

COUNCIL MEETING

MAY 18, 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, May 18, 2016 at 9:07 a.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Arryl Kaneshiro
Honorable KipuKai Kuali'i
Honorable JoAnn A. Yukimura
Honorable Mel Rapozo

Council Chair Rapozo: Before we have the approval of the agenda, I just want to let the Members know that I have had a request to take up Proposed Draft Bill (No. 2629) and the General Excise and Use Tax Surcharge (GET) Bill; Bill No. 2610, Draft 1, at 10:30 a.m. If there are no objections, that is how we will proceed. If there are no objections, can I have a motion to approve the agenda?

APPROVAL OF AGENDA.

Councilmember Kuali'i moved for approval of the agenda as circulated, seconded by Councilmember Kaneshiro, and unanimously carried.

MINUTES of the following meetings of the Council:

January 27, 2016 Council Meeting
March 9, 2016 Council Meeting
April 6, 2016 Council Meeting
April 6, 2016 Public Hearing re: Bill No. 2619

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

Council Chair Rapozo: Let us take the items on the Consent Calendar before we go to the bill.

CONSENT CALENDAR:

C 2016-120 Communication (04/06/2016) from the Mayor, transmitting for Council consideration and confirmation, Mayoral appointee William J. Fernandez to the Board of Ethics – Term ending 12/31/2018: Councilmember Kuali'i moved to receive C 2016-120 for the record, seconded by Councilmember Yukimura.

C 2016-121 Communication (04/29/2016) from the Director of Human Resources, transmitting for Council information, the May 1, 2016 Human Resources Reports, pursuant to Section 19 of Ordinance No. B-2015-796, relating to the Operating Budget of the County of Kaua'i for the Fiscal Year 2015-2016, which includes new hires, transfers, reallocations, promotions, and vacancies for the period of March 16, 2016 to April 30, 2016: Councilmember Kualii moved to receive C 2016-121 for the record, seconded by Councilmember Yukimura.

Council Chair Rapozo: Is there any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2016-120 and C 2016-121 for the record, was then put and unanimously carried.

Council Chair Rapozo: Clerk, can we have Proposed Draft Bill (No. 2629)?

JADE K. FOUNTAIN-TANIGAWA, County Clerk: This is on page 5, Proposed Draft Bill (No. 2629).

There being no objections, Proposed Draft Bill (No. 2629) was taken out of order.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2629) – A BILL FOR AN ORDINANCE TO AMEND SECTION 22-8.2, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO SMOKING IN A MOTOR VEHICLE: Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2629) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for June 15, 2016, and referred to the Public Safety Committee, seconded by Councilmember Chock.

Council Chair Rapozo: Any discussion? Public testimony?
Councilmember Chock.

Councilmember Chock: Council Chair, I noticed that we have some resource people in the audience and I would like to acknowledge that they are here, if there are any questions on first reading: our Prosecuting Attorney, Valerie Saiki from the Coalition for a Tobacco-Free Hawai'i, and Jason D. Overmyer from Kaua'i Police Department (KPD).

Council Chair Rapozo: Are there any questions of those resource people? This is the first reading. We do have a public hearing set for June 15, 2016, and then it will go to Committee. Councilmember Yukimura.

Councilmember Yukimura: Maybe the introducer of this Proposed Draft Bill can say what the status is. There was a very similar bill at the State Legislature. We just want to know how the two (2) will relate to each other.

Councilmember Chock: Sure. Again, the two (2) bills are very similar in nature. My understanding is that it was killed and was actually not even heard along with a group of other bills that were late in the day. I did track the bill and it looked like it was favorable moving through both sides, but in the last hour, as I said, the bills got piled up and it was not even heard, and therefore, it died. There may be more details that our Prosecuting Attorney might be able to offer, but that is what I know.

Councilmember Yukimura: I do have a couple of questions of the resource people, I am not sure who can answer them, but I can tell you my questions.

Council Chair Rapozo: Sure.

Councilmember Yukimura: I want to know where, if any, other place this law is in effect in Hawai'i or elsewhere in the Country, how it is working and how it is enforced.

Council Chair Rapozo: I would suggest that we send over the questions and we can have the discussion in Committee. If you need it today, for a decision on whether or not to vote on first reading, then fine, but I would prefer we send it over so that they can be prepared to come up rather than just come up and say, "I will look into it and come back later." I will leave it up to this body. Councilmember Kaneshiro.

Councilmember Kaneshiro: We did receive a communication regarding the Big Island and they issued one (1) citation.

Councilmember Yukimura: I do not need it for my vote today. I just thought it might be helpful for general public knowledge so people can prepare their testimony.

Council Chair Rapozo: That is fine. I will suspend the rules. Did you have any specific question for any specific resource person?

Councilmember Yukimura: Anybody who can answer those questions I stated.

Council Chair Rapozo: Okay.

Councilmember Yukimura: Whether it is in effect anywhere and yes, we know it is in effect on the Big Island, and how it is working or not working.

Council Chair Rapozo: If anyone can answer that, please come up.

There being no objections, the rules were suspended.

JUSTIN F. KOLLAR, Prosecuting Attorney: *Aloha*, good morning. Justin Kollar, Prosecuting Attorney, for the record. Concerning that question, I know there is an identical or similar bill on the books in Hawai'i County. I did communicate personally with Prosecuting Attorney Mitch Roth from that County and they expressed no concerns. I am not sure they even had to go to court on any of these cases. I did communicate personally with Deputy Chief Paul Ferreira from the Hawai'i County Police Department. He informed me that there were actually four (4) citations so I am not sure; I have heard a couple of different numbers. I have heard nineteen (19), I have heard four (4), and then I have heard one (1), but Deputy Chief Ferreira relayed to me that there were four (4) and they did not have concerns with the enforcement. It is something that appears that they are not actively enforcing on a daily basis or if a situation comes up or maybe they received a complaint, then they would respond and take action on. About the State bill, all the judiciary bills just got stacked up in the Conference Committee and almost nothing made it out at the end of the session. The bill did receive very favorable testimony on both sides and there was nobody actually in any of the Committee hearings that opposed the bill. It was just one of those things that they got stacked up at the end and nothing made it out. That is what I know about that situation.

Councilmember Yukimura: This was the second year in the biennium, so they have to reintroduce the bill. It is not going to be alive next session.

Mr. Kollar: Correct.

Councilmember Yukimura: Okay. Thank you very much.

Council Chair Rapozo: Any other questions for Mr. Kollar?
Councilmember Kagawa.

Councilmember Kagawa: Did you say that there were four (4) citations on the Big Island?

Mr. Kollar: That is what I was told, yes.

Councilmember Kagawa: I have heard on numerous occasions that the Office of the Prosecuting Attorney is overwhelmed on the number of cases you have. I am wondering, does this take away from perhaps current cases that...again, you may fall into that category of we are struggling to find the staff time to properly handle cases, and now we are going to be adding a little bit more, possibly to the plate.

Mr. Kollar: That is why I wanted to speak to Mitch Roth about the Bill. These types of cases typically do not go to Court or require prosecutor resources. It is one (1) of those tickets that you just pay, mail it in, and move on. If they would contest it with the Judge and then the Judge would rule against us or rule against the defendant, then the defendant could conceivably request a trial, but they never had that situation come up on the Big Island. It appears to be one (1) of those

things that is just a low volume kind of complaint driven enforcement mechanism, so it does not appear to be taking any resources from their office. I do not suspect it would take a significant quantity of resources from our office or from anyone else really.

Councilmember Kagawa: So these types of laws like smoking...smoking is legal in the United States, right? Smoking cigarettes is legal, it is not illegal?

Mr. Kollar: Correct.

Councilmember Kagawa: Is it problematic when the County passes this type of legislation and the State and Federal governments do not recognize it as an illegal action?

Mr. Kollar: Well, we do regulate smoking in any number of situations and we do regulate what people do in their motor vehicles in any number of given situations. I know that there is another County in Hawai'i that has a similar bill on the books. I know that there are other States in the United States that have similar bills on the books. I do believe that the State will eventually legislate on this particular specific subject, I am not sure when, but it happened with the cell phone ordinance. The Counties passed the ordinances first, and then the State came onboard and passed a uniformed law that superseded everything and made the policy consistent across the four (4) Counties. I understand the different concerns on both sides of the issue, but it is a fact to regulate much of what people do in their motor vehicles. We do regulate what people do when it comes to smoking and that is because it has certain health impacts on people and we want to discourage children from being put in that situation. We understand there are arguments on both sides of the issue.

Councilmember Kagawa: Does this seem more like a parenting bill?

Mr. Kollar: That is a policy discussion you folks can have. To me, it does not seem like it is an overreaching type of thing. We know cars are private property. We know that it is a person's sphere to do what they want to do, in general, up to the point where it starts to have impacts on other people. Our position is that kids' lungs – that is their property too. They have a right to be able to breathe, even around their parents. I understand that. We are not here to discuss changing people's cultures or attitude towards their private property, but we do think this is a reasonable thing. It is a minor thing and it can have a beneficial impact on public health, safety, and welfare. That is why we support the Bill from both a legal standpoint and from a policy standpoint and think that it would be appropriate to send it to Committee and have a conversation there about whether this is something the community wants to do.

Councilmember Kagawa: Is it the intention for the Office of the Prosecuting Attorney to support legislation that would ban smoking at home?

Mr. Kollar: No.

Councilmember Kagawa: Just in the vehicle?

Mr. Kollar: We have no intention to support any legislation at this point concerning smoking in private residences. That is not something that is before us and is not something we would encourage people to do. If there was a bill before us today, it is not something we would support.

Councilmember Kagawa: So not in a private home, but in a private car?

Mr. Kollar: Correct. A car is a very small space, especially if the windows are up, air conditioning (AC) is on, the air recirculates – it is a little bit different conversation, in my opinion. What people do in their homes is a little bit different. There are different rooms that people can get away from offensive smells, odors, and things like that, and have their own space where at least they can breathe maybe. I understand.

Councilmember Kagawa: Okay.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: I do not expect you to have the answer, but do you know when the bill on the Big Island was in place from?

Mr. Kollar: I know it has been a few years. Valerie might know what year it was passed, but it is relatively recent.

Council Chair Rapozo: Anyone else have any questions for Mr. Kollar?

Councilmember Chock: I just have a question for Valerie, if that is possible.

Council Chair Rapozo: Sure.

VALERIE SAIKI, Coalition for a Tobacco-Free Hawai'i: For the record, Valerie Saiki from the Coalition for a Tobacco-Free Hawai'i.

Councilmember Chock: Good morning, Valerie, and thank you for being here. I know this is been something that you have been spearheading/championing for a couple of years now. The question I have that I think would be helpful as a starting point and my hope is that we do get this to Committee to do a little bit more work is why is this important for the Coalition? Why is smoking in cars with minors such an important measure for you folks?

Ms. Saiki: For the Coalition, we want to protect the minors. We want to protect the children and it has been a big concern. Usually, we just do not take random thoughts and implement them. We do surveys, we ask the community, we get information from the public such as what do you want to see done? What is your top concern? A lot of the parents and even aunties and uncles of other kids are actually worried about this. They see people dropping their kids off at school and the parents are smoking. I have even had some teachers tell me, "I think this kid is a smoker because he always smells like cigarette smoke," and then the child is

very embarrassed because they do not smoke and do not agree with smoking, but they remain silent because it is their parents. You do not go against your parents and what they do is right. We have done surveys and I just wanted to point out the numbers for Kaua'i is seventy-six percent (76%) and that is a research done by Ward Research Company, Inc. in November 2015. I also wanted to add in 2010, Big Island passed their law relating to smoke-free cars.

Councilmember Chock: Do you know how many other counties, districts, or cities that have passed local legislation across the nation?

Ms. Saiki: Seven (7) states in the United States and numerous counties and municipalities.

Councilmember Chock: What was that number again?

Ms. Saiki: Seven (7) states. In our first packet, I am sorry I did not bring that copy with me, but I had the seven (7) states listed.

Councilmember Chock: Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Thank you, Valerie. What was the reason why...because you said it is very important to focus on this problem for the health and safety of the children, so what happened with the State Legislature this year? What was the reason why it was not even heard?

Ms. Saiki: It went to the House Committee on Finance because there is a fine number attached to it and they have to go through it, but they were just overloaded with so much bills that it just did not even get heard. It was not a fact that it was voted against, it was just not heard.

Councilmember Kagawa: Why?

Ms. Saiki: About ninety percent (90%) of bills die that way.

Councilmember Kagawa: Ninety percent (90%) of bills die that way.

Ms. Saiki: At the State Legislature.

Councilmember Kagawa: So even if you tell them the kids are being severely affected by this action, you cannot get a rush on something like that?

Ms. Saiki: I do not know if they list the bills by priority or what they feel is a priority, but I know we were given a 2:45 p.m. time slot that got pushed back every single hour until it just did not get heard. Every bill subsequently after that also got pushed back. It is not like – we will wait on this bill and hear the next one. Everything was pushed back at that particular hearing.

Councilmember Kagawa: The Coalition pushed this bill from the beginning of the legislature or did you folks wait until the latter part of the legislature?

Ms. Saiki: We started from the beginning.

Councilmember Kagawa: From the beginning?

Ms. Saiki: We have always done education.

Councilmember Kagawa: No, I am talking about this specific legislation of banning smoking in cars. Did you start that from the beginning?

Ms. Saiki: Yes.

Councilmember Kagawa: I am going to ask them and if I get a different story, I will be a little bit disappointed.

