that night they are getting robbed? It is so much better to have the officer respond, and whether they say that we cannot pick up the load or not—guess what? They are part of the civil service. If we deem it, they have to do it. That is how I view this. I have always not wanted the Kaua‘i Humane Society to be part of this, but if it does go down that route, I really urge that some public oversight, as well as some strict County oversight goes along with the process, because many of the people agree with me. That is the one thing that I want to leave here. How many people came up to me and said, “We do not trust them either, Matt.” I do not trust them. I do not think they can do it on their own. That is not negative because I am

obviously supporting where we are going with this. I just do not think that they are the people the fill the void. Thank you very much.

Council Chair Rapozo: Thank you. Anyone else wishing to testify?
Mr. Hart.

BRUCE HART: For the record, Bruce Hart. Out of the box, Council Chair. I am in support of this amendment. I had not seen it when I was here last Wednesday. One of the things that I am really pleased about is that it embodies both suggestions I made whenever I was allowed to testify last time. The amendment by Councilmember Yukimura said "any person." I suggested "any two (2) persons," the complainant and the enforcement officer. That is any two (2) persons." It also is not any longer limited to a neighbor. That was my other request. I am very pleased with this amendment and I think that I will leave it up to this Council to make decisions like who the enforcement officer will be and all of the rest of that. There is something that I think has pleased me as much or even more. On Thursday, I got up and went to Hō'ike and begun to read the captions of last Wednesday's council meeting where I saw this Council come together. I saw them work as a team and I saw that spirit and unity at work here among this Council. That really edified me. I think it was great. I am in favor. Thank you.

Council Chair Rapozo: Thank you, Mr. Hart. Anyone else?

KALANIKUMAI 'O NĀ 'ALI'I HANOHANO: *Aloha* Chair, Councilmembers, Staff, and Kaua'i. I would just like to weigh in on this a little bit, because I live in an agricultural district with invested hunters, as some of my neighbors. Over the eighteen (18) years that I have lived there, we have barking dogs going off. There are probably twelve (12) to fifteen (15) dogs at two (2) neighboring residences in pens and maybe thirty (30) to fifty (50) times a day they are going off. They get into a touse during the night, a cat or cow goes by and causes a disturbance, or somebody is going up the road. It is something that we live with and I tell people that it is better than honking horns, traffic, and neighborhood fights. However, there are times when I used to travel late at night for years, coming back to or going to the radio station and find stray cattle on the road or donkeys that I had to call the police on. There were also times also as mentioned where there is an unusual occurrence of a barking dog that is not part of the usual background. I think those instances should be investigated by an officer. It could be a problem or somebody injured, as mentioned. If the Kaua'i Humane Society gets it on the list to go out, they are not equipped to deal with emergency situations like that. I would ask that you consider expanding a little bit of leeway on what types of complaints and with the intent to try to resolve things before it gets any further. Also, remind people that in certain situations when you move into a neighborhood that is invested like that, you have to learn to live with it. *Mahalo*.

Council Chair Rapozo: Sir, I just need you to state your name for the record.

Mr. 'O Nā 'Ali'i Hanohano: For the record, my name is Kalanikumaikamakeule'ule 'O Nā 'Ali'i Hanohano, known locally is Branch Harmony. *Mahalo*.

Council Chair Rapozo: Thank you. I think the captioner got all of that. Anyone else wishing to testify? Mr. Mickens.

GLENN MICKENS: For the record, Glenn Mickens. I completely support this Bill with one big caveat and I think Councilmember Yukimura made reference to that in her amendment about the enforcement thing. I cannot see how the police or the Kaua'i Humane Society is going to possibly enforce this thing, and without an enforcement mechanism, you can pass all the ordinances and laws you want, but it is going to do no good. Basically, I think it is a people problem more than a dog problem. People are taking care of their animals. We have people across the street and their dogs are well-trained. The minute they bark a little bit, somebody says something and the dog stops. This Bill is fifteen (15) minutes, twenty (20) minutes, or whatever it is but you do not see that happen that much. Again, if the people will exercise their animals and not just tie them up in a place and leave them there—I had a dog for a long, long time over here and I took him every place I went. Animals are made to be exercised, just as people are. Again, we can pass this Bill. I completely support having some method by doing something about it. Again, I think you have to look carefully because if the police or somebody are on some case, or I think The Garden Island made mention of this, but if they are on some other issue, they are not going to drop what they are doing. At first when it is passed, they will jump on it. All of a sudden they say that it is really low on their priority list. If somebody calls about a dog, they are going to have sit there and take testimony about a dog barking. I do not think it is going to be anywhere on top of their list, so I think they will have a problem there. Thank you.

Council Chair Rapozo: Thank you. Anyone else wishing to testify? If not, we will call the meeting back order. Discussion? Councilmember Yukimura.

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

Councilmember Yukimura: Chair, with your permission I would like to make a brief presentation.

Council Chair Rapozo: Okay. Are you going to be proposing an amendment?

Councilmember Yukimura: I may, depending on if there is openness to it. Otherwise, I do not want to waste time. The Bill that was passed out of Committee last week tampers with the long established Rules of Evidence of the court by allowing barking dog citations to be made only if an enforcement officer witnesses the barking dog behavior, and it also makes enforcement of the law unnecessarily costly, wasting taxpayers' money that could be better used for other needs and programs. The court has an immense history and protocol for presentation of evidence and proof. The legislative branch, i.e. this Council, should not interfere with that. Under the court's Rules of Evidence, one (1) civilian witness is sufficient to prove murder, rape, robbery, and other felonies. An enforcement officer is not required to observe such illegal acts for arrest or conviction to occur. Why then should the law preclude credible civilian witnesses to be used to prove incessant and unreasonable barking? I have investigated the outcomes of barking dog citations that made it to the Prosecuting Attorney and the court under the

previous law and the reason I am looking at the previous law is because the previous law did not require an enforcement officer to witness the violation. The data shows that this law worked without requiring an officer. If the previous law allowed an enforcement officer to be a witness, but it did not require enforcement and allowed other ways of providing evidence. This flow chart shows the outcome of the seventy-one (71) barking dog complaints filed between March 2014 and June 2015. Of the seventy-one (71) complaints filed, fifty-three (53) or seventy-five percent (75%) of the complaints were resolved with education and information. You see that it starts with being disturbed and goes to a complaint that is filed. Seventy-five percent (75%) of the claims were resolved with education and information, meaning no citations was necessary. There were eighteen (18) logs submitted, which means that education was not enough and of those eighteen (18) logs, one (1) was determined by the Kaua'i Humane Society that there was no probable cause. Neighbors were interviewed and it was found that it was a "Hatfield v. McCoy" kind of thing and not a real barking dog problem, so no citation was issued. Seventeen (17) citations were issued and they resulted in these results: According to the Office of the Prosecuting Attorney's (OPA's) records, only ten (10) were disposed until the law was repealed. In four (4) of the ten (10) cases, defendants pleaded no contest or pled guilty and a videotape was used in one of the cases. In four (4) of the cases, the court dismissed or found that the defendant was not guilty. What was underlying these four (4) dismissals? In one case, the dog stopped barking and the complainant decided that they did not want to proceed with the court case. In another case, the defense witnesses contradicted the complainant's testimony, which is the regular court process. The judge made a decision about who was credible and based on that evidence determined that the defendant was not guilty. In one case, the Kaua'i Humane Society officer moved and OPA failed to call the complainant as a witness, which to me was a Prosecuting Attorney's strategy that I would disagree with as a trained attorney, but that case was dismissed. Then in another case, insufficient evidence was determined by the court. It actually shows that the court process worked, in my opinion. In last two (2) cases, the Prosecutor dismissed two (2) cases because it was the wrong defendant; it was not the person actually owning the barking dog. In another case, the complainant did not respond to calls. You will is summary that fifty-three (53) of the complaints ended with education and information. One (1), the Kaua'i Humane Society found no probable cause; one (1), the dog stopped barking before trial; four (4) pled guilty or no contest; two (2) dog owners were found not guilty or the case was dismissed; and two (2) the Prosecutor did not proceed to trial because in one case the complainant did not show and in the other case there was a wrong defendant. The law worked. Again, I want to emphasize that I have no objections to allowing citations based on enforcement officers' firsthand observations, but to limit the evidence to that alone is not good policy and it puts artificial obstacles in the way of effective law enforcement. I would like to propose the amendment that I proposed in committee, which would be to allow videotaped testimony or to allow competent evidence per the rules of the court, in addition to allowing an enforcement officer so we would have either way to provide evidence. If there is an interest in doing that, I will propose that.

Council Chair Rapozo:

Thank you. Councilmember Kagawa.

Councilmember Kagawa: Let us try and explain the process. When somebody was issued a citation, was a free attorney provided to them or did they have to hire their own to defend themselves in court?

Councilmember Yukimura: Well, when there is a citation, there is an assumption of probable cause. We do not hire...

Councilmember Kagawa: I am just asking if we provided...the Prosecuting Attorney represents the accuser, free of charge.

Councilmember Yukimura: That is correct because this is considered a public violation, just like a traffic speeding. It is considered something that will harm the public, so we do not hire attorneys for people to defend people against traffic violations.

Councilmember Kagawa: But you are counting success as those who paid the thirty-five dollars (\$35), but perhaps did they pay the thirty-five dollars (\$35) because they did not want to pay one thousand five hundred dollars (\$1,500) that they would have to hire a private attorney to represent them?

Councilmember Yukimura: I do not know that it would require one thousand five hundred dollars (\$1,500).

Councilmember Kagawa: That is how much Shona Fox paid to Mark Zenger while Pamela Welch got a free attorney from the Prosecuting Attorney.

Councilmember Yukimura: In that case...

Councilmember Kagawa: Shona Fox won, but she was still out one thousand five hundred dollars (\$1,500).

Councilmember Yukimura: Well, in that case, Shona Fox actually stopped her dogs from barking.

Councilmember Kagawa: That is not my question.

Councilmember Yukimura: Well, okay. We do not hire attorneys to defend someone who is accused of violating a public law. We do not do that. We determine what a violation of public is and we set the standards for barking dogs. If there is probable cause for that standard to have been violated, then the court makes that determination and the defendant has to get their own attorney. The analogy is that we do not pay for attorneys to defend speeding violations.

Councilmember Kagawa: I guess my second question is how did you get fifty-three (53) cases of success out of seventy-one (71)? As I look at this sheet reported by the Kaua'i Humane Society, I see seventy-one (71) total reports and that number is correct. I see that sixteen (16) was closed with education and eight (8) was closed "other," so I do not know how you can count that as success. Then you have seventeen (17) citations issued. If you add sixteen (16) plus eight (8), that is only twenty-four (24). So the ones that did not even produce a log, you are counting that as success?

Councilmember Yukimura: That is correct because they did not want to pursue the complaint. The logs were submitted by people who said...

Councilmember Kagawa: How is that success?

Councilmember Yukimura: It means that either the complainant decided it was not worth their trouble and the barking was not bad enough to proceed or dog owners found ways to keep their dog quiet. At any rate, the complainant did not want to proceed and that is a resolution. That is what happens when you give people an equal playing field, you say, "Fill out the logs. That is your responsibility. You cannot be anonymous. You have to show up if you have a complaint." The other side is, "Ask to find ways to quiet their dog." That is the framework that the laws set up.

Council Chair Rapozo: Real quick, when that log was provided to the dog owner, I am not so sure that the dog owner would be informed of who the complainant is at that point.

Councilmember Yukimura: That is correct.

Council Chair Rapozo: So it is anonymous at that point. If I am the neighbor that is calling about a barking dog on my neighbor and once I get the log, there is a chance that in fact I am going to cause problems with my neighbor. To guess why fifty-three (53) chose not to submit that log is just pure speculation. It could be many reasons. I highly doubt the dog stopped barking because I just do, maybe some of them. I think what is clear is that some people just chose not to do the log. They do not want to become known as the neighborhood complainer. That is one choice or one reason. The other thing regarding the person who receives a ticket, we do not provide a lawyer for the person who gets a speeding ticket, but the officer witnesses the violation. We have concrete evidence that a crime was committed, so naturally we would not. In this case, we do not; we have a log, a log that says one neighbor said against the other neighbor that your dog was barking more than the time allowed, and then we are going to go to court on that. I think there is a big difference between when a person has received a citation for speeding with a firsthand witness, law enforcement officer testifying or speeding gun record, versus someone who is being cited because the neighbor said that they violated the law. I think there is a huge difference there. Councilmember Hooser.

Councilmember Hooser: Thank you, Chair. I am thinking about the Bill that is in front of us and the proposed changes that Councilmember Yukimura may propose, and I just wanted to just raise the question of the video evidence again. I indicated earlier that I would support that and if there was a majority that supported that, I believe that amendment might be offered. When we discussed it the last time, it was pointed out that this is a very high bar to cross, so it would not be that frivolous people would just submit a video, it would not be accepted in court, and that it is very difficult. I would advocate that because it is a high bar, it does offer another alternative to the homeowner who may be subjected to this barking and the police officer gets there or does not show up. It is another alternative so I want to support that and raise the question since you have experience in law enforcement, but if a store is broken into in the middle of the night and there is

videotape of the evidence of the people breaking into the store and they leave and the police show up, the police do not actually witness the people and see the people stealing, but they see the videotape, collect preponderance of the evidence, and then they pursue it. It seems to me that would be a similar situation where the officer cannot always be there, but the preponderance of legitimate evidence might serve the same purpose. I would like to put that on the floor and encourage the videotape at least if, in fact, it is a pretty high bar to take. I do not see any downside risk actually for frivolous type of complaints. Thank you.

Council Chair Rapozo: I think we saw the value of videotaping last week with the bank robbery that the robbers' pictures went on Facebook and went viral and everybody all of a sudden was out looking for the bad guys. The big difference is that that is private property. The bank puts the cameras in their property. I do not know how many of you at home after last week's meeting watched Hawai'i News Now. Maybe it is divine intervention and maybe it is just a coincidence. I missed the night broadcast, but I watched the next morning broadcast and it was just incredible how there was an issue on O'ahu where a neighbor was videotaping a neighbor. At the end of Hawai'i News Now, they always bring on an officer to give some tips to the viewers and the Honolulu Police Department (HPD) officer came up and said, "Be very careful when you videotape your neighbors because if you have a reasonable expectation of privacy, to violate that by videotaping is a crime." That is what I tried to say last week. I think Mr. Bernabe's example was right on point. He has two (2) daughters and he sees a GoPro camera pointing towards his house, the thing that we have to worry least about are barking dogs. That would be the same for me. If there is no legitimate purpose—there is a fine line when we are saying as a legislative body that it is okay for you to videotape your neighbor's house, for whatever reason. I would suggest that we have the County Attorney's Office take a look at the privacy laws here in Hawai'i because I am not comfortable just saying it is okay, especially after watching that broadcast of the news where HPD came out and said, in my opinion, "Do not point a video camera at your neighbor's house."

Councilmember Hooser: Just a brief follow-up. I agree that privacy issues are important and have to be taken into consideration and I am not saying that we should say it is okay to videotape your neighbor's house. I think what we should say is videotaped evidence is acceptable in the package of things that you are doing. My house and my driveway is open to the world and a security camera there pointed out of my driveway is not pointing at anybody's house...I guess my point is that it is just an option and that is what we are looking for is options.

Council Chair Rapozo: I am in total agreement that videotaped evidence is very important, but it is how you obtain it. Councilmember Kaneshiro.

Councilmember Kaneshiro: I guess my question is without us putting it in there, is there anything precluding somebody from using video as evidence? For me, having the enforcement officer there is important because it is a third party confirmation, but if I was the person making the complaint on a barking dog, I would ask the Prosecuting Attorney what else evidence I need and what else I need to do to make this case stronger. It may be a videotape in your house, not pointing at the neighbor and it may be a whole bunch of other stuff, but I do not see why we need to add it in here as something. I think you leave it up to the person to build

their own case. It is not us to say, "You have to videotape or it is not going to be able to go to trial." I think we did that in the past where you take the logs and go to court and it failed. For me, I am under the impression that we do not necessarily need to put it in there, but it could be a tool that the complainant uses and there may be other tools that they use based on what their attorneys say. I think as far as us arguing over whether it should be in there or not, I think it is safer if it is not in there. The person is free to do what they want to help build their case.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: That is exactly what I am trying to allow in the Bill, but right now the way the Bill is written, you cannot get to citation unless you have an enforcement officer witnessing it, so you cannot even get into court to provide all of this evidence because we made it a condition of citation. If we just said that there shall be this standard of behavior that if it is violated and get a citation, then we are fine. In determining that there has to be an enforcement officer, we are stopping it from going to court if there is no enforcement officer. That is why a properly videotape authenticated by court rules would allow the court to make all these determinations, not us. Right now, we are saying that there is no way to get a citation. Another option might be to have anything that would be competent evidence in front of the court if you do not want to specify videotapes, because there are really high standards for using videotapes. I do not think a videotape is admissible if it violates privacy, so you would have the court adjudicate and balance all those things, not us.

Council Chair Rapozo: If you are going to introduce your amendment, Councilmember Yukimura, then do so. Videotaping is not even on this Bill, so I do not want to discuss videotaping if you are not going to introduce the amendment. You did last week and it did pass so you can do it again.

Councilmember Yukimura: Chair, I am trying to save time.

Council Chair Rapozo: We are not saving time.

Councilmember Yukimura: Excuse me, in the past we have sort of gotten a sense of the body so that is what I am trying to do to save time.

Council Chair Rapozo: I guess we got the sense last week when the amendment failed. Right now, we are spending time...all I am saying is to make it right, let us introduce the amendment so we can have the legal discussion because it is not on the agenda. That is all I am saying.

Councilmember Yukimura: Okay. I will work on it. Thank you.

Council Chair Rapozo: Councilmember Kualii has a question.

Councilmember Kualii: I just want to make one quick point and question. Of the seventy-one (71) complaints filed and sixty-four (64) resolved in some manner or another, whether they pulled back their complaint or what have you—four (4) out of seventy-one (71) was no contest or pled guilty. Of that four (4), just one (1) you mentioned as videotape used in one case. So one (1) out of

seventy-one (71) had video involved. What are the details about that, that tell us that video was the reason that it was no contest or pled guilty? What further information do you have from the Kaua'i Humane Society or...well, I guess it would not even be the Prosecutor because it did not go to court, right?

Councilmember Yukimura: It did go to court.

Councilmember Kualii: So no contest or pled guilty, one (1), that involved video.

Councilmember Yukimura: First of all, it is one (1) out of ten (10) because the others did not get to court, so you did not even need to think about evidence until you go to court. All I am saying is that it was admitted in court and how the dynamics...you do not know all the dynamics of what makes a decision. I cannot say for sure. All I am saying is that a videotape was admitted into court and that is all I am asking in this case.

Council Chair Rapozo: With that, I am going to ask the Prosecutor to come up because last week we heard the woman come up who said she had a videotape, but it never made it to court. In fact, the case was dismissed because someone never showed up or did not want to come. With that, I am going to suspend the rules. Justin, you are here. There is a lot of talk about what happened in court. Was a videotape used or admitted into evidence in any of these cases that went to court?

There being no objections, the rules were suspended.

JUSTIN F. KOLLAR, Prosecuting Attorney: Good morning. For the record, Justin Kollar, Prosecuting Attorney. The four (4) cases where the people entered their pleas where they just pled no contest—I do not believe there were actual trials in those cases, so the evidence may have been helpful to the prosecutor.

Council Chair Rapozo: The question was, the statement has been made, in fact, right on this document here: "Videotape used in one case." I just want to make it clear, because what I heard the last time, several months ago in the last go-around, and what I heard from the woman that testified that had the video last week, that, in fact, the case did not go.

Councilmember Yukimura: That was the Bonnie (Inaudible) Case.

Council Chair Rapozo: Councilmember Yukimura, please. I just need to know...I do not want this public to think that it is okay because we have done it and it is proven.

Mr. Kollar: There were no trials where videotaped evidence was used. That is correct.

Council Chair Rapozo: Thank you. That was the question and I appreciate the answer. Once and for all, close that book because it has not been established that videotaped evidence is okay. It has not been established by the court. It has not been established that it is not okay, but I am just saying do not

reference that it has when it has not because that is not fair. The public is watching. Two (2) things: 1) heaven knows if the courts are even going to allow it in; 2) I do not want to encourage violation of privacy laws with our local county statute. That is the two (2) reasons why I am having problems with it. Councilmember Yukimura.

Councilmember Yukimura: So how many cases went to trial?

Mr. Kollar: I do not believe any of them went to trial. I think there were four (4) pleas...

Councilmember Yukimura: Shona Fox went to trial.

Mr. Kollar: Well, you have more information than I do. I apologize. I was at home with my baby this morning and got the call to come down here.

Councilmember Yukimura: I know, but there are ten (10) cases that your office submitted to me when I asked how many cases you dealt with and one of them was Shona Fox's. I am asking how many went to trial.

Mr. Kollar: Well, why do you not tell me because you have it right in front of you? I do not have every case memorized.

Council Chair Rapozo: Mr. Kollar, you do not have that information right now.

Mr. Kollar: Yes.

Council Chair Rapozo: I apologize that we called you this morning because you are on leave with your brand new baby. Congratulations.

Councilmember Yukimura: But this is information submitted by your office. Please give him his memorandum.

Mr. Kollar: Okay, I see that one (1) went to trial and found not guilty by a judge, yes.

Councilmember Yukimura: Okay, so you are saying that in one case, videotape was not introduced.

Mr. Kollar: What is your question?

Council Chair Rapozo: Councilmember Yukimura, what he said was that one (1) case went to trial and it was dismissed by the judge. That is what he said. He did not say anything about a videotape. He does not even know about that case.

Councilmember Yukimura: No, but you said that videotapes were not used in any of them.

Mr. Kollar: I do not know if a videotaped was introduced into evidence in this trial. I know that for whatever reason this case went to trial and the defendant was found not guilty by the judge. I think this may have been the one where other people came in and testified that the dogs did not really bark.

Councilmember Yukimura: No, this was Shona Fox.

Mr. Kollar: Okay.

Councilmember Yukimura: You can see there that it says "Shona Fox."

Mr. Kollar: It does not actually say that on here.

Council Chair Rapozo: I do not want to get into specifics of the case because you are not aware of it.

Councilmember Yukimura: So...

Council Chair Rapozo: Hang on. Just if for some reason that a videotape was used in that case, obviously it did not work because it was dismissed by the judge.

Mr. Kollar: Correct.

Council Chair Rapozo: Again, if we are going to talk about videotapes then please introduce your amendment.

Councilmember Yukimura: I have further questions of Mr. Kollar.

Council Chair Rapozo: Go ahead.

Councilmember Yukimura: Thank you. Are you saying that it is not possible under the present court rules to introduce videotapes to prove or disprove barking dog complaints?

Mr. Kollar: I am not saying that at all, no.

Councilmember Yukimura: Okay, so under court rules, videotapes are a common form of evidence used. Is that correct?

Mr. Kollar: It is a form of evidence. A photograph, videotape, and witness testimony are all forms of evidence. Sometimes they are admissible and sometimes they are not. It depends.

Councilmember Yukimura: Right. Would it be good policy for the Council to decide that they are not admissible or would it be better for it to be determined by the judge in the courtroom?

Mr. Kollar: Most statutes do not reference specifically what types of evidence that the State should use in putting together the case. Most statutes leave it silent, and then whoever is doing the investigation can come up

with whatever form of evidence they think is the best to build their case, whether it is a video, live witnesses, photographs, or whatever the case may be. I do agree with some of the comments that were made that we want to be very careful about encouraging neighbors to videotape one another because that frequently leads to escalation of situations to a point where it is not constructive.

Councilmember Yukimura: Are you in favor of restricting the use of videotapes in barking dog cases?

Mr. Kollar: I do not think I said that.

Councilmember Yukimura: But I am asking you the question. Are you in favor of restricting videotaped evidence in barking dog cases?

Mr. Kollar: I would say no because I am not in favor of restricting any type of evidence. I do not think it is necessary that the statute specify what type of evidence be gathered. I do not think that is particularly helpful.

Councilmember Yukimura: The Bill in front of us specifies that it has to be an enforcement officer.

Mr. Kollar: Okay.

Councilmember Yukimura: So it restricts the use of videotapes.

Mr. Kollar: That is not how I read it. My reading is that the observation has to be observed by an enforcement officer. It does not say that the only type of evidence that the State can use is the observations of an enforcement officer. There may be other evidence that corroborates the observations of the enforcement officer. It just says that you cannot issue the citation unless you have an enforcement officer there to observe the violation.

Councilmember Yukimura: Exactly, so a citation cannot be issued unless the enforcement officer observes that.

Mr. Kollar: Correct, it says it right there.

Councilmember Yukimura: Okay. Thank you.

Mr. Kollar: Sure

Council Chair Rapozo: Any other questions for the Prosecutor? Thank you, Justin. Go back to your baby. Congratulations again. The meeting is called back to order. Did you want to introduce the amendment, Councilmember Yukimura?

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

Councilmember Yukimura: Yes. It is being prepared.

Council Chair Rapozo: Any other discussion before we get to the amendment? Councilmember Chock.

Councilmember Chock: Chair, will we be hearing from the Kaua'i Humane Society? I thought I saw Penny here.

Council Chair Rapozo: She is here if anyone has questions for her.

Councilmember Chock: Okay.

Council Chair Rapozo: We will address the videotaping when the amendment is introduced again. We had the discussion last week, unless someone has a change of heart. I was trying to pull up the Hawai'i News Now clip on the internet, but I cannot find it. It was quite clear to me that we should stay away from that, simply because we do not want to encourage, as the Prosecutor stated, our residents to be out there hooking up video cameras to their fences and pointed at their neighbor's house in the event that the dogs are barking. The other thing is that it is a great tool. Again, we are not putting it in the Bill. If I choose to do that, I am risking myself if I go and put a camera and videotape my neighbor's barking dog and then it becomes my *kuleana* and I deal with it. If they want to file a civil action against me, then that is fine. I turn it over to the officer, it validates my complaint, and the officer can go and take the necessary action to validate that complaint so a citation can be issued. I used the analogy early on during the discussion of the repeal. The way the bill is structured or was structured, a neighbor could fill out a log and give it to the officer or the Kaua'i Humane Society and they try to make contact with the offender and if they do not make contact with the offender, then they issue a citation. I used the analogy of a neighbor who constantly sees the other neighbor not stopping at the stop sign at the intersection. Imagine if we allowed just a log and no third party validation or no requirement for a law enforcement officer to witness that violation? Would you feel comfortable having an officer come to your door with a ticket and said, "Your neighbor said on these dates or times that you went through the stop sign. You guys deal with it in court. I just take the notes and I write the ticket. You hire an attorney and take this to court." If that was the bill on the table today, people would be going crazy saying, "You folks are nuts." I understand that barking dogs is a very emotional and passionate issue, but our job is to define the behavior, the enforcement, and the penalty. I think what the Prosecutor was trying to say was to let the investigators decide if they want to go and investigate, if they want to use the camera and put an officer out there, or if they want to rely on testimony so that they can narrow the time of violation down so they can send somebody at a cost-efficient manner. There are a lot of things they can do and I do not believe it is in our interest to put all of that stuff in the Bill. We define the behavior that we want to see corrected and that is I think what this amendment or this Bill does. Are we ready with the amendment? Not yet, okay. Further discussion? Councilmember Chock.

Councilmember Chock: I have questions for Penny. May we have her come up?

Council Chair Rapozo: Sure. Penny, may you please come up? I will suspend the rules with no objections.

There being no objections, the rules were suspended.

PENNY CISTARO, Executive Director of the Kaua'i Humane Society: Penny Cistaro, Executive Director of the Kaua'i Humane Society. Good morning.

Councilmember Chock: Good morning, Penny. I had some questions. You were not here last week when we passed the amendment and that leads us back to you. I wanted to hear from you about the realities and financial projections if we were to move in this direction of having it validated by one of the officers.

Ms. Cistaro: I believe that the Kaua'i Humane Society could do that with an officer and I submitted an estimate of costs to the Chair. We would hire an officer at sixteen (16) hours a week that would do the process and gather the information from the complainant and work with the dog owner, because the Bill still does allow ten (10) days for the owner to make modifications to the dog's behavior. There is the affirmative dispute resolution process in there, setting that up if that is the direction that it is going to go and validating the complaint, and sitting in front of the property for fifteen (15) minutes or forty-five (45) minutes, whichever way it works. The biggest challenge to the organization would be an additional vehicle because we have four (4) officers and three (3) vehicles currently and would need a vehicle to accommodate the additional officer.

Councilmember Chock: So do you have that proposal in writing that can be shared and circulated with other Members?

Ms. Cistaro: Yes.

Council Chair Rapozo: It is forty-seven thousand seven hundred dollars (\$47,700).

Ms. Cistaro: There are variances on the vehicle. The vehicle could be gently used for about twenty thousand dollars (\$20,000), up to thirty-six thousand dollars (\$36,000) for a new one. The officer's salary would be fourteen thousand dollars (\$14,000), and then the additional costs with the vehicle. We would take it to about seventeen thousand dollars (\$17,000) to eighteen thousand dollars (\$18,000) a year once the vehicle is purchased.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: Penny, I have a follow-up question. Does the costs account for only regular working hours?

Ms. Cistaro: I would depend upon when the barking was occurring. If the barking was commonly going between 9:00 p.m. and midnight, the officer would be sitting out there between 9:00 p.m. and midnight if we needed to validate the timeframe.

Councilmember Kaneshiro: So the officer would be available off-peak hours.

Ms. Cistaro: Yes. What would be difficult would be if it was 2:30 a.m., but...

Councilmember Kaneshiro: Are officers currently available during off-peak hours now?

Ms. Cistaro: For emergencies only: animals in distress or dangerous animals. We will go out in the middle of the night to assist the Kaua'i Police Department with cause, so yes, we are available 24/7.

Councilmember Kaneshiro: Okay.

Council Chair Rapozo: Councilmember Kualii.

Councilmember Kualii: How many officers do you have now?

Ms. Cistaro: Well, we have four (4) officers. One is thirty-two (32) hours, not forty (40) hour positions.

Councilmember Kualii: The newly hired officer is sixteen (16) hours a week. Would that be the only person that would handle barking dog complaints or could any of them when they are out in the community for other issues be helping with that as well? Could they be trained and help with that program?

Ms. Cistaro: Well, they are already trained and yes they could do that, but given that we would be able to schedule when we would be going to respond to a barking dog complaint; whereas with the officers it varies with you may be on your way to one call and an emergency comes in that is twenty (20) miles in the other direction. With the officer that is dedicated to the barking dogs, we would be able to schedule when they were going to sit in front of someone's house.