Ms. Saiki: We have always been in contact with the lawmakers and all of various ones that were going to hear the Bill, so we did not join late. We were there from the beginning.

Councilmember Kagawa: I find it frustrating that you cannot be given a thumbs up or thumbs down on something this important at the Legislature. It just baffles me.

Ms. Saiki: It baffles us too.

Councilmember Kagawa: Okay, thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Thank you, Valerie, for your information. The seventy-six percent (76%) is what exactly?

Ms. Saiki: This is for Kaua'i residents.

Councilmember Yukimura: Yes.

Ms. Saiki: Ward Research Company, Inc. sent out a tobacco survey to about twenty percent (20%) of the population and what they did was they tried to gather numbers on interests or policies regarding tobacco, for example, tobacco-free beaches and parks, smoke-free apartments, smoke-free homes, smoke-free cars, and smoke-free cars was the highest in favor of a concern and people that supported that bill.

Councilmember Yukimura: So, seventy-six percent (76%) of those surveyed on Kaua'i are in favor of a law banning smoking in cars with children?

Ms. Saiki: Yes.

Councilmember Yukimura: Okay.

Ms. Saiki: I do want to add additionally that seventy-one percent (71%) of smokers indicated that they would support the policy as well.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Anyone else? Thank you very much. Anyone in the audience wishing to testify?

Ms. Fountain-Tanigawa: Chair, we have registered speakers.

Council Chair Rapozo: Okay. Can we have the first one?

Ms. Fountain-Tanigawa: Matt Bernabe.

Council Chair Rapozo: Welcome back, Mr. Bernabe.

MATTHEW BERNABE: Matt Bernabe for the record. When they first started passing ordinances that you could not smoke in restaurants, bars, and public spaces, one of the first observations I made understanding anatomy physiology is that the kickback mechanism was they would light up twice as many cigarettes as they entered their car. So if they were with kids, they are not only going to smoke, but they are actually going to smoke double to catch up that void that they had when they were in the public space. I absolutely support this, but my question is are they going to use this as an active mechanism to pull vehicles over or is this going to be a subsequent violation if you get pulled over for an infraction, like speeding, or running a stop sign, or something like that? Is this going to be something else or are they actively going to be driving around and see – oh, there is a kid in the vehicle and somebody smoking a cigarette, let us pull them over. That would be my question because some might argue that oh, this is just another mechanism for a search of my vehicle, right? You have to keep all discussions on the table, but I support the bill because these young kids do not deserve to have their immunity...you stay in a flight or fight mode with nicotine, it is a stimulant. If you have a wound or any other thing...like I have had a surgery and one of the things you learn about is chocolate and nicotine and how it affects you with healing. If you are a child, it is worst if you suffer from malnutrition and dehydrated, you are at-risk. If we want a healthy community, we need them to be healthy so that they can go to school, get educated, and uplift this community and not have another excuse that they are failing the school system, failing our society system, and then we are subsidizing them in the long-term. Anyway, with that said, thank you very much.

Council Chair Rapozo: Thank you. Next speaker.

Ms. Fountain-Tanigawa: No further registered speakers.

Council Chair Rapozo: Anyone else? Mr. Mickens.

GLENN MICKENS: Thank you, Council Chair. For the record Glenn Mickens. Like Matt, I support this bill one hundred percent (100%) with one (1) huge caveat, the enforcement mechanism. The ability for the police to be able to enforce the real violations now are minimal. They have their hands full. Cigarette smoking is one (1) of the deadliest habits that mankind ever invented and I am highly against it being anywhere. Particularly for little kids in a car that have no say; they cannot get out of the car and they cannot help themselves, but again, the enforcement mechanism and to keep on passing things that are not realistic. I say that is wrong. I do not know what the answer is, but again, I am one hundred percent (100%) for Proposed Draft Bill (No. 2629). The enforcement part of the thing...just is not going to be there. They have a dilemma there. Thank you.

Council Chair Rapozo: Anyone else? Mr. Taylor.

KEN TAYLOR: Ken Taylor. I support Proposed Draft Bill (No. 2629). I think the health and safety of the community is important and it is more than just smoking that is the problem. The real problem is in the process of getting ready to smoke when you are fiddling around as you are driving down the road trying to get a pack of cigarettes out of your pocket, or out of your purse, or whatever, and then get it lit up and so on is when the safety issues become extreme. It is not a whole lot different than fooling around with a cell phone. I think your obligation is to take care of the health and safety of the people of this community. This is the step in the right direction. Thank you.

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

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

Councilmember Yukimura: I know this is first reading and we will have a public hearing. For me, this issue is a no-brainer because it is a health and safety issue of our children. If a police officer goes by a car and sees a parent beating up his child, he has the jurisdiction to stop it. Smoking in a car with a child is no different, although it is a more extended impact on the child. I think the officer should have a legal authority to stop that too. I think a case-by-case ability to do that – I mean I do not think there has to be all-out enforcement effort, but the officer should have the ability to stop it if he witnesses that. I think the all-out effort should be in education and that can be done by others, but the law should support stopping smoking in a car with children.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: Thank you for allowing this to go on the agenda, Council Chair. I know that there are pros and cons to just about every issue that comes to this table. I do think that this Bill, directed as it is, is worthy of us continuing to hear. My hope is that we can all agree to push this into committee to have a more detailed discussion on the variables that we are considering here. For me, it is about health, and I will always support health to the best of my ability. We currently regulate smoking in schools, hotels, hotel rooms, bars, financial

institutions, any industrial commercial establishment, and even restrooms. So, I think that public road/public safety is something that we should be looking at and I am looking forward to seeing it move forward. Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Thank you, Council Chair. I will be supporting this on first reading, but my general feeling is that parenting laws should be avoided at the Council. The best way to fix this problem is through education. I have known Val for a long time at Kapa'a High School and she does a great job with the students there. Education is the key. It prevents smoking in front of the child, not only in the car, at home, the beach, or wherever it is – education has a more positive and greater effect on their lives. I think a law that randomly catches one (1) or two (2) people...who is to say that is really curing the problem? Yes, it reduces the problem, but the way you reduce it significantly is by education and having the parents understand that they need to go out of their way and convenience and get away from the minor. That is the way I feel it will impact lives positively. It is not passing parenting laws at the County Council. Thank you.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: I have the same feeling. I wrote my notes last night and I do not think Councilmember Kagawa read them, but I have the same concerns. I am willing to let it go through first reading, but I agree, I do not condone people smoking in the car with children, but a law like this sounds and feels good, but does it accomplish its intended purpose? Big Island had it since 2010 and we are getting mixed messages on whether they issued one to fourteen (1 - 14) citations. Does that mean that everybody has stopped smoking in their cars with their children? I do not know. I agree smoking is bad for you, but I am not comfortable legislating every part of our daily lives. Smoking in a closed car with kids is a commonsense issue. Do not do it. Once we start legislating every little thing, we could probably sit here and make laws every single day to tell people what they can and cannot do. Again, we tell them they cannot smoke in their car, but when they go home, they can smoke in the house with their kids. Do we go further and say, "No smoking in the house with the kids?" If it is about health, do we just ban smoking completely? It is a very gray line. It was said that it is a "no-brainer," but it is not that black-and-white once we start going down this road. For me, again, it comes down to enforcement. Are we able to enforce this law if we have it in place? Is it going to be a priority? Are police officers going to be able to recognize someone smoking in a car, notice that they have a passenger, identify that person is under eighteen (18), and then pull them over. I think it is hard, but I agree, you should not be smoking in the car with minors. You should not be smoking in the car with anybody that does not want the secondhand smoke. Councilmember Kagawa hit the nail on the head. The initiative should be accomplished through outreach and education. Letting the kids know in school that secondhand smoke is unhealthy, so if it is around you, ask to put the window down or have your kids bring home pamphlets that say, "Smoking in the vehicle is dangerous for kids. Please do not do it. Respect my health." That is where I think the push should be and not just the Council making a law that may not do its intended purpose to stop all people from smoking in a car. I think the education and outreach is where it is at, but again, I am willing to let it go through first reading. I

know there are a lot of other Councilmembers that want to hear it through, but those are my concerns.

Council Chair Rapozo:

Councilmember Hooser.

Councilmember Hooser: I will be supporting this measure and some good comments have been raised around the table here. I will support what Councilmember Yukimura said basically that, "Smoking in a car with a child is equivalent to violence against a child." The child has no choice. The child has to be there. In some cases, they are young children, babies, and infants. I agree education should play a huge role, but those who are currently smoking in their cars with children as we speak here today, have had the opportunity. We have been talking about smoking for thirty (30) years. We have had these discussions repeatedly about where it is safe to smoke, where it is not safe to smoke, and how smoking causes cancer. If what I believe is the minority of the population has not gotten it by now, perhaps the best education is to make it illegal. I think it was interesting the statistics that quoted said seventy percent (70%) of smokers believed that we should pass a law. So, we are really talking about the thirty percent (30%) of smokers who for some reason do not see this as important and their children will suffer. We have laws mandating that children use seatbelts. We have laws mandating that they cannot ride in the back of pickup trucks. These are meant to protect children and I think that should be our number one priority is protecting the health of children where we can and where it is reasonable to do so and I think this is very reasonable to do so. Is enforcement an issue? Yes, but if a law was passed and children were protected, even if no citations were issued, I believe we would protect a certain percentage. People will follow the law. Right now, if a child is in the car and daddy lights up a cigarette, what is the child going to say? "Daddy, put it out?" I hope that they might, but then daddy might also react unfavorably to that child. However, if it is against the law and everybody knows, it is against the law, perhaps mom and dad would think twice and not violate the law because everybody knows; their neighbors and people driving in other cars know it. It is not always about giving tickets and citations, it is about deterrence. It is about people knowing this is against the law and I am not going to do it. The vast majority of us follow laws pretty much for that reason. The minority of people are the people that get tickets and citations. I think this is an important law. I commend Councilmember Chock for introducing it and for the community's support and advocacy that put it on our table today. Thank you.

Council Chair Rapozo:

Councilmember Kualii.

Councilmember Kualii: I will support this on first reading. I appreciate all of the comments, but I am leaning towards the comments of Vice Chair Kagawa and Councilmember Kaneshiro. I do not see this as an easy vote and I would like to hear a lot more, especially from our constituents. There is a big difference between public space and private space and I think all the laws in place now regarding public spaces are important. I am glad they are there because when I am in a public space, I do not want anybody blowing smoke in my face or on my food. In a free society, we have to be careful about an individual's private rights. The thought about the difference between creating a safe space versus changing people's behavior to a safe behavior. So, to make a law that forces somebody to behave in a certain way, that is a little bit more difficult to do, in my opinion. So legislating/creating a safe

shared public space, relatively easy, county, state, and federal, everyone should be working on it. Regulating a change in people's behavior, obviously comes first and foremost from education. I know there is good education in place already, obviously, you can always do more. It is not enough. If people are still behaving in a bad way and harming children, obviously more education is needed because I would imagine that most parents do not want to harm their children. The thing about violence against a child, it seems like when you are talking to that extreme, the State needs to take the lead. We are talking about crimes against a person and crimes against a minor victim. Why does the Legislature not do their job and create such a state law if that is the way we are supposed to be going? Something consistent that would be applied statewide. I would imagine the things like the safety and protecting the lives of citizens throughout the State of Hawai'i like the seatbelt law or the age limit of who can be in the back of a pickup truck, or whatever for safety reasons and having police involved, those are our state laws. Maybe we should be working on a resolution instead of a bill, especially when you consider how we are actually going to enforce it. Is the purpose of this really for a citation and a collection of fines or is it primarily to do further education?

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: I, too, appreciate this discussion very much. There are a lot of aspects to the issue. I believe parenting is a very personal thing and should not be regulated unless the health of children are involved. The question becomes where can we regulate it and is it reasonable to do so? That is another level of discussion, but education alone often is not sufficient and commonsense is often not common practice. So often education plus regulation is the most effective way of affecting behavior and I think with this Bill, we would be looking at both.

Council Chair Rapozo:

Councilmember Kagawa.

Councilmember Kagawa: Just a short comment. I just want to reiterate my frustration that we have a State Legislature and a system that says, "Ninety percent (90%) of bills that come before us, do not even get heard." To have an issue like this not even be given a thumbs up or thumbs down from the Legislature and just thrown in the rubbish can without a decision, I feel that something is wrong and it is broken and needs to be fixed. Big Island has some success from 2010, yet the Legislature sees this bill...well does not even see it, I do not know what goes on, but again, I am very frustrated that we have a system that if an issue that I feel is very important that be decided statewide, they cannot even give it a thumbs up or thumbs down. Thank you, Chair.