Councilmember Kualii: Okay. Thank you.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: Just a follow-up on that as well. In your proposal, do you also outline all other activities that your office or your organization would lead, leading up to the observation? For instance, is it your recommendation or in your purview that you will continue logs or any other best practices?

Ms. Cistaro: We would actually continue with the past practices and ask the complaining party to give the dog owner the ten (10) days the opportunity to correct the problem so the packets would be going out because the educational packets did, in fact, work for a lot of the dog owners. They were able to make modification to their dog's behavior. If the barking continues to be a problem, we would want a log sheet so that we could see if the dog is actually barking for thirty (30) minutes within a forty-five (45) minute time period. When we did receive some of the log sheets previously, it did not warrant a citation. Yes, the dog barked, but it did not bark for twenty (20) minutes within a thirty (30) minute period, so there was no reason to issue a citation or take it any further. We would still want that documentation because the complaint may not, in fact, be valid and we would

not have to pursue it any further. The log sheet for us would enable us to be able to schedule that “we are going out on Friday and we are going to be sitting there from 8:00 p.m. to 10:00 p.m. because that is when the dog most commonly barks.”

Councilmember Chock: I have one last question. Since the repeal of the Barking Dog Nuisance Ordinance, we understand that the educational aspect was still available and has it been utilized and to what degree?

Ms. Cistaro: It has been used twice that people want the packets mailed out to the dog owner.

Councilmember Chock: Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Thank you. Penny, can you check...I believe the Bill as is does not preclude your agency from continuing with a process like a log sheet process prior to going out there, because I do not expect that every time someone calls and says, “Hey, a dog is barking for more than half an hour. Can you please come out,” that you will go out to every single call right there. You would kind of set up and process where you can have log sheets or what have you. What I am telling you is that I believe the Bill does not preclude you, as a dog enforcement officer, from having a process that allows for some type of threshold to be met prior to an officer actually going out there.

Ms. Cistaro: Yes, that is what our plan would be.

Councilmember Kagawa: Okay. I guess the second part is, and I know Councilmember Kaneshiro kind of touched on it, that I remember the first time we talked about possibly adding a third party verification during my repeal of the dog barking law. At that time, you said that any from 8:00 a.m. to 4:30 p.m. that you would be able to do it, but after that period you would not be available. My understanding is that most dogs bark beyond the 8:00 a.m. to 4:30 p.m. hours, but you answered Councilmember Kaneshiro’s question and said you would be available?

Ms. Cistaro: Yes, because we would have an officer available for that. We need additional resources in order to do that, and that is the sixteen (16) hours that we would propose bringing someone on.

Councilmember Kagawa: Okay.

Ms. Cistaro: They would be able to respond when necessary.

Councilmember Kagawa: Are there any plans now that you see this Bill to work with the Kaua’i Police Department and have their assistance?

Ms. Cistaro: I have not spoken with the Kaua’i Police Department, but given that there will be the educational piece that has to happen first, we are going to be asking for the log sheets. It will be difficult for the Kaua’i

Police Department to follow that process. So when we may contact Kaua'i Police Department is if it is in the middle of the night, but it would be a discussion to have with the Kaua'i Police Department because they would be coming in at the tail-end of everything. We would have the log sheets and we would have had the discussion about going through a dispute resolution. We would have made attempts to resolve it prior to a citation, so really they would be coming in at the very end. At that point, we should just continue to handle it.

Councilmember Kagawa: Just to clarify about working with the Kaua'i Police Department, the City and County of Honolulu and in Hawai'i island, the police officers are in charge of dog barking.

Ms. Cistaro: In Honolulu, the Hawaiian Humane Society is taking barking dogs back.

Councilmember Kagawa: I am just telling you that what I heard from the other councilmembers is that the police officers are in charge in the City and County of Honolulu and Hawai'i island and they are not having much success because it is low priority for them.

Ms. Cistaro: Yes.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Penny, you have provided an accounting of the cost.

Ms. Cistaro: Yes.

Councilmember Yukimura: Can we have a copy of that?

Council Chair Rapozo: I will send it out. I assumed it went to everyone. I have the E-mail, so I will just forward it.

Councilmember Yukimura: Can we have it here today?

Council Chair Rapozo: Yes, I am going to forward it right now.

Councilmember Yukimura: Okay. I would like a hard copy, please. How much is it?

Ms. Cistaro: It would be approximately eighteen thousand dollars (\$18,000) a year for the officer and the vehicle with the addition of purchasing a vehicle, which I estimate somewhere between twenty thousand dollars (\$20,000) and thirty-six thousand dollars (\$36,000). We would go for the gently-used.

Councilmember Yukimura: Okay. Does the eighteen thousand dollars (\$18,000) include benefits?

Ms. Cistaro: This is an unbenefited position because it is only sixteen (16) hours a week.

Councilmember Yukimura: Okay.

Ms. Cistaro: If we raised it to...

Council Chair Rapozo: It is fourteen thousand dollars (\$14,000).

Ms. Cistaro: Yes, fourteen thousand dollars (\$14,000) for the salaries and that includes payroll taxes and everything. If we hit the twenty (20) hour a week threshold, then medical benefits needs to be provided and you can add about twenty-five percent (25%) to thirty percent (30%) more.

Councilmember Yukimura: So the personnel costs will be fourteen thousand dollars (\$14,000).

Ms. Cistaro: Yes.

Councilmember Yukimura: And a vehicle?

Ms. Cistaro: It would be a three thousand seven hundred dollars (\$3,700) a year.

Councilmember Yukimura: Okay. Have you taken into account the time that they have to be in court as witnesses, too?

Ms. Cistaro: Yes.

Councilmember Yukimura: Okay. Thank you.

Ms. Cistaro: And the dispute resolution process.

Councilmember Yukimura: Meaning the time...

Ms. Cistaro: They would help coordinate that because the complainant and the dog owner have to agree.

Councilmember Yukimura: Okay. Are they going to actually facilitate the mediation?

Ms. Cistaro: No.

Councilmember Yukimura: Okay. Are you going to be using existing resources like the Kaua'i Economic Opportunity (KEO) mediation board?

Ms. Cistaro: We would be researching what that is, because as the Bill is written, if the dog owner does not want mediation, then it is citation.

Councilmember Yukimura: Right.

Ms. Cistaro: We have to be able to coordinate that.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: It is nice to see you back here again. It is unfortunate that we are back here again actually, but it is an important problem and is a situation to a lot of people in our community. Can you kind of walk me through the process because it seems to me...maybe I can state how I see the process and you can correct me, but initially there would be more complaints that are pent up, and then ultimately that would stabilize. A person calls you up and says, "The dog across the street keeps on barking and barking. Can you help?" Then you would send notification? Can we not do this administratively?

Ms. Cistaro: Yes.

Councilmember Hooser: If my dog was barking and you sent me a note saying, "The Kaua'i Humane Society says that your dog is bothering your neighbor. If you do not fix it, then we are going to send an officer out," then I would pay attention and fix it. So it seems like most people would deal with this issue after a phone call or a letter or something. The actual officer having to go out to the property would be a minority at times, only egregious bad times. Is that a fair assessment of how it works?

Ms. Cistaro: Yes. If you look at the last numbers, seventy-one (71) complaints came in with only seventeen (17) citations and the majority of them did not move forward. As Chair Rapozo has said, it is for a variety of reasons and some we do not know and some we do know. The dog owner did make the necessary adjustments, so we had thought last time when the Barking Dog Nuisance Ordinance went into effect that we would have an overwhelming number of complaints come in, but we did not.

Councilmember Hooser: Okay.

Ms. Cistaro: So I am not sure that when it comes back that we will have an overwhelming number. What will happen is that if your neighbor calls and says that your dog is barking, we will send the complainant a letter and we will send the dog owner a letter with all of the educational materials and let them know that we are available to help them with the process. The complainant knows that the dog owner has ten (10) days to show improvement or modifications for the dog. At the end of that time period, they can start the log sheet, send us the log sheet, and we would be trying to make contact with the dog owner to facilitate a resolution through the dispute resolution.

Councilmember Hooser: The way this Bill is written, I think there is no requirement for a log sheet by the complainant.

Ms. Cistaro: Correct, but it was not in the last one either.

Councilmember Hooser: Okay.

Ms. Cistaro: We need some type of verification from the complainant that it meets the Bill's stipulations of thirty (30) minutes within forty-five (45) or consistently for fifteen (15) minutes. The log sheet last time was very important for us to point out that yes the dog does bark, but it does not meet the requirements of the Ordinance.

Councilmember Hooser: So do you believe that a full-time or part-time employee, sixteen (16) hours a week that is dedicated to this is what is needed?

Ms. Cistaro: Yes, it will take care of the issue. The bigger thing is going to be sitting in front of someone's house and coordinating the process for them, especially with it going to dispute resolution.

Councilmember Hooser: Okay. Thank you.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: Penny, I have a question on the two (2) cases during the repeal, the two (2) complaints. What were the results of the cases? You folks provided the educational material, but did it go any further than that or did it need to go any further than that?

Ms. Cistaro: It did not go any further than that because the complainant knew that there was no recourse for us other than the educational piece.

Councilmember Kaneshiro: Are they still having the problem?

Ms. Cistaro: Not to my knowledge.

Councilmember Kaneshiro: Okay. Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Penny, if this Bill passes, is there going to be an effort by the Kaua'i Humane Society to go after the egregious type of cases where you have these dog owners that have no regard for their neighbors? What I want to see is us go after the more serious cases because there are some out there.

Ms. Cistaro: Yes.

Councilmember Kagawa: I would not call a serious case a dog that is barking during the day with a single-family lady in an agricultural property and her dog barks when she is at work between 8:00 a.m. to 4:30 p.m. I am saying that there are cases out there that people cannot sleep and there are a lot of dogs in pens. Can there be an effort to go after the serious ones? I think like we have all

talked about, if we get some success and get these people guilty in court, then I think everyone will start complying.

Ms. Cistaro: I agree with that.

Councilmember Kagawa: The second question is as we go down the road of going out to verify if dogs are barking as a third-party verification and we go out there and the dogs are not meeting that threshold at that time, is there going to be an effort by the officer to approach the dog owner's house and say, "Hey, we came out to verify if your dog was barking for thirty (30) minutes straight and it did not meet that threshold, but we will be back if the complaints continue." Because that is what the police say is effective for them is that when you are an official officer and you warn them that "your dog was not guilty this time, but if it is next time, I will be issuing a citation." Is that kind of effort going to be made or are we just going to listen and if it does not meet the threshold, then we will just drive away?

Ms. Cistaro: Ideally, we will have had verbal contact with the dog owner prior to us sitting in front of their house listening.

Councilmember Kagawa: Okay.

Ms. Cistaro: So we would be letting them know that that is part of the process and if it did not meet the threshold at that time, we would be speaking with both the complainant and the dog owner to let them know the results of us sitting there. That is part of why we find the log sheet to be so important so that we know what times we should be sitting out there.

Councilmember Kagawa: Okay. Thank you.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: Penny, would you take into consideration and utilize video sources from the complainant in your process?

Ms. Cistaro: If they submitted it to us, then we would certainly look at it, but the way the Bill stands, we would not cite off of the videotape.

Councilmember Chock: Okay. Thank you.

Council Chair Rapozo: Any other questions for Penny? If not, thank you. I will call the meeting back to order. Is the amendment ready?

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

Councilmember Yukimura: May I have a five (5) minute recess?

Council Chair Rapozo: Okay.

Councilmember Yukimura: Shall we take a caption break?

Council Chair Rapozo: No, we can just do the five (5) minute break because we do not need a caption break until 11:30 a.m. Let us do a five (5) minute recess for the amendment.

Councilmember Yukimura: Thank you.

There being no objections, the meeting recessed at 10:47 a.m.

The meeting reconvened at 10:58 a.m., and proceeded as follows:

Council Chair Rapozo: The meeting is called back to order.
Councilmember Yukimura.

Councilmember Yukimura: In assessing the situation, I have determined that I probably do not have the votes for an amendment regarding videotapes so I am not going to be introducing it, but I also have an amendment for amending the affirmative defense section. I am doing it because of an E-mail that all of you have received regarding the passing by defense, and right now the way the section is written, anytime there is a passerby, it is an absolute defense against a barking dog complaint. In the amendment I have proposed, the passing by would be subject to the judgment of the court based on the circumstances. It would not be an absolute defense in any circumstances and you will recall from the issue that we got from one of the testimonies from the public that they have a situation where there is a dog that barks all of the time, anytime somebody passes by and in their situation there are people passing by continuously, including the complainant, who behind a brick wall, just goes to his car and the dog barks. What is reasonable or not would be subject to the reasonable test. I think it would leave it to the courts to make that decision. I think it is a better way to make our law effective.

Council Chair Rapozo: Is that a motion?

Councilmember Yukimura moved to amend Bill No. 2604, Draft 1, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1, seconded by Councilmember Kualii.

Council Chair Rapozo: Thank you. Further discussion? Any public testimony on the amendment? If not, I will just say that this Bill gives a lot of discretion to the law enforcement agency, whether it is the Kaua'i Humane Society or the Kaua'i Police Department and I think that is important. When either officer arrives, they will gather all of the facts and evidence and make a reasonable decision whether or not that a violation has occurred. I think that is the best way, so it relies on the discretion of the investigating officers. Further discussion? I do not have a problem with the amendment. Councilmember Kaneshiro.

Councilmember Kaneshiro: I am indifferent to the amendment because I think we are just wordsmithing it. I do not have a problem. I would like to know what the introducer of the Bill thinks of the amendment, just to get a feeling on it. I think it does the same thing, but just words it differently.

Councilmember Kualii: As the original introducer of the Bill, I would say that I like the amendment that it changes it just slightly, but I think it makes it better so I am good with it.

Council Chair Rapozo: Thank you. Councilmember Yukimura.

Councilmember Yukimura: Thank you. I have checked it with the attorneys and it is a nuance in how the law would be applied, but it is quite critical nuance and I think it clarifies it and makes the law more effective.

The motion to amend Bill No. 2604, Draft 1, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1 was then put, and unanimously carried.

Council Chair Rapozo: We are back to the main motion. Further discussion? Councilmember Kagawa.

Councilmember Kagawa: Thank you, Chair. We have Council Chair Mike White from the County of Maui and I want to welcome him here. Happy New Year. The Barking Dog Nuisance law is a tough law to pass and enforce. I think Maui had some success with it a couple of years ago. I heard that maybe the success is not where it was a couple of years ago today. On Hawai'i island, myself and Councilmember Kaneshiro had a conversation with Councilmember "Fresh" Onishi and he told us that in Hawai'i island they get a lot of complaints as councilmembers because they have a law on the books, but when the public calls the police, they have very little success in getting them out there to enforce the law. The same thing, of course, for the City and County of Honolulu where there is a lot more crime. Can you imagine how low a priority that is for that city? I think the same thing may happen on Kaua'i. I had a conversation yesterday with a police officer and we discussed the law and what may pass. He told me that, "Can you imagine how many calls we get a day?" My answer was, "No, I do not know." I have never been a police officer and never been involved with the Kaua'i Police Department as far as how many calls an officer gets a day and the various types of calls. I am glad that the Kaua'i Humane Society have a proposal and it basically takes responsibility for trying to enforce this very difficult law. It is not an easy law. I am sure maybe even in Seattle it is tough to enforce and the reason is that dogs do not speak English. If you were to ask a dog, "Why were you barking," the dog cannot answer that question. It is not a simple lawsuit like a speeder who is a human who can say what went on. It is a dog and dogs are made to bark. The only problem is hopefully what this law will have is a law on the books that can work against serious cases. I think I have said it before that whether we have a law or not, you as a dog owner should know when your dog is barking excessively and you need to take responsibility and now we will have a process back on the books that can cite those people that neglect their dogs and are neglecting their neighbors' rights. I am not going to be supporting this Bill, solely because I do not believe that it will work. I believe that we will have a flood of calls coming in at some point and will not be able to service everyone. Councilmember Kaneshiro kept mentioning to me, and it sank in and it is in my heart that I believe he is right, is that we have a process; it is a civil suit process. If you have a neighbor that is really not listening to your concerns and is totally disrespectful of your needs, you can take them to civil court and there is a process. So I believe, like Councilmember Kaneshiro, that I do

not think it is our County's role and I do not think it is in our capability to solve the riddle of the barking dogs, but I believe it will pass. I believe it is a big improvement and I commend the other Councilmembers who will support it and who have worked hard to make this "court proof" where we can win those cases, and then people can just abide, knowing that the law works in court. Thank you, Chair.

Council Chair Rapozo: Thank you. Any others? Councilmember Kaneshiro.

Councilmember Kaneshiro: Again, it is the same as what I said last week. I am going to stick to my guns and will not be supporting this. I did vote on amendments and I think we do have a better bill. As I mentioned earlier, I had a few gripes and enforceability was one of them. I think having the enforcement officer witness it might help with the enforceability of the bill, maybe possibly wining in court. Again, I think my biggest gripe is the redundancy. If two (2) neighbors have a problem with each other or the dogs are barking and it is bothering the peaceable enjoyment of someone's property then they can go to civil court and settle it without having a County process. I know we talked a lot about the costs and what it is going to cost us. We have the cost of the enforcement officer for the Kaua'i Humane Society and costs for possibly police officers. It costs us with our prosecuting attorneys. For me, we could eliminate those costs by letting the two (2) neighbors solve it in court, which is a tool and mechanism that is available right now, without a law. Also, the successes have been and I think it is confirmed today the two (2) cases when the Bill was repealed was resolved just through education and this education part does not require a law. The Kaua'i Humane Society said that they are willing to still take the dog complaints, pass out the information packages, and let people be aware that their dogs are a problem. I think a lot of cases were resolved because people did not know that their dogs were barking during the day when they are at work, and with getting that information, they can be a responsible neighbor and say, "I am sorry. I did not realize that my dog was barking and let me try to address it." That is why I think a lot of the cases were resolved before it even went to court. Again, we are using the County's resources. If we have a law in place, our County Prosecuting Attorney is going to be defending the complainant and that takes time off their hands to do other cases, and also just the fairness to the dog owner. If somebody makes a complaint, the dog owner is responsible for paying for their own defense, while the person who makes the complaint gets free representation by our own County resources, our own Prosecuting Attorney. Basically, I think that having the Bill will cost us more money and it is a redundant law. I am sure it is going pass and I am comfortable voting against it because I know that there is a mechanism available if this law was not in place and that is the private nuisance lawsuit between two (2) neighbors. So for those reasons, I will not be supporting this.

Council Chair Rapozo: Thank you. Councilmember Kualii.

Councilmember Kualii: Thank you, Chair. First and foremost, I just want to thank all of my fellow Councilmembers for the work that was done in committee with amendments, especially your big amendment, Chair, to get us to this point with a reasonable amount of time, pretty efficiently and quickly. I also want to thank the Kaua'i Humane Society because they are, like other councilmembers were talking about, willing to continue doing the education and

outreach, which is the most important part that is resolving most of the complaints. I find that their proposed figures seem reasonable. With this new Bill, as I see it, is our best attempt at making this Barking Dog Nuisance law fair and enforceable. Most importantly, I think it gives citizens a process to have their barking dog complaints resolved short of on their own having to take the dog owner to court. I support this strongly and I am glad that we are at this point. Thank you.

Council Chair Rapozo: Thank you. Anyone else? Councilmember Yukimura.

Councilmember Yukimura: I want to thank you, Chair, for allowing us to deliberate on this issue in the morning. I appreciate that very much. I want to say that by passing this law, we are making it clear that barking dogs who violate a standard that is set in this Bill, soon to become law, is a public nuisance. It is not just an issue between two (2) people. It affects a lot of people; it affects a lot of neighbors who are not speaking up, affects health and well-being, and even affects public safety. We had testimony about a woman who had to get up early in the morning to go to work and was so tired that she had to call in sick because she had been up all night with barking dogs. It is a public nuisance and when we declare a public nuisance, we use the power of the State or the power of the County to enforce that law. It is not redundant because to civil suit...because most people do not have the money to bring a civil suit. If we did not have this law, they would have no recourse, essentially. While I disagree with some details of the case, I think we have a workable law, and before us, a workable bill. I want to thank the Kaua'i Humane Society's Penny Cistaro and staff for figuring out how to make the law work with a requirement of an enforcement officer. I hope it works. We will watch and look at the data and statistics over the next six (6) months to one (1) year and if there are changes that are needed, we can amend the law. But I am hopeful that it will work because there are so many people that have needed the law and without the law it is not true that just education alone works. We have had numerous stories about how the barking ceased when the former law was in place and how it resumed after the law was repealed. We need a law and I thank all of my colleagues for working on this. I hope that we can consider the Barking Dog Nuisance law problem resolved for now. Although I must say, Chair, I presume that an appropriation bill will be in the works soon, because without that this law will not work.

Council Chair Rapozo: Yes. Obviously, we are going to have to deal with the appropriation. I have some questions, but that will be worked out at a later time.

Councilmember Yukimura: Okay. Without this enforcement officer, there is not going to be enforcement.

Council Chair Rapozo: Right.

Councilmember Yukimura: So we have to get this enforcement officer in place.

Council Chair Rapozo: Let me just say that I expect the funding to be based on a reimbursable...basically, they get reimbursed for the expenses that

they incurred enforcing the Bill. In other words, twenty thousand dollars (\$20,000) for a truck—is that truck used one hundred percent (100%) of the time for barking dog enforcement? Is that part-time officer’s time one hundred percent (100%)? Obviously, we will pay for the enforcement of the Barking Dog Nuisance Ordinance. That is what I think the County is obligated to do.

Councilmember Yukimura: I do not think that “reimbursable” was the plan that most of us had in our mind.

Council Chair Rapozo: That just my opinion. It still takes this Council’s action for the appropriation. I am just telling you how I envision it, that I am not saying that we are just going to give forty-seven thousand dollars (\$47,000) and if they get two (2) barking dog complaints in one (1) month or eight (8) in one (1) year, then we are not buying a truck to buy a truck. That is what I am saying. Like we do with our contract, we pay a percentage of the budget for the County function, not any other function. That is all I am suggesting. That will be discussed at a later time when the appropriation bill comes up.

Councilmember Yukimura: People need to know that the education part might be working when the Mayor signs the Bill into law, but rest of it may not be happening until they are able to get another enforcement officer on, which I heard them say would be necessary for enforcement of this law.

Council Chair Rapozo: Part-time, not full-time.

Councilmember Yukimura: Yes, absolutely. It still has to be a body.

Council Chair Rapozo: Understood.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Any other discussion? Councilmember Chock.

Councilmember Chock: I will be supporting the Barking Dog Nuisance Bill, as amended, and thank all of those who put time and effort into it. I think that there is more to be done, especially for those who are on agricultural properties. My hope is that the Comprehensive Noise Ordinance attempts to address some of those issues as well and distinguish the differences in those zoning areas. Also, my hope is that this passage will halt the primary abusers of dog owners and also create an avenue for us to come back and revisit this; I am thinking once we get someone on board, to look at this continually. I think that we will see a reduction in the kind of complaints that we have in the past. Eventually, maybe education is all we will need. Like any ordinance, I think we need to continually look at how to improve it. I anticipate that we will hear back from the Kaua’i Humane Society as this progresses. Thank you.

Council Chair Rapozo: Thank you. Anyone else? Councilmember Hooser.

Councilmember Hooser: I am happy to hopefully put this to rest. I was thinking that it has been the fourth time that I have been engaged in this conversation since I have been in elected office, one time unsuccessfully many, many years ago and when Councilmember Yukimura proposed hers and the Council passed two (2) years ago, and then the repeal, and now we are doing it again. Each time, we have the same conversations and each time the public has to come out. I am hopeful that this council and the community can accept the work we have done and I think it has been good work. People talk in the community sometimes or joke about the barking dogs and say, "We are wasting our time," and whatnot, but this is a very real problem for some people. I have had people call me, literally crying on the phone that they cannot sleep at night or they work all night and they cannot sleep in the daytime; the neighbor will not listen and they cannot afford to move or sue; they call the police and there is no law against it. It is really a quality of life issue for many people and I am confident that what we pass will alleviate the vast majority of that and that the only people really that enforcement officers will have to deal with will be the very egregious problems where the dog or the people, the dog owners, are not cooperative or do not want to help. I am happy that hopefully we will find some closure on this issue. I wanted to say *mahalo* to Councilmember Kualii for introducing this again. There was some speculation when the last one was repealed that it was not going to happen, but he came through and did what he said he was going to do. Also, thank you for your amendment, Chair, because I think that improved the measure. I would be remiss if I did not compliment Councilmember Yukimura, who has been a real stalwart and has not let this issue drop. It would be real easy to say that this is a tough issue and not deal with it and do something else, but she has been there reminding us that this is an important issue to the community and has kept with it all the way, so my compliments to her. Thank you.

Council Chair Rapozo: Thank you. Anyone else? If not, I thank you all for participating in this process. I think what I wanted to see was something very simple, broken down very simple, and let the law speak for itself. As I see it, the Kaua'i Police Department and the Kaua'i Humane Society should be the two (2) agencies that could possibly involve the ten (10) day, two hundred forty (240) hour requirement, to allow these people—see, we are trying to gain compliance and not just try to hammer everybody. I would envision the information being forwarded over to the Kaua'i Humane Society where this new person would be able to address it and focus on the ten (10) day deal with the logs and the verification or validation of the complaint would happen right after that. At that point, the violator and the victim would be able to go through some kind of dispute resolution process, hopefully to avoid the citation and hopefully resolves it. If not, the citation is issued and it goes to court with the proper and necessary evidence. I agree with several Councilmembers who have said that once we start citing legitimate cases, I think you will see two (2) things: the number of violations will drop and the number of complaints will drop once people understand. Penny talked about the numerous cases that as you keep a log...if a dog barks constantly for three (3) minutes and you are home, trying to have a discussion, or watching the television; that three (3) minutes might seem like an hour. When you put a timer to it, it is really not that long. It is just so irritating. I think the people that are being affected were to the point that they cannot sleep and they do not get a good night's rest. They are victims and those cases need to be addressed. I think this is the best case scenario for the problem that we are facing and it is always open for correction or

adjustments later. I am hoping that it works. As far as the cost, I said at last week's meeting that if we consider this a problem, then we will absolutely fund whatever it takes to make it work. Like anything else, we pay for what we get; we pay for the services that we want someone to take care of. That is all I am suggesting that it is not just a lump sum and that we will fund for the work that is provided as it relates to this Bill. The educational component is already being done at no extra cost to the County, and we appreciate the Kaua'i Humane Society for doing that. We know that to properly implement this Bill, this Ordinance once it passes, it is going to take some money. It will have to be another person hired, whether it is part-time or whatever the case may be, and hopefully we will become so successful that that cost will eventually go away. We understand that if it is a priority in the community, which this is, that it does come with some expense. With that, roll call.

The motion for adoption of Bill No. 2604, Draft 1, as amended to Bill No. 2604, Draft 2, was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kualii, Yukimura, Rapozo	TOTAL – 5,
AGAINST ADOPTION:	Kagawa, Kaneshiro	TOTAL – 2,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Motion carries. Thank you very much. Next item.

COMMUNICATIONS:

C 2016-09 Communication (12/14/2015) from Councilmember Hooser, transmitting for Council consideration, amendments to Chapter 3, Kaua'i County Code 1987, as amended, by adding a new Article 6 relating to the Registration of Lobbyists, to comply with Article 14 of the Hawai'i State Constitution by requiring lobbyists to register with the County of Kaua'i, disclose the amount of money used by lobbyists to influence government decision-making, and identify themselves as lobbyists prior to testifying before the County Council or County agencies: Councilmember Kagawa moved to receive C 2016-09 for the record, seconded by Councilmember Kualii.

Ms. Fountain-Tanigawa: Chair, we do have a registered speaker for this item.

Council Chair Rapozo: Okay. If you are looking at the agenda, it looks like typographical errors because there are some "v's" where there are supposed to be "y's." I do not know if any of you caught that, but it is a formatting issue. It is actually typed correctly, but it is just when it printed for some reason it squished the "y's" to look like "v's." I did check with Staff and it is accurate. It is just the formatting that is wrong. Disregard the "v's" where it should be "y's." With that, I will suspend the rules. Who is the first registered speaker?

Ms. Fountain-Tanigawa: The first registered speaker is Alice Parker.

There being no objections, the rules were suspended.

Ms. Parker: Alice Parker for the record. I highly recommend having lobbyists registered and I know when I worked for the federal government that we could not even accept a cup of coffee from a “customer” or representative. I think there are lots of gifts and moneys, representative kind of things that are passed to influence votes and positions on things to our representatives, and I think we need to know who these lobbyists are and for whom they are contacting and working for, basically. I think this is a great bill and I am delighted that Councilmember Hooser has presented it. Thank you.

Council Chair Rapozo: Thank you. Anyone else? Next speaker.

Ms. Fountain-Tanigawa: There are no further registered speakers.

Council Chair Rapozo: Anyone else in the public wishing to testify?
Mr. Mickens, you may come up.

Mr. Mickens: For the record, Glenn Mickens. I support this Bill one hundred percent (100%). I think it is a “no-brainer.” For transparency and openness in government, we need this to see where our money is going. Anytime a big donation goes someplace, we should see it. It may be completely legitimate and it may be suborning the candidate, but if the money is going to something that they are going to benefit from, I think it should be known. Thank you.

Council Chair Rapozo: Thank you. Mr. Bernabe.

Mr. Bernabe: Matthew Bernabe for the record. I do also support this. The first testifier talked about not being able to receive a cup of coffee—I am glad you had the 7:0 vote to ask the State to become one the states to go against and become a registered state on the Constitutional Convention with Citizens United. Since Citizens United has so drastically changed our world that we do not even know how it works, I think this is highly necessary and I want to add that I would like to see an amendment include whenever a special person receives money from the State’s Capital Improvement Program (CIP) and they force you folks to write the check, like we have seen already this past 2015; I would like that being disclosed before they even approach the State. If they are getting it directly from the State then that is their *kuleana*, but if the State wants to make you folks issue the check and it can only go to a specific person, i.e. Moloa‘a well, then I would want to see that publically addressed before they even start that process as well, because it is part of our County and it seems to be the new way of sidestepping your authority as the “governors of money” for the County. You all know what I am talking about, but I would also like to see that addressed because I think we are being hamstrung in what we can do with that particular process and I support transparency for everybody. If I have to come up and be transparent, then the lobbyists have to be, too.