Council Chair Rapozo: Anyone else? I can try to put a little light on the Legislature question. Number one, it is an election year and it is a controversial issue. Number two, as long as I have been on the Council since 2002, lobbying at the Legislature, our Legislature is very defense-oriented in this state. Unfortunately, they Judiciary Committee, as the bills that protect police officers, bills that want to toughen the criminal laws get introduced, they see the same faith. It just goes without hearings and that is just the way it is. Search and seizure laws are very pro-defense. If you watch "Cops" on television, you see how in California and other states when the cops do a traffic stop, they can search the car and you cannot do that here in

Hawai'i. Hawai'i is very different. You have a pro-defense legislature along with an election year and a controversial topic—it does not even get heard. That is the reality and it is unfortunate. As to Mr. Bernabe's question, is it going to be an opportunity for officers to stop more vehicles? Let me just give you a little history. Seatbelt law, way back, same discussion...it is a personal right. It is up to you. You are not hurting nobody else, blah, blah, blah. The testimony back then in support of the bill was that it was going to be a supplemental violation. In other words, if the officer stops a car for speeding and notices the man did not have a seatbelt, they will write a ticket. The cell phone bill. I was not on the Council when that one came through, but I followed it, and same thing. You stop a car for a taillight safety check tax, you find the man using a cell phone, you give him a ticket. But what happened over the years is task forces were set up specifically to stop cars that the drivers or passengers were not wearing seatbelts. Task forces are set up for cell phone violations. That is the reality. There is no doubt in my mind that at some point this will happen. Whether it is the state or the federal government that is going to be offering funds for overtime for these violations. I cannot tell you. We have an officer here, I am not going to bring him up today, but at the committee, KPD can come up and answer some of our questions. I am just telling you the history as I know it that it started off...it will be basically a secondary violation, but over the years the evolution and now you have those specific task forces that are set up to stop these vehicles, specifically for these violations. I hope that answers your question.

We will send over the other question, which is...you know that as I know the law, it is not illegal for a sixteen (16), fifteen (15), or fourteen (14) year old to smoke. Correct me if I am wrong. Valerie, am I wrong? It is illegal? Or is it illegal for the person to purchase or sell to a minor?

Ms. Saiki: Purchase, possess...

Council Chair Rapozo: Maybe I can...that is okay, we will save it for the committee. I get it. I misspoke. So, it is illegal for an underage person to smoke? Okay. Thank you. I was under the impression it was only illegal to sell to a minor. That would be interesting to think if a sixteen (16) year old is smoking in the car, what happens? We can just send that over. I am interested in the dialogue that will follow. I enjoy the dialogue today. It was a great discussion and we will have more to come at the committee. Any further discussion? If not, can I have roll call?

The motion for passage of Proposed Draft Bill (No. 2629) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for June 15, 2016, and referred to the Public Safety Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Thank you. Next item.

COMMUNICATIONS:

C 2016-122 Communication (04/21/2016) from the Executive on Transportation, requesting Council approval to apply for, receive, and expend, the Federal Transit Administration (FTA) Section 5339(b) Buses and Bus Facilities Program competitive grant, in the amount of \$1,648,000 and to indemnify the FTA, to provide eighty percent (80%) of the cost to replace twelve (12) buses exceeding their useful service lives, of which matching funds have been included in the Transportation Agency's Fiscal Year 2017 budget request: Councilmember Yukimura moved to approve C 2016-122, seconded by Councilmember Kualii.

Council Chair Rapozo: I have some questions and I do not know if Celia is prepared. I apologize for not sending anything over. Celia, can you come up?

There being no objections, the rules were suspended.

CELIA M. MAHIKOA, Executive on Transportation: Celia Mahikoa, Executive on Transportation.

Council Chair Rapozo: Thank you, Celia. Do we have a replacement program?

Ms. Mahikoa: Yes, we do.

Council Chair Rapozo: Do you have that available?

Ms. Mahikoa: I do have one (1) here.

Council Chair Rapozo: Can you make that available to the Council?

Ms. Mahikoa: Certainly. Do you want it right now?

Council Chair Rapozo: Yes. They can make copies and then we will go ahead and open it up for questions. The twenty percent (20%), which is close to three hundred thirty thousand dollars (\$330,000), is already in the Fiscal Year budget, correct?

Ms. Mahikoa: Yes.

Council Chair Rapozo: Any questions for Celia? Councilmember Yukimura.

Councilmember Yukimura: Just to clarify for the audience, you are asking for approval to apply, expend, and receive federal transit moneys of one million six hundred forty-eight thousand dollars (\$1,648,000) which will provide eighty percent (80%) of the cost to replace twelve (12) buses.

Ms. Mahikoa: That is correct.

Councilmember Yukimura: And we have the twenty percent (20%) match in our budget, so that is what we are talking about today. Okay, thank you.

Council Chair Rapozo: Any other questions? Go ahead.

Councilmember Kagawa: Celia, I know one time we thought about looking at some alternative type of fuel buses that would be cleaner and I am wondering what kind of fuel do these buses use?

Ms. Mahikoa: All of these are still clean diesel that we are procuring.

Councilmember Kagawa: Diesel.

Ms. Mahikoa: We are investigating what is available as far as fuel alternatives for future purchases; however, we are always restricted by the availability of supply.

Councilmember Kagawa: Yes.

Ms. Mahikoa: That is always the challenge that we have.

Councilmember Kagawa: I think it was Senator Hirono that expressed to us some opportunities with bio-fuel or whatever it was called, but if we do not have the sufficient supply of bio-fuel, you are saying that it is difficult to head in that direction.

Ms. Mahikoa: Right. Once we can have a consistent supply that can be identified and know that in the long run that it will be available, then we will invest in vehicles that will utilize those fuels.

Councilmember Kagawa: Are there a lot of success elsewhere in the United States that have the supply of bio-fuel and that has been using bio-fuel buses?

Ms. Mahikoa: What we have observed with public transit through the nation, there has been a tendency to go more towards the battery driven or electric vehicles. We have challenges here naturally for just the technology, knowledge-base, maintaining, and repairing those types of vehicles. So naturally, we are always a few years behind what the rest of the nation is doing.

Councilmember Kagawa: Understood. Thank you.

Council Chair Rapozo: Thank you. Any other questions? What happens to the old buses that are being replaced? In this sheet right here it states, "the buses listed FY 2017, eleven (11) buses will be graveyard."

Ms. Mahikoa: Yes.

Council Chair Rapozo: What happens to those buses?

Ms. Mahikoa: They need to go through the procurement office's disposal procedure...

Council Chair Rapozo: Yes.

Ms. Mahikoa: ...which is the annual auction.

Council Chair Rapozo: Auction.

Ms. Mahikoa: Yes. Those that are not auctioned off, nobody purchases it, they need to either be donated to another state or county operation or disposed of.

Council Chair Rapozo: Okay. So these buses listed under FY...and I appreciate the rotation schedule or replacement schedule...so these are going to be taken off the line and go through the auction process?

Ms. Mahikoa: Yes.

Council Chair Rapozo: You talked about donating to the other counties, but what is up with the Honolulu buses that we got? Is the status the same? Is it status quo and still sitting there?

Ms. Mahikoa: We have made very little progress as far as working out to getting the classification for the driver positions worked out.

Council Chair Rapozo: Very little progress?

Ms. Mahikoa: Unfortunately, yes.

Council Chair Rapozo: Is there a plan to continue to keep those buses or can those buses be used for anything else such as homeless...I know a lot of places are converting old buses...because we are still using our manpower to go ahead and start them up and drive them around, right?

Ms. Mahikoa: Yes, every week.

Council Chair Rapozo: Is it worthwhile or should we look at selling them?

Ms. Mahikoa: I believe we need to go there. As far as the expanded capacity of these vehicles...whether you have a fifteen (15) seat bus or a forty-five (45) seat bus, it takes one (1) individual to operate it and therefore your return on what you are investing in a larger vehicle is typically much higher in ridership.

Council Chair Rapozo: So you think we should continue to...until we come to an agreement with the union.

- Ms. Mahikoa: Yes, I would like to.
- Councilmember Yukimura: Council Chair, point of order.
- Council Chair Rapozo: I am sorry.
- Councilmember Yukimura: We are off the agenda topic.
- Council Chair Rapozo: Off the agenda?
- Councilmember Yukimura: Topic.
- Council Chair Rapozo: Really?
- Councilmember Yukimura: Yes, I do not mind scheduling it in my committee for a full discussion.
- Council Chair Rapozo: No, no. This is what I was looking for, Celia, and I appreciate you having it available, so I am fine with what you have asked for. I am fine with approving it today. Any other questions for Celia? If not, thank you, Celia.
- Ms. Mahikoa: Thank you.
- Council Chair Rapozo: Anyone in the audience wishing to testify?
Mr. Mickens.
- Mr. Mickens: For the record Glenn Mickens. Thank you, Council Chair. The question you asked, I think, is a great question. What happened to those four (4) buses? The buses are still here and we are starting them up. What did we get them for? What was the purpose? Did we pay for the shipping to get them over here from Honolulu? The biggest question is why did we get those four (4) buses? Thank you, Council Chair.
- Council Chair Rapozo: Anyone else wishing to testify? Mr. Bernabe.
- Mr. Bernabe: Matt Bernabe for the record. I think the question about those O'ahu buses is do the buses run? If they are not operational, what was the original plan? If they are operational, let us create the main transit that goes from one (1) end of the island to the other with these larger buses so that we can get more volume on one (1) ride. This morning, I was watching that we are getting two million dollars (\$2,000,000) for forty-nine (49) bus stops, is that all we have is forty-nine (49) bus stops on this island? It dawned on me that one (1) route on O'ahu has probably more than forty-nine (49) stops. Compared to that one (1) route, we have a pretty large budget for these forty-nine (49) stops and we need to increase our stops. I really need to say one (1) thing and it is not a negative, but I am just using this because it is communication time. As much as I have seen problems in this bus system, I will say of lately, I have seen progress in the right direction. With that said, I will let this play out to the next meeting. Thank you.

Council Chair Rapozo: Anyone else? If not, I will call this meeting back to order. Further discussion?

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

The motion to approve C 2016-122 was then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

C 2016-123 Communication (04/22/2016) from the Director of Finance, transmitting for Council information, the Period 9 Financial Reports – Detailed Budget Report, Statement of Revenues (Estimated and Actual), Statement of Expenditures and Encumbrances, and Revenue Report as of March 31, 2016, pursuant to Section 21 of Ordinance No. B-2015-796, relating to the Operating Budget of the County of Kaua'i for the Fiscal Year 2015-2016: Councilmember Yukimura moved to receive C 2016-123 for the record, seconded by Councilmember Kualii.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2016-123 for the record, was then put and unanimously carried.

Council Chair Rapozo: Next item, please.

C 2016-124 Communication (04/26/2016) from the Director of Finance, transmitting for Council consideration, proposed amendments to Ordinance No. B-2015-796, as amended, relating to the Operating Budget of the County of Kaua'i, for Fiscal Year July 1, 2015 through June 30, 2016, by revising the amounts estimated in the General Fund and Golf Fund, to fund excess pension costs pursuant to Act 153 (Session Laws of Hawai'i (SLH) 2012)/Hawai'i Revised Statutes (HRS) Section 88-100, as billed by the State Employees' Retirement System (ERS). (*Employees' Retirement System Excess Pension Cost - \$330,096*): Councilmember Kualii moved to receive C 2016-124, seconded by Councilmember Chock.

Council Chair Rapozo: Discussion? Public testimony? This is connected to Proposed Draft Bill (No. 2632), which will be heard late. If you decide to testify on this matter, know that it will be...yes, you folks know the rules. Your testimony will carry over to the Bill. With that, I will suspend the rules. Mr. Bernabe.

There being no objections, the rules were suspended to take public testimony.

Mr. Bernabe: Matt Bernabe for the record. I will be brief. I am using this opportunity because it is related to the Golf Fund and I am assuming

that is Wailua Golf Course. With that said, I just recently ate at Wailua Golf Course, how ironic, and I was so pleasantly surprised. I thought to myself that this is such an underutilized venue. I know it is leased out and run by somebody other than the County; however, if we could somehow vitalize that venue to generate a little bit more revenue for itself, it might help that golf course. That is all I wanted to point out at this point in time. Thank you very much.

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

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

Council Chair Rapozo: Councilmember Kagawa and I are working with the Department of Parks & Recreation and one (1) of the problems is that they cannot serve liquor at the restaurant, I mean on the golf course. That is something we are working on trying to bring more business and more golfers, but we will see how that plays out. This is a result of spiking. As people retire and the last few years, they spike, they get more pay, and we underestimate the retirement contribution. We get the bill from the state and so this is where it is coming from. Councilmember Yukimura.

Councilmember Yukimura: Just to note that this is adding to the one million dollar (\$1,000,000) subsidy that we give to the Golf Fund to the General Fund, which is why we cannot fund things like the Materials Recovery Facility (MRF) and other projects, so it is an area of concern.

Council Chair Rapozo: You have to go out and use the golf course more.

Councilmember Yukimura: Yes, we need to figure out how to use the golf course more and what the appropriate fees are.

Council Chair Rapozo: With that, no further discussion.

The motion to receive C 2016-124 for the record was then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

C 2016-125 Communication (04/26/2016) from the Hawai'i State Association of Counties (HSAC) President, transmitting for Council approval, HSAC's proposed Fiscal Year 2017 Budget and the slate of officers for the HSAC Executive Committee and Board of Director nominations for the National Association of Counties (NACo) and the Western Interstate Region (WIR) for the 2016-2017 term, pursuant to Section 5c of the Bylaws of the Hawai'i State Association of Counties, Inc: Councilmember Kualii moved to receive C 2016-125 for the record, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? Public testimony?

Councilmember Yukimura: Do we not have to approve it?

Council Chair Rapozo: No, this is the communication that is tied to the Resolution and it will be coming up later.

Councilmember Yukimura: Oh, okay. Thank you.

Council Chair Rapozo: No further discussion?

The motion to receive C 2016-125 for the record was then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

C 2016-126 Communication (05/06/2016) from the Mayor, submitting his Supplemental Budget Communication for Fiscal Year 2016-2017 and Proposed Amendments to the Budget Bills, pursuant to Section 19.02A of the Kaua'i County Charter: Councilmember Kualii moved to schedule public hearing for May 24, 2016 at 8:30 a.m., and refer to the June 1, 2016 Council Meeting, seconded by Councilmember Chock.