JAN TENBRUGGENCATE: Jan TenBruggencate, representing myself. I agree with the previous speakers that we absolutely need a lobbyist bill, but I disagree that we need this Lobbyist Bill. This piece of legislation lets off-island

lobbyists skate. They do not have to register until five (5) days after they testified, which means that a lot of them will never register. This Bill, as written, lets the Council and the Administration exempt their friends from having to register as lobbyists by declaring that they are expert witnesses. This piece of legislation would punish local coaches and people from nonprofits who may be getting a salary and be lobbying on behalf of their organizations. This piece of legislation makes it difficult to register for lobbyists. Instead of simply coming in and signing up, you have to jump through a bunch of hoops. This piece of legislation requires a lot of paper work. My sense is that a lobbyist bill ought to be clear and simple and ought to be a one (1) page bill. It should require that lobbyists come in here, sign their names on the day that they are doing the lobbying and not four (4) or five (5) days later. It should require that that information be kept in this room during the council meetings, and if necessary, in administration locations. Also, that list of lobbyists ought to be maintained by the County Clerk's Office. Thank you.

Council Chair Rapozo: Thank you. Anyone else?

JOE ROSA: For the record, Joe Rosa. I support this Bill also because all these years, I have been coming here as a private citizen to speak for the good of government and for the people of Kaua'i in general. We are not forced to come up here and give our testimony; we are freelancers. We try to help the public and try to make Kaua'i a better place to live. Thank you.

Council Chair Rapozo: Thank you. Anyone else? Mr. Bernabe.

Mr. Bernabe: Matthew Bernabe for the record. I would just like to reiterate that if there is room for expansion and who it has to cover then I support that. I know that I have not actually read everything within the Bill, but I am assuming that there is room for improvement and I will go and read it. I would also like to say that if there are outside lobbyists, and not just from outside the state, being the same nation, but I like internationals, too. What was the statistics? Forty-two percent (42%) of owners of properties are out-of-state and a majority of that are foreign nations. I would like to see them be put on the hook, just like a citizen of this County or a citizen of O'ahu, California, or wherever they are from and make it all apply. Thank you.

Council Chair Rapozo: Anyone else? If not, I will call the meeting back to order. The motion is to receive. Councilmember Hooser.

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

Councilmember Hooser: I just have a brief comment. I appreciate the testimony. One particular testifier seemed to be fairly critical of the Bill and I want to respond to some of those comments. This measure is modeled after what the State is doing and what other counties are doing. For example, the definition of a "lobbyist" is "someone who gets paid" where it is part of their job to influence government, and that is basically based on what the State does right now. There are situations where we want to call an expert witness in, a major landowner or somebody from Grove Farm or someone like that, and it is our request to get them to come in and talk about land use issues, and we do not believe that just because

we are calling them in that they should have to register as a lobbyist when we are asking for their expertise. The comment that we are allowed to invite our friends in to testify and not register as a lobbyist, I take some offense to because that certainly was not the intent. The intent is to allow us to bring in outside experts who have expertise and not force them to register as lobbyists. We can certainly look at the question about the five (5) day limit. I believe that is also based on HRS; I am not clear as we sit here, but we can certainly look at that. I asked all of the testifiers to submit those suggestions in writing, especially those who have opportunities or suggestions for improvement. For the record, we have testimony today from the Sunlight Foundation, which is a national organization that focuses on lobbyist laws nationally and internationally, and they have testified in support and said that this is a very good bill. The Bill, as written, also is an example of the testifiers who just testified before us—if this law was in place, they would have to disclose if they were a lobbyist. We do not know if the people who testified just a few minutes ago are lobbyists or not. The three (3) or four (4) who testified in support of the lobbyist bill and the one who testified against it if they, in fact, get paid to talk to us as Councilmembers or if that is part of their job, they would then before they testify have to say if they were a lobbyist, if this Bill passes into law. I also want to point out for the record that the Hawai'i State Constitution requires us to have a bill to regulate lobbying and we do not have one. I think this is a great start. Our staff here has worked very hard on it. We have consulted with the County Attorney's Office at length and they have reviewed it numerous times. I look forward to future discussion as we move forward. Thank you.

Council Chair Rapozo: Thank you. Any further discussion?
Councilmember Yukimura.

Councilmember Yukimura: I want to thank Councilmember Hooser for working on this and introducing the bill because we do need a lobbyist bill. I want to point out that if we had been able to ask questions of public witnesses, we could have asked "are you a lobbyist" as another way of getting information that is very important to public decision-making. I just want to point out that we lost that power at this point.

Council Chair Rapozo: Councilmember Yukimura, is that your intent to bring that up at every council meeting or do you intend to bring up a resolution to change the rule, which would be more productive?

Councilmember Yukimura: I am going to change the rules; however, whenever there is very concrete evidence of the need for such rule change, I want to bring it up and I think I should be entitled to that.

Council Chair Rapozo: It is just irritating every week that you do that. That is all. I think you have mentioned it every week when you could have done a resolution for a rule change and have time to explain and be productive, rather than just...

Councilmember Yukimura: Chair, I agree that good rules would make us much more productive.

Council Chair Rapozo: People see this every week and it is just getting nauseous almost. Do something productive, propose a resolution for a rule change, and we can take it from there.

Councilmember Yukimura: Chair, you can also file a rule change as well.

Council Chair Rapozo: I did and I am very happy with the way the rule is.

Councilmember Yukimura: Well, it is part of the problem that you are concerned about.

Council Chair Rapozo: Any other discussion? I am perfectly fine with it. Councilmember Kaneshiro.

Councilmember Kaneshiro: I just have a quick clarification. I know Grove Farm was mentioned as possibly...I just wanted to clear up that I do not think we would fall under the definition of a "lobbyist."

Councilmember Hooser: I apologize because I do not want to inadvertently put you on the spot. I was just referring to any large landowner. Often times, whether it is before the Planning Commission, before us, or during the General Plan process, we want to find out what is going on with large landowners. The head of any company is one you can say that gets paid to run the company and act at its best interest, so they may very well fall under the definition of a "lobbyist." If we call them here, they would not have to register. They only have to register for lobbying. There is "lobbyist" and "lobbying." If they are lobbying, they would have to register, but if we asked any large business to come here specifically, whether it is Grove Farm or other landowners or other large businesses, we do not want to make them have to register as a lobbyist if they are coming here on our invitation. That is the point of the exception.

Councilmember Kaneshiro: This Bill is only up for first reading, but I will need a more clear definition of "lobbyist" because I was under the impression that if something is in front of the Council where Grove Farm has to come up for and they are either for or against it, then they are not considered a lobbyist because they are not getting paid to lobby for it. They are doing what is in...they are not getting paid to lobby for a particular bill. It is just like any other person that comes up. They are not necessarily getting paid, but they are saying what they feel.

Councilmember Hooser: Absolutely. The definition runs consistent with other definitions at the State. It is essentially "that is part of your job to influence government." The definition is there and we can have those discussions moving forward.

Councilmember Kaneshiro: Okay. Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: For me, one of the questions I have is why we did not follow one of the other counties that have a good one. Instead, I think we

chose to pick bits and pieces from all of the other counties and that makes it confusing as far as trying to see why bits were taken out of this County and why bits were taken out of that county, instead of following one county that had the best one and kind of stayed consistent throughout. That would have made it a little simpler for me as Mr. TenBruggencate raises some concerns that this Bill may have. We have time to go and look at why the changes were taken from various counties. Thank you.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: I am sorry, but I just wanted to clarify the question. I am not just picking Grove Farm—when we had the minimum wage thing and say a Walmart employee came up and they testified either for or against it, I wanted to be clear if they were getting paid by Walmart or were considered a lobbyist, or if they was doing it on their best interest.

Councilmember Hooser: If I could respond, if Walmart was paying them to come here, if it was their job and they are the governmental relations person and it is their job to show up at council, then you are a lobbyist. If you are just a Walmart employee and you show up, then you are not a lobbyist. If I may just briefly continue, we looked at every single lobbying law in the state, in the different counties, and they ranged widely. We took the same approach that I think all of us take with every proposed bill, whether it is regarding barking dogs and look at how everybody is doing it, with what works and what does not work. You also check with professional organizations that focus on this and you talk to the attorneys and take the best of all the different pieces and put together, rather than just copy the simplest law. Maui's law is maybe one (1) paragraph or two (2), and my goal which I think should be goal of all of ours, is to make the best lobbyist law that works. I think we have a very good starting point, if not a finish point, that covers the various bases. We learn as we go along from these other laws, which some are better and some are worse, but I think we have taken the best and adapted it to our situation. For example, the reporting requirements are less than the State requirements; just responding to some testimony that was given before. There are some things that are not on there that others do not do, but that is in a minority. Most of it is all items that are now in place with the State or other counties.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I wanted to ask Councilmember Kagawa which county has the good law in his opinion.

Councilmember Kagawa: I was just making a general statement that there were some concerns raised by a prominent member of our community and I am just saying had we followed a county in its entirety that has a successful one, but I guess it may be Councilmember Hooser's opinion that all three (3) counties have defects in theirs and that is fine. He pretty much explained that we have the best law now that we pulled bits and pieces from all three (3) counties. Just because he says that, it does not mean that I feel the same way. I will vet it and we have time.

Councilmember Yukimura: I was just thinking about the research and homework that I want to do and I thought you mentioned that there was one good law, so I was just wondering what that was.

Councilmember Kagawa: One of the suggestions Mr. TenBruggencate brought up is a simple law that asks us to make sure we identify who lobbyists are when they come before us, and if Maui's one is a paragraph or two (2) then to me that would answer Jan TenBruggencate's suggestion, which is that we "keep it simple, stupid."

Councilmember Yukimura: Like we found out with the Barking Dog Nuisance Bill, simple is good many times, as long as you can cover everything that you have to. It sounded like you were thinking that maybe Maui is the one to look at. Thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: There are a couple of items in this measure that are not in the HRS or in the other counties' laws. For example, this measure proposes to ban gifts from lobbyists to councilmembers, the mayor, and key administrative people. Say you cannot give anything at all, if any councilmember thinks that lobbyists should be able to give us gifts, they are welcomed to offer an amendment to take that provision out. This measure requires lobbyists to disclose to us when they sit here that they are lobbyists and who they lobby for. If any member of this Council thinks that they should not disclose it to us and the public at that time, then they are welcomed to offer an amendment and take it out. This Bill says that if you are a lobbyist, you will not be able to sit on the Charter Review Commission or the Board of Ethics. If any member here thinks that lobbyists that are paid to influence government should sit on our Charter Review Commission, then they are welcomed to make that amendment as well. Those are the three (3) primary ones that make this Bill a little different from some of the others. I believe it makes it a stronger bill and I think it has greater, increased protections for the public. If others feel differently, they are welcomed to weaken this measure, and if they have the votes, that could very well happen. Thank you.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: I am an advocate of simplicity as well and I think that is the outcome with the Barking Dog Nuisance Bill; however, here is what I do not want to see, is us take another year or two (2) to come up with a lobbyist bill. This measure was first introduced by former Council Chair Furfaro and it has been stalled for a long time. Whatever it takes for us as a Council to get through this, I would encourage us to dive deep into it and make the suggestions early on so that we can successfully pass a lobbyist bill. Thank you.

Council Chair Rapozo: Thank you. Anyone else? I look forward to a very active discussion going forward. The public hearing for this item will be on February 10th. The Bill will come up later today for first reading; this is just the communication. For any of you who is watching or for those that are not here, the public hearing will be on February 10th and 1:30 p.m. I agree that it should be simple enough. The most important thing is to actually define who is a lobbyist,

which for me will be the most critical part. If you are being paid to influence the vote of a legislator, then that makes you a lobbyist. That is what your job is and you get paid to do that. If you are a person that works for a big company that has an opinion then that does not make you a lobbyist. In my mind, a lobbyist is a person that is specifically paid and that your function every day is to make friends with legislators, buy them gifts, and change their vote. That is what a lobbyist is and I think the public has a right to know who those people are as well. For me, that is what I want to see. As far as being simplistic, I think I am looking for that as well, but once you define that person, and then you force them to register, then I think you have met your goal.

The motion to receive C 2016-09 for the record was then put, and unanimously carried.

C 2016-10 Communication (12/23/2015) from the Civil Defense Manager, requesting Council approval to accept a donation of a 2007 Enclosed Cargo Utility Trailer from the State of Hawai'i Department of Defense, valued at \$25,017.93, for the Kaua'i Fire Department's search and rescue operations: Councilmember Kuali'i moved to approve C 2016-10 with a thank-you letter to follow, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion or public testimony? The rules are suspended.

There being no objections, the rules were suspended.

Mr. Bernabe: Matthew Bernabe for the record. I would like to say that we should accept that and we should have let somebody inflate the value so we could have gotten a little bit more from the State. That is all I wanted to say.

Council Chair Rapozo: Thank you. Anyone else wishing to testify? If not, I will call the meeting back to order. Further discussion?

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

The motion to approve C 2016-10 with a thank-you letter to follow was then put, and unanimously carried.

C 2016-11 Communication (01/04/2016) from Councilmember Chock, requesting agenda time to present the final report of the County Manager Sub-Committee of the Committee of the Whole pursuant to Resolution No. 2015-50: Councilmember Kuali'i moved to receive C 2016-11 for the record, seconded by Councilmember Kagawa.

Council Chair Rapozo: Councilmember Chock, do you think you can your PowerPoint presentation done before 12:30 p.m.?

Councilmember Chock: Yes.

Council Chair Rapozo: Let us do that. We have to take a lunch break at 12:30 p.m. because we have a 1:30 p.m. public hearing. Councilmember Chock can make his presentation, and then afterwards we will break for lunch and be back at 1:30 p.m. for public hearing and continue on with the discussion.

Ms. Fountain-Tanigawa: Chair, there are two (2) members from the public who also want to testify on this item.

Council Chair Rapozo: Okay. Do they want to testify before the presentation?

Ms. Fountain-Tanigawa: Mr. Mickens and Mr. Taylor.

Council Chair Rapozo: Do you want to do the testimony after the presentation? Yes, okay. That makes sense. Thank you. Councilmember Chock, you can begin your presentation.

Councilmember Chock: Thank you, Chair. First of all, I would like to thank the Sub-Committee members, Councilmember Kaneshiro and Councilmember Kualii, for their participation. We have been meeting on a weekly basis and have had numerous conversations and have done a lot of outreach with other counties across the country, but also in our own state that are looking at this form of government. This is the outcome of a resolution that was passed in July of this previous year, so we have had about six (6) months. Most of you who have been following this already know that we already had one briefing of an outline and multiple resources for all members and the public to look into with the outline and links provided on our County webpage. We also have visited with the International City/County Management Association (ICMA) in Seattle at the past conference and have done just a lot of work in preparation for this. Most recently, we had Dave Mora from ICMA did a presentation as well on the best practices in the form of government. This is a combination of all of that work. Our interest with the Sub-Committee is to present this material as information for all Councilmembers and the public so that we will be more empowered to move forward and make a decision, if indeed, we should be looking at this further. So what I am going to do is move forward. It is still loading, but I think we can do this verbally until we get to it. We do have a copy of the whole presentation in portable document format (PDF) form and I can have it also loaded up to the web afterwards. The overview of the resolution covered three (3) areas: the first area and question was the various options for the council-manager form of government; the second area was to look into the cost and benefits of a council-manager form of government; and the third area was the feasibility of implementing a council-manager form of government. The way this presentation will go is that all Sub-Committee members will take a portion of this accordingly in the three (3) directives from the Resolution. I will be covering the first portion, Councilmember Kaneshiro will cover the cost and benefits portion, and Councilmember Kualii will cover the feasibility of implementation.

I will move on to my section here, which is what we have already talked about, the council-manager form of government. I have done an overview of it already. Members, what we will do is go through the whole presentation by all three (3) Sub-Committee members and then we will take questions at the very end. Thank you. Within the first question, these are the areas that we looked at:

organizational structures; roles and duties of the manager; roles and duties of the mayor/council, and it says slash council because the mayor and council in this form will primarily sit as one (1) body; role of the mayor in the council-manager form, because the mayor traditionally has a specific role; and then moving on to the selection of the mayor in a council-manager form; selection of a manager; the council appointment of the manager, and also his or her removal; and the contractual or employment agreement that we looked into extensively. As I did previously, the various organizational structures, and let me just say that what we are presenting is really there are many forms and options within the council-manager system, and what we have chosen to do is to really look at the best practice, so a lot of this information that we are reviewing does come with support from ICMA and that is really what we are presenting here. In order to do so, I wanted to quickly go over our current form of government, what we call mayor-council. As you can see on slide number 5, in this system here voters vote in the mayor and the council. The mayor in this instance, in our system, has oversight of our department heads. In more detail, the Mayor oversees specifically the departments on the left hand side, in terms of appointment of directors. On the right hand side, we have, in the bottom right hand, a box that illustrates that there are specific departments that are appointed by individual boards and commissions and also confirmed by Councilmembers, and that includes the Planning Director, Chief of Police, Fire Chief, Department of Water Manager and Chief Engineer, Director of Liquor Control, and the Director of Human Resources.

I am going to move on to two (2) different forms within the council-manager system, but overall this is what it looks like. The voters vote in both their mayor and council who serve on one (1) body. The mayor and council then in turn hires a professional manager and the manager would oversee the department heads. There are two (2) variations to this in how we might look at it. The best practice from ICMA is this first option where the manager would have oversight over the department heads; however, the mayor and council would confirm all boards and commissions members. Again, this was the best practice that ICMA has recommended since our last meeting. Option number two (2) is not best practice, but more along the lines of how our current system runs, which the manager would have oversight and hiring over some of the directors; however, like our current system, the mayor and council will confirm, but the individual boards and commissions would appoint the departments on the right hand side.

I will move on to the roles and duties of the manager. Primarily, the role of the manager is to oversee the administrative duties on a daily basis. This includes providing policy advice to the mayor and the council on a daily basis or weekly basis, providing leadership in administration, assisting the council in direction-setting, providing relationship-building with the council, providing quality reporting, overseeing the fiscal management of the county, manage financial and human resources, delivering county services, strategically plan for community development, using systems to drive continuous improvement, be committed to high ethical standards, and then assist the council in developing a vision for the county. What this tells me and what I would like to point out is that the manager has an integral role and relationship with the council and mayor in order to come up with some specific vision to move forward. The duties of the manager, which I think varies from the roles here, are that the manager specifically appoints the department heads, evaluates and disciplines the employees, developments rules and

procedures for the operation of the county, ensures compliance with council directives and the applicable laws of the county, state, and federal, he or she attends every council meeting and reports to the council, develop an annual budget presentation to the mayor and the council, so the manager does not approve the budget but submits this budget for council approval, and administers the budget as approved by the governing body. Again, here are what the roles and duties are of the mayor and council, one body sitting together. There are three (3) areas to basically guide, guard, and govern. In guidance, their specific duty is to develop vision, values, goals, and priorities for the county. They guard to ensure people that fiscal resources are protected and oversee the budget and capital improvements program. They also ensure that practice is in place to implement council decisions. It is very similar to what we currently have, but a little more simplified in terms of the legislative side. Lastly, they govern to represent the public and responds to constituents' concerns at neighborhood meetings through written correspondence, telephone communications, and staff assistance. They consider well-being an interest of the county, so they serve on mayor and council sub-committees to deal with specific issues, such as public safety, planning, housing, and all the other functions that we currently have. They also make appropriate choices based on needed services and programs at acceptable levels of costs and hold weekly council meetings to address issues and concerns in the community, as we currently do.

There is a difference in roles and duties for the mayor in a council-manager form and I wanted to go over that. One is ceremonial, where I will go over that, as well as the broad roles and duties here. For a mayor in a council-manager system, he or she is the presiding officer and recognized as the official head of the county and has the responsibility of interpreting the policies, programs, and needs of county government to the people and on occasion may be required to inform the people of any change in policy or program, so basically a spokesperson for the policy. Powers may include appointment, removal, or confirming of members to the boards and commissions and advisory agencies; assists and provides leadership within the community for citizens by addressing problems, concerns, and information requests; communicates and works with other policy-making bodies to ensure that the county is heard at the state and national levels; has the right but not the exclusive power to make recommendations to the council on matters of policy and programs that require council decisions; presides over council meetings and votes on issues that come before the council for consideration; and may propose ordinances and resolutions. Again, these are best practices. There are variances. We have had discussions on exclusive veto power, as well as no decision power on the council, which would lead to their other duty here as ceremonial.

Ceremonial duties include: promotion of the county by serving as the county's ambassador to visitors, dignitaries, conferences, and annual community events; participates in lectures, summits, ribbon cuttings, ground breaking ceremonies, speaking engagements, business tours, and school visits throughout the community; and very much like our current mayor issues proclamations, letters, certificates, and awards for special occasions, notable calendar events, and distinguished individuals. I know a lot of people discredit part of this, but this is a huge job that is currently undertaken by our mayor and needs to be considered. It is delivered in the council-manager form or set up in different ways, which we will talk about moving forward.

We are on the options of selection for a mayor in a council-manager form of government. These are the statistics across the country in terms of how they are typically selected: sixty-nine percent (69%) are elected by the voters; and twenty-eight percent (28%) are selected by the council from the councilmembers, so in our case it would be all members here that would vote in the mayor. The other option is for the highest vote among the seven (7) members, so whoever was highest in the election would automatically become the mayor—one percent (1%) of the other counties and cities out there use it. Two percent (2%) use the councilmembers in a rotation. So as I mentioned the ceremonial duty is often...or the chair...I mean the mayor also serves as the chair...ceremonial would rotate that every few months.

The selection process and minimum qualifications has been a discussion here with the public. These are the recommendations and they vary. The first is a Master's degree with a concentration in public administration, public affairs, or public policy. In addition, three (3) to five (5) years' senior-level executive experience; or other applicable degrees, plus six (6) years' senior-level executive experience; or a Bachelor's degree, plus five (5) to seven (7) years' senior-level experience. The recommendation is also membership with ICMA, the International City/County Management Association and a Credentialed Manager Designation (CM) through ICMA, which is an ongoing credentialed program or certificate program.

How do we get the appointment of a manager? Basically, it is the majority of four (4) votes or super majority of five (5) votes. Removal? There are various ways in addition to at-will, which is the same process as previously mentioned, or for cause with four (4) or five (5) votes, and then also based on the contract. The contract most often will identify a fixed term in the employment agreement. The manager employment agreement considerations, of course, how long we want this contract to be is up to the body in creating it; the compensation level, and we will talk about these details in cost and benefits moving forward; terms of separation; code of conduct and ethics, which is a big piece when it comes to ICMA; expectations; roles; annual performance evaluation was also something that we suggested and imperative; and then just the execution of the this employment agreement. That is it for the options. Those are things that we need to consider and I will hand over that presentation to Councilmember Kaneshiro to talk about cost and benefits.

Councilmember Kaneshiro: Thanks. As Councilmember Chock mentioned, as part of this Resolution we were tasked with looking at costs and benefits of the mayor-council and council-manager system. First, we are going to look at the costs of the system and we are going to look at the costs of our current mayor system, and then we are going to look at what the potential costs of a council-manager system are. We will also look at the costs and benefits of a mayor system and cost and benefits of a council-manager system.

In looking at the costs, I looked at the size of the mayor-council manager's office, the salary of the mayor, county-manager, and the total cost of the office. Also in my discussion, I identified that there are essential positions the mayor-council manager's office to make it run. For example, in our Mayor's Office, there are actually eleven (11) employees, but on this spreadsheet I have nine (9) employees, because also included in the Mayor's Office is the "Executive Assistant to the

Mayor,” but this position deals specifically with CIP and would be considered more of a Department of Public Works employee than essential to the Mayor’s Office, and I also removed the “Life’s Choices Coordinator.” I used the same methodology when looking at other cities and counties under the council-manager system because there are positions such as volunteer grant positions where they deal with volunteers and things like that. I looked at what the essential positions were to run the office. As you can see, the Mayor’s Office has nine (9) employees and the Mayor’s salary is one hundred fourteen thousand four hundred ninety dollars (\$114,490) and the total office cost is seven hundred sixty-nine thousand two hundred eighty-three dollars (\$769,283). That is cost of our current Mayor’s system. Now looking at the cost of a council-manager system, we obviously could not find a city or county that mirrors our County exactly, so I looked at a variety of counties on the west coast and tried to use cities or counties that are comparable in population, total budget, and services offered, which services offered are police, fire, transportation, and public works, for example. What I found was that the number of employees varies. As you look from county-to-county or city-to-city. In general, they had between six (6) to nine (9) employees in their city manager or county manager office.

The compensation for city or county manager is also varied. I received information from ICMA and based on ICMA’s 2015 salary survey, the average salary for cities and counties with a total population between fifty thousand (50,000) to one hundred thousand (100,000), which Kaua’i is around seventy thousand (70,000), so we were trying to look at whose population base is similar to ours. The average salary of the city or county managers were one hundred seventy-five thousand dollars (\$175,000) and one hundred thirty-nine thousand dollars (\$139,000), respectively. That was the average. This was nationwide, so they had ninety-seven (97) counties or cities that actually responded: seventy-three (73) of them were cities and twenty-four (24) of them were counties. That is the average cost of their county manager/city manager. ICMA also provided a 2015 salary survey for the west coast region, because in the prior average we had cities from the east coast, Montana and all over the place. So we figured, “Hey, let us try and look at what it costs on the west coast.” They had a total of twenty-seven (27) responses and the average salaries for cities and counties in the west coast region were two hundred sixteen thousand dollars (\$216,000) and one hundred ninety-nine thousand dollars (\$199,000), respectively, for a city and county manager. I also looked at a few cities on the west coast and the average compensation that I found was about two hundred twenty-eight thousand dollars (\$228,000), so it is pretty consistent, and mine were just some random cities, looking based on population, size, and services. It is in the ballpark. I cannot say what the salary of a county manager would be on Kaua’i, but additional salary considerations for Kaua’i would be our high cost of living and the vast responsibilities. Being that we are an island, we provide probably the most services of any county, I would expect, because we have to provide everything for our citizens. The labor market and the competitive nature of the position will also affect the price of what a county manager would be on Kaua’i. It was difficult to nail down the cost of a council-manager office on Kaua’i because I am not sure what type of resources a county manager would need to be successful here. In looking at different cities, they also had positions such as Assistant City Managers, Deputy City Managers, Executive Assistants, and secretarial positions. You see that a county manager office has similar positions as a mayor’s office. They still need help with communications and they still have

secretaries. In summary, it would be reasonable to say that a county manager will likely cost us more than what we are paying for a mayor in just looking at that one position. The size and total cost of their office is unknown and could vary, depending on the amount of resources that a county manager would actually need.

Next, we look at the benefits of the mayor-council and council-manager system. For this, the pros and cons between a mayor-council system and a council-manager system and what system is better is heavily debated. We hear that a council-manager system provides efficiency, transparency, accountability, and continuity. Based on information that was gathered, various literature that we looked at, and information from ICMA, I think there is no guarantee that one system is better than the other, but I have put together some of the main arguments for and against each system. The main argument for our current system, the mayor-council system, is a democratic election of a mayor by the voters by having the ability as a citizen and voter to vote for who you want to be in charge of your county. It is your responsibility as a voter to pick your leader. In turn, the mayor is accountable to the voters and needs to respond to the voters as a public figure and should be available and open to their opinions. Another benefit is a separation of powers. There is a clear line between the executive body of government and the legislative body of government. This provides the proper checks and balances and helps diffuse political power between the elected bodies. Arguments against a mayor-council system are efficiency and productivity that may be compromised. An electable mayor does not guarantee that they have the management skills to run a county. They may also be more concerned about winning about an election than the day-to-day administration of the county. In response to these claims, advocates of a mayor-council system have said that campaigning leaves the mayoral candidates their views and credentials open to scrutiny and it is the voters' responsibility to make an informed decision. Based on our current charter, the mayor does have the ability to appoint a managing director with a skillset they may be lacking. It can also be argued that a mayor is vulnerable to political influence because they are elected and their decisions may be swayed by political support.

The benefit of a council-manager system is the appointment of a professional county manager. With that comes a professional with the education, skillset, training, and experience of managing and delivering public services. Hiring is based on their qualifications and their future depends on their work performance. They can also be a member of ICMA and with that comes resources, networking, and continued educational opportunities. As a result of having a county-manager, efficiency and productivity should be increased because their reputation and future depends on the quality of their work and their ability to provide excellence in management and delivery of public services. Another touted benefit is the neutrality of a county manager. Their directives are derived from the elected body of council and they are not accountable to voters, so political influence is eliminated. There could be arguments on whether being accountable to voters is a good or bad thing. Cons of a council-manager system are that the concentration of political power rests with the council. This power is a shift from the mayor to the council, so the organization becomes more like a corporation where the council provides the policy and direction, like a board of directors, and the county manager implements their policies like a chief executive officer (CEO) or president of a company. This structure can be a problem when council cannot agree on important policy issues.

Also, a county manager may not be accustomed to the intricacies of a particular county, but this can be mitigated by resting on the council for direction and the ability to hire and surround themselves with personnel that have extensive knowledge of the county. There are probably many pros and cons for each and I probably did not go through all of them. Some are objectives and some is more opinionated, but the main difference between a mayor-council system and a council-manager system is the voters' ability to elect their leader. In the mayor's system, a voter has the ability and responsibility to elect their mayor, the leader of the county. In a council-manager system, the power is moved to the elected body of council and the council is responsible for hiring a professional manager to lead the county. In looking at the literature, the difficulty in justifying which system was better was hard because there are no two (2) systems that are exactly alike, but it seemed that overall quality of service and performance of basic functions hinged more on the actual individual, who is a mayor or who is the county manager, than which system they were in.

Councilmember Kualii: I have seven (7) slides to go over in ten (10) minutes, so I am going try to talk really fast. In addressing feasibility of implementing a council-manager system, we needed to look at these three (3) areas: 1) rewriting the County Charter, both Section 7.05, which spells out the powers and duties of the mayor, and other articles, sixty-two (62) other sections actually; 2) what is the best practice regarding council terms and districts; 3) considering the Hawai'i Revised Statutes, both the statutes granting the mayoral authority and the others that do not delegate that authority.

In order to implement a council-manager system, these are the specific items in Section 7.05, having to rewrite the County Charter, which grants the mayor his or her powers and duties. Decisions would need to be made about these changes on designating authority to direct supervision over all departments and administrative activities, to appoint staff, other employees, and officers, to create and abolish positions, to make temporary transfers of positions, to recommend a pay plan for all officers and employees, exemption from civil service, to submit operating and capital budgets, and to design instruments, including deeds and other conveyances. Additionally, it would also include decision-making on designating authority to present messages or information to the council, make annual and periodic reports to the public on county policies, programs, and operations, to improve our veto ordinances and resolutions pertaining to eminent domain proceedings, to have a voice but no vote in the proceedings of all boards and commissions, to enforce the provisions of this Charter, the ordinances of the county, and all applicable laws, and to exercise such other powers and perform such other duties as may be described by this Charter or by the ordinance. In addition to the provisions in Article 7, the mayor appears in sixty-two (62) other sections of the charter. In rewriting the charter, consideration must be given to, among other issues, the selection of department heads, the selection of boards and commissions members, the powers and duties given to boards and commissions, the formulation of the budget, whether the mayor has veto power, and the role of the manager director. David Mora, the State Liaison for the ICMA, advised this Council recently that the best practice would be to have the Council elected to four (4) year terms by district with terms staggered. This would require amending Section 3.02 and Section 3.03 of the Charter, which provides for the Council to be elected currently at-large and serve for two (2) year terms. The Hawai'i Revised Statutes makes reference to a mayor in

the following chapters as you see them all there; there is nearly fifty (50). These statutes actually grant the mayor the authority to, among other things, negotiate development agreements, declare emergencies and suspend laws in the event of a natural disaster or other catastrophe, organize, administer, and operate the county's emergency management agency, and represent the county in negotiating union contracts. While some of these statutes provide specific provisions for a mayor to delegate authority to others, other statutes do not. Given the numerous statutory references, it appears that at a minimum, any manager system must include a mayor in its organizational framework. It looks like some form of the mayor should exist because so much that is written in the Hawai'i Revised Statutes point to the mayor position, whether it is the mayor that exists today or the mayor that is a chair on a future council—but some mayor.

Councilmember Chock: Thank you. That concludes the Sub-Committee's presentation. There is a subsequent written report from the Sub-Committee that outlines all that was presented previously, and also an update to the original outline that was distributed with the links updated as well. There was one more piece that was connected to them, and I will just wrap it up with this, which is within the cost of the implementation. As you can tell, we did not give you a cost of what the transition is going to be because it is a little bit unknown. However, we understand based on what you saw here the many sections that need to be revised that there is time and effort that needs to be put into place, whether the considerations are if someone was to move forward, is the hiring of a consultant to accomplish those, someone familiar with our charter. Also, how we would get some of those changes in the Hawai'i Revised Statutes to pass would be somewhat of a consideration. I will leave the rest of the discussion to the Committee of the Whole, but we will just say that there are a few initiatives or interests; one that was driven by the citizens group for a charter amendment for a council-manager, and also most recently, the Charter Review Commission has submitted a charter amendment. These are what are on the table for us. Chair, we can take questions on the actual presentation, unless you would like to wait until after lunch.

Council Chair Rapozo: We will definitely wait until after lunch because we have a public hearing at 1:30 p.m. and I would like to start that at 1:30 p.m. With that, Councilmembers, you can digest what you just saw, and then we will back at 1:30 p.m. after our lunch break. We are in recess until 1:30 p.m.

There being no objections, the meeting recessed at 12:25 p.m.

The meeting reconvened at 2:29 p.m., and proceeded as follows:

(Councilmember Kagawa is noted as excused.)

Council Chair Rapozo: The meeting is called back to order. We have a couple of issues. I know we recessed on the county manager item. We have a resolution on the Transient Accommodations Tax (TAT) Task Force. I did invite Maui County Council's Chair Mike White as a resource person to do a presentation on the work that he has done and he has a 4:25 p.m. flight, so I do want to get him up so that he can get out of here and catch his flight. We also have a 2:30 p.m. special counsel set meeting with our special counsel on the telephone at 2:30 p.m., and I am assuming that we can push that back. If there are no objections, I want to

stay in recess from the county manager discussion and go into the resolution for the TAT, take Mr. White's presentation, and then go back to the county manager discussion. Is there any objection from the Members? If not, can you read the resolution for the TAT Task Force?

There being no objections, C 2016-13 was taken out of order.

C 2016-13 Communication (01/07/2016) from Council Chair Rapozo, transmitting for Council consideration, a Resolution Supporting The Findings And Recommendations Provided In The Final Report Submitted By The State-County Functions Working Group (TAT): Councilmember Kualii moved to receive C 2016-13 for the record, seconded by Councilmember Yukimura.

Council Chair Rapozo: Thank you. As many of you know, the TAT is always an issue item on the State's legislative agenda. I will let Mr. White go through the numbers because I think a lot of the public really does not understand the history of the TAT and what has evolved throughout the years. As you know, the session is going to start next week. In our Legislative Package, we have asked the State to consider giving the counties more of the TAT. The Legislature a while back commissioned a special working group that was made up of a wide range of people throughout the State to come up with a recommendation. That report was just made public or just came out last week. We had the draft for a while and Mr. White has spent a lot of time and energy in researching this item. As we move forward through the Legislative Session, we have a resolution on the floor today that encourages the State to accept the recommendations of that working group, hopefully to create a little more revenue for the counties. Mr. White has a little different approach and that is why he is here today to share another option, and I would think that the discussion following this will get pretty interesting. I do not know if the media is still here, but I think this is one that the public really has to understand the history and evolution of the TAT. With that, Mr. White, I appreciate you coming here to share your presentation with us and you may proceed. Please state your name for the record for our captioner.

MIKE WHITE, Chair of the Maui County Council: My name is Mike White. I am the Chair of the Maui County Council and I really appreciate you inviting me to come and share my perspective on this today. The working group did a lot of good work. I think it is an issue that will probably remain with us for a while. My wife made the comment the other day, "You are like a little gerbil on the wheel. You have been chasing this TAT issue for over twenty (20) years." So I said, "Well, if we do not chase the TAT issue, then the counties will lose out." I firmly believe that. A couple of things that I would like to say are very positive about the work that the working group did. Part of it is that we now have a TAT generation by county, another thing that they did was they looked at a number of different items like visitor counts and other things, and they validated pretty nicely the split that we currently have between the counties, with forty-four percent (44%) going to O'ahu, twenty-two point eight percent (22.8%) coming to Maui, and I believe Hawai'i island is around eighteen percent (18%), and you all at around fourteen percent (14%). They were able to validate that split from a different perspective. What I would like to share with you today is that for the first time in the years that I have been dealing with the TAT issue, a study has come out from a company on the mainland that compares levels of taxation by state and also compares the split

of taxes on lodging establishments in one hundred fifty (150) cities, and those one hundred fifty (150) cities on average...I should say cities and counties...receive more than two-thirds of the tax revenues from lodging than each of their states.

Back in 2009, the State took the County's TAT money to cover loses when their times were challenging, but failed to make significant adjustments when the county property values dropped by a greater percentage, and I will get into those percentages in a little bit. Total tax revenues dropped by nine point eight percent (9.8%) and shortly thereafter the TAT was increased to eight point two five percent (8.25%) from seven point two five percent (7.25%) from 2009 and another percentage one (1) year later to offset their loss in revenues. At the same time in 2009, county revenues continued to grow slightly with increasing property values. In 2010, total state revenues began to increase, but remained below in 2008. In 2011 and 2012, the TAT distribution to the counties was capped at ninety-three million dollars (\$93,000,000). By this time, property values were in significant decline, especially in the neighbor island counties, and property tax revenues were eroding.

Where is the State today? State revenues have rebounded by thirty-four point percent (34.4%) or nearly one billion eight hundred million dollars (\$1,800,000,000) over their 2010 level and the cumulative revenue increase from 2010-2015 for the State is six billion eight hundred million dollars (\$6,800,000,000).

Where are the counties today? Well, we have had an eight percent (8%) increase in our tax revenues at one hundred twenty-two million dollars (\$122,000,000), even though property values remains about four billion five hundred million dollars (\$4,500,000,000) lower than in 2010. Because the counties lost significant ground during the 2010 to 2015 period, even though we are up one hundred twenty-two million dollars (\$122,000,000) now, the cumulative increase for the counties over that period is only thirty-one million five hundred thousand dollars (\$31,500,000).

This is how the counties shape up: the City and County of Honolulu in 2015 is up five percent (5%). They dropped a little bit in 2009 and 2010, but they made back their values. After looking at these numbers, I decided that we need to come and get Kaua'i's assessor to come in and assess our properties on Maui. You can see that we remain down. Again, these are 2015 numbers. I chose 2015 because the actual numbers for the State for 2016, as you know, are not yet available. Maui County is the big loser, and as a result of some of our property valuations, we have increased the effective property tax rate by twenty-five point eight percent (25.8%). O'ahu has increased theirs by six point one percent (6.1%). Hawai'i County has increased theirs by seventeen point seven percent (17.7%). Kaua'i County has increased theirs by fifteen point three percent (15.3%). This is the constant thing that we get from Honolulu—they say, "Well, you folks do not increase your taxes." Well, we have increased our rates significantly, but from an economic standpoint, the basis of our main source of revenue, which is the property values, remain down compared to the State's condition.

What is the impact of the TAT rate increase plus the cap? The State increase in net TAT revenue has gone from eight million three hundred thousand dollars (\$8,300,000) in 2007 to nearly two hundred five million dollars (\$205,000,000) in

2015. As you all know, the counties are getting one hundred three million dollars (\$103,000,000) a year. If we were still getting the forty-four point eight percent (44.8%) of the tax that we were receiving before the cap was implemented, we would be getting roughly one hundred eighty-seven million dollars (\$187,000,000). If we were still under the original distribution, which gave us ninety-five percent (95%) of the first five (5) points of tax, the counties would be receiving two hundred ten million dollars (\$210,000,000), which is roughly half of what is generated today.

Just to put it into a historical perspective, in 1997, the TAT generated by all the hotels in our counties totaled one hundred twenty-six million dollars (\$126,000,000), the counties got one hundred one million three hundred thousand dollars (\$101,300,000), and the State got six million three hundred thousand dollars (\$6,300,000). These numbers do not add up from side to side because the missing numbers are what is spent by the Hawai'i Tourism Authority (HTA), the Convention Center, the Department of Land and Natural Resources, and the north shore land purchase. In 2007, the TAT generation grew to two hundred twenty-four million dollars (\$224,000,000), the counties received an extra half million dollars (\$500,000), and the State was still getting just eight million three hundred thousand dollars (\$8,300,000). With the cap and everything else that has gone on in the last eight (8) years, you can see that the State has taken the lion's share where they have gone from eight million three hundred thousand dollars (\$8,300,000) to two hundred five million dollars (\$205,000,000) and we have gone from roughly...actually, I think that one hundred one million eight hundred thousand dollars (\$101,800,000) is actually one hundred million eight hundred thousand dollars (\$100,800,000) and this number is one hundred million three hundred thousand dollars (\$100,300,000) and this one should be one hundred million eight hundred thousand dollars (\$100,800,000). So we have gone up two million two hundred thousand dollars (\$2,200,000) while the State has gone up by about one hundred ninety-six million dollars (\$196,000,000) in the same time.

Just to put it into a perspective with today, in looking at the Governor's budget for this upcoming year, they are projecting general fund revenues of seven billion one hundred million dollars (\$7,100,000,000) and that represents a five hundred forty-seven million dollar (\$547,000,000) increase over this current fiscal year. It is eight hundred twenty-five million dollars (\$825,000,000) than the last fiscal year and is one billion one hundred five million dollars (\$1,150,000,000) more revenue to the State than in 2014, so a nineteen point two percent (19.2%) increase.

As you all know, the State has significant responsibilities and they are concerned with their ability to pay. As you all know, collective bargaining issues are significantly more under the control of the State than the counties, so when they reach agreements, it trickles down to us. To give you a sense, this is comparing the State's share again. Their increase up to the two hundred five million dollars (\$205,000,000) is almost a two thousand four hundred percent (2,400%) increase while the State has given the county two point two percent (2.2%) of an increase. For another perspective, all four (4) counties' police, fire, and parks—the three (3) departments that interface the most with our visitors and need significant assistance have increased in that same timeframe, as we were getting a two million two hundred thousand dollar (\$2,200,000) increase, our fire, police, and parks departments increased cost was one hundred seventy-three million dollars (\$173,000,000). What this tells me is that the State's willingness to take the TAT,

which is a visitor generated tax, and by not doing what they need to do to control costs themselves or increase their own revenue sources, they are asking the counties to transfer the costs of these departments from the visitors to our residents. I do not recall what Kaua'i's number was, but I know that Maui's increase was about sixty million dollars (\$60,000,000) of that.

How do we compare to the other one hundred fifty (150) municipalities? This HVS study entailed that we ranked one hundred forty-ninth (149th) in receipt of taxes on lodging establishments. Thirty-five percent (35%) of the cities involved in the study received one hundred percent (100%) of taxes on lodging. Places like California do not charge either a state lodging tax or a state excise tax on lodging, so for any of you who have gone to Disneyland, if you stayed in a hotel there, there is a twelve percent (12%) tax and the entire twelve percent (12%) goes to the City of Anaheim. That is the same everywhere in California and I cannot remember the other ones. Up above Honolulu, because they get one-half percent (0.5%) excise tax, they have a ratio of twenty point four (20.4%) of the tax on lodging and the neighbor islands received seventeen point one percent (17.1%). Of the one hundred fifty (150), one hundred twenty-seven (127) of the cities received fifty percent (50%) or more and one hundred forty-eight (148) received twenty-five percent (25%) or more. Hawai'i and Rhode Island are receiving less than twenty-five percent (25%). I thought, "Okay, I want to go find out what the one hundred fifty (150) have got," because I have seen something that said there was a lodging tax that was returned to the municipalities. Over the weekend, I looked at their budgets and found numbers that confirm that there was money coming back from the state to the counties. What is interesting is while the counties still get less of a percentage, where they are spending the tourism tax is the same way you are doing, which is spending a lot of it in marketing, which goes to six (6) regional tourism districts, goes to the Providence Warwick Convention and Visitors Bureau and the Rhode Island Convention Center Authority. The marketing arms, which are the ones in white get approximately forty-six percent (46%) of the tax and the two (2) government entities, the state and the municipalities, split fifty-four percent (54%). This amount, if you just take the split—let me back up. The working group is suggesting that the Convention Center, the DLNR programs, the HTA, and the north shore land purchase get paid for prior to any splitting of the revenues between the county and the State. Their current proposal is that the State should get fifty-five percent (55%) and the counties should get forty-five percent (45%). In this situation, you can see here that the counties are getting seven million four hundred thousand dollars (\$7,400,000) and Rhode Island is getting three million six hundred thousand dollars (\$3,600,000), so the state is getting thirty-three percent (33%) and the county is getting sixty-seven percent (67%). Even though they are getting less than we are, this is a split that is similar to what is being done in the working group presentation, but with a significantly different result.

If we were getting the same nine point one percent (9.1%)—I need to point out that these numbers on the next couple of pages are distributions based on a 2015 TAT and General Excise Tax (GET). The working group was looking only at the TAT, but I think an argument can be made that if you are looking at dividing up revenues based on all expenses, then you should be dividing up the revenues from all sources. I am adding GET and TAT together. If we were to get what our peers get, on average, that is nine point one five percent (9.15%) out of the thirteen point four eight percent (13.48%) average. The municipalities would be getting about four

hundred nine million dollars (\$409,000,000) and the state would be getting one hundred three million dollars (\$103,000,000), of course this does not account for the Convention Center and HTA.

How much are Hawai'i's counties getting? With the current legislation, we are getting a two point two percent (2.2%) out of the thirteen point two five percent (13.25%). I am just using the neighbor island perspective here. We are getting one hundred three million dollars (\$103,000,000), which is leaving the State with the five hundred million dollars (\$500,000,000). Again, these are using State TAT and GET numbers combined. If we were to request that we get fifty percent (50%)—I have to point out that I did not update this page, so this says “Hawai'i State Association of Counties' (HSAC's) request” because it is from the HSAC presentation, so please ignore that. Under the case where the state and counties split the total...I am sorry...if we were to get fifty percent (50%) of the TAT, that is the two hundred ten million dollars (\$210,000,000); this is the State's share of the GET and TAT. The total of both is six hundred three million dollars (\$603,000,000) and we get four point six percent (4.6%), so we are still below everyone else. This is what we used to get, the forty-four point eight percent (44.8%) and that would amount to one hundred eighty-eight million dollars (\$188,000,000) and the TAT working group's proposal provides us based on 2015 revenues, one hundred thirty-eight million dollar (\$138,000,000) payment to the counties, with the State keeping four hundred sixty-four million dollars (\$464,000,000).

My position is that at a minimum, the counties' share of the TAT should be fifty percent (50%), which leaves us at only about thirty percent (30%) of the combined taxes on lodging, which I believes it puts us in maybe one hundred forty-eighth (148th) place instead of one hundred forty-ninth (149th). One of the other comments that we get from the State is that they are not going to give it back to us for free. Well, my position is that the State is not giving it away; the State is giving it back to the counties. Thank you very much and I am happy to answer any questions if this has generated any.

Council Chair Rapozo: Thank you, Mike. You opened up a lot of eyes, something our former Chair Furfaro would highlight many times at council meetings. Mr. White is a former legislator himself. I am not sure if you brought that up, but I failed to bring that up in the introduction.

Mr. White: I actually have an interesting perspective on this because I pay TAT as a hotel manager and our hotel pays about two million one hundred thousand dollars (\$2,100,000) in tax every year. As a hotel manager, the majority of my visitors come into more contact with county services while they are on-island than they do with state services. If we are putting money into something that is supposed to be to support the state and counties' services provided to visitors, then I want to make sure as a payer that those funds are coming to the County more than they are to the State. That is the only reason that we supported the initial TAT back in 1987 because initially it was supposed to be for the Convention Center. Kaua'i, Maui, and Hawai'i island were the only places in the country where we would be paying for a convention center that we could not drive to, so that was when many of the folks from Kaua'i, Maui, and Hawai'i island went to the Legislature and said, “Look, you have to give us a share of the money. You

cannot just be building a convention center on O'ahu." That is how we initially got that ninety-five percent (95%) share of the tax.

Council Chair Rapozo: Thank you. Mike, I am not going to ask you any questions because we have had this discussion several times and it has been a discussion at the HSAC meetings. I know you mentioned it in your presentation and I think it is important that the public understand that when we talk about the TAT, the accompanying tax, which is the GET is never discussed.

Mr. White: Correct.

Council Chair Rapozo: None of the GET comes to the county. That stays with the State and it is substantial, four percent (4%)...four point five percent (4.5%) on O'ahu. The TAT is a separate tax and you mentioned that the services are mostly county services, so I think it is important that the public understands that when we talk about the TAT, there is an accompanying tax that goes along with that. With that, I want to open it up for questions. I do want to get back to the county manager discussion, so if we could just limit it to questions right now, we will definitely have an opportunity to have the discussion. Mike has to leave, so if we could just focus on questions of Mike. Councilmember Chock.

Councilmember Chock: Thank you so much for being here and for the presentation. It is pretty eye opening. Have you had this presentation done at Hawai'i County or any other outer islands?

Mr. White: Not Hawai'i County. I have made the presentation to the HSAC board.

Councilmember Chock: I guess we will have that discussion later on where that is headed. Thank you.

Council Chair Rapozo: Councilmember Kualii.

Councilmember Kualii: It was very eye-opening. Thank you for all of these figures. I think it is really interesting. I am just curious as to how is Maui County acting on this information?

Mr. White: We have a resolution that we will be hearing, either on the 25th or the 5th of February to basically sending a resolution stating that we want fifty percent (50%) of the total TAT, which again, represents a third of the total taxes on lodging.

Councilmember Kualii: Will you be willing to share a draft of that resolution?

Mr. White: Yes.

Councilmember Kualii: Thank you.

Council Chair Rapozo: Real quick, we approved the HSAC Resolution where the percentage is blank in the draft bill or proposed bill for the

Legislative Package, so there is an opportunity for each county to submit resolutions or testimony to encourage a fifty percent (50%) shift. We left it blank on purpose and hopefully we can garner some state legislative support.

Mr. White: Right. Interestingly enough, if you take the approach...you take the TAT working group's 55/45 split and you accept that split—I do not necessarily accept that split. I have done some work on the numbers and it appears to me that that split does not hold up if you are looking at just general funded items. They have a mix of proprietary funds in there, but I am not really ready to make any particular statements on that. If you take their 55/45 split, give the counties forty-five percent (45%)—interestingly enough, if you just add the GET to the split, the counties' share becomes almost identical to what our share was in the beginning, the ninety-five percent (95%) of the first five percent (5%) of tax amounts to, in today's revenue levels, about two hundred sixteen million dollars (\$216,000,000) to the counties. If you take the forty-five percent (45%) share that the TAT working group is recommending and apply it to the combined GET and TAT, then we end up with two hundred twenty million dollars (\$220,000,000). I think it is kind of fair to say, "Fine, we will take your split, but if you are going to ask us to look at all of the costs, then you have to subject the split to all of the revenue." It just happens to get us back to where we started, which I think is kind of fair.

Council Chair Rapozo: I agree. Councilmember Yukimura.

Councilmember Yukimura: Thank you so much for the presentation. Excuse me if you said it and did not hear it, but is the 55/45 split recommended by the joint task force off of a base that minuses the four (4) items on O'ahu: the Convention Center, HTA, the land acquisition, and I forget the fourth one.

Mr. White: Yes. I believe there are about three million dollars (\$3,000,000) that goes through HTA for DLNR programs.

Councilmember Yukimura: Oh, DLNR. Okay. The split you are recommending here at fifty percent (50%) is for fifty percent (50%) off of the total?

Mr. White: Fifty percent (50%) of the total TAT, so currently that is four hundred twenty-one million dollars (\$421,000,000), so I am suggesting that we should get half of that, which just happens to take us back to where we used to be.

Councilmember Yukimura: Okay. On Kaua'i, we have done an analysis of visitor-related expenses in our budget, with the idea that at minimum we should be reimbursed for that since we are, as you say, "experiencing the brunt" of the visitor requirements for parks, roads, police, and fire rescue. Have you done that in Maui and is that mainly your theory or are you thinking that we deserve even more than just reimbursement?

Mr. White: I do not remember the number exactly. I did not work on that number, but I believe that Maui's number was around fifty-nine million dollars (\$59,000,000) or so. My feeling is that what we do as counties goes way beyond...to me, we spend a lot on social services on Maui, and the way I look at

it as a hotel person is that this makes Maui, Kaua'i, and other places...as we take care of social service concerns, we are making our county a much better place for visitors to come to because we are showing our *aloha* to the residents, and in return, they tend to show their *aloha* to the visitors and make it a much better experience. While the visitor related expenditures may be at a certain level, we do so many other things to make our communities good places for visitors to come, but we are not spending it on them; we are spending it on the residents. But it accrues to both residents and visitors. So to limit it to a particular visitor number is, to me, not a very honest appraisal. I hope that answers your question.

Councilmember Yukimura: Yes, it does. You have contacts in the State Legislature, so I am just wondering what kind of feedback you are getting on your proposal.

Mr. White: Well, I tend not to share who says things to me.

Councilmember Yukimura: Yes.

Mr. White: But one very high person said, "It sounds really, really fair, but it is not likely to happen." I brought with me a chapter in "The Price of Paradise" from one of my staff members, and I was struck by the similarities between what we are facing today and what was written twenty (20) years ago—actually, it was written a little more than that in 1992 by Lowell Kalapa and the title of the chapter reads something like "Why is it that the State bullies the counties?" It talks about the TAT, collective bargaining issues, the Land Use Commission, which I do not think any of us really believes is necessary anymore, but it is another step in the way that the State control what happens at the county level. The TAT just happens to be one more of those items which they have the paternalistic view that "father knows best" or "mother knows best."

Councilmember Yukimura: Okay. Thank you very much.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Good afternoon. Actually, I do believe that the Land Use Commission is necessary. I understand where you are coming from. To me, there are two (2) things: the State is being paternalistic or maternalistic, depending on how you look at it, and taking these funds away from the counties. The fact that the intent of the person actually paying the funds, the visitor industry, to supplement the county it services, means to me now that the visitor industry is not paying its fair share to the counties. This is where I am going on this.

Mr. White: Yes.

Councilmember Hooser: HRS Chapter 46 gives us the power as the counties to charge for services. I have been exploring looking at charging as a surcharge to the property tax a park fee or other fee to the visitor industry. If we did that, number one it would help us recapture funds that we are not getting from the visitor industry, and number two I would hope would encourage the visitor industry to talk to the Legislature and ask them to play nicely with us a little bit

more than they are. Is the visitor industry helping us on this or are they standing back?

Mr. White: I would beg to differ that the visitor industry is not paying enough.

Councilmember Hooser: No, to the counties.

Mr. White: Yes, I know, but our county generates one hundred seven million dollars (\$107,000,000) in property taxes from the visitor industry. Either way, the nice thing about the visitor industry is that if you do something nice in the parks, you are doing it for the residents and the visitors. There are so many things where what is good for the residents are good for the visitors and vice versa. You folks have to make your own decisions in what level of property tax is appropriate. I am not sure if it would be cleaner to look at just an overall rate for hotels as opposed as doing a charge for a specific park.

Councilmember Hooser: Thank you. What I see is the Legislature squeezing the counties' budget and trying to get us to pass a general excise tax, which goes on to help offset all of this. Meanwhile, the TAT, which is intended to be from the visitor industry to help us offset those impacts, is being stiffened away from us. I think if you analyze the usage of parts, specifically, the visitor industry would have a disproportionate share of impacts on park usage. How do we enroll the visitor industry is the question to help us talk to the Legislature and say, "Be fair. Pay the counties what they are due?"

Mr. White: I think the visitor industry is really well-engaged. They are likely to support the TAT Working Group's position. I have chosen not to because I think it is selling the counties a little short, but that is just my feeling. Having been there yourself, the Legislature is an interesting place to work. The challenge for me is that they have found the TAT to be something they can play with, with no political exposure because the visitors do not vote. If they raise the GET, there is exposure there, so they are more than happy to pass the ability to the counties to engage the GET so that you folks take the hit.

Councilmember Hooser: Absolutely.

Mr. White: I do not want to trade a visitor-generated tax for a resident-generated tax. That is why I am way more interested in getting a fair share of the TAT, rather than implementing a GET alternative because it is not the right kind of tax; it goes after all of our residents. It does impact visitors, but it is mostly going to fall on our residents.

Councilmember Hooser: Thank you. We share a thing in common.

Council Chair Rapozo: Any other questions for Mr. White? That was quick and painless. Thank you very much. There is the Legislature Opening Day next week and will probably see you over there. Again, I know that you have a flight to catch, but if you could hang on for a little bit, it might be good to get some clarity.

Mr. White:

Thank you.

Council Chair Rapozo: We are going to come back to this. We are going to get back to the county manager discussion, but I did want to say that because the GET was brought up and that was an opportunity for the State to give the counties an opportunity to generate revenue to offset the loss of the TAT. If you think about the expenditures that we have, and the task force spells it out quite well, about what counties spend. Police, fire, lifeguards, parks, beaches, and promotions—all of those things, really the county provides the services for the visitor, some of those not just for visitors, but for the sake of discussion, all of those services are provided by the county, not the State. The GET that they are saying, “Hey, counties, you folks want to raise revenue? You get to use this new tool,” would not allow us to pay for police, fire, lifeguards, parks, beaches, or visitor promotions, because those GET funds came with a restriction for transportation and infrastructure. It is apples and oranges. You cannot use the GET money to deal with the visitor cost for the counties. I just wanted to make that note before we move on. Any further discussion? If not, we will recess this part of the agenda and reconvene with the county manager discussion. Councilmember Chock, you have the floor. I believe your discussion was over.

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

Councilmember Chock: Thank you, Chair. At this point, I just wanted to open it up to Councilmembers for questions on the presentation itself and work by the Sub-Committee. None? Councilmember Yukimura.

Councilmember Yukimura: Thank you very much for the presentation. It was very comprehensive and well-organized and I appreciate all of the work that the Sub-Committee has been doing on this issue. In Councilmember Kaneshiro’s section of the presentation, there was not a costing of a council-manager alternative. I wondered if they could not do that with some articulated assumptions. I do believe that if they mayor becomes the ceremonial representative, those costs from the Mayor’s Office will move to the Council, so there will be less of that kind of expense in this manager’s office, presumably, right? But it is net zero because you are just moving it from one part of the County budget to another.

Councilmember Chock: That is correct. I will let Councilmember Kaneshiro respond.

Councilmember Kaneshiro: For us, it was very difficult to put a cost to a system that...we did not say, “This is how it should look and this is the way it should be.” Because we left it open, there are a lot of considerations that we went through that decisions needed to be made on, “Where is the mayor going to be,” and, “Where is the county manager going to be,” that we just did not want to get into...I think if somebody is going to take this forward, then they need to go through and make those decisions. As far as putting a cost to it, it is really hard to say what it would be. If the mayor moved over to the council’s section, I could see him getting served almost like a council chair. If we decided to make the mayor the council chair, he would have the clerical staff there to allow him to make those decisions,

and I do not see an increase in costs because the staff is already here. The county manager would end up in the mayor's seat and he would have a staff. It is very hard to say how much staff he needs and how much staff will need to be here. I kind of just looked at what the costs are around the nation and on the west coast, and what costs are counties and cities currently paying for these types of positions.

Councilmember Yukimura: Thank you. I think one of the main concerns in my part is that there seems to be an assumption that the mayor was going to be elected by the council, and I thought I had heard a consensus in earlier discussions that the mayor would be elected by the people. I feel like there is more consensus around that than there is around a mayor elected by the council. I would like to have a discussion and if there is that consensus, I would like whatever council manager scenario we are building to be given.

Councilmember Chock: Sure. I think I can respond to that. In the statistics, what we are meant to do is present the best practices. I think sixty-nine percent (69%) of the mayors were voted in.

Council Chair Rapozo: By the people?

Councilmember Chock: By the people, yes. If the Sub-Committee made it seem as if we were moving in one direction or another, that is not what we intended to do. All we might have suggested is that there are various ways, which one would be to be appointed by your fellow colleagues. I think that in our discussions, most of us had agreed that there is a strong interest for a mayor and it would fall closely in-line with the changes necessary in HRS and our Charter to retain a mayor, but also, of course it is open to whoever would be introducing it that the people, to a large degree, has said that they want the opportunity to vote for their mayor. I would be in agreement with your statement.

Councilmember Kualii: Just to add, basically this is the information and an addition of best practices, if you will, from ICMA. Ultimately, if one (1) of us seven (7) decided to do a proposal together, we would be trying to draft a proposal that we thought we could get at least five (5) so that it could get on the ballot and that we also thought the voters would vote for. So this idea about the people still having their ability to elect "a" mayor, not "the" mayor, as that position exists today, but some form of mayor in the future, that would be part of your decision to include it in that make-up to get the five (5) votes and to get the people to pass it.