Council Chair Rapozo: 8:30 a.m. is a deviation from our normal 1:30 p.m. Any discussion? Public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to schedule public hearing for May 24, 2016 at 8:30 a.m., and refer to the June 1, 2016 Council Meeting was then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

C 2016-127 Communication (05/06/2016) from Council Chair Rapozo, transmitting for Council consideration, a Proposed Draft Bill to amend Chapter 5A, Section 5A-11A.1, Kaua'i County Code 1987, as amended, which allows for tax year 2017, a beneficial tax rate for owners of long-term affordable rental units, provided that their rental rates are at or below the 2015 rates established by the Kaua'i County Housing Agency Affordable Rental Housing Guidelines: Councilmember Kualii moved to receive C 2016-127 for the record, seconded by Councilmember Kagawa.

Council Chair Rapozo: Any discussion? Public testimony? Seeing none.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2016-127 for the record was then put, and unanimously carried.

Councilmember Yukimura: There is testimony.

Council Chair Rapozo: I am sorry. Yes, could you please withdraw the motion?

Councilmember Kagawa: No, we are just withdrawing the vote.

Council Chair Rapozo: Okay, I will suspend the rules.

There being no objections, the rules were suspended to take public testimony.

TINA SAKAMOTO: Good morning, Tina Sakamoto. Long-term affordable housing is a big issue on the island and I hope there is movement forward that we actually walk the talk. This is 2015 rates that you want to apply for 2016 and 2017 because the year 2016 and 2017 rates have decreased significantly. If the County truly wants the private citizens, the landowners to participate in this program, there has to be some enticement otherwise why should they participate? They can go to open market and get the full amount of money because what you are offering may not really be beneficial to them. I encourage you to try and move forward and review the rates annually that are United States (U.S.) Department of Housing and Urban Development (HUD) generated. Maybe that is not the best sheet to follow as far as the allowable rents and come up with a better plan to address this before it goes online as an application so we are not backtracking and causing more problems as far as keeping owners participating in this program. I do not see them coming back once they go to the market rents. Please move forward and really promote the affordable rental rates. Thank you.

Council Chair Rapozo: Thank you. Any other testimony? Please.

JULIE SOUZA: *Aloha*, good morning. Julie Souza for the record. I was not going to say anything about this long-term rental because I have been kind of out of the scene on this. Because I have a rental on Hoona Road, which is on the beach, I try to take effect of that is what I have, a long-term rental. But I cannot get the cap because I cannot just rent my place for one thousand one hundred dollars (\$1,100) like I used to. I had to go up because I had to make repairs and tried to compensate for the land tax as it is, but if there were a way in coming up with different categories, for example, if you owned a property on the beach, we have a different rate for rent as compared to have a long-term rental inland. I think that would make it more convenient for people that have rentals on the shoreline to have and take effect into the long-term, because they can get that tax break. That would be a consideration and a thought, so that we would have more rentals available for our local people. I do it because I want someone to have the same experience that I had living on the beach as we used to before, so maybe we could consider that. Thank you.

Council Chair Rapozo: Anybody else? Mr. Bernabe.

(Councilmember Kagawa was noted as not present.)

Mr. Bernabe: Matt Bernabe for the record. I actually was not going to speak on this issue until I heard the previous speaker. It reminded me that this is another reason we need to look at real property tax. The fact that she is grouped into the a neighborhood by default of being by the ocean, even if that is just a family house from one hundred (100) years, she gets grouped into this value perceived or not. It does not take into effect that if you are on the windward side how much damage does the salt spray. So, if you are trying to rent for one thousand one hundred dollars (\$1,100), you will never keep up with the damage alone. What I am trying to say is that on one-hand, you are going to have to look for the long-term renters that they may need an exempt under the current system. So that they can get into a neighborhood that does not price them up in the sense of property tax. Second, this is just another call for us to really look at our tax system and streamline it. I will reiterate, we only have thirty-five thousand (35,000) taxable parcels and yet we have one thousand five hundred (1,500) distinct descriptive neighborhoods that they use the ad valorem system for and yet again, they use half of it for cost and the other for market value to determine the value. So it is kind of bias right out of the gate. Once again, let us look at that as well.

Council Chair Rapozo: Anyone else? If not, I will call the meeting back to order.

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

Council Chair Rapozo: Further discussion? Seeing none.

The motion to receive C 2016-127 for the record was then put, and unanimously carried *(Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

Council Chair Rapozo: Next item, please.

CLAIM:

Council Chair Rapozo, the presiding officer, relinquished Chairmanship to Councilmember Kualii.

(Council Chair Rapozo was noted as not present.)

C 2016-128 Communication (05/06/2016) from the County Clerk, transmitting a claim filed against the County of Kaua'i by GEICO Insurance as subrogee for Jenica Springer, for damages to her vehicle and personal property, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Chock moved to refer C 2016-128 to the County Attorney's Office for disposition and/or

report back to the Council, seconded by Councilmember Yukimura, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Kagawa and Council Chair Rapozo were noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

Councilmember Kualii: Next, we have Committee Reports.

COMMITTEE REPORTS:

PUBLIC WORKS / PARKS & RECREATION COMMITTEE:

A report (No. CR-PWPR 2016-07) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be Received for the Record:

“PWPR 2016-06 – Communication (05/03/2016) from Council Chair Rapozo, requesting the presence of the Director of Parks & Recreation to provide a briefing on the Administration’s future plans for the expansion of Black Pot Beach Park in Hanalei.”

(*Councilmember Kagawa was noted as present.*)

Councilmember Kaneshiro moved for approval of the report, seconded by Councilmember Yukimura.

Councilmember Kualii: Is there anyone wanting to give public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval for the report was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Council Chair Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

Councilmember Kualii: Next.

PLANNING COMMITTEE:

A report (No. CR-PL 2016-03) submitted by the Planning Committee, recommending that the following be Received for the Record:

“Bill No. 2609 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO HOMESTAYS,”

A report (No. CR-PL 2016-04) submitted by the Planning Committee, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2619, Draft 1 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO HOMESTAYS (*Restricting Homestays to the Visitor Destination Areas County of Kaua'i, Applicant*),”

Councilmember Chock moved for approval of the reports, seconded by Councilmember Yukimura.

Councilmember Kualii: Anyone wishing to provide public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval for the reports were then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Council Chair Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion*).

Councilmember Kualii: Next.

BUDGET & FINANCE COMMITTEE:

A report (No. CR-BF 2016-13) submitted by the Budget & Finance Committee, recommending that the following be Received for the Record:

“BF 2016-07 – Communication (03/17/2016) from the Director of Finance, requesting agenda time to provide the Council with an update relating to the County’s Long-Term Financial Plan project contracted with the Government Finance Officers Association (GFOA),”

A report (No. CR-BF 2016-14) submitted by the Budget & Finance Committee, recommending that the following be Received for the Record:

“Bill No. 2610, Draft 1 A BILL FOR AN ORDINANCE TO ESTABLISH A GENERAL EXCISE AND USE TAX SURCHARGE FOR THE COUNTY OF KAUAI,”

Councilmember Kaneshiro moved for approval of the reports, seconded by Councilmember Yukimura.

Councilmember Kualii: Anyone want to provide testimony?

There being no objections, the rules were suspended to take public testimony.

Councilmember Kualii: Mr. Bernabe, please come forward.

(Council Chair Rapozo was noted as present.)

Councilmember Kualii returned Chairmanship to Council Chair Rapozo.

Mr. Bernabe: Matt Bernabe for the record. In parentheses under here says it is restricting it to the Visitor Destination Areas (VDA). I was trying to Google the amended version, but the last one I saw had language that said, "if you are not in the VDA area, you could have one (1) operation," is that still in this bill? I was trying to Google, but it did not come up. I do not know the amended side. If it is, that begs the question, what is an operation? If the house has twelve (12) rooms, is that ten (10) of the twelve (12) rooms? Sorry everybody, I heard something wrong. I apologize.

Council Chair Rapozo: Anyone else wishing to testify? Seeing none.

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

Council Chair Rapozo: Further discussion?

The motion for approval for the reports were then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

COMMITTEE OF THE WHOLE:

A report (No. CR-COW 2016-06) submitted by the Committee of the Whole, recommending that the following be Received for the Record:

"Resolution No. 2016-42 RESOLUTION PROPOSING A CHARTER AMENDMENT RELATING TO THE INSTITUTION OF A COUNCIL-MANAGER FORM OF GOVERNMENT,"

Councilmember Kualii moved for approval of the report, seconded by Councilmember Chock.

Council Chair Rapozo: Any discussion? Any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the report was then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

RESOLUTIONS:

Resolution No. 2016-42 – RESOLUTION PROPOSING A CHARTER AMENDMENT RELATING TO THE INSTITUTION OF A COUNCIL-MANAGER FORM OF GOVERNMENT: Councilmember Kagawa moved to receive Resolution No. 2016-37 for the record, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Between the Committee Meeting and now, I had a chance to think about this. I would like to have a discussion about this first, but my thought is we could defer it to the Council Meeting in May 2017. We could work at the next legislature to get the proper amendments to state law that would not conflict with this, and in the meantime, really work on all of the details and then refer it to the Charter Review Commission, which expires at the end of this year, but only if the Charter Review Commission is somehow resurrected, have the Charter Review Commission consider it, and then they could put it on a special ballot next year.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: I was hoping that we could follow the normal process and have the public testimony before discussion. If it is a suggestion as to where should we best go with this, I think that is fine, but if we are going to get into discussion, I would say that we take the public testimony and then have our discussion, and recommendations from a personal standpoint.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Did we receive an opinion from the County Attorney in writing?

Council Chair Rapozo: I have not received anything, but maybe we have. I apologize, I have not checked my folder.

Councilmember Hooser: No, it is okay.

Council Chair Rapozo: If you want to take some time to look at the...

Councilmember Hooser: Prior to voting, I would like to look at the opinion.

Council Chair Rapozo: Okay. Councilmember Chock.

Councilmember Chock: I did have one (1) question regarding the opinion of the Attorney, if possible.

Council Chair Rapozo: Okay. Is there any other discussion before I suspend the rules? Mr. Trask.

There being no objections, the rules were suspended.

MAUNA KEA TRASK, County Attorney: *Aloha*, for the record, Mauna Kea Trask, County Attorney.

Councilmember Chock: Can you explain the difference between the current system where our Mayor has the oversight of appointing our Managing Director now and the discussion that we are having on the hiring of a County Manager?

Mr. Trask: Will do. A County may frame charters for their own self-government under the Kaua'i State Constitution. I think it is under

Article 8, Section 2, I believe. Per the Constitution, the charter provisions regarding the County's governmental structure shall be superior over legislative enactments of the same thing, subject to the legislature's authority to enact general laws throughout the state. So anytime you do an analysis of this issue, it is a two-part test. One, does it pertain to the County's governmental structure; and two, does it affect any general laws? Under the current charter structure, the mayor is an elected head of branch of government, the executive branch, and the mayor appoints the Managing Director exclusively. If you look at Hawai'i Revised Statutes (HRS) Chapter 76-77, it says that all civil servant positions or all positions in the government, here and now provided for and created here and after, shall be civil servant or shall be subject to the civil service process, except the following. It cites a laundry list of exceptions, and it also refers to HRS 46-33. However, HRS 46-33 pertains to counties with populations of over five hundred thousand (500,000), therefore, it does not pertain to Kaua'i.

If you look at HRS Chapter 76-77, positions within the mayor's office appointed by the mayor are exempt from civil service and that is clear. So now the case on-point is a case called Hawai'i Governmental Employees Association (HGEA) vs. the County of Maui, and this was decided in 1978. It is 59 Hawai'i 65. In that case, the County of Maui floated some charter amendments that HGEA believed were illegal under the Constitution. Although they pertain to government structure, they said that it was in violation of the general law provisions of the state. In that case, one (1) of the two (2) issues that came up was that the revised charter proposed that the County Attorney's Office and the Prosecutor's Office in that County could appoint staff outside civil service provisions. The other was that the Mayor could appoint the Human Resources (HR) Director as opposed to the Civil Service Commission. There are other provisions regarding the Water Department, Liquor Department, et cetera. The court found specifically in regards to our issue that HRS Chapter 76, which is the civil service portion of HRS is a law general applicability of statewide concern and that any charter provisions, although they would specifically relate to, in that case, the County of Maui, would be in violation of the general law and therefore the case uses the word, "nugatory." In that case, there is language that specifically that says any revised charter sections in conflict with HRS Chapter 76-77 would be rendered nugatory. Because in this case we are dealing with a HRS Chapter 76-77 issue whether or not the County Manager would be a civil servant or not, and if you look at the very specific exceptions, which I believe are to be read narrowly because of the Constitutional provisions and the overarching statewide general law concerns of HRS Chapter 76, I think the County Manager would be construed to be civil service position, and any charter provisions contrary to HRS Chapter 76-77 given the language of HGEA vs. County of Maui be rendered nugatory, and therefore beyond the charter amendment. So the law would need to be addressed and changed in that regard.

Councilmember Chock: The way that it is currently structured...and I sort of understand the general applicability, but the Mayor is elected and has a right to appoint a listing of people. One of those people is the Managing Director, is that correct?

Mr. Trask: Correct.

Councilmember Chock: Okay. That being said, if there is still a mayor in the current proposal, could the mayor not hold that same right?