Councilmember Yukimura: I have to leave this meeting in half an hour for a funeral and I asked the Sub-Committee Chair what that outcome was that we wanted for today. I just wanted to say that my thought is that I think if we can come to an agreement of the basic parameters of a council manager proposal, and I prefer the Council doing it, rather than the Charter Review Commission, that we would have the charter proposal prepared and think about how we would do that. My sense is that it is not going to be ready for this coming election because there is a lot of work to be done and we will not be able to propose a charter amendment. This is such a big change that we have to do it really carefully and deliberately. That is where I am thinking of moving and the way I see it is that I would like to have the form that we are looking at be an elected mayor. I would also like to have a true council manager system where the department heads are all accountable to

and hired and fired by the manager. We should have a discussion on that, otherwise it will not be a true manager system and it would be very difficult for a manager to not have that kind of accountability and yet produce the results that he or she are going to be asked to produce.

Councilmember Chock: Thank you.

Councilmember Yukimura: I think it is best practice, too.

Councilmember Chock: It is. Any other questions on this presentation?

Council Chair Rapozo: I just have a real quick comment.

Councilmember Chock: Yes.

Council Chair Rapozo: I am not convinced that we do not have enough time to get this on top the ballot, but I could be wrong. Having said that, I would agree that I have not heard any consensus that the council would pick the mayor. I was always under the impression that the public, the people and the voters, would vote for the mayor, so that would not change. That is just my personal opinion. I believe that cannot be taken away from the public. Logistically, it would be complicated to transition—there is no doubt about it. You have HRS and our Charter involved, so there are some logistical issues. I think that this body can have the necessary discussions, whether it is in the form of a special workshop or series of workshops, because I agree that it is going to take a lot of work. Again, maybe I am wrong and we cannot get it done. I believe that if we cannot get it done this time to have it in front of the voters at the next election, then to try to change this in the middle of a mayor's term, a newly elected mayor, which will happen in 2018, and that person will have an opportunity to serve eight (8) years, I think it will be very difficult to convince the people to change that system in the middle of a potential eight (8) year run of a new mayor. If, in fact, we want to put this in front of the people, then I believe this is the election that we need to do it so that it does not affect anybody's term in office at the Mayor's Office. I think we are going to have to put the work and the time in, and I believe the community has to be involved. There is some discussion about the costs and we do not know the costs, but I do know one thing—when I went to the ICMA Conference in Seattle with Councilmember Chock...one thing I do know...first of all, I am the Chair now. So let us just pretend that today we adopted the county manager system. I will tell you what my staff includes. Do you know what my staff includes as the Council Chair of this Council? I share a secretary with Councilmember Kagawa and Councilmember Yukimura. That is my staff. I do not have a personal secretary or a personal executive assistant. Everybody you see in here today is shared between seven (7) Councilmembers. If you put up slide number 28, one thing that I do know is that tomorrow if this system should change over to a county manager system—this is after discussions and a lot of research online in talking to county managers, actual sitting county managers from various jurisdictions across the country, I can assure you that the new mayor or the county manager that would come across and become one (1) body versus two (2) separating bodies, we would not have a managing director. They would not need an administrative assistant, two (2) administrative aids, and an executive secretary to the mayor. They would not need

that. So public information officer—yes, I think we would need that. I also think that we might possibly need a communications specialist. The other thing the managing director would look at is, “What are the pay structures of these positions?” It is a tough discussion to have because we have people that are serving in these capacities right now. As a manager coming in or new CEO coming in, looking at everything, as we are looking at hiring a County Auditor, that person will come in and reassess, and if need be, restructure. My point is that I know that the transition from a strong mayor’s system as we have today over to a county manager system, for the people that are out there saying it is going to cost more, I just want you to understand that that is not going to cost more. It will not cost more. That CEO or county manager would look at existing resources, resources in different departments, and make determinations of whether or not we are overstaffed or understaffed. If you just look at this today, it is going to exist today and every time we get a new mayor, the structure of the office changes. But there is the Mayor’s Administrative Assistant earning one hundred two thousand nine hundred ninety-six dollars (\$102,996), two (2) Administrative Aides at seventy-seven thousand two hundred ninety-two dollars (\$77,292), and an Executive Secretary at eighty thousand sixteen dollars (\$80,016) for the Mayor. That is what is happening today. Vice Chair Kagawa, Councilmember Yukimura, and I all share one (1) secretary; we share our staff. I can tell you with all certainty, as far as salaries are concerned to staff the Office of the County Manager, we would save way more money than the salary it would take to hire a county manager. That, to me, is undisputable. That is just my personal opinion from experiences in this County since 2002. I know we cannot put a number on it, but it is what it is. When I talked to the County Managers at the Conference, they have very limited staff; nowhere near this. I just wanted to make that point. Thank you.

Councilmember Chock: Any further questions on that actual presentation? I prefer to move this out of the Sub-Committee, not to speak for the whole committee, but on the larger next step questions if that is the direction of the Committee. Any questions on the presentation itself is what I would like to entertain. If not, I will hand it back over to the Committee of the Whole. Thank you.

Council Chair Rapozo: Thank you, Mr. White. Thank you, Councilmember Chock. Councilmember Yukimura.

Councilmember Yukimura: This is not so much a question, but just a clarification on slide number 11 where we talk about the role of the manager. I would just like to ask that wherever we mention the council, it would be “mayor/council” just so that we are clear that it is this new form that includes the mayor. I do want to say that that is a really big benefit of a council manager form that the mayor and the councilmembers are together around one table. I think it would build unity. Even though we have division among here, we would still be talking on the same agenda and we would be talking to each other much more, the mayor and the councilmembers. So there is not the Mayor’s vision in Holo Holo 2020 where the Council has not had any input, but there would be, in fact, a County vision that would have been crafted together by the mayor and the council. I did not think that council by districts was part of this mayor/council picture and we have had no discussion on that either, so I just do not it assumed. To me, there is so much to discuss about that and to me it causes more separation,

rather than unity. If we are going to have further discussions on that—I prefer that we keep the council at-large while we make the transition, and then later on see if we want to go to districts because that is a whole other dynamic. If you look at the Legislature and Congress and you ask why they are so divided, it is because everybody is just trying to do their thing for their little district and that is where the fights and deception occur. It is better if we are all accountable to the same people and people will have the power of seven (7) votes, otherwise they will just have one (1), two (2), or three (3), depending on the format. Anyway, I just want red flag that as a key issue, too, if we are talking about what form of the proposal we want to put forward.

Councilmember Chock: Sure. This is Councilmember Kualii's section, but I will say that David Mora, who came in and did a presentation, stated that his focus was more on the two (2) to four (4) year term limit, rather than the districts; however, we understand that districts is currently at the forefront of our commission and need to be discussed specifically if we decide on moving forward, and that is why I think it was mentioned. Councilmember Kualii.

Councilmember Kualii: That is exactly what I would have said. It is about not having the full council turnover all at the same time because then the political decision on whether to keep or hire the council manager, the CEO of the County, would be so volatile and that you would not have seven (7), two (2) year terms turning over every two (2) years, so four (4) and three (3) the staggered, and the longevity will help preserve the historical and institutional knowledge within the body.

Councilmember Yukimura: I do remember that Mr. Mora mentioned four (4) year terms staggered, but I do not recall him mentioning anything about districts at all. I would prefer that if we say "best practice" that we actually are accurate and say it was a four (4) year term with terms staggered.

Council Chair Rapozo: I am going to defer to any Member of this Council that would want to introduce a resolution for a charter amendment, because the Sunshine Law obviously disallows us to meet after today's meeting, but I would ask that if anyone is interested or remotely interested to let staff know so they can let me know. Otherwise, I am going to move towards introducing this resolution. As you all know, you cannot have a charter amendment on the ballot that covers more than one (1) subject. So we could not do a charter amendment that had the county manager transition that included the change in the terms, term limits, or districts. That would have to come across as a second or new charter amendment. Having said that, my intention is not to touch the districting two (2) year term or four (4) year term in the county manager proposal; that we work on that proposal and establish a series of workshops that involves the community, so we can get a very good idea of what the public wants to see. We need to do this in a relatively short period of time because should five (5) members feel that we want to move forward and getting this on the ballot, it is going to take staff, the legal attorneys, and everybody else some time to put the language of the charter amendment together so we can get it on to the ballot at the next election. Is that possible? I do not know. I am optimistic, but I do not know. I believe that we can at least work to that end and try our best to get it done. Councilmember Yukimura.

Councilmember Yukimura: I am interested in introducing a resolution and I am not averse to working with you to co-introduce, but I really feel that to rush it would not be wise, and I would like to suggest an alternative that we work for one (1) year on this and have a special election in a non-election year. There would be additional costs, but I think it would give us time to go out into the community, not get it intertwined with all of the political election year stuff, and really be able, as a community, to look clearly at all of these pieces, and next year only that on a ballot. Anyway, that is just an alternative to look at because you still can make the timetable to be for the 2018 Election, which next year is 2017, and still accomplish everything we want to, but not in such a rushed format and not in such a political environment.

Council Chair Rapozo: I am not opposing to that. I do not think we should plan it that way; I think we should plan for a 2016 charter amendment. If the process moves through and it is very evident that we are not going to make the 2016 Election, then I think we make the adjustment to have that special election, but I think we should try our best to get it on. What will happen is if you do not get it on 2016, you are going to potentially have a bunch of candidates running for mayor in 2018 and they are going to be “hitting the ground running,” and then we have this special election, and should this pass, that would end that. They still would be able to run for a different type of mayor for a different type of system, so I am not discounting that we can do that. I think we could. I would not have a problem with that, but I think we should try to see if we could get this in on the 2016 ballot. Councilmember Chock.

Councilmember Chock: I think that the fundamental question is whether or not we believe that the people should have a choice on their form of government and that should be moved forward on. Based on the work that we have done and evidence that we have been able to provide, it is giving us enough information to want to move that forward. Of course, I do not think we can or need a vote for that, but that indication in itself would ignite the next steps to take.

Council Chair Rapozo: I would agree. I think the decision that has to be made first is whether or not—you hit it right on the head—whether or not we believe the public should have the choice. I believe also that we need to provide the public with the necessary information because this is a major change. Maui is looking at it, believe it or not. I think they have already drafted the resolution for the charter amendment. I should have asked Mr. White when he was here. After that, it is the logistics of how we make it happen and producing this final product of a ballot question that can be put on the ballot. Councilmember Yukimura.

Councilmember Yukimura: To me, it is clear that people should be the ones to make the choice, but the question is what choice do we put before them? If you just put the concept “council manager,” as your research has shown, there are so many different parameters, so you can have many different proposals, and I for one, would not support a council manager system that does not have that accountability to the manager. If we had lay commissions that picked the managers that the county manager has to direct, it affects whether you can actually have the results of a county manager system. That is why we have to do some shaping. Even if the county manager system had a mayor elected by the council—I am not

sure I could support it. I am not sure that would be the best choice to put forward to the people. That is why I think we have some homework to do and I do not think anybody disagrees with that.

Council Chair Rapozo: Absolutely. That is why I suggested a series of workshops because this is not something that can be done at a committee meeting. This started a while ago—the discussions of this started months and months ago. The formulation of the task force took some time. I agree one hundred percent (100%) that if we are not ready then we are not ready. We will try our best to get ready, which is what I think I am asking. Whatever resolution comes forward, I think the workshops need to be held so that whatever is in that resolution put forth to the Council has to be vetted out and it should be clarified as to the different components of the transition so that we can actually move this thing forward to the public. Councilmember Kualii.

Councilmember Kualii: I just want to add that, yes, the vetting out would take time, especially if you are trying to make the smaller decisions of how to make the big choice. As far as the people having the right to choose their system of government, whether this Council is able to succeed with one (1) proposal, that five (5) votes can pass and can get on the ballot so that the citizens have that choice to vote on, it is the choices that we made working in workshops and what have you. There are other ways to get it done and the Charter Review Commission has tried in the past and the citizens themselves always have the opportunity to, by petition, put a charter amendment forward. We can feel like it is our responsibility to do our best, but I will tell you that it is challenging just because of all the...I think if we are going to do workshops, then we are not going make it. It is going to take time if we are trying to just develop the basic concept by committee. The three (3) of us in our task force has seen all the moving parts and the variables and all of the choices. There are hundreds and hundreds of different configurations if you keep moving one piece compared to the other piece. It makes more sense if one of us think we have the magic solution that we can convince four (4) others to support us on, that we think the voters will support, that we come to the table with something as a starting point. Otherwise, if we start with a blank piece of paper, it is going to take us over one (1) year. That is what I believe.

Council Chair Rapozo:

Councilmember Hooser.

Councilmember Hooser: I want to second what Councilmember Kualii said. I think we cannot expect to resolve every single question regarding everything. We need to get the broad strokes down as soon as possible, put a document on the table and work through it, have our meetings, and hash through all the different elements. I would support trying to get something, not rush something, but try to get something meaningful and solid on the ballot this year if we are going to do this. From our discussion about an elected mayor, I would certainly support the elected mayor part and keeping out maybe some of the discussion on the districts or other things like that that are not directly relevant or do those concur. I am not trying to get out of doing work, but I have several bills, like probably most of you are, that I am already working on. For those of you that have dug into it already, and the Chair mentioned that he might be doing it himself, I would say to go for it, get it on the table, have our meetings, and vote up or down. Thank you.

Council Chair Rapozo: I think there is a need to rush to get it on the table.

Councilmember Hooser: "Rush" is a hard word to use.

Council Chair Rapozo: Well, I agree with Councilmember Yukimura that the discussion should not be rushed. I think we need to explore. We are not going to sit here and discuss the positions that the county manager would get. That is not for us to discuss for the charter amendment. I think the cost of a transition is definitely something that we have to discuss, but we are not going to get into the minutia of how many people does he or she need? I think what we discuss is the structure, responsibilities, job description, how this person is hired, and the authority for commissions. All of those things are the big things that we have to identify, and that is all we need to identify. Should this pass, we will have two (2) years to get it implemented. I would envision utilizing ICMA, looking at best practices, and at that point the transition will occur. For us and our discussion, it is really the changes that will occur in our Charter that we have to address. Councilmember Kaneshiro.

Councilmember Kaneshiro: In going through this whole process, it is a lot of information. The question that always comes up in my head is, "Is this an all or nothing decision?" Are we going to say we are either a mayor system or a council manager system? Or you look at it and say, "What is working now or what is not working now?" Are we able to improve it? As we went through the process, I think we are all thinking, "How is the county manager working? Are we able to incorporate it into what we have now? I do not want to throw a wrench in the system, but it is always in the back of my head, "Why can we incorporate something?" If there is a flaw in the system we have now, why can we not incorporate something to make it better now?

Council Chair Rapozo: I am sorry, but we need to take a caption break. Councilmember Kaneshiro, let me just say that because you brought that up, but I was first elected in 2002. We have been through several mayors, a whole lot of Councilmembers, and collectively every Council has tried to make things better, and collectively, we have been unsuccessful. I am not saying it is Bernard, Bryan, Kaipo, or not any of the mayors, including Councilmember Yukimura, but the system that we are in on this island makes it difficult for accountability to occur. That is just what I have seen over the years. We try and try, but we just have not been able to get it done. The costs keep rising. Councilmember Hooser, do you want to say something? I am going to take a caption break if you do not mind.

Councilmember Hooser: I am going to need to gone for about ten (10) minutes.

Council Chair Rapozo: Right now?

Councilmember Hooser: I was going to leave with Councilmember Yukimura during the caption break because I have to pick up my car and come back.

Council Chair Rapozo: Okay. Yes, we will take the caption break now because we are running late. Thank you.

There being no objections, the meeting recessed at 3:43 p.m.

The meeting reconvened at 3:53 p.m., and proceeded as follows:

(Councilmember Hooser, Councilmember Kagawa, and Councilmember Yukimura were excused.)

Council Chair Rapozo: At this time, is there anyone wishing to testify? I know we have some registered speakers. With that, I will suspend the rules. Can we have the first speaker?

Ms. Fountain-Tanigawa: Chair, the first speaker is Glenn Mickens, followed by Ken Taylor.

There being no objections, the rules were suspended.

Mr. Mickens: I have two (2) testimonies: one from myself and one from Walter Lewis. I once again wish to thank Sub-Committee Chair Chock, Sub-Committee Member Kualii, Sub-Committee Member Kaneshiro, and Council Chair Rapozo for their efforts in putting this county manager issue before the people. This style of government can only improve the way our island needs to progress now and in the years ahead. There are those who argue that we do not need a county manager to correct the laundry list of problems facing us, that we only need to put the right people into the key positions that are causing the problems. This is a great soundbite, but over way too many years, these "right" people have not been elected or appointed. Thus, this system has not worked or we would not be in the mess that we are in today like traffic, infrastructure not keep pace with growth, solid waste, and on and on. We cannot keep doing the wrong things over and over and expect better results; it is not going to happen. We are not asking this Council to implement a council manager system only to put it on the ballot and let the people vote it up or down. The example of this system's successful use by nearly half of America's communities are there, so why not at least try it. That is my testimony. Council Chair Rapozo made a great case for what he said about the costs. I think you are going to see a huge savings in a county manager system because I do not think it is going to come anyplace close to the somewhat eight hundred thousand dollars (\$800,000) for people in the Mayor's Office. My other testimony is from Walter Lewis and he regrets not being here today. I do hope that we have workshops as soon as possible so that we can iron some of these things out. "The report you will be considering today relates to a subject that will be as important to the County and its people as any of you have while serving as a Councilmember. A council manager system of government has a strong potential of providing in Kaua'i a better governmental system in saving its taxpayers millions of dollars each year. The council manager system consists principally of assigning the executive responsibilities to manage council operations to a qualified manager, but also includes the provisions needed to be made in our County Charter to carry out the change of executive responsibilities to implement the report given by your Sub-Committee. The Council should establish the authority to create the specific proposal that will be required to present to the electorate to make the necessary

amendments in our Charter. I would urge the Council to act as promptly as may be possible to point one or more members to work with staff and legal counsel and to hold one or more workshops where our citizens develop the terms incidental to the county manager system as deemed advisable.”

Council Chair Rapozo: Mr. Mickens, your light is on, but I will let you finish that very long sentence of yours. You can come back if you want to.

Mr. Mickens: Thank you. I did not notice the light. Sorry about that. I will come back.

Council Chair Rapozo: Next week, we are raking it up to a little buzzer underneath the seat. Mr. Taylor.

KEN TAYLOR: Chair and Members of the Council, my name is Ken Taylor. I want to thank the Sub-Committee for a good report. I know that they have put a lot of time and effort into this, along with the staff. They could not have done it without the staff and they have gone a good job up to this point. What I would like to see now is a decision to move forward with the next step. Hopefully, you will point somebody to start working on putting a proposal together, along with a workshop as early as possible. I am not going to get into a lot of discussion about activities at this time, but the one thing that I do see that is missing here is mention of an assistant manager. There are different ways that can be handled, too, but I really do not believe that making this change will be any more costly than the operation is today. There are two (2) ways you can move forward: you can make it very complicated or you can use the “Keep It Simple, Stupid (KISS)” principle and keep it simple. We are not reinventing the wheel. There are a few decisions that need to be made, but they are minor in my opinion. In the past, Walter Lewis spent over one hundred (100) hours looking at the changes that needed to be made in the Charter. A lot of that has been done and needs to be written up, but those things have already been done. I think that if you do follow the KISS principle and move forward with this, you will have no problem getting on the November ballot. A fallback would be a special election down the road, but I think you can move forward and it would really be good to have the election in November because then it gives you some breathing room to prepare for moving out, advertising, hiring, and being prepared and ready to go in 2018 when this would all come down to a final situation. All I can say is follow the KISS principle; “Keep it simple, stupid.” Thank you.

Council Chair Rapozo: Anyone else wishing to testify? Mr. Bernabe.

Mr. Bernabe: Matt Bernabe for the record. I would first like to start by saying that everybody who has put work into this county manager issue that is trying to change the status quo, I want to applaud that. While we are there, I just want to point out that on page number 28 that we used earlier, we talked about all of these people that are in the Mayor’s Office and there are two (2) things that I want to point out; one is that some of them are redundant. Why do we need two (2) Administrative Aides? That goes to what I am about to say. The checks and the balance in the current system is the County Council to be able to say to the Mayor, “No.” Just like the other day, we watched an after-the-fact resolution and I sat here and watched only the Chair vote against giving them an

after-the-fact resolution. If we go as a Council and we keep doing that, no matter who you put or no matter what system you put, it will not work. You folks are the checks and the balance for the current administration, so if you go ahead and allow a group of people that are supposed to be conducting the bike trail, hold public process, hold due process, and they come in and say, "Look, we have already done it. Who cares? Just stamp it and let us go." Nothing will change if there is a manager in there or a mayor if the Council does not have the political will to say no. You have to tell them, "No, we do not need two (2) Administrative Aides." Who allowed the budget to fund two (2) Administrative Aides? I think that is the bigger question here. The current system does not work the way it is supposed to work, which is going to my main point that, "adopt the best practices for department heads required criteria for job qualification," including the mayor, right? You might have to put some things in there. For the department heads that we are talking about—that is your answer right there. In going back to page number 28, we already heard a testimony about there being an assistant manager, but we do not understand or even know what the manager will hire. He may hire two (2) more positions than we have currently. We do not know, because as you folks said, there are one thousand (1,000) models and not all of them work and some only work for some places. The reality is that you as the Council have the ability to make the current system work. That is it. That is the system. I will come back for my other three (3) minutes and explain why that is important.

Council Chair Rapozo:

Thank you. Mr. Rosa.

Mr. Rosa: For the record, Joe Rosa. I am speaking for the management type of the mayor basically because I come here and give my testimony and people who work for the County say that I make more sense than some of the department heads. I know what I am talking about through experience. I did not go to college for four (4) years, but I had a lot of experience in work and I know where I am coming from. I see all these fancy designing they are doing here on Hardy Street and Rice Street. It is not improvements. Ten (10) feet wide pavements...twenty (20) feet wide...eight (8) feet wide sidewalks—people ask me, "Where is all the people that is going to be walking on eight (8) feet wide sidewalks?" Bike paths and all of that...why is Kaua'i only the Americans With Disabilities Act (ADA)? I do not know. The consultants do things on the main streets coming in...five (5) feet radius and the cars are climbing the curbs right here by the bus stop. A big (inaudible) for the bus has to come out on the main travel way to get back on the highway. He could have gone straight without this big (inaudible). It is the same thing by the Convention Hall, right here on Hardy Street. I see a fire hydrant and they planted a tree close by the fire hydrant. It is going to be a nuisance for the Kaua'i Fire Department. There are all of these things. Big money is being paid to consultants. All this kind of engineering work could have been done here at home in the engineering office with designing, planning, and everything. I did it when I was with the Department of Transportation (DOT). I worked from scratch with planning, surveying, or whatever. In this county style of government, you have to do your job, know your job, and seven (7) members on the so-called "mayor/council" will select people who are totally qualified, not a "buddy-buddy" person who gets a job that does not know Shinola from polish. I see the expenses. Like I say, in the last negotiation, the fifty-three (53) members of the Mayor's staff costs more than the four (4) bargaining

units, as far as for paying wages. You tell me if that is a good government. You have too much access material on the staff. Thank you.

(Councilmember Hooser is noted as present.)

Council Chair Rapozo: Thank you. Anyone else wishing to testify for the first time? Second time? Mr. Mickens.

Mr. Mickens: For the record, Glenn Mickens. Back to Mr. Lewis' testimony: "The council manager system is an established form of local government in place and operating successfully in nearly half of America's communities is a grave duty of this Council's members to ensure the citizens of Kaua'i the best government they can. This responsibility should guide the members as they consider the steps to take on the council manager proposal, which is the subject of the report being issued. When members vote on the course to be taken, it is their paramount obligation to recognize that it is a basic right of our electorate to determine the form of government they wish to have. We thank you for respecting that right." Realistically, I know this is not going to be easy and how much work you folks put into it and going up to Seattle and everything to try and put this together. There is no way that a lot of things are going to have to be put in place, but a workshop or two (2) workshops will be highly beneficial when you put those things together. To look at the responsibility and efficiency that you are going to put in the county system where the county manager system is going to be is probably second to none. As one of the speakers pointed out, we look back at the things that have not been done in this County of ours for so long that we cannot do anything but go forward if we get a county manager type of a system going. He may advise you folks. You are going to make the final decision. A lot of people have said, "You are taking the decision out of the council." No, you are making the decision. All he is doing is implementing it in a learned, good way of doing it. That is all. Like Councilmember Yukimura was saying, the mayor is going to be sitting here now with you folks. He is not going to be pointing the finger back at the administration because he is here. When you are pointing these things out, it is already in place. Anyway, I hope in your wisdom we can have these workshops and everything so that we can put this thing together. I really appreciate your efforts. Thank you.

Council Chair Rapozo: Thank you. Mr. Taylor.

Mr. Taylor: Chair and Members of the Council, Ken Taylor. I just want to read a couple of comments from a gentleman who was city/county manager. He said, "In Berkley, California where I served as city manager, there was a strong charter role for the manager, even the city attorney were hired by the manager; yet, delivering public value required skillful negotiations with intense and often angry community with political activists, and with a diverse and bickering council." He also managed a county in Arizona with a fragmented organizational structure and no charter where half of the department heads were elected, yet the county functioned like a textbook plan—government largely thanks to a cohesive and deliberate governing body. We talk a lot about a manager doing a good job and so forth, but it is a team effort and it takes a good counsel, along with a well-experienced manager that has the skills, as he says here, "negotiate and fine-tune the activities that are being discussed at any given time."

He goes on to say that a lot of managers could tell similar stories. I just bring this up because of this concern about the problem with the manager and council activity under the cons of a county manager. Again, we are not reinventing the wheel. We want to keep it simple and we want to move forward. I think we are very capable of doing that. Thank you.

Council Chair Rapozo: Thank you. Mr. Bernabe.

Mr. Bernabe: Matt Bernabe for the record. At the end of the day, either system will fail if the people that are in the system do not have the political will to literally go against the grain. I see this as a mechanism to actually make the abuse, to me. In this city? In this County? In this State? Are you kidding me? I have to be honest that this, to me, is bad. The reason I like the current system, as I have already mentioned a few things, but I am going to something more personal. The current system, the mayor balanced by the council, has the genius to allow for participation by regular Joes like me. Right now, I can go as a voter and I can press the Mayor on an issue. If he is a manager, he will refer me back to you folks, so that only leaves me with one course. Right now, I can come here and testify, "Hey, I am not going to vote for you folks if you keep on allowing after-the-fact resolutions to the Roads Division." I can say that, right? I can also go to the Mayor and say, "Hey, what is up with your Roads Division?" I can pressure two (2) different bodies. If we elect bad people, that is our fault as the voters. We need to elect better people if that is the case. The problem that I have this late in the game is that people that are older than me, come in and say, "Look, we have thirty (30) years of a failed system." Guess what everybody? You folks were engaged in those thirty (30) years. Is it fair that you are going to pull the plug on us now? This system is a lot better. It is like double-dutch where two (2) people go with the rope and whoever jumps in may get it good or they may not. Right now, you folks are not working on a good thing, but who knows? If we put the right people in the same system, this thing might flourish better than any manager system out there. That has the potential. You have already talked about the language. Put out the best practices and make it concrete where they do not have the choice of not doing the right thing. That is what I am saying. I am going to hold you folks accountable because just a couple of weeks ago, I watched you folks "okay" an after-the-fact resolution. That is not what the current system is designed for. You folks should have said, "No, bad job, Administration. We are going to send it back. Try again." Even if it goes to the public and we have to let heads roll, that is how the system right now is supposed to work, but it does not. Let us not change it until we can at least make this one work. If it takes getting new people in these seats and new people in those seats, that is the genius of this current system, not that you have to have a college degree.

Council Chair Rapozo: Thank you. Anyone else wishing to testify? If not, the meeting is called back to order. Further discussion? Councilmember Chock.

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

Councilmember Chock: I would urge people to look even further than what has been discussed here at the table with the presentation and the work that

the Sub-Committee has done because there is a lot more to look at, which is what we have tried to accomplish with the Sub-Committee and get all the resources and information together. I know that not everyone has looked at it because there is so much. There is everything from history to philosophy behind it about why it makes it a little easier in the different system to accomplish the things that we are trying to accomplish. I think that this is just the beginning, and I agree. I think that if we can accomplish things that we need to in the current system, then go for it. Let us see it happen. However, some of the things that have been said are just not possible because we truly do not have the oversight over some of the things that we are talking about administratively. I can see that there is a clear path for that and I think that is what this body has been trying to take on and act on; not in every case and maybe not on the resolution—that was a hard one to determine after-the-fact that it was a bike path. It could have gone either way; however, when we are talking about administrative aides, that is a different story. I do not think we have the direct oversight to fire people. Anyways, if there are ways, I would be happy to see how it is we can continue to improve upon. That is what I think everyone in this room wants. What system makes it easier is really what the key question is for me. I am open to looking at how it is we form, whatever comes out of this discussion, an amendment or even just best practices to accomplish. Thank you.

Council Chair Rapozo: Any other discussion? If, let me just say that the deadline to have a resolution stamped by our County Clerk's Office to get this on the ballot is June 3rd. That leaves us a pretty good chunk of time. So by June 3rd, it has to be received here and stamped so that it can be on the June 15th agenda for first reading. I believe we do have enough time to have some quality discussions and possibly a resolution, which is what I intend to pursue. Just because I introduce a resolution for a charter amendment, depending on what the outcome of the discussions and the ultimate resolution is, I may or may not support it. There are a lot of issues that need to be discussed. There are some major structural changes that need to occur, which is where I think we need to attack. Matt is right—the Council controls the purse strings. Councilmember Chock is also correct that we cannot really interfere with the administrative function because we are two (2) separate entities; we are two (2) different branches of government. Yes, we could cut the funding and the Mayor would have an opportunity to veto that or have an opportunity to take money from somewhere else to keep that function running. That is hardcore. There are other tools at our disposal, Matt. I will say this to you and it is not because we have not tried. We have audit powers and investigative powers. Historically, the body, whoever sits on this body, has never had the political will to get it done. I, for one, have introduced numerous resolutions for that and you just cannot get the political will to get it done. That is the system and that does not make those people bad Councilmembers, they are just looking out for the best interest of the County, so I respect everybody's vote around the table. Right now, we have two (2) mini corporations running this County: the executive branch or administrative branch and the legislative branch. The executive branch or the Mayor has his personnel needs and he justifies that and has that. We have ours. I tend to believe that we are a lot more frugal here at the Council, but if you think about it, what is the difference between a Councilmember that has to answer to the same constituents as the Mayor, has to answer the same amount of E-mails and phone calls, and who actually has to come here every week and put ourselves up on camera. Why should I not get a couple of executive administrative assistants that can answer my calls and make my schedule? I guess

I could justify that, but we choose to be frugal. In fact in this term, we have reduced staff because of the financial times. This would merge two (2) corporations together, no different than any other big corporations. Do you know what happens when private corporations merge? Guess what? One of the CEOs has to go. One of the executive secretaries has to go. I do not want to sound mean, but what I am saying is that as the merge occurs, the county manager will...this addresses your concern—that is just not going to happen because now you have merged two (2) entities into one. You hit it on the head. The Donkey Beach road that was just cut without permits...just go do it...the bike land on Olohena, the Kapaia Swinging Bridge that Mr. “The Shadow” is here for—all of those things would not happen under a county manager system, I believe. My suggestion is that we get a communication in the Committee of the Whole to give us the ability to discuss the charter amendment process here, and hopefully that will trigger some consensus of moving forward. The workshops will follow as part of that communication, obviously if it is approved by this body. Once that series of workshops are done, I would anticipate a draft resolution for the charter amendment to be introduced, which we would have the discussion on this floor with the community participating. I would also suggest that we solicit the services of the ICMA as a resource to assist us through the process to help guide us through the process to make the best out of the time that we have. I think if we follow that schedule, I think we should be able to get something on the council agenda by the deadline of June 3rd. That is the hope. We will start with that communication for next week and start that discussion. I will have a better timetable to present. Next week’s meeting is on Thursday, not Wednesday, because of the Legislature Opening Day. With that, any other discussion?

Councilmember Hooser: Chair, I apologize for not sharing my thoughts early on, but as you were speaking, I was thinking that it might serve us well if somebody else could consult with the Charter Review Commission to see what their status is or if they have something ready to go. The possibility of having two (2) going forward is a valid point that might happen, so we should explore that a little bit, too. That would be my suggestion.

Council Chair Rapozo: That is a good suggestion. I have met with one of the members and he has a draft, which is completely different. What I do not want to see is competing amendments on the ballot. It serves no good purpose. I think we can reach out and send a communication out to the Charter Review Commission and maybe we can get a response as to what their intention is. I did see a draft and I honestly do not like it, but that is just one (1) Councilmember’s opinion. Again, the Council process involving the workshops, I believe, is a much better process for the community involvement, rather than one (1) meeting a month of the Charter Review Commission. I think this is probably the better venue. I mean no disrespect to the Charter Review Commission. They will do what they want to do and they will offer the same opportunities for the public to participate, but we will send something over and let them know what we are intending to do. Thank you for that. Any other discussion?

The motion to receive C 2016-13 for the record was then put, and carried by a vote of 5:0:2:0 (*Councilmember Kagawa and Councilmember Yukimura were excused*).

Council Chair Rapozo: One of the things that I hate doing is deviating from the agenda, but we have a couple of resolutions here for mayoral reappointments. I have a feeling that the Transient Vacation Rentals (TVR) discussion is going to go a lot longer. I want to take two (2) resolutions now just for public testimony, and then we will go back to the regular agenda. With that, can we take up Resolution No. 2016-13 and Resolution No. 2016-15? I believe we also need to take up Resolution No. 2016-12 as well. I think Scott just made an announcement to me. Is that the one that is withdrawing? Let us start with Resolution No. 2016-12.

There being no objections, Resolution No. 2016-12 was taken out of order.

RESOLUTIONS:

Resolution No. 2016-12 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE LIQUOR CONTROL COMMISSION
(*Pauline D. Ventura*)

Council Chair Rapozo: Can the Boards and Commissions Administrator come up and explain? I think this will ultimately be a motion to receive.

There being no objections, the rules were suspended.

JAY FURFARO, Boards and Commissions Administrator: Good evening Chair Rapozo and Councilmembers. Yes, in trying to coordinate with the particular new structure of the rules on this process.

Council Chair Rapozo: Please state your name.

Mr. Furfaro: That is true. My name is Jay Furfaro and I am the Administrator for the Boards and Commissions for the County of Kaua'i. Ms. Ventura was traveling, while at the same time, attempting to meet the new fourteen (14) day notice to post an item on the agenda. Subsequently in that trip, she fulfilled her first commission role, but wanted to have a family discussion about serving a second term. To meet the deadline on the correspondence, I posted that correspondence for her second term on the third, but she was on the mainland until the 14th, decided on the return, and after a family discussion, she would not like to serve a second term, but would, in fact, be willing to stay on for a ninety (90) day period until we identify her replacement. I would like this item to be received.

(*Councilmember Kagawa is noted as present.*)

Council Chair Rapozo: Thank you very much. I will call the meeting back to order.

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

Councilmember Kualii moved to receive Resolution No. 2016-12 for the record, seconded by Councilmember Chock, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

Council Chair Rapozo: Thank you. Next item.

Resolution No. 2016-13 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE PLANNING COMMISSION (*Louis E. Abrams – Business*): Councilmember Kagawa moved to approve Resolution No. 2016-13, seconded by Councilmember Kualii.

Council Chair Rapozo: I will suspend the rules. Do we have any registered speakers?

Ms. Fountain-Tanigawa: Yes, we do.

There being no objections, the rules were suspended.

SAM LEE: Thank you, Chair and Members. For this testimony, I am submitting...

Council Chair Rapozo: Can you please state your name first?

Mr. Lee: I am sorry. My name is Sam Lee. I am a resident of Po'ipū. For this block of time, I am presenting this written testimony on behalf of Branch Harmony, who was unable to stay. I will just paraphrase his short comments. He says, "Gentlemen, I was here to question these reappointments, referring to Resolution No. 2016-13 and Resolution No. 2016-15, based on the appearance of prejudicial conflict and requests deferment." I just wanted to represent him on that matter and add his comments to the record.

Council Chair Rapozo: Okay. Thank you. Mr. Lee, do you have more testimony?

Mr. Lee: Yes. It is possible, because time is short, that I could combine my comments into one (1) testimony that would be for Resolution No. 2016-13 and Resolution No. 2016-15?

Council Chair Rapozo: Sure.

Mr. Lee: While they are different commission reappointments, obviously, the comments pertained to the individuals.

Council Chair Rapozo: That is fine. Can you reset his time?

Mr. Lee: Again, my name is Sam Lee and I am a resident of Po'ipū. In this testimony, I am representing myself, my wife Sheila, and Julie Souza, who was unable to stay. We are informing the Council that we object to the reappointments of Mr. Abrams for the Planning Commission and to Mr. Blake to the Public Access, Open Space, Natural Resources Preservation Commission. I do not think it is appropriate at this time or place to get into much

detail, but suffice to say that you remember that several months ago, all of a sudden you began to see and hear from people from Kōloa and Po'ipū, and I was certainly one of them. You had letters, E-mails, and many testimonies from people who were concerned about a proposition that if passed, as part of the South Kaua'i Community Plan, would have changed the zoning of our neighborhood from residential to a Visitor Destination Area (VDA). Now how that pertains to Mr. Blake and Mr. Abrams is that in the midst of the controversy, and it was a very, very hot item on the south shore, Mr. Blake and Mr. Abrams appeared in our neighborhood, sent my whom and acting on behalf of whom was a question that we asked numerous times; however, it was never answered. Going past that, who and why were they there, they conducted what they described as a "survey," which in actuality was an intense lobbying effort directed at the old time *kama'āina* residents in that neighborhood to twist their arms to change their minds about no VDA. The result of that effort only made people angrier and this was a point where the Planning Commission and this Council began to see faces that you would normally and ordinarily never see. Again, skipping the details for a more appropriate time, we are very concerned about that, centered about their ethics, morals, honesty, and several things. Thank you.

Council Chair Rapozo: Thank you very much. Anyone else wishing to testify on Resolution No. 2016-13? If not, I will call the meeting back to order. Councilmember Chock.

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

Councilmember Chock: Thank you, Chair. I have no past history or qualms about the two (2) gentlemen who are seeking reappointment. In fact, I think in the past they have served well. However, in light of the recent testimony received over the past few days, it would behoove us keepers of transparency for the community to perhaps defer this item until we can get either an ethics investigation or a ruling on anything that might have occurred or if there is any conflict moving forward. I have asked some of the testifiers to actually provide more detail if there is indeed substance to move on, and I think that would require more time. At this time, I would ask the Council to consider a deferral.

Council Chair Rapozo: Okay. Before we entertain that motion, I failed to see Mr. Furfaro raise his hand, so I will suspend the rules again. Mr. Furfaro, you may come up

There being no objections, the rules were suspended.

Mr. Furfaro: Jay Furfaro, Boards and Commissions Administrator. Although I have heard Councilmember Chock possibly ask for a deferral, I do want to point out that all of the reappointments were, in fact, in one cover letter. Mr. Blake is actually an appointment from the Council and Mr. Abrams is an appointment from the Mayor's Office. Perhaps if there is a little more time and some particular questions, I can pursue some questions with these candidates, because at the change of the year, with the discretion of my department, they were all given a ninety (90) day extension, pending approval from the Council. Thank you.

Council Chair Rapozo: Thank you. Any questions? If not, I will call the meeting back to order. Councilmember Kaneshiro.

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

Councilmember Kaneshiro: Typically, do the members actually come up? I know we interviewed a few up here before, but when does that occur? If they are reappointed, do they not come up?

Council Chair Rapozo: Typically, they do not, unless there is a request from a Councilmember that they want a second interview. Councilmember Chock talked about some recent E-mails that we received, which came obviously after the posting. For all of us, it came in the Council testimony, so I am assuming everybody got those E-mails. It was obviously too late to un-post, so we did not schedule an interview. If anyone wants to schedule a second interview, that is definitely okay. Mr. Furfaro has offered to take a look at any questions that we may have, which I believe we should direct any inquiry to Mr. Furfaro's department. If you do want to have another interview, we can definitely do that.

Councilmember Kaneshiro: For me, I am open either way, but I think if they want to be here or if the questions go to Mr. Furfaro that they are able to defend themselves or give us answers to any questions or concerns that the citizens may have. I was not sure if it goes as a question to Mr. Furfaro or if they have to come up here and answer the questions.

Council Chair Rapozo: They will have an opportunity to come up if it is deferred. If they want to come up and make some comments, they would be more than welcomed to do so. Councilmember Hooser.

Councilmember Hooser: Both the gentlemen have served prior, and like many of us, I know both men and have known them for many years and have never had any reason at all to question their integrity or their character. I think they work really hard for the community on many levels over the years. I believe that good people could look at the same set of circumstances and come to different conclusions. Quite often, it is a difference of opinion or it is a communications issue. But when strong statements are made, I think it behooves us to say what do we do, and in this case if the allegation is a conflict of interest or an ethical issue, then we should refer this to the Board of Ethics and have a ruling.

Council Chair Rapozo: I would agree. Any other discussion? If not, Councilmember Kagawa.

Councilmember Kagawa: Thank you, Chair. In my view, when I look at candidates or members willing to serve or continuing to serve on commissions, I try not to think about specific issues that I may disagree with in candidates, and rather I try to look at overall performance in the community, in business, or in whatever expertise they have. I just feel like the questions can be answered to the Council, but on the higher level, I believe that the makeup of a lot of these boards, hopefully with the numbers, preclude specific individuals from carrying out the will

in controversial type of issues. I hear the concerns and I believe there may be some validity to that specific issue, but again, I tend to be cautious about looking at particular issues and saying, "That candidate does not meet the criteria," because I think if I look deep enough into every candidate, I would see some maybe some point of disagreement and some problems with voting. Overall, I may be concerned about the performance on that, I think Councilmember Hooser brought up a valid point that I think the Board of Ethics may be the better venue for their performance on that specific issue. Thank you, Chair.

Council Chair Rapozo: Thank you. Any other discussion? I came here today prepared to support all of these reappointments and I have read majority of the E-mails that were pretty generic or pretty general, stating things like, "I do not support these people." That is fine. I agree with Councilmember Kagawa that their position on one issue, whether I agree or disagree, is one issue and the greater work that they do for the community is really what determines whether or not I am going to support a second term candidate for a commission. What was said today regarding a possible conflict of interest or possible lobbying of a position, I think, is where my concern is at right now and I am not going to get into the details because I have heard it for the first time a few minutes ago, and I am not going pass judgment on anybody, but I do believe that with that information, that we probably should send this to the proper agency to look at that, and that is what Councilmember Chock would be doing. Any more comments? Councilmember Kaneshiro.

Councilmember Kaneshiro: I am fine, but I would just like to know what the results were and if it actually had to go to Board of Ethics or if based on the information, it did not need to go. I know that Mr. Blake and Mr. Abrams both were on the south shore committee and Mr. Blake is in the Public Access, Open Space, and Natural Resources Preservation Commission, so I do not know if that is a conflict if he is elected to the South Kaua'i Community Plan and he is on that commission—is that a conflict? I do not know. I do not think that is my decision. Also, Mr. Abrams was also on it, but I do not want to say for a fact, but I think when he did get put into planning, I think he might have stopped his association in the South Kaua'i Community Plan. Again, I just want to be careful. I think they should have the ability to defend themselves also to certain claims. People may disagree with them, but we need to look at if they are doing a good job in what position they are at and if they are trying to serve the community and so forth. These are volunteered positions and I know that the Planning Commission is probably one of the hardest...it might even be harder than being on the Council. They do not get paid and they are on television. They have a very difficult commission. I just think that they should have the right to defend themselves, too, and then we kind of make the decision from there.

Council Chair Rapozo: Thank you. Councilmember Hooser.

Councilmember Hooser: I just wanted to follow-up on that. I think Councilmember Kaneshiro makes a very good point. My thought is that it is a question of is there a conflict of interest or not with the organizations that they sit on? It is not did they or did they not do something that happened some time ago and there was a neighborhood conflict or whatever. It is simply a matter of, "You

are on this committee or group. Are you able to do the job moving forward?" I do not think it serves anyone well to get involved in these other things.

Council Chair Rapozo: Okay. Any other discussion?
Councilmember Chock.

Councilmember Chock: Chair, I concur with the statements that are on the table and I am looking for the same outcome, in terms of just looking at the conflict and sending it to the Board of Ethics. I would like to make a motion to defer.

Council Chair Rapozo: A deferral takes it to the next council meeting, so that should be enough time. The holdover period is only for ninety (90) days, correct? Okay, that is fine.

Councilmember Kualii: I just have one clarification on our vote. We are just voting to defer an item to reconsider it at a later time.

Council Chair Rapozo: Correct.

Councilmember Kualii: So we are not voting as a Council to send something to the Board of Ethics?

Council Chair Rapozo: No. Councilmember Chock has asked for a deferral to get some clarification from the Board of Ethics, so no action or no discussion from this Council. Councilmember Chock will send something over.

Councilmember Kualii: Okay.

Councilmember Kagawa: We are open and welcomed to hear any statement from Mr. Blake or Mr. Abrams.

Council Chair Rapozo: I am sure we will be hearing from them; if not today, then tonight or tomorrow.

Councilmember Kagawa: Thank you, Chair.

Councilmember Chock moved to defer Resolution No. 2016-13, seconded by Councilmember Hooser, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

Council Chair Rapozo: Let us take up Resolution No. 2016-15.

There being no objections, Resolution No. 2016-15 was taken out of order.

Resolution No. 2016-15 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND COMMISSION
(*Theodore Kawahinehelelani Blake – Kōloa – Po'ipū – Kalāheo*)

Council Chair Rapozo: Is there anyone wishing to testify on this matter? If not, may I have a motion?

Councilmember Chock moved to defer Resolution No. 2016-15, seconded by Councilmember Kualii, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

Council Chair Rapozo: Thank you very much for allowing us to divert from the agenda. Let us go back to C 2016-12.

COMMUNICATIONS:

C 2016-12 Communication (01/06/2016) from Council Chair Rapozo, requesting the presence of the Planning Director, to provide the Council with a briefing and an update on the Planning Department's enforcement efforts relating to the Visitor Destination Area (VDA), Transient Vacation Rental (TVR), and Homestay Ordinances: Councilmember Kualii moved to receive C 2016-12 for the record, seconded by Councilmember Kagawa.

Council Chair Rapozo: Thank you. With that, I will suspend the rules. Mr. Dahilig, I appreciate your patience. You can go through your presentation, and then we can entertain questions at the end.

There being no objections, the rules were suspended.

MICHAEL A. DAHILIG, Planning Director: Good afternoon, Council Chair and Members of the Council. For the record, Mike Dahilig from the Planning Department. On behalf of my department, I am pleased to present an enforcement update concerning the TVR enforcement activities that the department has undertaken. The last update that we did provide to this body was back in October 2014, so it has been a little over one (1) year since we last talked about some of the efforts and challenges that our department is experiencing concerning the implementation of the TVR programs as set forth by the Council. This afternoon, I would like to hit five (5) points with you, concerning what the Enforcement Division's priorities are and what we have done since the last briefing in October 2014. I will go over some statistics with you and just give you a flavor of what statistically is going on with the enforcement efforts in the department. I will also have a frank discussion with you concerning some of the challenges, both new and evolving, regarding what we are seeing as we are implementing the programs, and then anything regarding future plans and needs that we may have in a policy context. The Garden Island, right before the turn of the year listed homestay enforcement as one of the five (5) top stories of 2014. I do want to reemphasize that as much as that may be what The Garden Island did say, in effect we still are priority focused on illegal single-family transient vacation rentals outside of the visitor destination area. That is an enforcement focus. However, as we have had discussions with the Council over the past few months and going into last year, we did have enforcement actions relating to homestays in order to close a loophole that became apparent as we were putting pressure on TVR enforcement. What we have done since the last briefing in October 2014 is that we have completed the three hundred twenty (320) inspections that came out as a consequence of the irregularities between our records and the real property assessment records that

came in during that assessment year. We have issued ninety-five (95) additional zoning compliance notices and closed down eighty-nine (89) illegal transient vacation rentals over that period. We are currently managing twenty-eight (28) active contested case hearings, sixteen (16) of them are related to TVR enforcement appeals and eight (8) are related to homestay permitting. We have collected eleven thousand seven hundred dollars (\$11,700) in TVR homestay enforcement fines over the past fiscal year and we have an additional thirty-two thousand dollars (\$32,000) that are pending, given the appeals in front of the Planning Commission at contested case hearings. Also, as part of our commitment at the last briefing to commence investigation of online listings—I will get into this more throughout the presentation. We have disposed of two (2) of the TVR contested case hearings. One of those case hearings actually did take four (4) years from the appeal filing to actually dispose of. We have done administrative restructuring of the division. We did hire a full-time enforcement supervisor. Thank you to the Council in past budgets for approving that new position and funding that. It is a familiar face. Mike Laureta has agreed to come out of retirement and is actually serving as our full-time enforcement supervisor, so we do have permanent leadership in that position. We have implemented the interim homestay ordinance that was passed by this Council in December 2014. We have forwarded to the Council, as you have seen today at the public hearing, a more permanent measure to have and close that loop. Finally, we have been working with the County Attorney's Office and we did win a declaratory order from the Planning Commission. We do have an affirmative determination from the Commission that homestays are not home businesses. Part of this was part of the enforcement defense that many people that got appealed on...people that got enforced on...they tried to assert that homestays were home businesses. The Planning Commission agreed with our position, thanks to Mauna Kea and his staff, in saying, "No, these are not home businesses. They do need a separate permit."

Just to give you an example, it ties up where we have hit a juncture between TVR enforcement with homestay enforcement. We got a complaint against Mr. Ben-Dor concerning his illegal TVR in Hanalei. That complaint started the process and we wanted to shut down that TVR, which we were successfully doing so. But in the consequence of them shutting down the TVR, they applied for a homestay permit in front of the Planning Commission. Again, these are all public documents, so I feel comfortable talking about this particular case in front of the Council just to personify the issue here. The Planning Commission denied that homestay permit and now they are trying to apply for an Additional Dwelling Unit (ADU) via use permit. So you see the persistence in this example of what our department is undertaking when we do enforcement. It is not just a citation and they shut down. We have been getting into much administrative litigation as a consequence of people being persistent and wanting to have rights in the property that they are not entitled to.

As you know in the discussion that we had with the Council back in December 2014, we did tip off the Council that we were going to receive a flood of commission level permits for people trying to squeeze into the loophole before the cap was established by this body. Again, just to revisit that policy, there were ten (10) additional homestay use permits that were allowed outside of the VDA—sorry, that were allowed as of last calendar year...were allowed to issue an additional ten (10) more this year, and then the permanent policy is currently before this body for

the discussion. For statistical purposes, twenty-five (25) applications did come in before the cap came into effect. Only three (3) homestays applied after the cap for a total of twenty (20) applications that were being disposed of by the Planning Commission. Eighteen (18) of those applications are not on agriculture and nine (9) of those were approved, one (1) was denied, and a yield of three (3) denial recommendations, which people appealed at contested case hearings. We have an additional ten (10) applications on agriculture. One (1) was denied. We recommended five (5) for denial at contested case hearings, three (3) are approved, and one (1) is still pending on given some factual determinations that need to be resolved. As you are aware of given the public hearing today, a more concrete homestay policy we are trying to work through to provide more of a direct policy guidance on homestay issues.

Given this background of what has been going on with the department—I just want to go over some statistics with the Council as to where we are compared to previous fiscal years. As you know, one of the issues that we discussed with the Council was our ability to stabilize the management of our TVR files, so we continue to report on this to provide continuity in that briefing for the Council. We do have six hundred seventy-one (671) active TVR files right now. These are again single-family transient vacation rentals outside of the visitor destination area. Four hundred sixty-three (463) are what are considered closed files in respect of whether or not they are entitled to or not entitled to a TVR certificate. We have twenty-three (23) pending appeals before the Planning Commission, four hundred forty-seven (447) active TVRs, so that is the number that reflects how many licensed certificates we have of TVRs operating outside of the VDA, so that is the firm number. We have an additional eight (8) that are still being worked on based on additional contested case hearings. In terms of enforcement investigation, again, this is building on information that we have given the Council in previous briefings. Over the past fiscal year, that is the green bar in 2015. You see that very large spike in investigations that the department had to go through, and that was prompted by the disparities that were identified between the real property assessment database and our own database. Of those over the past fiscal year, we were able to shut down seventy-one (71) TVRs and when you look at it comparatively, this fiscal year thus far, we have had fifty (50) investigations and have been able to shut down fifteen (15). This gives us a reflection of where we are in year-to-year in regards to our investigations. Again, just as an aggregate to compare, we have been building on the amount of TVRs that we have been able to shut down. So far, we have six (6) this fiscal year, so you will see in terms of complete information on the last fiscal year, we have been able to shut down seventy-one (71). Lastly from a statistical standpoint, we did have issues in previous years about late TVR renewals. What has helped stabilize the amount of late renewals that we have gotten has been a consequence of the Planning Commission being able to pass a firm and very clear renewal policies and rules. We are getting implementation of the certificate, so this past fiscal year, we only received eight (8) late applications as compared to eighty-eight (88) in fiscal year 2013. Just to provide some background of what the renewal process entails, we do an average of about four hundred fifty (450) renewals annually, collect fees, do the annual paperwork and follow-up, and we acknowledge that the renewal has been approved. We do spot inspections to confirm and continue compliance with the Comprehensive Zoning Ordinance (CZO), as well as we confirm annually on the fifty (50) agricultural TVRs that they have a one million dollar (\$1,000,000) liability

insurance policy that names the County of Kaua'i as part of the special conditions that were attached to those particular certificates as prescribed by Ordinance No. 904. Finally, when you look at the Department of Public Works, we have been actively engaged with the Department of Public Works in coupling our inspections with their inspections when they do annual inspections of structures within the flood zone, and this is in compliance with our obligations under the Federal Emergency Management Agency (FEMA) to maintain our flood insurance program.

Some of the challenges that we still are reaching is that I understand that the public would like to see a more efficient, quicker, and expedient shut down of these transient vacation rentals. I get that. I think the process to actually shut these things down is a bit more complicated than issuing a ticket because we are dealing with property rights. Let me go into due process, just so that everybody who is in the room, as well as may be watching the presentation, understands that property cannot be deprived without due process of law, and this is the Fourteenth Amendment of the United States Constitution. If we choose to enforce on these purported legal transient vacation rentals outside of the VDA, we still have to go through due process in order to take that purported property right away. We say that there is no property right, but they say it is, so we still have to go through that due process in order to ensure that we are able to not get sued so that we are not prohibiting them from being able to have a benefit of due process of law.

This is a slide that I did show at our budget briefing a little while back, just to kind of explain what challenges our department faces in facilitating due process. As you see, we have two (2) forms: one is criminal and one is civil. I put in parentheses what the standard of proof is in order to succeed at these particular contested case hearings or criminal matters. In criminal cases before the courts, you need to have evidence that reaches beyond a reasonable doubt. At civil, it needs to be preponderance of evidence. However, when you look at the three (3) elements of facilitating an enforcement case through either the criminal or civil form, you will notice that I have investigation, prosecution, and then the actual due process that is involved. Our department, as you see, is responsible for all three (3) syllo of the due process elements that are required to enforce on a law, whereas you have a separate Police Department, separate Prosecutor's Office, and a separate Judiciary that handed the elements of a criminal case. In civil, we are responsible for the investigations and prosecution, and thank you to Mauna Kea for supporting legally our administrative litigation on that. Then on our due process, we are also responsible for supporting the Planning Commission to provide the quasi-judicial forum to dispose of a case if we bring it from an enforcement division.

Let me give you an example of another case that we are handling, and this is the County of Kaua'i v. Greg Allen. We issued a zoning compliance notice in July 2014 because he was operating an illegal transient vacation rental, as we assert, in 'Anini. He hired a very high-priced Honolulu attorney, and then he boldly admitted to us that he would not stop operating the transient vacation rental because he was making too much money and he would continue to pay the ten thousand dollar (\$10,000) fine. When we challenged him with that assertion that he was operating the transient vacation rental, he then said, "You know what? I live on the property. I am not operating a homestay." Again, you see the pattern of what the enforcement yields as excuses from those that are purportedly violating the TVR Ordinance, that we have to box them in and say, "No, you are not

operating a homestay. We are going to run you through due process. We have the evidence and we are going to win.” We did fine him twenty thousand dollars (\$20,000) and this is one of the appeals that the Planning Commission is handling because he is contesting the twenty thousand dollar (\$20,000) fine. I will say that my suspicion is that he is actually spending more in legal costs fighting this thing than paying the fines.

These are the five (5) challenges as I can whittle them down in terms of what we are both experiencing and what we can anticipate in the future. The due process elements are lengthy and costly. It is meant to be slow and deliberative. That is due process and it is meant to be that way. We have a chronic management issue. We constantly run into a “cat and mouse” game where we shut down an illegal transient vacation rental, and then we get reports that it is up and operating again after we circled back. We know that this is going to be a continuing chronic issue with our department that we are going to have to...this is a way of life for us now. We are going to have to enforce TVRs consistently because people continue to choose to break the law. We see an evolution of website advertisement issues, so you again see the “bait and switch” thing that I have explained to the Council in the past where you have somebody putting a very beautiful home up on the website, you call that number, and what they do is they offer you another house that is not even there in terms of the photos or the information, so it is done underground. We have run into that as another issue, as well as we do not have anybody in our office that speaks Chinese. We have TVRs that are on Chinese websites. We can see the pictures and we can tell based off of some of the elements there that they are advertising transient vacation rentals, but they are done in the Chinese language. That is another issue that we have encountered. All I know in Mandarin is “*ni hao ma*” and “*xie xie*.” That is pretty much all I know. When we are looking at the evolution of websites, people are becoming very nimble at being able to run around our system and we constantly have to evolve in those things. Homestays as loophole to TVR use—we are addressing it. We want to close this loophole. We do have a second bill that is coming up to provide the Council the policy juxtaposition in order to not run a (inaudible) of the substantial change issue. I am going to go into a something a little more in-depth and that is what is called the “explosion of the shared economy.” I understand that on an island, we are very weary of things that are impacting our island based off of the globalization elements that happen around the world. This is a phrase came out of a conference that I recently attended where this was a topic about how to handle vacation rentals and this was one of the sessions that I went into, which had a very packed house. This phrase came up which is what is called “Disruptive Innovation,” which is “one that creates a new market and value network and eventually disrupts an existing market and value network.” I want you to keep that phrase in mind, as well as this phrase “Sharing Economy,” which is “an economic model in which individuals are able to borrow or rent assets owned by someone else.”

If you look at this, this shows the United States’ population overtime in terms of birth. It is a little dark there, but you notice on the far right that this is the “baby boomer” generation and it is seventy-seven million (77,000,000) people between the ages of fifty-one (51) and seventy (70). When you look at this on the left side, these are millennials. I am thankful that I am right on the cusp here being thirty-five (35) years old, so I am right on that edge. When you look at the millennial generation with spans between the ages of fifty (50) to thirty-five (35),

they are actually from by population larger than the “baby boomers.” When you look at the consumer habits of millennials, you will notice that they want access to things, not ownership. They are big spenders, but they want to get the comforts of ownership without actually having the ownership. What you will notice, and many of you may have this application on your phone, “UBER,” and I think it is the greatest thing since white bread. UBER exemplifies that philosophy that you do not own something, rather you share something and you pay for that. What we have noticed with something like UBER is that millennials now, if you look here on the right, in terms of home or vacation sharing programs—these are the “baby boomers.” Half of millennials are open to this idea of home or vacation sharing programs. I want to give the Council just from a statistical standpoint the reality that we are facing, in terms of this accelerated pressure on the transient vacation rental issue, that it is not going away. The consumerism behind it is continuing to push in that direction, as well as when you look at the population, the demand is going to be there as the transfer of wealth from the “baby boomers” gets transferred over to the millennials. This is how they will be spending their money. Just as a side note, when you look at the valuation of Airbnb, in terms of a public company compared to other hotels chains, Airbnb’s market valuation is anticipated to be larger than Marriott, Starwood, and Wyndham. Just to put that in mind, these are stalwart, traditional hotel chains, so when you look at the notion of economic disruption, you will notice that those in the business community are now saying, “Hey, this is the future.” When you look at Marriott and Starwood, these are hotels that we have on-island and they are anticipated to be smaller companies when Airbnb goes public than when Airbnb goes out for its initial public offering. One other thing that we found is that when you look at this past year, Airbnb has booked eighty million (80,000,000) reservations. Going back to the UBER effect, this is a snapshot of Airbnb, as part of that electronic enforcement that we are looking at and surveying websites, for the weekend of July 4th, there are three hundred (300) plus rentals that are on Airbnb. This is a high-traffic weekend. Just like UBER, when you choose to rent out your car, you turn it on, and when you choose not to rent it out, you turn it off. This number of three hundred twenty (320) actually fluctuates drastically. We have seen it as high as over nine hundred (900). Again, it is at points when people choose to want to share their home, they turn it on, and when they choose not to share their home, they turn it off. Being able to chase these people down and hold them in compliance with our laws becomes more and more of a tricky game for us because of the disruptive innovation that is happening as a consequence of the shared economy pressures that are going on.