Mr. Trask: I do not believe so because I believe that the "mayor" in quotes, in the charter proposal is also used interchangeably with chair

and chairperson. If you look at the statute, it is merely titular. Is it still a legislative branch position officer; and therefore, would not fall with the purview. I would not feel comfortable arguing that it would fall within the purview of the provisions of HRS Chapter 76-77, because that was drafted when all Counties had elected mayors. HRS knows what "mayor" means. It is an elected executive. Given that this would be a legislative position, I do not think...and it would not be within the Office of the Mayor either. The language is within the Office of the Mayor in that statute and the Managing Director is within the Office of the Mayor under our Charter.

Councilmember Chock: Okay.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Mr. Trask, essentially the mayor under the Council-Manager form of government would not be the appointing body of the county manager.

Mr. Trask: That is true. It would be the council.

Councilmember Yukimura: It would be the council, so it would not fit under the statute, right?

Mr. Trask: More so, correct.

Councilmember Yukimura: My question is what kind of amendments to HRS can we suggest that would allow for a county manager to be appointed under a Council-Manager form of government by the council rather than the civil service process?

Mr. Trask: I would like to do more research on that, but I have been thinking about this and so today, I can say something about understanding that the county executive. A legal term that would allow for various different kinds of positions, I would think that would be it, but I am not sure.

Councilmember Yukimura: Under the exemptions could we not say, "A county manager when appointed under a Council-Manager form of government."

Mr. Trask: That maybe too specific. I would leave it up to the legislature how they would do it...

Councilmember Yukimura: No, no, no. We have to suggest to the legislature the amendment that we want. We are not going to leave it up to them. They have not done any study of the Council-Manager form of government. We actually could check with International City/County Management Association (ICMA) about other states where this is an issue, actually.

Mr. Trask: I would think that general reference to the county executive, whether elected or appointed, would be good.

Councilmember Yukimura: I am thinking that a reference to a Council-Manager form of government, which clearly distinguishes it from the strong Mayor-Council form of government that the counties all operate under right now, but that is something that we could discuss. We could craft an amendment to propose to the next legislature in 2017, right?

Mr. Trask: Correct.

Councilmember Yukimura: I mean we have a lot of time to do that. It would be crafting an exemption however we word it.

Mr. Trask: Correct.

Councilmember Yukimura: Whether it is county executive or county manager under a Council-Manager form of government, but I do not think it will be that complicated. It is going to be far more complicated to get it passed, perhaps.

Mr. Trask: Remember the civil service provisions are only one (1) part of what you would have to look at, in total.

Councilmember Yukimura: True.

Mr. Trask: Today, we can talk about this and I just want to leave an open-end, if and when you have these discussions later, to revisit other issues that may pop up.

Councilmember Yukimura: Thank you, because I think that is absolutely crucial that we identify all the areas in state law that need to be amended and go in with a package because that is what is going to be required for a Council-Manager form of government to have even a chance to exist in this state. Okay, thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Thank you for the work and thought you put into this, I appreciate that. My question is hopefully short. Are there any appointments that we make today that are not civil service appointments?

Mr. Trask: I do not think you do...

Councilmember Yukimura: The Auditor and the Clerk.

Mr. Trask: Oh, yes, maybe the Auditor and the Clerk.

Councilmember Hooser: The Auditor and the Clerk. If we appoint the Auditor and the Clerk and are not required to go through the civil service system with them, tell me again why the county manager would have to go through it?

Mr. Trask: I do believe as far as the Auditor, it is the head of a department, the County Auditor Department, and "department" is defined under HRS 76 as agency, board, commission, whereas as opposed to county manager, it is to be the head of the executive branch. It is not a department, but an overarching branch of government. Again, I do not think that is what it means and I do not feel comfortable making that argument. As far as the County Clerk, I believe there are specific exceptions to that. I do not have that document in front of me, but we have visited this issue and I just do not have a side currently.

Councilmember Hooser: It seems like you have gone over the opinion you provided fairly thoroughly in public, so can we release this?

Mr. Trask: I would say that I had discussed this previously on the floor. I had issued an opinion on it. If you could just go through the normal process of voting and ask the body to release, just to maintain the process would be fine. I would not have any objection.

Councilmember Hooser: You have no objections?

Mr. Trask: No.

Councilmember Hooser: Okay, thank you.

Mr. Trask: For the record, I have opined on this. My opinions have been made public for a long time now.

Councilmember Hooser: Just the written document, I guess...

Mr. Trask: Yes.

Councilmember Hooser: Thank you.

Council Chair Rapozo: Thank you. Anyone else have questions for Mr. Trask? Thank you.

Mr. Trask: Thank you.

Council Chair Rapozo: While the rules are suspended, is there anyone else wishing to testify?

ALLAN PARACHINI, Charter Review Commission Chair: Just to clarify something that Councilmember Yukimura mentioned, we, under the current Charter sunset on December 31, 2016. We have placed an amendment on the ballot for this November to make the Charter Review Commission an ongoing part of county government. Obviously, it is up to the voters to determine whether they want to pass that. We do not believe, and I would defer to Mr. Trask on whether I am factually correct on this, but we do not believe that you or the Mayor have the power to do anything to extend our work beyond December 31, 2016. We have also been told by the Deputy County Attorney who advises us that we, for the rest of the year, can undertake to put amendments on the 2018 ballot and we may do that. I do not believe there could be a charter amendment voted on in 2017 because that is not a General Election year. I think the next time that a charter amendment could come before the people is 2018 and in the General Election process of that year. But as far as what we can do, we have the rest of the year to do anything that comes to us or comes before us, or that we initiate. Otherwise, we sunset and even if we are extended by the vote of the voters, the Mayor would have to either reappoint some or all of us, or appoint new Charter Review Commission members. That is the status of where we are and I will just leave it at that.

Council Chair Rapozo: Thank you very much.

Councilmember Yukimura: I have a question.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Is it not true that the Charter Review Commission can set a special election?

Mr. Parachini: I do not know the answer to that. We had a discussion about another matter a few months ago and the County Clerk raised some extremely valid concerns about the cost and process of running a special election at the county-level. Such that we decided...and I frankly do not remember what the issue was, but we decided not to pursue it because the Clerk told us that the obstacles to putting a charter amendment on a non-General Election year ballot, from their perspective, were close to insurmountable.

Councilmember Yukimura: I am not asking questions about financial feasibility.

Mr. Parachini: Right.

Councilmember Yukimura: I am asking about legal feasibility.

Mr. Parachini: I do not know the answer.

Council Chair Rapozo: We can send that over to the County Attorney. Thank you.

Councilmember Yukimura: Thank you.

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

Mr. Bernabe: Matt Bernabe for the record. I am not in favor of a county manager; however, I would point out that it has allowed me to make some very good arguments. The county manager has pointed out all of the updated best practices that it would bring to the table. They said if they came in and we overhaul it, this is what we are going to do...I agree with all of those solutions and their analysis as correct. What I think we should do is instead of wasting all our time on amending charters and this and that, so we can push this as agenda item, we should really be identifying the areas that we can strengthen by updating the language in the Charter and Code that operate this County. To me, that is the "no-brainer" of the day. If we had some areas that we already identified that need improvement, for example, we need actual criteria for department heads like HR. We need them to have a degree or experience in that field that they can bring to the table and justify raises and high pay grades. Other than that, that is why we are sitting here trying to tax the citizens so we can fix roads. There is a lack of communication between departments because the nerve center, HR, if we need anything...we need a charter amendment that says, "Do you want a qualified HR department head or would you rather just have some college degree in any field and "we will call that acceptable?" I think we are wasting our time, except for the fact that it has allowed us to have this discussion, which is the only benefit of this. With that said, I yield the floor.

Council Chair Rapozo: Anyone else wishing to testify?

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

If not, I wanted to get an opinion from the Attorney General regarding the exemption. I tend to agree as I read the statute, I am not a lawyer, but I tend to agree

with what the County Attorney has said. But before we put this to rest, I want to make sure we cover all bases. I would ask that we defer this for two (2) weeks and if we could follow-up with the Attorney General on an opinion. I think the case that the County Attorney has cited on Maui is on point, but it raises another question about our Auditor. Our Clerk is very clear, she is the department head, but the Auditor is not, and I have some concerns. My suggestion would be to defer for two (2) weeks. Hopefully, we can get a response from the Attorney General, and at that point, we will make a decision. Again, I tend to agree with the County Attorney that this position would not be exempt and would have to go through the civil service process, which would really defeat the purpose of having this system in the first place. Any further discussion? Councilmember Yukimura.

Councilmember Yukimura: I agree with the deferral. During that time, I would like to check with ICMA about enabling legislation for...or how to address the potential conflict in state framing and state law. I would also like to have the County Attorney research whether the Charter Review Commission is able to call a special election on a charter amendment.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: Just to respond. I did pose the question to ICMA, but I have not heard back yet. When they respond, I will circulate that.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: While I agree that the County Attorney should be consulted on the question of a special election, reading from the Charter, under Charter Review, Section 24.03 says, "The county clerk shall provide for the submission of such amendments or a new charter to the voters at any general or special election as maybe determined by the commission." It appears on the face of it, that the Commission would determine whether it is a special election or not, but I agree more detail is necessary.

Council Chair Rapozo: I think with the discussion that we have had, I think the Commission is the only body that can I know that for a fact that the Council cannot set an amendment at the special election. I believe it is only the Commission. Councilmember Yukimura.

Councilmember Yukimura: I would also like to get the cost of a special election from the Elections Division.

Council Chair Rapozo: Okay, we can pose all of those questions. Looking at the calendar, the Clerk showed me the calendar, and June 15th would be the preferred deferral date. Councilmember Kagawa.

Councilmember Kagawa: Thank you, Chair. I have been strongly against the idea of the Council-Manager form of government to improve all of the problems that I foresee or have seen over the years with government. I have accepted that is the process that we have, which is based on checks and balances. The United States government has it and the Hawai'i State Legislature has it. Am I totally happy with both of those sectors of government and their performance? Absolutely not, but is changing the entire checks and balancing system going to mean an improvement

to our system? I believe that answer is no. There is going to be problems that I foresee with the council-manager form of government because you are going to take out the “check” out of the checks and balances. I am concerned that putting this on the ballot could possibly come out to an outcome that the voters did not really care for, which could be a government that is worse than now. The risk/reward for me is not there. I am not convinced even with the deferrals and the further opinions that we are going to get more clarity to that question. Is any other system besides the checks and balances system that we have throughout the federal government, state government, and here, is another system without the checks and balances a better solution? I say no. What Country are we looking at that does not have checks and balances that functions better? I think the United States of America is the greatest Country on Earth and we have a system of checks and balances. What Country are we looking at that does not have checks and balances? Russia? Anyway, I am not for it. Thank you, Chair.

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

Councilmember Yukimura: One (1) of the things for me that is attractive about a special election in a non-election year, is that the community can really focus on the discussion and debate about how this would actually work, what kind of benefits or problems there would be, and it would be just a much more educational environment where we could really look at the pluses and minuses and make a good decision. That is why I am thinking, right now, we are stymied. We cannot have a Council-Manager form of government under the present statutory framework of the state, but we could make those changes and those changes would stand whether or not it passes. It would be available to any county who wanted to go to a Council-Manager system and they would still have to make an affirmative choice at the ballot, but the statutes at the state-level would not be an obstacle. It would give people the power of the choice and then having the entire issue come up in a special election on a non-election year would really enable the community to focus in a non-political environment on the issues and learn and educate ourselves and then make an educated decision together. Whatever is the outcome, is the outcome. To me, that would make democracy work in the best way possible.

Council Chair Rapozo: Any other discussion? Councilmember Kaneshiro.

Councilmember Kaneshiro: I will not be supporting a deferral. I have not supported this the entire time. Again, I am not going to go through all that I said the last time because I am sure it is going to get deferred and I will have to say it again, but I think Judge Laureta continues to repeat it – what is wrong with our current system? How do we fix that? That is the same question that I asked. You bring up specifically what you do not like about our system now and we try to fix that and resolve that or look at ICMA and best management practices. I am not in favor of changing our entire structure of government to fix whatever problems we have now. I can almost guarantee that system will also have problems and we will be in the same situation. I will not be voting for the deferral.

Council Chair Rapozo: Any other discussion? If not, I will entertain a motion. Oh, Councilmember Kualii.

Councilmember Kualii: Can you explain why the deferral is not for two (2) weeks and for June 15th? Why is the request for June 15th?

Council Chair Rapozo: I guess, for time to allow our staff to put the questions together and get it over to the Attorney General and get a response. I will entertain a motion for two (2) weeks or for four (4). It is entirely up to this body, or I think Councilmember Yukimura is recommending a deferral until 2017. If we are not going to defer it in this term, then I would say we would receive it and start over. I do not like that thing hanging in the deferral bin. I want to keep everything active. Go ahead, Councilmember Yukimura.

Councilmember Yukimura: I think it is important to keep the momentum going because of the work. I do not think we have ever gotten this far and I think it has been good work and so we need to, I feel, stand on it and continue it. I do not mind a deferral until June 15th. I do believe that asking the Attorney General to render an opinion in two (2) weeks is rather demanding, and so a little bit longer time would be better – a little bit more courteous, I think. June 15th is fine with me and then we can go from there.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: This is another possible suggestion because there still seems to be some cloudiness about the issue, legal cloudiness, if you would, given the Auditor position and so forth. It is my understanding that the County of Maui also has a committee and I am not sure that it involves councilmembers or not, but my understanding is that they are looking at the same issue and possibilities. If it is the council, itself, asking these questions, it might be good to consult with them or ask their county attorney if they discovered the same thing or perhaps discovered some work-around. Just a thought.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: I can speak to that. Maui Council put together a committee of mixed stakeholders. They have recently made a recommendation for a proposal to be submitted to the Council for a Council-Manager proposal. The legal questions have not been answered on their end, but I have reached out and asked them to share their progress along the way and will be doing so on this particular question.