Our commitment at the department is to continue enforcement of the law. We do want continued enforcement on TVRs and homestays and we have expanded more investigative tactics. I do not want to explain some of those things on the floor. I know that there is an Executive Session just in case that we briefed the County Attorney to brief you on, some of those investigative tactics, as to not tip our hand to the public. Our need is to still close that loophole so that we are better able to identify what is a legal homestay and what is not a legal homestay. We are working, need to work on, and need support on being able to expand the timeliness of the due process effort. Again, it is largely inhibited by our ability, as well as the County Attorney’s ability, to concentrate and run the administrative litigation through the due process elements that are required under the Constitution. One other thing that we are working on from a cost-effectiveness standpoint, as well as from a standpoint of being able to more timely process, these violations. We are

working with the Charter Review Commission and we intend to go in front of them in two (2) Mondays, I believe, to discuss spinning off the role of the Planning Commission to a zoning board of appeals that would handle the quasi-judicial enforcement efforts, which is similar to what Maui County and Hawai'i County has. Hopefully, this is something that we can maybe put in front of the electorate to try to gain some efficiency in our due process efforts. That is the end of my presentation. Thank you for the opportunity to present.

Council Chair Rapozo: Thank you. Questions? Councilmember Hooser.

Councilmember Hooser: I just have a quick question and I will probably have some other ones, but you mentioned the Airbnb at three hundred (300) and it goes up to nine hundred (900), so it is fair to say that some of those are permanent places, just filling in the gaps? If someone has a permitted TVR or permitted bed and breakfast and they have an empty night, they can list it on the website, right?

Mr. Dahilig: Some of those that are on Airbnb are legal TVRs with certificates and some of them are legal homestays, but a lot of them are illegal. The difficulty in being able to peg down who exactly is on the website and who is not on the website is the UBER effect of turning it on and off. Our ability to say that "x" percentage that is on Airbnb is illegal is difficult at any given time for us to identify because of the UBER effect and because of the fact that some of them are legal and not legal. That is the best I can explain that in this juncture.

Councilmember Hooser: Okay. There was a slide that said "closing the loophole for homestays in a residential district." Does that mean prohibiting them or requiring a use permit in a residential district?

Mr. Dahilig: As we have presented to the Council, I believe that the current regime that we have, which is the use permit process, is a very time intensive and resource intensive process, and that is the current process that we have had going back decades, concerning permitting homestays. We have wanted to have a more permanent policy, whichever way, to at least address a clear policy guideline regarding it, as well as address some of the administrative efficiency issues with it. I think given the Bill that we have sent to the Council is just looking for clarify at this juncture. What is easiest for us, I will say, is that it follow the same regime as single-family transient vacation rentals that either you are in or you are out. That is the easiest for us, but again, given the balance of these being maybe not as impactful as a single-family transient vacation rental, I think that is a policy question that is better left to this body to decide.

Councilmember Hooser: Okay. Thank you.

Council Chair Rapozo: Thank you. I just have one quick clarifying question. With these Airbnb ads, the law states that they need to have a certificate number. If they do not have a certificate number, then they are in violation.

Mr. Dahilig: That is the way I read it.

Council Chair Rapozo: So that one is easy to determine whether or not they are legal or illegal. They are violating the law if they do not put a certificate number on it. I think that is a red flag, number one.

Mr. Dahilig: Yes, we agree.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: How much money have we spent to administer this enforcement?

Mr. Dahilig: We have an Enforcement Chief, as well as two (2) inspectors that we are currently funding, specifically for TVR enforcement. We have borrowed a Planner from the Long Range Division to actually backstop the needs out of the enforcement division. On top of that, we have resources that are being used by the County Attorney's Office with respect to administrative litigation, as well as our regulatory division to take care of the homestay issue. It is hard for us to monetize it if that is what you are looking for. The only monetized elements that I could probably explain is that we have a fifty thousand dollar (\$50,000) with a special counsel specifically for this that is being administered by the County Attorney's Office. In terms of contested case hearings, over the past few years we have accrued an aggregate of close to two hundred fifty thousand dollars (\$250,000) in hearings officer contracts that are currently being used to dispose of the cases. Again, it is hard for us to monetize the County's salary effort, but at least those are firm numbers that I can give you right now.

Councilmember Chock: In the scope of the bigger picture in trying to accomplish and get a handle on enforcement, what is the bigger plan if we are getting run over by some of what we are facing? I can see that you have made huge gains with the statistics, but in terms of where we want to be and how we are going to get this under control I guess from my seat it is like how much money do we want to spend to get there? Is it a constantly losing battle for us to get there?

Mr. Dahilig: I think that is a question that is a broader discussion that I would probably have to think a little more about at this juncture. I think going into the budget season, the competing priorities from the appropriation standpoint and duty of this body are well-suited for that type of discussion. All I can say at this juncture is that the statistics show our ability right now, given us...I would say going as much as we can is that we are able to tack away at some cases, but to meet the communities' expectation of shutting these things down yesterday, I think given the resources that we have at this point, is a little unrealistic.

Councilmember Chock: Okay.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: I asked this the last time we discussed this if we had some figures on how many TVRs are legally permitted in the VDA and outside of the VDA. I do not know if you have those numbers.

Mr. Dahilig: So going back to the slide, we have as a firm number...let me just pull it out again...

Councilmember Kagawa: Is that page number 5?

Mr. Dahilig: Yes, slide number 8.

Councilmember Kagawa: Okay.

Mr. Dahilig: We have four hundred forty-seven (447) legally certified transient vacation rentals outside of the visitor destination area. That is a firm number. In terms of the amount of homestays, I believe we have a couple dozen.

Councilmember Kagawa: Can you repeat that number?

Mr. Dahilig: Four hundred forty-seven (447) outside of the VDA that have certificates. In terms of within the VDA, that is administered by the Real Property Tax Assessment Division because they do not need to go through an annual recertification. The last time we checked with them, the numbers are in the thousands. In terms of outside of the VDA...not outside of the VDA, but just in general, we have twenty-one (21) active homestay use permits on-island at this point.

Councilmember Kagawa: If you use the website, there is maybe over nine hundred (900)?

Mr. Dahilig: Sometimes it is less and sometimes it is more. Again, we are able to identify what is and is not legal, but it is not a fixed number because it varies by day.

Councilmember Kagawa: I guess the problem that I have is that you have these kinds of people that came today where they are stressed out and affects their livelihood, and they are trying to come through the legal process. Then we have these eight hundred seventy-nine (879) that are just doing as they please, the "Wild West," but how do we catch them and how does this Council help you to make sure that the work that we do is effective, spreads, and acts as a police in itself. Do we impose stiffer fines? Do we even turn off their water if they do not pay their fines? What can we do to help you do your job?

Mr. Dahilig: I think it is worth having a broader discussion in general because we have seen other jurisdictions use not the planning enforcement method, but use the taxation disincentive method to try to regulate this stuff. Whether that fits the policy objectives of this body, it is hard for me to guess at this point. There are other models out there that have been done. I think this is the first briefing that I have been able to, at this point in front of the Council, say that we are actually operating to a degree of competence. As you know in the past, we have had issues concerning everything from files to you name it, and those are things that we wholeheartedly own as our starting point to learn from. Given what we are seeing right now, if this does not reflect the desired level of enforcement within the County, then I think it is worth the discussion to look at

whether or not another approach may be necessary. I would say that if we were to scale this effort by providing more resources or whatever not, we still would run into due process elements that would take a lot of time.

Councilmember Kagawa: I understand. On these nine hundred (900) Airbnbs that are just doing as they please, if they do not have that certain permit number that Council Chair has talked about, what is the process? Do we issue a fine?

Mr. Dahilig: We issue a citation first that tells them to shut down. So under 46-1.5 (inaudible), we are required to provide one notice before we can actually fine because it is a civil fine. What ends up happening is that we tell them, "Okay, zoning compliance notice. Shut down. We know you have a website and you do not have a TVR number or you do not have a homestay permit." We shut them down, and then we notice that after a while they will start operating again. At that point, we believe it is right for a fine, but we still have to go through that process of giving them that one notice first to say, "Clean up your act," then we need to follow up with a second requirement.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: I am not sure if we have good numbers. Airbnb is a booking service. They do not own property; they just book other people's properties.

Mr. Dahilig: Right.

Councilmember Hooser: You mentioned twenty-one (21) or so homestay permits and four hundred (400) to five hundred (500) TVRs permits outside of the VDA.

Mr. Dahilig: Right.

Councilmember Hooser: Then thousands of them within the VDA.

Mr. Dahilig: Right.

Councilmember Hooser: If you are within the VDA and you are doing a TVR, do you need to have that number you talked about?

Mr. Dahilig: No.

Councilmember Hooser: I would imagine...I used to live at Pono Kai, I know a lot of owners there in different condos with vacation rental properties and manage it themselves, so they would be posting on Airbnb also. Just because there are nine hundred (900) or three hundred (300), we do not know how many of those are outside of the VDA and unpermitted.

Mr. Dahilig: We agree.

- Councilmember Hooser: Okay.
- Mr. Dahilig: We can identify it at any fixed point in time, but it is not a consistent reflection of what is out there on a daily basis.
- Councilmember Hooser: Okay, so the slide just showed three hundred (300).
- Mr. Dahilig: Yes.
- Councilmember Hooser: How many of those on a typical day would be in the VDA?
- Mr. Dahilig: Again, it varies.
- Councilmember Hooser: Fifty percent (50%)? Twenty percent (20%)? Ten percent (10%)?
- Mr. Dahilig: It varies. We could maybe do a daily journal in terms of what is and is not...
- Councilmember Hooser: Is it a majority?
- Mr. Dahilig: Sometimes we have seen a majority and sometimes we have not.
- Councilmember Hooser: Okay. I guess that is the point. A lot of numbers have been thrown around and there are thousands of them, but most of them maybe within the VDA.
- Mr. Dahilig: Maybe, but again, it varies.
- Councilmember Hooser: Right. I think it is important when we have our discussion to separate the homestay from the TVR so that we are talking about two (2) separate things.
- Mr. Dahilig: Right.
- Councilmember Hooser: The other question I have, which I think is actually more important and is a fundamental one for me, is I am real clear on the TVR is not a healthy thing to have outside of the VDA. I am real clear on that. It is an individual home, changes the lifestyle, and takes away rental properties. I am not as clear on the homestay. My question is, is there any data that shows what percentage of long-term rentals is impacted by homestays? You have twenty-one (21), so out of the twenty-one (21), if they were not doing homestays, how many of those would be long-term rentals? What is the real impact on the rental market? Do we have any data on that?
- Mr. Dahilig: We have not been able to go that far. I think it is a good statistic that would be useful from a policy evaluation standpoint. I

would have to go back to my staff and try to figure out how you would be able to mind that information.

Councilmember Hooser: Okay. You hear the testimony of the people coming in where they are retired or they have financial hardship and are using this to get through. How many of those would long-term rent—for decision-making, it is difficult.

Mr. Dahilig: Just to clarify, I will say that when we look at the phrase “bed and breakfast” versus...

Councilmember Hooser: “Homestay”—you are using different words now.

Mr. Dahilig: Per our code, they are actually synonymous.

Councilmember Hooser: Okay.

Mr. Dahilig: Just for information purposes, they are synonymous.

Councilmember Hooser: I am sorry, I did not mean to interrupt you. You were going to say something.

Mr. Dahilig: Yes. “Bed and breakfast” and “homestay” are synonymous given the way that the code is written.

Councilmember Hooser: Okay. Thank you. That is all I have.

Council Chair Rapozo: Councilmember Kualii.

Councilmember Kualii: Just on the thing about at any fixed point in time with the Airbnbs, you mentioned a possible journal. How long have you been able to look at it on this site?

Mr. Dahilig: We have not formalized it. I will say that this has really been me...

Councilmember Kualii: You just mentioned July 4th as an example and if you really look at it, it changes.

Mr. Dahilig: Yes.

Councilmember Kualii: And that people are turning it on and off.

Mr. Dahilig: Yes.

Councilmember Kualii: Obviously overtime, creating a log and seeing the same one pop up again and again, and then if they do not have a certificate...

Mr. Dahilig: Then that gives us a better standing.

Councilmember Kualii: So just looking at the numbers in these charts, slide number 9 and number 10, I see how the different colors represent the different years and how you have already gotten quite a few going in 2016. The calendar year...we just started January 1st...

Mr. Dahilig: We are going by fiscal year.

Councilmember Kualii: Oh yes, that is right. How does the chart at the top line up with the one at the bottom? Here in 2014, you say one hundred eleven (111) investigations, and then on the case closed, the pink shows fifty-nine (59) as shut down, but down below, it only has twelve (12) as illegal TVRs shut down.

Mr. Dahilig: The investigation may be closed, but there are still things on there that are ongoing with the case. The reference to "case file closed" means that it is a closed file. That is all.

Councilmember Kualii: Yes, but if you look at slide number 9 at the red...

Mr. Dahilig: "No/fixed violation."

Councilmember Kualii: Oh I see. You are using the color, but red is actually...no it is 2014, right?

Mr. Dahilig: Yes.

Councilmember Kualii: So if one hundred eleven (111) was investigated, and then now as far as case file closed, the lines lining down to ninety-four (94) says fifty-nine (59) of that ninety-four (94) has been shut down. But down in the slide below, it says that only twelve (12) has been shut down.

Mr. Dahilig: Let me check specifically where that disconnect is.

Councilmember Kualii: Okay. The main question about shut down in 2013 shows zero (0), 2014 shows twelve (12), and the 2015 shows seventy-one (71), so obviously we are doing much better. After they are shut down, you mentioned later in another slide the whole thing about chronic management, the "cat and mouse" game, and that they are opening up again. Of these that have shut down, are we following up to see if they are opening up again, and then shutting them down again?

Mr. Dahilig: That is about...

Councilmember Kualii: It might be easier the second time around. I do not know.

Mr. Dahilig: Because we have had such a flood over the past year with the investigations, that is about as far as we have reached, is that we know they are operating again. Because we are going in a linear fashion in terms of first-in and first-out with our investigations...

Councilmember Kualii: But because of the whole issue with due process and all, if you gave them their due process, they were shut down, and then they just reopened again, do you have to start the due process all over again if it is the same operator with the same address, doing the same activity?

Mr. Dahilig: We do not run them through the full due process if after citation they agree to shut the operation down and we verify that they shut it down. We do not run it through a quasi-judicial hearing with the Planning Commission. If we catch them on the second time, we would issue them a fine at that point, which then could trigger an appeal of the fine. When you talk about shutting it down, there are many methods to shutting down a TVR and some of those situations when after the first notice, we will go verify that they have shut down.

Councilmember Kualii: So you are saying in some instances that you catch them and they say, "Okay, you have caught me," and they say they are going to shut down, but then they start up again?

Mr. Dahilig: Yes, they start up again.

Councilmember Kualii: If they do not voluntarily shut down, then you have to take them through the due process.

Mr. Dahilig: Through the full due process, right.

Councilmember Kualii: Okay. Thank you.

Council Chair Rapozo: We talk a lot about Airbnb, but there are other sites out there like VRBO.com. If you filter out the stuff that you do not want and you just look for houses with three (3) to ten (10) bedrooms and you will find a large list of vacation rentals that are obviously outside of the VDA.

Mr. Dahilig: Right.

Council Chair Rapozo: If you click on those, you will see that they have no certificate number any day of the week. I could pull them up right now and I am that confident that we would find that the majority of those do not have certificate numbers.

Mr. Dahilig: Right.

Council Chair Rapozo: Airbnb is one thing—Councilmember Hooser is correct. You cannot tell with many of those on Airbnb if it is a unit in the VDA. You kind of recognize some of the pictures, but you do not know. On VRBO or any other of these vacation rental websites, it is very clear because it says it is located in 'Anini or Moloa'a Bay. We know that is not in the VDA, far from the VDA.

Mr. Dahilig: So whether they have the certificate or not...

Council Chair Rapozo: It is very clear that they are not in the VDA, they do not have a certificate number, and we can fine them ten thousand dollars (\$10,000) a day. Is that correct?

Mr. Dahilig: After the first notice.

Council Chair Rapozo: Correct.

Mr. Dahilig: Yes.

Council Chair Rapozo: But the fine is ten thousand dollars (\$10,000) a day.

Mr. Dahilig: Yes.

Council Chair Rapozo: When Councilmember Kualifi asks, "How do you stop them from popping up," would it not make sense to fine them ten thousand dollars (\$10,000) a day?

Mr. Dahilig: We do in certain circumstances.

Council Chair Rapozo: I can see that maybe you did on one, and that is up to. Five thousand dollars (\$5,000)—if they come back and they want to...ten thousand dollars (\$10,000)—pretty soon, it is cheaper to close it down than it is to operate illegally. It is a slap in the face to us to say, "Keep fining me because I am making way more in revenue than I am in fines. I will pay a little petty fine of ten thousand dollars (\$10,000) or twenty thousand dollars (\$20,000) because I am making substantially more." If it is ten thousand dollars (\$10,000) a day, at some point a lien goes on that property and we can actually use that property as an affordable housing unit one day. I am saying that if we want to beat this, the tools are there. We put that fine in there for a reason to cause a deterrent. I think that is what my suggestion is, is that if we believe it is a serious issue, and I think most of us do, then let us treat it as such and fine them if they are illegal. If they want to laugh in our face, fine them the maximum a day. After seven (7) days, eight (8) days, ten (10) days, or twenty (20) days, it is rough to pay the County of Kauai a check for two hundred thousand dollars (\$200,000). If that is what it takes for these stubborn people that refuse to adhere to the law...otherwise, it is not going to work. We can give you manpower, but if it is cheaper for them to operate illegally and pay a small fine, they are going to do it. Councilmember Kagawa.

Councilmember Kagawa: Thank you, Mike. I just want to thank your staff for all of your work because I do not think since 2008 we have ever had this kind of success, probably because the due process part is very frustrating. Again, I just wanted to clarify how much bed and breakfasts that are in the VDA are permitted?

Mr. Dahilig: Right now, bed and breakfasts or homestays, regardless of whether they are in or outside of the VDA, need a use permit.

Councilmember Kagawa: So we have twenty-one (21)?

Mr. Dahilig: Twenty-one (21) on-island.

Councilmember Kagawa: When we look online, we pull up three hundred (300) or nine hundred (900)? I just want to make sure that we are not making excuses that we do not have a bed and breakfast problem because we have a huge illegal bed and breakfast problem.

Mr. Dahilig: It is a problem given the structure that is out there. I wish I could give concrete numbers, but because of the innovations that the web provides and that social media and the mobile devices provide—again, all I can provide is point-in-time counts. The universe of what is actually out there is pretty large, but what percentage is operating legally or illegally, I can only determine on a point-in-time basis.

Councilmember Kagawa: A lot of the agricultural owners of bed and breakfasts have come and testified numerous times and I am just trying to figure out...there were ten (10) permit applications on agricultural land, five (5) were denied, three (3) were approved; one is denied and one is pending. I am kind of just wondering what the general basis for the Planning Commission's difference on denying or approving is, or if it is very complex and you can explain some of the complexities.

Mr. Dahilig: Our recommendation to the Planning Commission in evaluating whether or not a homestay is allowed on agriculture or not allowed—this is a State level permit, which is required to operate this type of activity on agricultural land. Given the State's standards when we look at what it talks about, we try to look at whether or not the operations on the property are genuinely in agricultural, and that is a very hard factual thing to wrap our arms around because everybody has a varied definition of what is genuine agriculture or what is not. I think it has been a chronic issue with this body for decades. "What is a farm?" We have taken the position to be very conservative and even asking for revenue and tax documents to show that what they are proposing on the property is an accessory used to their agricultural operation, not the predominant revenue stream for their operation on agricultural land. We have based our recommendations to the Planning Commission on that basis on whether or not it seems that there is revenue that characterizes homestay use as an accessory used or not. So six (6) people we recommended denials on. For five (5), we went before the Planning Commission and they elected to go through the due process because it is denial and we are saying, "No, you cannot use your land for that purpose." For the three (3) that we approved, we felt comfortable in saying, "Look, these people are genuine farmers." One of them does have a very substantial agricultural operation on the north shore and that went through that process, so that delineates your question.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Any other questions for Mr. Dahilig?
Councilmember Kualii.

Councilmember Kualii: When you were talking about that chart with all the years and the colors, you said they were four hundred forty-seven (447) TVRs outside the VDA and there were thousands administered by Real Property Tax Assessment in the VDA. You also said there were twenty-one (21) actual homestay use permits on-island. Of those twenty-one (21), do you have the breakdown between within the VDA and outside the VDA?

Mr. Dahilig: No, I do not, but I can get that for you. Because of the way the law is written, we have not distinguished those, but that would be good information.

Councilmember Kualii: Maybe the number was said and I missed it, but do you have a number based on investigations and what you are finding out as far as the number of illegal homestays?

Mr. Dahilig: I do not have that number offhand. I believe we can find that information for you.

Councilmember Kualii: Okay. Thank you.

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

Mr. Dahilig: Thank you.

Council Chair Rapozo: There are no registered speakers. Mr. Bernabe, did you want to speak? Okay. The rules are still suspended.

Mr. Bernabe: Matt Bernabe for the record. First of all, awesome job guys. Second of all, on page number 13, slide number 26, the map with all the Airbnb "UBER" tags—if you look at the one that is by itself up here, that is Kōke'e, so it is an automatic fine right there. They cannot do that in Kōke'e. You cannot even lend your cabin out and charge somebody to use your cabin in Kōke'e, even if it is a friend that is only paying twenty dollars (\$20). That is illegal. With that said, when I talk to the State on all of these subjects, I have actually stimulated them to look into them to the point where they even want some of your videos and when I called in, they asked me if I knew some of the people testifying, which I did not. Some of the people that testified right here for the Airbnb, the State watched, took their names down, and they told me, "Hey, that *wahine* that flipped you folks off at that Airbnb meeting, that lady does not even own that building and that is not a licensed building." They wanted the address, but I said, "I do not know the address and I do not know the lady," but they know that I come here and I have called them enough. What I am about to say next is going to be out-of-the-box. Call them and get with the State Taxation Office because they have resources and they are as upset as you folks with these illegals. They, themselves, are having TAT money not being filed, so they have a dog in this fight, too. I know that for a fact because I call them on a regular basis, once a month, if not once a week. I do not even know all of them by names, but they know my by name already. They hear my voice and they know already. Sorry, it is my camouflage. Get with

the State, make a list, and keep it going. I support this. I just wanted to put those points out.

Council Chair Rapozo: Anyone else wishing to testify? If not, I will call the meeting back to order. Further discussion? Councilmember Chock.

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

Councilmember Chock: Thank you. This is a great first start and I applaud the Planning Department for a good presentation of where we are and an update. I am looking forward to the larger discussion in its broad sense about how it is we are going to plan to get to the goals what we want to accomplish, because I think there is a cost to it and we need to be clear about the pathway to achieve it. If that cost is going to be significant, we need to take that into consideration as well. I heard some good ideas and I actually like the ideas that you have written down in terms of how we might be moving forward in the future. I just think that it is going to be very difficult, given the globalization that you talked about and I think that we need to be realistic of how we approach this. If there is another approach, then we need to consider it. I would like to see that we continue that path to success. Thank you.

Council Chair Rapozo: Councilmember Kualii.

Councilmember Kualii: I just want to say thank you for all your hard work and congratulations. I know there is a lot more work to be done, but you are headed in the right direction. I want to offer and I plan to work on this to figure out if there are ways that we can take legislative actions to help with your administrative actions currently ongoing as far as enforcement goes. They might do little things within the law now...we already know that we have the ten thousand dollar (\$10,000) daily fine, but there may be other things like that. I know we got some suggestions from some of the testimony and I have been looking at that and I am going to look at it further and work with you to see if there is any more legislative stuff we can do to help with enforcement. Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Thank you, Chair. The illegal TVR and bed and breakfast problems are not isolated to Kauai. Maui and the City and County of Honolulu are also struggling with this same problem, which is probably a lot worse. I even had Councilmember Ozawa from Honolulu ask me if we have had any success and I told him that I think we are headed for some success and the numbers prove it. Mike, in the past two (2) years, your staff has done a tremendous job in trying to solve this riddle that affects the whole State. If I can give you any advice on this, let us keep trying to change and improve. If something is not working and we are fining people, and then we find out that they are operating a few weeks later, then we need to change strategy. I think Council Chair Rapozo talked about stiff fines. Something has to work. In our court system, when thieves steal money, they are thrown in jail or what have you. Using an illegal permit and being told you are wrong, and then reopening is like stealing money. It is theft and fraud. To me, to even allow it and say, "Well, other people are doing it so it is okay," is totally

wrong and immoral. I think our residents, like Sam, expect more out of us as a County. I think it is a tough problem, but the only way we are going to solve it is to keep going full speed after it and when a strategy is not working, we need to change the game plan. I sit here on this body, willing to do whatever I can to prevent fraud from continuing to occur to our people. I think people who play by the rules expect everyone to play by the rules. If these people are committing what I call "fraud" against the County of Kaua'i, our taxpayers, and our citizens, then we need to go full speed after them as though they committed fraud like how the police goes after people. Thank you, Chair.

Council Chair Rapozo: With that, we need to take a break because the tape is almost about to run out, so let us take a ten (10) minute caption break at this point, and then we will resume in ten (10) minutes. Thank you.

There being no objections, the meeting recessed at 5:43 p.m.

The meeting reconvened at 5:52 p.m., and proceeded as follows:

Council Chair Rapozo: The meeting is called back to order. Any further discussion on the TVR enforcement update? If not, I will just say that I appreciate the Planning Department being here this late and being patient all day, and I also appreciate the work that has been done, considering the limited tools and resources that they have. They are making headway as best as can be done. Councilmember Kualii was asking me during the break, "What more can we do to expedite?" It is real simple: you have to give them money and resources for them to expand the scope of enforcement. There are tools in place, as I talked about earlier. We have the ability to fine them at ten thousand dollars (\$10,000) a day. I think these people only listen to that and they only get affected by money. That is why drug dealers still do drugs and still sell dope, because they make more money in the trade than they do with the penalty that they will get if they go to court. The other thing is that if you go to court and you screw up once, the judges tend to kind of give you a chance and give you a small fine and maybe allow you to get some of these programs like drug court, teen court, or all of these things, but if you come back a second time or a third time, you do not want to be there. That is kind of what we have to do. I am not telling the Planning Department how to do their job, but it is just my personal experience that if the penalty is not going to impact them financially, and in fact, if they can make more money by violating the law, they will. That is just economics. It is the cost of doing business. "Okay, I will go for one (1) year and pay my ten thousand dollar (\$10,000) fine, but I generate two hundred thousand dollars (\$200,000) in profit. Really, it is more beneficial for me to just violate the law." I was thinking today, "Wow, what if we offered a Crime Stopper's reward of one thousand dollars (\$1,000) to everybody that reports this illegal activity and it leads to the conviction of the crime?" Councilmember Kagawa referenced it accurately by saying, "It is fraud," because that is what it is; it is fraud. No one can tell me today on this island, with the amount of publicity this issue has had over the last years that they think it is okay. They should know the laws. What is "genuine agriculture?" "Genuine agriculture" is genuine agriculture. Guess what? That is where you generate your revenue from agriculture. That is what "genuine agriculture" is. We need to start really focusing on that. It is really nice to see the Planning Department actually denying some of these things because they do not fit the requirements, which I think is a good thing. Where do we move

forward? Budget hearings are going to be starting up shortly. We have so many priorities on this island that we need to look at all of the priorities and put those priorities in order. I do not believe that the TVR situation has gotten any better since the laws were passed a few years ago. It has not gotten better. In fact, if you go on any of those websites, you will see that there is a lot of TVRs that are operating illegally. What we have control of are the license and legal ones, which is a good thing. What we do not have control over of are the illegal ones and those are the ones that we need to go after. I do not have a problem with trying to gain compliance first, but the way the law is set up, if you missed the cut, you missed the cut. There is no way you can comply with that law; absolutely no way you can comply with that law. Then they are coming under the bed and breakfast now, "Okay, I cannot get a TVR certificate, so I will come in as a bed and breakfast." Again, if you do not meet the requirements, then sorry. You have a very high-priced home and I suggest you move your family to live in it because you are not going to make any money in the TVR business. If the people of this island believe that Kaua'i is ready to have TVRs in residential neighborhoods, then so be it. I do not believe that has happened from the amount of information that I get from the public. They are becoming more upset. The infiltration has not slowed down. I think we need to step up the enforcement. That is the only way we will ever see some success. It is interesting. We will look and review this during the budget and hopefully we will be able to provide the tools and resources to actually tackle this thing. Thank you, Mike and your staff, for being here so late. Any other comments?

The motion to receive C 2016-12 for the record was then put, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

Council Chair Rapozo: Next item, please.

Ms. Fountain-Tanigawa: The next item is C 2016-13.

C 2016-13 Communication (01/07/2016) from Council Chair Rapozo, transmitting for Council consideration, a Resolution Supporting The Findings And Recommendations Provided In The Final Report Submitted By The State-County Functions Working Group (TAT): Councilmember Kagawa moved to receive C 2016-13 for the record, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Where are we at?

Ms. Fountain-Tanigawa: Page number 5, Chair.

Council Chair Rapozo: Okay. Thank you. Further discussion? I think we spoke that one to death earlier. No discussion and no testimony.

The motion to receive C 2016-13 for the record was then put, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

CLAIMS:

C 2016-14 Communication (12/21/2015) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Gordon Lee, for damage to his personal property, pursuant to Section 23.06, Charter of the County of Kaua'i:

Councilmember Kualii moved to refer C 2016-14 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Chock.

C 2016-15 Communication (12/22/2015) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Farmers Insurance Hawai'i, as subrogee of David Yukimura, for damage to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kualii moved to refer C 2016-15 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Chock.

C 2016-16 Communication (12/28/2015) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Kay-Marie Y. Constantino-Berry, for damage to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kualii moved to refer C 2016-16 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Chock.

C 2016-17 Communication (12/29/2015) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Leonita B. Mendoza, for personal injury, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kualii moved to refer C 2016-17 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Chock.

Council Chair Rapozo: Any further discussion? Public testimony?
The rules are suspended.

There being no objections, the rules were suspended.