Councilmember Hooser: Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I thought Mr. Parachini said that it went on the ballot, but it is going to be on Maui's ballot.

Council Chair Rapozo: No, it is not going on the ballot. It was not until Mr. Morimoto found that legal issue. He found a part of the HRS and again, the request to seek an opinion from the Attorney General does not...please do not take it that I do not trust Mr. Trask, but if you read the case, it is on point exactly with what this is doing. There is no gray area in my opinion, I am not a lawyer, and I anticipate the same result coming from the Attorney General and that is obviously for this to be put on the side until we can clarify that. It does raise an issue with the Auditor's Office and the timing is good because it is vacant right now. We need to clarify that as well before moving forward and hiring the Auditor. There are a lot of things that this brought up that we would not have known. I can have not spoken to Maui and I

will today to let them know what we have found, what Peter Morimoto, our Legal Analyst, who came up with this as he was researching HRS. I am glad he did. I do not want to move forward on a charter amendment like Councilmembers Kagawa and Kaneshiro – voters pass this measure, we change the entire structure of government, then we get a challenge, and then it is a mess. We are doing our due diligence and I think we are doing a good job at it and our staff is doing a heck of a job, so we just want to cover all the bases and that is what I want to do. Any further discussion? Councilmember Kualii'i.

Councilmember Kualii'i: I just wanted to add my comments that in the end, while it is important to know the legal information as far as what is legally possible, my decision will not be based just on that, but I would support the deferral so that we can get that. So that there is more time to hear from even more of our constituents, but what I have been hearing is that the voters want to be able to elect their mayor and that they want the checks and balances. Some of the testimony I heard the last time, which kind of muddled the entire proposal in a way because they could not accept that best practices was to have the staggered longer terms to retain historical knowledge, institutional knowledge, and skillsets so that the whole council was not turning over potentially every two (2) years and then that is leaving all the authority, management and political, if you will, in one (1) hired person as a Council-Manager. There are a lot of things to consider, but this is an important final consideration for now, so I will support the deferral to June 15th.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I just want to make it really clear that the proposal for a Council-Manager form of government, this Resolution, has an elected mayor in it. Let us be real clear that the mayor will be an elected official.

Councilmember Kualii'i: And let me just make it clear too that it is not the mayor as you know it now, in a separate place with separate authority. It would in essence be mayor that sits on this body and potentially the chair of this body, but not the mayor as you know it.

Council Chair Rapozo: As it is written, the mayor would be the chair. He would not manage any department. He would just be the chair of the council.

Councilmember Yukimura: And the strengthen of it...and true every system has its pluses and minuses, but the strengthen of it is that the body would choose a professional manager who would then have to produce and therefore not be an elected official, would not be making political appointments for the department heads.

Council Chair Rapozo: It is always political. That is the nature of the beast. It is not necessarily a bad thing and it is not necessarily a good thing.

Councilmember Yukimura: And it is not necessarily political when it is professional.

Council Chair Rapozo: Okay. I need a motion.

Councilmember Chock moved to defer Resolution No. 2016-42 to June 15, 2016 Council Meeting, seconded by Councilmember Yukimura, and carried by the following vote:

FOR DEFERRAL:	Chock, Hooser, Kualī'i, Yukimura, Rapozo	TOTAL – 5*
AGAINST DEFERRAL:	Kagawa, Kaneshiro	TOTAL – 2,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Kualī'i was noted as silent, but shall be recorded as an affirmative for the motion.)*

Council Chair Rapozo: I apologize we scheduled the GET bill for 10:30 a.m., we ran over time, we have a caption break scheduled for 11:00 a.m., but let us take it now.

There being no objections, the Council recessed at 10:52 a.m.

The meeting was called back to order at 11:05 a.m., and proceeded as follows:

Council Chair Rapozo: Can we have the 10:30 a.m., please, at 11:05 a.m.?

There being no objections, Bill No. 2610, Draft 1, was taken out of order.

BILLS FOR SECOND READING:

Bill No. 2610, Draft 1 – A BILL FOR AN ORDINANCE TO ESTABLISH A GENERAL EXCISE AND USE TAX SURCHARGE FOR THE COUNTY OF KAUA'I

Councilmember Kagawa moved to receive Bill No. 2610, Draft 1 for the record.

Councilmember Yukimura moved for adoption of Bill No. 2610, Draft 1 on second and final reading, and that it be transmitted to the Mayor for his approval.

Council Chair Rapozo: Okay, I got the motion to receive first. Is there a second?

Councilmember Kualī'i seconded motion to receive Bill No. 2610, Draft 1 for the record.

Council Chair Rapozo: The Mayor has asked to speak first, so I am going to suspend the rules. Mr. Mayor, thank you for your patience. I apologize. I am glad today we do not have any controversial items on the Council agenda.

There being no objections, the rules were suspended.

BERNARD P. CARVALHO, JR., Mayor: No controversial items, we are just talking. Good morning Council Chair Rapozo and Members of the Council. Mayor Bernard Carvalho. As we all know that the Legislature did give us authority to pass GET and for the past seven (7) months or so, we have been talking about it. Our fiscal team, our team in general, has been working with you folks. We have prepared a 10-year financial projection of revenues and expenses. We have developed a sound plan for implementation, including the identification of specific roads and

bridges in every *moku* that can be improved over the next ten (10) years. We have clarified personnel needs to implement the plan. We also have worked with various organizations to do more of an educational component to help people understand what this could do for Kaua'i – to help us move forward in this area. We generally proposed a point five (0.5%) increase, that is no secret, that is what we came across with, and at this time I know that on the table is the point two five percent (0.25%) surcharge, which I support. I am asking for your support as we move forward to address the backlog of bridge improvements, improvements to a transit system, and all of that. We have gone through back and forth and so I am here to tell you that I am supportive of the point two five percent (0.25%) and it is not you folks alone...let us work together to come up with the bigger plan. We have done a lot of the homework, we have asked questions, we have responded to questions, we have tried to fill most of your questions, and we feel strongly that we have that in front of us at this point. The Government Finance Officers Association (GFOA) is advising us that are relying on one (1) source of income, real property taxes for eighty percent (80%) of our general revenues is not a healthy situation, so we can go back and forth, but I am saying this is just an opportunity that we can hopefully come to some kind consensus agreement on to move forward. I know we do not want to raise taxes, but the way it has been delivered and the homework, if you will, that has been done tells me that we have an opportunity to move forward in repairing our roads, our bridges, and our transit system. Again, I am here today to ask you to consider the proposed point two five percent (0.25%) and look forward to working together in coming up with a sound plan that can really help us move forward in this area. Again, it is an opportunity. I see it as an opportunity from the Legislature to give us the authority. On the table, again, point two five percent (0.25%) and we look forward to a healthy discussion. Thank you for the opportunity.

Council Chair Rapozo: Thank you, Mr. Mayor. Any questions for the Mayor? Councilmember Kagawa.

Councilmember Kagawa: I had a question for the Director of Finance.

Council Chair Rapozo: Ken?

Councilmember Kagawa: A lot of the testimony coming in is saying, "How do we fix the backlog? There is no other way, let us raise this tax." It would be the first time we would try it, but the fact of the matter is that we have raised a lot of things in the past few years. We have raised the Pay-As-You-Throw, how much did that raise per year?

KEN M. SHIMONISHI, Director of Finance: Ken Shimonishi, Director of Finance. I do not have those numbers in front of me. We were going to talk about the GET.

Councilmember Kagawa: I am just trying to summarize because we are saying we need additional moneys, let us give the beast more moneys, and then we will see some paved roads. So I am wondering how much does the beast have in the recent few years. We have raised the fuel tax, car registration fees, and vehicle weight tax—how much additional money did that raise in the past two (2) years?

Mr. Shimonishi: Again, I do not have those numbers off the top of my head. We have gone through the revenue projections with the Council, the budget revenue line items...

Councilmember Kagawa: I just thought that we had that information.

Mr. Shimonishi: I think as part of the submittal of the balanced budget that the Administration proposed, the Council can see where all those revenues are being used to operate the County whether it be Pay-As-You-Throw which goes to our solid waste efforts or the Highway Fund, which goes towards all of different baseyards, road crews, as well as part of transportation.

Councilmember Kagawa: I am trying to find out how much more taxes in the past two (2) years has this Council or the previous Council, imposed new taxes. How much have our property taxes gone up since last year because of the rising assessments?

Mr. Shimonishi: This year it went up roughly six million four hundred thousand dollars (\$6,400,000).

Councilmember Kagawa: Six million four hundred thousand dollars (\$6,400,000) for property taxes additionally collect through the taxpayers and then another maybe three million dollars (\$3,000,000) in additional taxes from the vehicle, tipping fees, and everything?

Mr. Shimonishi: I think if you are looking from when it was initially imposed, the most recent increase...that probably is about right.

Councilmember Kagawa: So, there is your ten million dollars (\$10,000,000) additional right there. We already did it.

Mr. Shimonishi: That is assuming every other cost element remains flat and the Council does not approve any bargaining unit increases.

Councilmember Kagawa: For me, as we continue to give the Administration more money to pave roads or what have you, how is the taxpayer ensured that it is going to happen and not just go to...we are going to come to the table and say, "Well, it is for negotiated pay raises" or "this went to unexpected lawsuit settlements." How does the taxpayer know that this point five percent (0.5%) is going to paving roads and not sidewalks, not bike lanes, and not flashing crosswalks? How does the taxpayer know? Can we have that in blood?

Mr. Shimonishi: Councilmember Kagawa when we were initially talking about the half percent (0.5%) and the quarter percent (0.25%), one (1) of the amendments we were asking to propose was to create a general excise tax fund so that only the GE tax revenues would be placed in this fund and it would be clearly identifiable to the Council, as well as the public, exactly what these funds were being used for. That is what was the intent when we initially submitted the point five percent (0.5%) and then later we were talking about doing an amendment, but things went in a different direction.

Councilmember Kagawa: So, out of your plans, if you get the point two five percent (0.25%) which is ten million dollars (\$10,000,000)...

Mr. Shimonishi: Roughly ten million dollars (\$10,000,000) a year.

Councilmember Kagawa: How much of that ten million dollars (\$10,000,000), out of your plan, is going to go per year for salaries and labor costs...not paving roads. I know you are going to say, "Well, the salary costs are associated to paving roads," but I believe we contract all of those services out, so how much are we going to eat up of that ten million dollars (\$10,000,000) for anything other than buying asphalt, digging up the ground, preparing it, and finishing it?

Mr. Shimonishi: The most recent amendment of the bill does not specify specifically what percentage goes where. That was amendment to be removed out by the Council and it would depend on the Operating Budget that is ultimately passed by the Council.

Councilmember Kagawa: Thank you. I am done.

Mayor Carvalho: I wanted to add, Councilmember Kagawa, that from me to you folks that it is specific and it is in this realm that the funding that comes through this surcharge cost opportunity will be specific to roads, bridges, and a portion of transit.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Is it an advantage of the excise tax that it cannot be used for solid waste and it cannot be used for collected bargaining, in general? It has to be transportation related, right?

Mr. Shimonishi: If you look at the language, it says, "Operating or capital cost relating to transportation," and so on. To that respect, it is narrow in its use of the intent; however, I would not say it is only specific to infrastructure repair or only transportation, capital purchases, or expansion.

Councilmember Yukimura: Right. It can be used for any operating or capital, but they have to be related to land transportation. In the State's statute, it is called, "public transportation," but when you look at how it is defined, it is basically land transportation.

Mr. Shimonishi: Correct.

Councilmember Yukimura: It can be used for roads, both existing and new roads, public transportation both operating and capital and it is all modes of land transportation.

Mr. Shimonishi: That is my recollection, yes.

Councilmember Yukimura: If the Council or Administration wants to, we can narrow it...I would love to say, "Only road repair and transit." We can do that or at budget time, we can do that based on project-by-project. That is how it is set up right now. It was a compromise because I wanted to earmark it for transit and the Budget & Finance Committee Chair wanted to have it to land transportation, so we can determine the exact purpose of expenditure every budget and I am okay with that. I believe that is what the existing bill is land transportation, in general, the specific expenditures and projects to be determined at budget every year.

Council Chair Rapozo: Thank you. Councilmember Chock did you have a question?

Councilmember Chock: No.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: I just rehashed what we collect additionally with all the new taxes that we have imposed by new legislation in the past two (2) years or so. We are saying that is about ten million dollars (\$10,000,000) a year. We appropriate one million two hundred dollars (\$1,200,000) per year for road repaving.

Mr. Shimonishi: That is correct.

Councilmember Kagawa: Out of that ten million dollars (\$10,000,000), how much more did we add? Zero (0), right?

Mr. Shimonishi: That is my...yes.

Councilmember Kagawa: Okay. Thank you.

Council Chair Rapozo: Anyone else? I had one (1) question and I apologized if it was answered because I am not sure if anyone asked this. The original half percent (0.5%) according to the plan was going to create thirty-five (35) positions in the Transportation Agency and seven (7) positions in the Department of Public Works. With the amended point two five percent (0.25%), what would the numbers be?

Mr. Shimonishi: Again, it would depend on what the Council passes in terms of the Operating Budget Ordinance. Ultimately, that is where it is determined where how those funds will be used. Just to get back at Councilmember Kagawa's comment about how much more have we appropriated, I think the last budget meeting that the Council with its cuts of another three hundred fifty-five thousand dollars (\$355,000), appropriated that money towards the road resurfacing was my understanding.

Council Chair Rapozo: Councilmember Kaneshiro and then Councilmember Yukimura.

Councilmember Kaneshiro: With the increases in fuel tax and vehicle weight tax that happened before, I thought I heard that that money was transferred to the bus. We started putting more money towards the bus and the Highway Fund rather than paying it out of the General Fund, was that correct?

Mr. Shimonishi: That was correct. Part of the bus system expenditures were pushed over to the Highway Fund to help alleviate pressures on the General Fund, roughly three million dollars (\$3,000,000) a year.

Councilmember Kaneshiro: Okay.

Councilmember Yukimura: I think when we did a two cent/two cent (\$0.02/\$0.02) fuel tax increase, I think a totally of...if you just look at the highway related taxes like motor vehicle registration and the small gas tax increases we did, we started spending three million dollars (\$3,000,000) on bus operations on the Highway Fund and we started that one million two hundred thousand dollars (\$1,200,000) every year for road repaving. That is a total of four million two hundred

thousand dollars (\$4,200,000) of the increases that we have had over the last four (4) or five (5) years or so have gone to bus operations, alleviating as you say pressures on the General Fund, which allowed us to pay for collective bargaining and other increase from the General Fund. We also started a road repaving program at one million two hundred thousand dollars (\$1,200,000) per year accumulating that every two (2) years and going out to bid every two (2) years.

Mr. Shimonishi: Yes, that is correct. A lot of the Members who were here, for a longer period of time, recalled the Highway Fund audit which actually identified the use of the road resurfacing capital funds to now be absorbed in the Operating Budget. That was a significant move as well that also started to us more of the revenues that were being generated.

Councilmember Yukimura: So are you saying that we got the legal opinion or the Bond Counsel opinion that we cannot use bond moneys for maintenance and repaving?

Mr. Shimonishi: Correct. That was one (1) issue and then it should also be reflected or paid through our operating budgets.

Councilmember Yukimura: That put a lot of costs, that we had to draw from the Highway Fund for, and so wherever we got increases, that is where the money went to basically highway projects. Okay. Thank you for that clarification. The six million four hundred thousand dollars (\$6,400,000) in property taxes that we get additional, I believe you said very little of it were from owner-occupants or residents. It came mainly from outside investors, new property development, and that sort of thing and has gone to collected bargaining increases of how much this year did we have additional?

Mr. Shimonishi: I believe it was roughly close to that amount.

Councilmember Yukimura: Of six million dollars (\$6,000,000)?

Mr. Shimonishi: Right.

Councilmember Yukimura: And then we just added the lifeguards in...how much? Six hundred thousand dollars (\$600,000)? Yes. So, if we did not have those moneys, we would not be able to pay for those increases.

Mr. Shimonishi: That would be a fair statement.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: You were not the Director of Finance at the time, but you were a Budget Analyst. I believe it was 2012 that we removed the property tax cap or 2013. The cap that was in place for twenty-five (25) years or so, and did that not lead to significant revenues from residents as well because instead of having a cap on their properties, owners with a rental or just an extra house that was not sitting around went from a three dollar (\$3) rate to a six dollar (\$6) rate. There were significant increases by residents. Some of whom own more than one (1) property.

Mr. Shimonishi: I think the increases were due to now taxing by use as opposed to zoning. So that, in fact, if you were an owner-occupied home with no other activity, then you continue to get your beneficial or Homestead tax rate as opposed to if you are generating income. It was definitely taxed at a different class. You are correct that I think overall, obviously real property taxes has increased, but keep in mind that the County was operating at a ten million dollar (\$10,000,000) a year deficit through fiscal year 2012, 2013, and 2014. An average of ten million dollars (\$10,000,000) a year deficit and there was no way that the County could continue on that track for another two (2) or three (3) years.

Councilmember Kagawa: Understood. Was any of that deficit caused by the County trying to address roads that were in bad need of repair?

Mr. Shimonishi: No. From what we have seen, it was due to the decreasing real property tax revenues as well as the ongoing expenditure increases, not related to roads.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Is it true that when we removed the cap we also increased the homeowner exemption and put in place things like the long-term relief for residents in places where the real property was increasing like Hanalei and we did commercialized use? So, there were a lot of mitigating programs that we put into place.

Mr. Shimonishi: That is correct. Exemptions were increased and other measures were taken. I would say personally for me, I was in the capped category of real property. I have owned my home since 1990 and when the cap was removed, I actually saw a slight decrease in my tax on the first year. Obviously, since then it has been adjusted, but I think there were gives and takes when the cap was removed. It was meant to bring more equality within the taxpayers of that category.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Any other questions? Councilmember Kualii.

Councilmember Kualii: These are general questions and you can answer with a "yes" or "no." Is it the Administration's position that you have exhausted all other budgetary means including cutting expenditures, as well as raising revenues such as fees, licenses, and taxes? That you have exhausted all other means and this is the last resort that you are asking for this GE tax license.

Mr. Shimonishi: I do not think I can answer that with a yes or no. It is what are we willing to do going forward. Are we willing to implement user fees exponentially in order to make up some of the costs that the County incurs? Again, I would just reference the Council just having gone through the budget process, looking line-by-line, making the cuts where the Council felt necessary. I think the question would be does the Council feel that they have gone through every attempt or every change that they could in order to cut the budget or increase revenues and find alternative sources of revenue.

Councilmember Kualii: It kind of sounds like the answer is more towards the no than the yes, and the reason that it is no is because the Administration sees this solution for the one hundred million dollar (\$100,000,000) backlog as a solution that is spread more widely? That is kind of a question. You are saying the solution of increasing other taxes or user fees is not the route that you would go, and when you are asking for this particular route with a GE tax...

Mr. Shimonishi: I think we are saying this is a way to have everyone contribute, including our visitors, towards an ongoing problem. Given the history of what is accomplished through our budget submittal/budget reviews, are we really being honest with ourselves in thinking that we can come up with the funds in order to address the issue that has been brought forth?

Councilmember Kualii: Along those lines of, "including our visitors." The legislature has done this and obviously their primary impotence was because of City and County of Honolulu and the rail, as far as giving Counties the opportunity to do a GET, that the state already does that already impacts our constituents. If the state was to do the same kind of thing with the Transient Accommodations Tax (TAT), as they have done with the GET by giving authority the Counties authority to have their own TAT, would you explore that option? Especially since knowing that over the years the backlog of the road maintenance, even though it was administrative decisions that got us to that point, the wear and tear on the roads were easily caused by tourist just as it was caused by the local residents. I do not even know if that is even possible with the legislature, but I am saying we are grabbing this because that is what the legislature put before us. If we ask them to do a TAT for the county, would you obviously look at that?

Mr. Shimonishi: Again, that is a discussion that would be had between both the Administration and the Council as to whether or not we would exercise that option, if given.

Councilmember Kualii: For the Administration when negotiating and approving any county position raises, from the lowest level to the highest level, is part of that decision the realization that it may actually take raising taxes such as real property taxes in order to fund those raises?

Mr. Shimonishi: I am sorry, Councilmember Kualii, could you repeat that question?

Councilmember Kualii: Before you spend the money do you realize whether you have the money or not or if you might have to take out a loan to pay for it, to put it in layman's terms.

Mr. Shimonishi: Some of the increases is tied to bargaining...I guess the majority of the increases are tied to bargaining units that are ultimately passed by the Council...

Councilmember Kualii: Some are and some are not.

Mr. Shimonishi: When we work through our budget process, that is the dynamic process that we undergo and to look at what are our projective costs and revenues.

Councilmember Kualii: Has the Administration ever in response to negotiating or approving raises, through salary resolution or however it happens, that cost millions of dollars, if you will, in response to that come back to the Council and said, "We approved this much money. We need a tax increase to pay for it." How do you pay for it?

Mr. Shimonishi: That has not occurred to the best of my knowledge. Again, looking at the county operations in aggregate, in total, obviously drives the need for what are our revenues in order to put forward a balanced budget. To say that we are deliberately putting in increases and then coming back and saying, "Raise taxes," I do not think that is a fair statement.

Councilmember Kualii: I was not saying that. I was asking have you considered when you are making the decision to approve raises that as a part of that approval thinking – I already know I have to pay for it and it may take raising taxes to pay for it.

Mr. Shimonishi: I think it goes both ways when the Council is excepting or approving, like the most recent Ocean Safety Bureau...

Councilmember Kualii: Right.

Mr. Shimonishi: ...are we identifying that will now cost more in terms of revenues needs to support that?

Councilmember Kualii: Well, the Council did come up with the cuts to pay for that four hundred thousand dollars (\$400,000), which the Administration did not do in their second submittal. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Can you help us be clear about the revenue options we have in this County? We have real property taxes and obviously nobody around this table, nor did the Mayor, proposed increases in real property taxes this year. Obviously, that is not a source of additional revenue right now, right?

Mr. Shimonishi: Correct.

Councilmember Yukimura: We have the Highway Fund, which is made up of the registration fees, the vehicle weight tax, and the fuel tax?

Mr. Shimonishi: Yes.

Councilmember Yukimura: And I introduced two (2) bills to increase the fuel tax and the vehicle weight tax, I mean I think we need to consider the heavy trucks that cause much of the damage, but that failed. The Council rejected that – so that is not an option. What other options do we have?

Mr. Shimonishi: As far as the Highway Fund, I do not know of any.

Councilmember Yukimura: No. I am talking about any other revenues for the County.

Mr. Shimonishi: The other option would be our General Fund, but we have already identified eighty percent (80%) of the revenue from the real property tax is not an option. Another ten percent (10%) would be transient accommodations tax and that is again, not controlled by us. Really, how are we trying to raise that much money on fees and permits are not viable.

Councilmember Yukimura: Yes, they will not give us ten million dollars (\$10,000,000), which is what this tax will.

Mr. Shimonishi: Yes.

Councilmember Yukimura: So our real option is the TAT, but that is dependent on the legislature and that is a revenue sharing, which is not a revenue raising power. We do not go out and we do not have the power to tax hotel rooms, right? The State has the power to tax hotel rooms and then decide how much of that revenue they share with the Counties. We tried really hard. The Council Chair and the Mayor were there almost every day and there was no response. In fact, there was a threat to go back down to a lesser level. We can still continue, but right now, that is not a source. The only other source is this half percent (0.5%) power, which evaporates on July 1st if we do not use it.

Mr. Shimonishi: That is correct.

Councilmember Yukimura: Okay. This half percent (0.5%) is on the broad-base of everybody; residents and visitors alike, depending on how much you purchase in services and goods in a year.

Mr. Shimonishi: Up to half percent (0.5%), that is correct.

Councilmember Yukimura: Up to half percent (0.5%). We are setting it at...

Council Chair Rapozo: Right now, it is at a quarter percent (0.25%).

Councilmember Yukimura: And that is twenty-five cents (\$0.25) for every one hundred dollars (\$100) of purchase.

Mr. Shimonishi: Yes.

Councilmember Yukimura: And somethings like medical insurance, I think, is not taxed. There are somethings that are exempted from the excise tax, but most things are covered. I think we can be conservative and assume that everything is taxes of what we spend and so we can calculate how much we would pay based on how much we spend a year. But it is twenty-five cents (\$0.25) on every one hundred dollars (\$100) or one dollar (\$1) for every four hundred dollars (\$400) of expenditures.

Mr. Shimonishi: Correct.

Councilmember Yukimura: That is our choice, right? We either pass this tax or we do not. Okay. There is no other...we cannot tax tourist cars, right? That is not a power that the Counties have.

Council Chair Rapozo: That is not a question for the Department of Finance or the Mayor.

Councilmember Yukimura: Well, but the Director of Finance knows what sources we have and do not have.

Mr. Shimonishi: I would say that we have looked at it. Other Councilmembers have brought that up, and we have had our County Attorney review it, and that is not within the powers of the County.

Councilmember Yukimura: So we cannot do a hotel room tax and we cannot do a tourist car tax?

Mr. Shimonishi: No.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: What is in the County's savings right now? What is our savings balance?

Mr. Shimonishi: If you are talking about the Unassigned Fund Balance of the General Fund, is it roughly twenty-five million dollars (\$25,000,000) without considering what should we hold towards a reserve.

Councilmember Kagawa: So, right now we have twenty-five million dollars (\$25,000,000) in our savings.

Mr. Shimonishi: Yes.

Councilmember Kagawa: Hypothetically, if we said, "Well the quarter percent (0.25%) passes—that will give us thirty-five million dollars (\$35,000,000)." In 2018 when it is in effect. So basically, you can add ten million dollars (\$10,000,000) per year.

Mr. Shimonishi: If you are saying we are imposing the quarter percent (0.25%), but not expected to expend it...

Councilmember Kagawa: I am just saying that would be that much more...ten million dollars (\$10,000,000) more revenue in our savings, right, or more to spend.

Mr. Shimonishi: Or more to spend.

Councilmember Kagawa: Well, put it this way...

Mr. Shimonishi: Available to appropriate – you would have ten million dollars (\$10,000,000) in revenue available to appropriate and if you did not spend it, then yes...

Councilmember Kagawa: How much did we have in our Unassigned Fund six (6) or seven (7) years ago? I think we need to look back to look at mistakes and look at how we are going to do things differently, right? How much did we have? Sixty million dollars (\$60,000,000)?