Mr. Bernabe: Matt Bernabe for the record. I know these claims are something that you have to just go through them and do them; however, I just want to ask a question for the record. Are the damages to their vehicles because of roads causing damages to struts, tires, and whatnot, or are these County vehicles having accidents with civilian drivers? I see that several of these are for damages to their cars and I think the argument that if the roads are so bad that we keep having claims for damages to vehicles, or are these bad drivers and what is the process of these drivers or any of them being recirculated or reprimanded? I think this is a serious discussion here because I see more than one vehicle, which I have seen before, but I have never thought to ask anything about it. I think seeing them in succession right here begs the question, "Is this damage because of roads or is this damage because County employees are banging people and getting into accidents?" Thank you.

Council Chair Rapozo: All of the above. I think just for the public's knowledge and information, often times you will see of this show up in Executive Session. We have had a lot of claims because of accidents caused by the buses, vehicles have struck vehicles, rocks flying from lawn mowers, golf balls from the golf course, and all these kinds of things. It goes to the County Attorney's Office where they have a Claims Review Committee where they review the claims and make a determination of whether or not they are going to settle a claim if there is proof that the County, in fact, caused those damages. If it is less than five thousand dollars (\$5,000), the County Attorney has discretion to settle them without Council

approval. Anything over five thousand dollars (\$5,000) shows back up here and it has to be approved in open session. That is how the process works. With that, I will call the meeting back to order. Further discussion on the claims?

The motion to refer C 2016-14, C 2016-15, C 2016-16, and C 2016-17 to the County Attorney's Office for disposition and/or report back to the Council was then put, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

COMMITTEE REPORTS:

BUDGET & FINANCE COMMITTEE:

A report (No. CR-BF 2016-01) submitted by the Budget & Finance Committee, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2607 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2015-797, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2015 THROUGH JUNE 30, 2016, BY REVISING THE AMOUNTS ESTIMATED IN THE DEVELOPMENT FUND (*Kōloa/Po'ipū Intersection Improvements, Po'ipū Realty Partners, LLC – \$41,000*),”

Councilmember Kualii moved for approval of the report, seconded by Councilmember Kaneshiro, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

A report (No. CR-BF 2016-02) submitted by the Budget & Finance Committee, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2608 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2015-797, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2015 THROUGH JUNE 30, 2016, BY REVISING THE AMOUNTS ESTIMATED IN THE DEVELOPMENT FUND (*Kōloa/Po'ipū Intersection Improvements, Kiahuna Fairways, LLC – \$47,750*),”

Councilmember Kualii moved for approval of the report, seconded by Councilmember Kaneshiro, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

COMMITTEE OF THE WHOLE:

A report (No. CR-COW 2016-01) submitted by the Committee of the Whole, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2604 – A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE IN THE KAUA‘I COUNTY CODE 1987, AS AMENDED, RELATING TO BARKING DOG NUISANCE,”

Councilmember Kualīi moved for approval of the report, seconded by Councilmember Chock, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

RESOLUTIONS:

Resolution No. 2016-01 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE POLICE COMMISSION (*Kevin T. Mince*)

Council Chair Rapozo: The Mayor has just come in. Mr. Furfaro, were you going to testify on any of the commission resolutions?

There being no objections, the rules were suspended.

Mr. Furfaro: Yes, Chair. I would like an opportunity at the right time, but I can yield time wherever you want to go.

Council Chair Rapozo: I would like to take up the TAT Resolution now. The Mayor has returned for that. If there is no objection, I would like to do that real quickly.

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

There being no objections, Resolution No. 2016-17 was taken out of order.

Resolution No. 2016-17 – RESOLUTION SUPPORTING THE FINDINGS AND RECOMMENDATIONS PROVIDED IN THE FINAL REPORT SUBMITTED BY THE STATE-COUNTY FUNCTIONS WORKING GROUP (TAT): Councilmember Kagawa moved for adoption of Resolution No. 2016-17, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Mayor, can you come up? I will suspend the rules. Just to give a little history, I think we heard Mr. White earlier today when he came up and did his presentation of the position he has taken as the Council Chair of Maui County. The Resolution will be forthcoming for Maui to support that proposal. HSAC has already supported a proposal for the Legislative Package that would provide an increase in the TAT funding for the counties. The Mayor got together with the other mayors and basically agreed to support the recommendations that were put forth by the TAT Working Group. The Mayor contacted me and met with him, and did a telephone conference call with four (4) council chairs, as well as the Hawai‘i Conference of Mayors (HCOM), and almost had unanimous support as far as the council chairs. Again, there was no action of this Council, but just the council chairs and the mayors on the working group’s recommendations. That triggered this Resolution because I wanted to have the discussion on the floor here with the County Council as well and possibly have a unified support of this body to move forward with the recommendations of the TAT

Working Group. Council Chair White was here and his presentation was right on target; there is no doubt about it that, in fact, I believe we should be getting more. The Legislature does not feel that way. They feel like the cap at ninety-three million dollars (\$93,000,000) is what we deserve and is what they can afford. In meeting with the Mayor, the other mayors, and the other council chairs, it was tentatively agreed upon that our best chance of getting any kind of increase in the TAT would be to show a united front between the mayors and the council chairs and hopefully we can convince our Legislature to increase our share of the fund. That is what generated this Resolution.

There being no objections, the rules were suspended.

BERNARD P. CARVALHO, JR., Mayor: I want to follow up on that, Council Chair, that we did get together collectively and spoke and decided to...I am speaking on behalf of the Hawai'i Conference of Mayors and we spoke and met several times on this particular issue. From the mayors' standpoint statewide, we are asking that we support the findings of the working group, the group that has been assembled by the Legislature. They are the ones who put all of the recommendations and the structure together. When Chair Rapozo and I met, like he said, we talked about it and went to Honolulu. In addition to that, we also went to the House and Senate. Just to be specific upfront, we have nothing else other than to say that we as mayors support the findings of the working group. It is always good to have more, but you do not want to have less. We thought that this would be the best way to do it collectively, all of us together, in this particular discussion and supporting the findings of the working group. By the way, Steve Hunt was our representative from Kaua'i. They had a very diverse group with a very unanimous decision to move forward, so I just wanted to be here to support what the Chair said and what he and I talked about in O'ahu. We are hoping that as mayors that the committee will support that effort.

Council Chair Rapozo: A conference call was held in the Mayor's Office here between the four (4) council chairs and the mayors. The conclusion of that call was that we had unanimous support, but the very next day, Maui pulled out. As of this day, we have three (3) of the four (4) council chairs that support it. They say "half of something is better than all of nothing." That is kind of how we looked at it. I am not sure where the Legislature is going. I will say that the Mayor and I flew up to O'ahu with some of the other representatives from the other mayors and had the discussion with the House leadership team, as well as one of the senators. I am going to be honest that it did not sound so promising. It is quite clear that the Legislature or some of the Legislature is very hesitant to give any more and I think they are even considering having discussions with the counties to see if the counties can take on more of the State's functions. That is the impression that I got.

Mr. Carvalho: I would also like to add that Steve Hunt and the group that was assembled came up with a unanimous goal, collectively. Like the Chair said, we met with the leadership team. It was all over the place, but at the same time we kind of stand consistent and firm on supporting the findings of the committee.

Council Chair Rapozo: Are there any questions of the Mayor or discussion? If not, thank you very much. Anybody in the audience wishing to testify? Mr. Bernabe.

Mr. Bernabe: Matt Bernabe for the record. The first thing that I would like to say is that maybe I need to start a petition informing all of our voters to call up Mr. Kouchi and explain to him that it is an election year. With that said, I am going to move on. It is election year, Ron Kouchi. The one thing that I wanted to point out on this thing that we saw earlier is that Hawai'i County is going to get eighteen percent (18%). I wanted to see the numbers of how many tourists went to Hawai'i County, because I know they have more residents than us, but if they are not getting more tourists than us, then they should not get more revenue than us; that is one. Number two, I want to point out that this is all tied in with the movies, because as I explained to both the Governor and the Senator at that meeting at the Kaua'i Community College (KCC), they are underselling...we are paying them to film movies and banking on the exposure as tourists. Part of the package for the movie deal is that their movies and their shows like Hawai'i Five-O attract tourists; but at the same time, the counties are incurring the costs for the abuse of the infrastructure. Most of you folks were there and you heard me give it to them. I just wanted to point out that I support all of this and I just want to ask was it the mayor or the chair that stepped down from Maui? You can tell me that after. The last thing that I want to end with is that if we have to get so drastic and go out on a "Bumpy Kanahale" kind of style and going and telling them, "Hey, this is what the State is doing. Let us not support tourism." Maybe we need to go out a drastic limb and shake feathers up. Do not be afraid of these people. We vote you folks in. They are not voting you folks in. We are the ones that vote you folks in. It is the same thing with Tulsi Gabbard; we vote her in, so no matter what she says up there, who cares; we vote her in. I am a public member to the Administration and to the Council. We support you folks in bussing the State up.

Council Chair Rapozo: Thank you. To answer your question, it was the Maui Council that pulled out, not HCOM. HCOM is still unanimous or united on the working group's recommendations. No one else is here to testify. I will call the meeting back to order. Further discussion? Councilmember Kagawa.

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

Councilmember Kagawa: I will be supporting this request. I just want to point out some facts. Last year, we received fourteen million nine hundred thousand dollars (\$14,900,000) of TAT moneys. If we get what they have recommended from the working group, we will get an additional twelve million four hundred thousand dollars (\$12,400,000) and that is basically the amount a little less than what we would be receiving, but it was taken away when it was capped four (4) years ago, so we basically lost out on fifty-one million dollars (\$51,000,000). The salary increases for next year are approximately eight million dollars (\$8,000,000). About five million dollars (\$5,000,000) to six million dollars (\$6,000,000) will come out of the Police and Fire Department. I want to read a piece that was written in this book called "The Price of Paradise: Lucky We Live Hawai'i," written by Randall Roth. This section comes out of chapter 6 from Lowell Kalapa from the former Tax Foundation and is talking about the unfairness of collective

bargaining: “The fairness of that requirement was perpetuated with the adoption of the collective bargaining in the early 1970s. Since bargaining units represent public workers at both the state and county levels, the outcomes of negotiations and arbitrations are subject to approval by the state and the counties. However, the law gives the state five (5) votes to figure out that the state will always control the outcome.” Basically, it just reiterates that much of these eight million dollars (\$8,000,000) comes from the State having the votes on the police and fire contracts. I think in the last negotiation, they got four percent (4%) raises over the next four (4) years, including another two percent (2%) raise for performance of duty or what have you. An eighteen percent (18%) raise over four (4) years—if our counties had to dictate what kind of raises we would negotiate, knowing the financial well-being of our County at this point, I do not think we would have approved the eighteen percent (18%) increase over four (4) years. The State controls that because they do not pay it. That is why they give generous pay raises to the police and fire unions, but they give measly one percent (1%) raises to the Hawai‘i Government Employees Association (HGEA). Figure that out. Let us be real. The State is bullying the county and I will say it like it is. This has to stop because what is happening is the less TAT revenues our County receives, the more we are passing it on to our property tax owners. The cost of taking care of our tourists that come to this island that use our parks and ask for our public safety—we are going to be using our property tax owners’ moneys to pay for those costs like roads, etcetera. All we want is a fair share. Do I think twelve million four hundred thousand dollars (\$12,400,000) additional is fair? I think it is way too less. I agree with Council Chair Mike White, but it is a start. If we can get twelve million four hundred thousand dollars (\$12,400,000) additional, it will help cover eight million dollars (\$8,000,000) of unanticipated pay increases that the State approved. I just want to say that I hope the State Legislature is listening to us. We have had some frank conversations where they are saying, “Well, you can increase your GET.” Why should our taxpayers pay for moneys that we should be getting from tourists and instead ask our residents to pay for something that we should receive from the tourists’ taxes. Thank you, Chair.

Council Chair Rapozo: Thank you. Any other discussion?
Councilmember Kualii.

Councilmember Kualii: I just have to say that I was really moved by the presentation by Chair White of Maui. I appreciated all of his in-depth numbers and that he has been working and fighting on this for like twenty (20) years. I wish the four (4) counties had more time to perhaps look at this, and I do not even know what our time constraints are, so I would like to know that. I guess we probably have to act because the Legislature is opening. I wonder if us asking for what is right, which is the fifty percent (50%) equal share of the TAT between the State and the counties, why would that mean that we do not at least get the forty-five percent (45%), which is the recommendation of the committee? Why do we have to approve their recommendation when they are coming to the conclusion that that is the right thing to do? Are we fearful that the Legislature would vote down that recommendation when they have actually done all the work and can justify at a minimum the forty-five percent (45%)? I would like to vote for the fifty percent (50%). I heard the Chair say that it is better to have half of something than all of nothing, but is it really all of nothing or is the responsible thing that the Legislature has to do is forty-five percent (45%), which means that at least a twelve million

dollar (\$12,000,000) increase to help with the things that Vice Chair Kagawa was talking about. I would like to know about time constraints. Do we honestly believe we will lose the forty-five percent (45%), and then what does it mean if we pass a resolution? Do I diminish the Resolution by being the one Kaua'i Councilmember who votes against it? I want to hear about that, too.

Council Chair Rapozo: You do not diminish anything. I think the Resolution is here for a reason. It is to show unity. First of all, it was not the Legislature that came up with the recommendation; it was the working group. So you had people from the private sector, government, Legislature, and industry, and I think they put it off. They said, "Hey, we are not going to rule on this. We are going to keep it capped at ninety-three million dollars (\$93,000,000) and have this task force come back in a couple of years and come up with some recommendations." From what I am hearing, that is not what the Legislature is going to...as the Governor himself said last week when the mayors and the council chairs...I was not at that meeting, but the people that were did provide a report, and the Governor said, "I agreed with a lot of what has been said; however, I have to defend my budget." His budget does not include an increase in the TAT. I think that sends the message, which to me is loud and clear that I do not think they are looking at raising the counties' share. I just wanted to put this up because every page of this presentation is quite revealing, but I think this puts everything into perspective, as far as what we have received. Since 2007, we get a two million two hundred thousand dollar (\$2,200,000) increase and just in our public safety and parks department, an increase of one hundred seventy million dollars (\$170,000,000) plus. Who made that up? Who made up the difference? It was the real property tax payer. Remember now, as I stated earlier, those figures do not include the general excise tax that the State charges hotels and the visitor industry. That is just the TAT. In addition to the increase in the TAT, they have also managed to hang on to all of the GET. You said you was hoping that the Senator was listening and I am sure he is listening or if he has not then he will hear about this first thing in the morning and we will get our calls. I think it is really what is fair is fair. This is something that came separate and apart from the councils and the mayor's office. This task force was made up all people and it did not make everybody happy. Everybody on that committee did not get what they wanted. This was the final compromise, but it resulted in a unanimous vote, so this is the best that it will get as far as the task force was concerned and I feel comfortable supporting it going forward. I wish we could get more, but I think this is probably the best shot at success. Now, it is left up to people like Mr. Bernabe and everybody else watching to contact your delegation here on Kaua'i and say, "Hey, please support the task force's recommendations." Any other discussion? Councilmember Kagawa.

Councilmember Kagawa: I just want to state with my time that I have left is that the State has an unfunded retirement liability of about thirteen billion dollars (\$13,000,000,000) and their method of trying to pay the thirteen billion dollars (\$13,000,000,000) is, what I have heard, to use the capped money from the TAT. They will never catch up. At some point, the Legislature will have to either raise the GET or what have you to pay that off, unless they will be like the federal government and just pass it on to the future. Anyway, they have a lot more problems than that and I am just hoping that we get our fair share, you like said, Chair.

Council Chair Rapozo: Or at least part of our fair share. The other thing, too, is that we have sat here throughout the last several years, listening to our County agencies come up and nonprofits come up and ask for a county subsidy because the State has cut their funding for social services. We have seen that time and time again. This County and Council have really stepped up in that arena. I can only hope that they listen and they comply with the recommendations of the task force that they put together, so we can get a small success here. Any other discussion? Councilmember Kualii'i.

Councilmember Kualii'i: I just want to say another thing that I thought the point about the costs of our visitors being transferred to our residents, which you showed the numbers how real property tax is having to cover more and more because of many years of this going in the wrong direction and the State taking more and more of what should have been our fair share of the TAT. It is pretty horrible that the tourists are paying their transient accommodations taxes, and then the State is holding it and not passing it to our County, instead our residents through real property tax have to pay for that. The system is wrong. Yes, maybe this is moving us a little bit in the right direction, but let us look at the big picture with the TAT and GET together. The point made, too, about how these services need to be paid with TAT, not with GET. The GET is a regressive tax that really hurts the most vulnerable in our society and we are on the verge of considering a GET when we are not even standing up to the State and saying that they should be doing better. I think in principal, I am going to vote against it.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: I feel compelled to add my voice. Having served in the State Legislature and the Senate for eight (8) years, I would say do not hold your breath for anything at all, which is unfortunate. It is an election year, so that money will go towards those that have screamed the loudest. Besides the retirement system, there is a lawsuit or court ruling on Hawaiian Home Lands. The teachers are now asking for more money for schools. There will be no tax increases at the State Legislature during 2016, I can tell you that. It is really unfortunate in many ways. The Speaker of the House is a Maui legislator. The President of the Senate is a Kaua'i legislator. The neighbor islands should have more cloud, but for some reason we do not seem to have the cloud. I would like us to ask our legislators why they are not fighting as loudly and strongly as we are here at the table today. Councilmember Kagawa is absolutely correct; we are shouldering more and more of the burden and it is not fair for us to shift that to our property tax payers when the money is being collected in our community for the services that our community deserves. "The squeaky wheel gets the grease," and we need to be loud and strong on this and demand our share for our taxpayers. Thank you.

Council Chair Rapozo: Thank you. Anyone else? With that, roll call, please.

The motion for adoption of Resolution No. 2016-17 was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Rapozo	TOTAL – 5,
AGAINST ADOPTION:	Kuali'i	TOTAL – 1,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Thank you, Mayor. Let us move on to the remaining resolutions.

Resolution No. 2016-01 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE POLICE COMMISSION (*Kevin T. Mince*): Councilmember Kagawa moved for adoption of Resolution No. 2016-01, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Mr. Furfaro, did you want to have a few words before we move on or do you have a specific resolution that you wanted to speak on? I will suspend the rules.

There being no objections, the rules were suspended.

Mr. Furfaro: Thank you for the query, Chair. I do hope you act favorably on this Police Commissioner, but I worked out with your staff a particular item that I would be able to give testimony as a blanket, but I certainly hope for a positive outcome for Mr. Mince.

Council Chair Rapozo: Thank you very much. The meeting is called back to order. Any further discussion? If not, roll call.

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

The motion for adoption of Resolution No. 2016-01 was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Thank you. Next one, please.

Resolution No. 2016-02 – RESOLUTION CONFIRMING COUNCIL REAPPOINTMENT TO THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND COMMISSION (*Dorothea K. Hayashi – Hanapēpē – 'Ele'ele*): Councilmember Kagawa moved for adoption of Resolution No. 2016-02, seconded by Councilmember Kuali'i, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-03 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE BOARD OF ETHICS (*Addison C. Bulosan*): Councilmember Kualii moved for adoption of Resolution No. 2016-03, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-04 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE BOARD OF REVIEW (*Dorothy R. Bekeart*): Councilmember Kualii moved for adoption of Resolution No. 2016-04, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-05 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE BOARD OF WATER SUPPLY (*Sherman Tsuyoshi Shiraishi*): Councilmember Kualii moved for adoption of Resolution No. 2016-05, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-06 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE CHARTER REVIEW COMMISSION (*Cheryl A. Stiglmeier*): Councilmember Kualii moved for adoption of Resolution No. 2016-06, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: Chair, a point was brought up earlier by one of the testifiers about the date and I think we should address that.

Council Chair Rapozo: I believe that is why Mr. Furfaro is here right now. We will suspend the rules. Mr. Furfaro.

There being no objections, the rules were suspended.

Mr. Furfaro: Thank you Chair and Councilmembers. Jay Furfaro for the record. First of all, there were a couple of things brought up this morning that I would like to clarify for everyone. This is not about throwing any movement under the bus or anything; this is just having a clear understanding of the particular parts associated with the Charter. First of all, I want to apologize to you, Chair. You may be aware that my day was quite challenged this morning, as I was dealing with the media outcome for the contract that comes under Boards and Commissions for a pretty positive outcome at this point, as well as the fact that on the legislative part, we had the federal people here dealing with another item as it relates to land acquisition for a potential park-and-ride. I did miscall you on Monday, but I did communicate a question to your staff and they indicated that it would be for 1:30 p.m. today, so I was in those two (2) meetings, so I apologize. It was no reflection on anything other than being triple-booked. On that note, I wanted to visit with you...Philip, the Deputy County Attorney to Mr. Trask, has been working closely with me on this particular piece. The Charter was amended several times, but really back in 2006, a reference was made by former Mayor Baptiste that the active working of the Charter Review Commission should be in ten (10) year increments. So we went from 2006 to 2016. I did meet with the individual that gave testimony this morning in December and I accepted her application for a new commission. Quite frankly, the conflict is although the charter amendment is in ten (10) year increments, there is nothing that accepts terms to be anything but three (3) years. This has come up in the past. We have Mr. Parachini, who is on the commission, and his approval is based on the fact that his term would end in 2017. The reality is that come December 31, 2016, everyone who is currently on that board, that commission terminates, and then everyone would be given a new term. There is no exception and the legal department is still working on this, where I could submit a name only for one (1) year. I think that is where some of the clarification was necessary. Obviously, I did take applications. We do have a reserve of applications now. Should the Charter Review Commission make a recommendation to extend it into the next ten (10) years, but right now, it is on for ten (10) years, rest for ten (10) years; yet the appointments only allow us to make three (3) year appointments, no variations of that. You will end up with one spare year somewhere. At the same time, they are pushing a deadline for late March. You will probably be pushing a deadline for June for any amendments that you want to submit, but we have to get ready with the legal interpretations, the media pieces, and so forth, so two (2) of those commissions were given the ninety (90) day extension, and the other commissioners, because that is how the Charter reads, their names came in for three (3) years. They will all terminate on December 31st. I hope that answers your question.

Council Chair Rapozo: Thank you very much. You definitely clarified it for me. Any further questions from Mr. Furfaro? If not, thank you very much.

Mr. Furfaro: On that note, I hope you will look favorably on the rest of the resolutions. Thank you.

Council Chair Rapozo: Thank you. I will call the meeting back to order. Any further discussion on Resolution No. 2016-06? Seeing none, roll call.

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

The motion for adoption of Resolution No. 2016-06 was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-07 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE CIVIL SERVICE COMMISSION (*Karen S. Matsumoto*): Councilmember Kualii moved for adoption of Resolution No. 2016-07, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-08 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE COST CONTROL COMMISSION (*Laurie Lynn Koike Yoshida*): Councilmember Kualii moved for adoption of Resolution No. 2016-08, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-09 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE FIRE COMMISSION (*Clifton K. Miranda*): Councilmember Kualii moved for adoption of Resolution No. 2016-09, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-10 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE FIRE COMMISSION (*Thomas M. Nizo*): Councilmember Kualii moved for adoption of Resolution No. 2016-10, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-11 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE FIRE COMMISSION (*Bradley M. Maruyama*): Councilmember Kualii moved for adoption of Resolution No. 2016-11, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-12 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE LIQUOR CONTROL COMMISSION (*Pauline D. Ventura*): Councilmember Kualii moved for adoption of Resolution No. 2016-12, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-14 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE POLICE COMMISSION (*Mary K. Hertog*): Councilmember Kualii moved for adoption of Resolution No. 2016-14, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2016-16 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE SALARY COMMISSION (*Jo Ann Shimamoto*): Councilmember Kualii moved for adoption of Resolution No. 2016-16, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Thank you very much. That does it for the resolutions. Can we go to Bills for First Reading, please?

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2612) – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 14, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE PLUMBING CODE: Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2612) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 10, 2016, and referred to the Public Works / Parks & Recreation Committee, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Proposed Draft Bill (No. 2613) – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 13 OF THE KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE ELECTRICAL CODE: Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2613) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 10, 2016, and referred to the Public Works / Parks & Recreation Committee, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: Chair, there is an amendment that I am going to float that came from the Administration just to clean up one of the numbers that were written wrong and it has been circulated.

Council Chair Rapozo: Okay.

Councilmember Kaneshiro moved to amend Proposed Draft Bill (No. 2613) as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 2, seconded by Councilmember Kualii, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

Council Chair Rapozo: We are back to the main motion. Roll call.

The motion for passage of Proposed Draft Bill (No. 2613), as amended, on first reading, that it be ordered to print, that a public hearing thereon be

scheduled for February 10, 2016, and referred to the Public Works / Parks & Recreation Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Proposed Draft Bill (No. 2614) – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 3, KAUAI COUNTY CODE 1987, AS AMENDED, BY ADDING A NEW ARTICLE 6, RELATING TO THE REGISTRATION OF LOBBYISTS: Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2614) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 10, 2016, and referred to the Committee of the Whole, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Discussion? Councilmember Kagawa.

Councilmember Kagawa: I am glad that I had the opportunity to talk with Chair White and he said that the Maui ordinance, which is short and sweet, is insufficient. He said more language is better and more effective. I just wanted to clarify that for the members. Thank you, Chair.

Council Chair Rapozo: Thank you very much. Councilmember Kaneshiro.

Councilmember Kaneshiro: I am going to approve it on first reading. For me, I need a better understanding of what the definition of a “lobbyist” is. As I mentioned before with the minimum wage bill that was up, if Kaikini Bikinis came up, are they considered a lobbyist? The same goes for the lady from the bakery. If she came here and supported a bill, would she be considered a lobbyist? In the future, we will be looking to get a clear distinction of what a lobbyist actually is.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Obviously, I am in support and I think this is a good bill. I worked really hard on it. Just for the record, the definition is fairly clear. I understand that we need to digest it more, but a “lobbyist” means “any individual who for pay...” so anybody who gets paid, “for the purpose of attempting to influence legislative action/administrative action.” It is pretty clear. It is really not so onerous. It really means at the end of the day that if you get paid for trying to influence people like us, you have to file two (2) forms once a year: one form you says you are a lobbyist and the other form says how much money you spend on lobbying. It is not an onerous type of requirement. Again, it is very thorough and comprehensive. Thank you.

Council Chair Rapozo: Any further discussion? If not, roll call.

The motion for passage of Proposed Draft Bill (No. 2614) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for

February 10, 2016, and referred to the Committee of the Whole was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: The next item is on page number 9, Bills for Second Reading.

BILLS FOR SECOND READING:

Bill No. 2607, Draft 1 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2015-797, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2015 THROUGH JUNE 30, 2016, BY REVISING THE AMOUNTS ESTIMATED IN THE DEVELOPMENT FUND (*Kōloa/Po'ipū Intersection Improvements, Po'ipū Realty Partners, LLC – \$41,000*): Councilmember Kualii moved for adoption of Bill No. 2607, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Next item.

Bill No. 2608, Draft 1 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2015-797, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2015 THROUGH JUNE 30, 2016, BY REVISING THE AMOUNTS ESTIMATED IN THE DEVELOPMENT FUND (*Kōloa/Po'ipū Intersection Improvements, Kiahuna Fairways, LLC – \$47,750*): Councilmember Kualii moved for adoption of Bill No. 2608, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: With that, ES-828, which is the Executive Session to have a discussion relating to the TVR and homestay enforcement, can I get a motion to receive that item, please?

ES-828 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Kaua'i County Council relating to the enforcement of the Visitor Destination Area (VDA), Transient Vacation Rental (TVR), and Homestay Ordinances. 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: Councilmember Kaneshiro moved to receive ES-828 for the record, seconded by Councilmember Kualii.

Council Chair Rapozo: We do not need that, so we are going to dispose of that here in open session.

The motion for receive ES-828 for the record was then put, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

Council Chair Rapozo: Thank you. For ES-829, which is the Executive Session on the briefing on Eric Shibuya v. County of Kaua'i, we had the attorney on-call, but because of the day's events, we let her go. They cost money. I have spoken with Mr. Trask and he is going to get a briefing from Ms. Wang and provide that briefing to us at a later time. This posting is sufficient for that, so I will entertain a motion to defer. We will have it back in two (2) weeks.

ES-829 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(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 on Eric Y. Shibuya vs. County of Kaua'i, et al., Civil No. 13-1-0345 (Fifth Circuit Court), 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: Councilmember Chock moved to defer ES-829, seconded by Councilmember Kaneshiro, and carried by a vote of 6:0:1:0 (*Councilmember Yukimura was excused*).

Council Chair Rapozo: Jade, can you read ES-830 for us?

EXECUTIVE SESSION:

ES-830 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), 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 with a briefing for the case of Akira Kadomatsu, et al. vs. County of Kaua'i, et al., Civil No. 13-1-0324, (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.

Councilmember Kagawa moved to convene in Executive Session for ES-830, seconded by Councilmember Chock.

Council Chair Rapozo: I am assured that this Executive Session will take five (5) minutes. With that, roll call.

The motion to convene in Executive Session for ES-830 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Rapozo	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: With that, we are concluding with the regular agenda. The meeting is adjourned.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 6:44 p.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk

:cy

(January 13, 2016)
FLOOR AMENDMENT
Bill No. 2604, Draft 1, Relating to Barking Dog Nuisance

ATTACHMENT 1

Introduced by: JoAnn A. Yukimura

Amend Bill No. 2604, Draft 1 by amending proposed Sec. 22-____.4, Affirmative Defense, as follows:

“Sec. 22-____.4 Affirmative Defense.

A dog shall not be deemed a barking dog for purposes of this section if, at the time the dog is barking or making any other noise, a person is trespassing or threatening to trespass upon [or traveling past] private property in or upon which the dog is situated or for any other reasonable cause [which teased or provoked the dog.] that has been determined under the circumstances to have teased or provoked the dog, including traveling past private property in or upon which the dog is situated.”

(Material to be deleted is bracketed. New material to be added is underscored.)
V:\AMENDMENTS\2016\FA-2604, D1 JY.docx

(January 13, 2016)

FLOOR AMENDMENT

Proposed Draft Bill (No. 2613), Relating to the Electrical Code

Introduced by: ARRYL KANESHIRO (By Request)

Amend Proposed Draft Bill (No. 2613), by amending the referenced zip code in Section 13-4.1 to read as follows:

“Section 13-4.1 Electrical Code to Govern.

The National Electrical Code, [2008] 2014 Edition, as copyrighted and published in [2007] 2013 by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts [02269-7471] 02169-7471, is hereby adopted by reference and made a part hereof, subject to the amendments hereinafter set forth as the standard for electrical work covered by this Code.”

(Material to be deleted is bracketed. New material to be added is underscored.)
(V: Amendments-FA-Bill No. 2613-AK-CNT-lc.doc)