Mr. Shimonishi: In 2010, I believe it was sixty plus million dollars (+\$60,000,000) in the overall General Fund balance. I do not have the specific breakdown of that.

Councilmember Kagawa: No. All I wanted was the ballpark figure. The question is did we know in 2010 that we had a backlog of roads and bridges that were in disrepair and needed fixing?

Mr. Shimonishi: I am not exactly sure when that information was compiled.

Councilmember Kagawa: We only found out this year that we have a backlog of road and bridge repairs?

Mr. Shimonishi: I do not think that is true.

Councilmember Yukimura: I think I can answer that.

Councilmember Kagawa: No, I do not want you to answer it. He should answer it. He is the one asking for the GET increase. Or, Lyle, did we know in 2010 that we had a huge backlog of roads and bridges in disrepair and I am wondering...

Councilmember Yukimura: No, we did not.

Councilmember Kagawa: ...if this tax passes, what are we going to do differently? How do we justify it? We had sixty million dollars (\$60,000,000) in 2010. We did not increase our road repaving significantly in all those years, what are we going to do differently now? We have thirty million dollars to forty million dollars (\$30,000,000 - \$40,000,000) less in our savings and we are saying "if you give us this ten million dollars (\$10,000,000) more per year, we are going to do it better now." Did we not know that we had a backlog in 2010?

LYLE TABATA, Acting County Engineer: We knew that there was a backlog, but we did not how large it was until we contracted out a firm to come in and help us perform a survey of every single one of our County roads. The report came out, I believe, in late 2011 where we then identified what the needs were and we started quantifying them. By 2012, we had a pretty good idea.

Councilmember Kagawa: But we did not have the funds?

Mr. Tabata: Yes, we did not have the funds. Let me remind you that we have been having one million two hundred thousand dollars (\$1,200,000) every year since 2010 when the Mayor was elected and he brought myself and Mr. Dill on staff and asked how best to spend the one million two hundred thousand dollars (\$1,200,000) set aside for road resurfacing. When we came in, we did not have a program that maximized our federal aid funds and that is what we helped to develop what is the right split of how we were to spend that money. We learned through the bidding process to contractors to do the work for us that we could gain more efficiency by doing a larger volume of funding, which in turn allowed us to synergize the amount of work so that there was less charges to do it every other year versus every year.

Councilmember Kagawa: What are we going to do significantly differently?

Mr. Tabata: So what we know today has laid out our whole system of what we are going to do and all we have to do is find enough funds. Today, I match the roads with the highest need with the money I have available. If I have more money, I can take care of more needs.

Council Chair Rapozo: Any more questions?

Mr. Tabata: Maybe I did not make myself clear enough that objectively the evaluations that we have done had brought us to our point where we are today and on top of just resurfacing, you need to embark on a road preventive maintenance program. That is added costs. Everything we are going to have going to be spent specifically to reconstruct and resurface the road. We have to revisit back between three (3) and five (5) years to do other preventive measures.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Good morning. I accept the Administration's premise that number one, you are doing everything you can to manage the budget and pave the roads with the money we have. The fact that these budget problems have built up over time, largely due to the result of the TAT issue. I think we are in a good place now, basically, we want to move forward, we need the money to do it, and there is no question at all that the County roads are in bad shape and need to be fix. If people are not sure of what roads are what, the State roads are the ones where all the traffic is on. We are looking at paving County roads and fixing them. My question is since the root of much of our issues is the capping of the TAT, which impacts the visitor industry and impacts us, and even though one (1) of my colleague's mentioned earlier and someone concurred that we do not have the ability to tax hotel rooms. We do have the ability and we are taxing hotels. The owners of the hotels through property taxes. They take that tax and pass them on to their visitors. The net result, in my opinion, is the same. We do not have the right to put a TAT, but we could raise the property tax on hotel properties/resort properties and they will pass it on to the visitors, in which the net result will be the same as the TAT. We also have the right to tax other properties property taxes for use of those properties. Right now, if you own a home and you use it for commercial purposes, your tax is automatically increased, right, because of the commercial use. We could in theory tax car rental companies on the land that they use at a car rental use tax, just the same as we do a Transient Vacation Rental Use tax or a commercial use tax – we tax by use. My question is has the Administration, and I do not think you have because I have not seen it...would the Administration consider putting forward a tax initiative, if you would, to increase taxes on the visitor industry and forgo this GET? It was not in the budget, but it is my understanding that the City and Council of Honolulu charges twelve dollars (\$12) and we are at ten dollars (\$10), and timeshare tax for Maui is fourteen dollars (\$14) and again, we are at ten dollars (\$10). To me that would be a much more...acknowledging that we need the funds to fix the roads, where are those funds going to come from, and acknowledging that the root of much of our issues, is the lack of the visitor industry dollars. Would you consider that?

Mr. Shimonishi: I am not sure we say that it is the visitor industry that should be paying for all of our infrastructure, roads, bridges, and so on.

Councilmember Hooser: Right.

Mr. Shimonishi: I think that is a philosophical question that needs to be approached...

Councilmember Hooser: I am certainly not saying that either.

Mr. Shimonishi: The effect of actually purely going after hotel, resort, and TVRs, or just rental car companies is in fact just that. To have those sectors of the businesses pay for what is purely a roads and bridges type of service. I guess that is something that needs further discussion.

Councilmember Hooser: For the record, I am not suggesting that they pay for all of roads, bridges, and repairs. I am suggesting that the reason we are in our financial predicament now is because we are not getting our fair share of the visitor dollars, number one. Number two, we are under taxing them, in my opinion, compared to the rest of the State. Thank you.

Councilmember Kagawa: I have a follow-up.

Council Chair Rapozo: Please.

Councilmember Kagawa: Before the cap went into place, how much did we collect on the TAT?

Mr. Shimonishi: It was roughly close to what we are getting now, but if you are looking at how much we have lost since the cap was put into place because the TAT revenues have gone up, then we were estimating that we have lost probably close to fifty million dollars (\$50,000,000). I think it was from 2011 or 2012 until 2015.

Councilmember Kagawa: I guess I am a little confused when you say, "Well, we do not except the tourists to pay for all of the road repairs," but what I am saying is that you could look at it and say, "Well, this is the money that if the State did not cap it, because they said they were in financial difficulties five (5) years ago, we should be collecting that twelve million dollars (\$12,000,000) or fourteen million dollars (\$14,000,000) every year." To pass on that to the real property taxes of the visitor industry, to me, is not saying that they are paying the additional. It is just because the State is taking away a gap of our tourist moneys that supposed to be coming to us and I think it is unfair to say that we do not want our visitors paying for our roads. The State is taking that away and this is our vehicle to get those moneys. Can we negotiate something with the State where we are both not taking additional taxes from the visitors that should be split, is the question, and how do we achieve that going forward? I think the property tax issue is one of the only vehicles that we can fill that gap of property taxes of visitor industry taxes.

Council Chair Rapozo: Anyone else? Thank you very much. While the rules are suspended, is there anyone in the audience wishing to testify?

Ms. Fountain-Tanigawa: We have two (2) registered speakers. The first registered speaker is Matt Bernabe, followed by Leilani Mindoro.

Mr. Bernabe: Matt Bernabe for the record. I agree that we should increase the amount of money we get out of the tourist dollar. I would like to point out that Kaua'i puts more TAT money in the till for the State and yet, Hawai'i

County gets four percent (4%) more than us. I called the State Tax Office and they told me that themselves. They also told me that many of those resorts on that Kona coast have classified themselves other than hotels and they call it, "Spa and something retreats," and do not pay TAT outright. The State is trying to get that from them. With that said, I know another way to reach our goal of fixing roads financially. For example, in 2011, when you folks got the idea of what the problem was on the backlog, why did we waste resources? I have been in this building right here and watched time and time again on Roads Division coming in here for that Transportation Investment Generating Economic Recovery (TIGER) grant for Rice Street. They were going to rip up and have to put two million dollars (\$2,000,000) more in to just put bring it back down to a three-lane, where it is a four-lane now. This is the kind of prioritizing that I do not buy. They are claiming that today they have answer. That was only four (4) years ago. That is around the time they understood the backlog. Or how about this, why do we not penalize our Roads Division when they put in a bike trail from the roundabout at the bottom of the bypass going up Olohena Road to Kapa'a Middle School? There were no repercussions, nothing. We watched that unfold here that had no due process except to come and ask for an after-the-fact resolution to make that project legal. That is wasted time, wasted money, and nobody uses that bike trail. I do not care if that filled one (1) or five (5) potholes, it would have been better spent fixing the roads. With that said, I do not think they should get this money until they can prove that they can run efficient on what they have got. Start showing us that they are not focused on wasting resource, time, and management on projects like Rice Street or this wasted potteries that have all these plants. I have watched the person who got the contract, since that thing on Hardy Street opened; they already cleaned that road many times. They have done it more than I did my yard, in the last few months. We are wasting money. Let us prove that we do not waste money before we give them any more money. Thank you.

Council Chair Rapozo: Next speaker.

Ms. Fountain-Tanigawa: Next speaker is Leilani Mindoro.

LEILANI MINDORO: Good morning Council Chair and Councilmembers. This is not my normal format so excuse the nervousness. I am not normally put on the spot, but I have been asked by the State Director, who is out of State at this time, to ensure that you folks receive the letter in support of this tax of a quarter percent (0.25%). Dayton Nakanelua, the State Director for American Federation of State, County and Municipal Employees (AFSCME), Local 646, and AFL-CIO (UPW) submitted his letter in support. The letter reads, "The UPW is the exclusive representative for approximately eleven thousand (11,000) public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawai'i and various counties. The bill that establishes a one-quarter percent (.25%) General Excise and Use Tax Surcharge to be used for purposes of funding operating and capital cost of public transportation within the County of Kaua'i. The UPW supports Bill No. 2610, Draft 1. Thank you for the opportunity to submit this testimony." As the extension of our State Director, basically I wanted to let you know that this was something that was a resolution at our state convention just last year. We are asking for this so that it can provide better transportation. I am going to go away from the State Director's message to you folks and now I have been authorized to allow to speak on behalf of my personal opinion in regards to the transportation issue. I have heard testimony and talk, "Well, I do not use the transportation or the bus, so I should not have to be included." While getting a little bit from everybody versus taxing and getting what you can from the hotels or the vehicle tax, not

everybody drives. For instance, I have a mother who is almost eighty (80) years old. In her early seventies (70s) she was no longer allowed to drive because she is legally blind. Her transportation, and like many of our *kupuna* here, the transportation that she has is Kaua'i Bus. They pick her up from door-to-door.

Council Chair Rapozo: Leilani, I have to stop you. That is your first three (3) minutes. You can come back after we go around. Thank you.

Ms. Mindoro: Thank you.

Council Chair Rapozo: Next speaker.

Ms. Fountain-Tanigawa: Chair, there are no further registered speakers.

Council Chair Rapozo: Anyone else wishing to speak? Please come up.

NANCY KANNA: My name is Nancy Kanna and I am speaking on behalf of a private citizen. I am in support of the GE tax surcharge. I believe we should be getting more TAT funds, but I do not see our State legislature doing anything in the near future. In the meantime, I see our roads eroding at a rapid rate and I am looking at this from the perspective of...I have a son that is fourteen (14) years old and even if we were to have this surcharge, we are looking at about another seventeen (17) years until our roads are finally in a cycle where they are in a state of being normal. I do not want to pass that on to my son. I am hoping that this Council can do something now. In reality, it is twenty-five cents (\$0.25) for every one hundred dollars (\$100) that I am contributing to this. I am an independent contractor, I pay the four percent (4%) GET just on whatever wages I make, and I think that sucks, but I am willing to pay an extra twenty-five cents (\$0.25) for every hundred dollars (\$100) I make. If it is going to our roads, if it is going to making it easier for our kids, if it is helping to build our bridges back to where they are supposed to be, and if it is helping our public transportation system because bottom line, times are changing. Smart-growth is something that we have to look at. Thank you for the opportunity to testify.

Council Chair Rapozo: Thank you very much. Anyone else?
Mr. Mickens.

Mr. Mickens: Thank you, Council Chair. For the record, Glenn Mickens. I agree with what Matt said one hundred percent (100%). We have to prioritize what we are doing. I agree with Councilmember Kagawa keeps on saying. We sit here for what, ten (10) years, and we did not know this problem is coming before us. The roads all of a sudden after ten (10) years are deteriorated and we just know it at this stage of the game. That is wrong. We got complete inability to have people that are supposed to be doing the job that are doing it. There is something radically wrong and to ask the people now at this stage of the game to pay more tax. I think Councilmember Hooser's suggestion sounds great. I did not hear the answer to it. Tax the hotels more if we cannot get the TAT tax, go in the backdoor and get it. The car companies, tax their property more. I think it would be a way of doing it. We cannot say that the visitors industry should pay everything, but they can certainly bring it up if we got to have more money. However, to say that we need to tax the people more, I am sure the people watching this program are just screaming, "We do not want any more taxes." Councilmember Kagawa says it all the time and he is one

hundred percent (100%) right. People are not going to want to be taxed no matter how you say it or what it is for. The roads all of a sudden becomes this huge problem, but it has been a problem so why we have not addressed it before now? Anyway, I think the prioritization is mandatory before we do any more taxing. Thank you.

Council Chair Rapozo:

Next speaker.

JOE ROSA: Good morning, for the record, Joe Rosa. I agree with what Mr. Bernabe said. He follows the TAT thing and O'ahu paid eighty-four percent (84%), Kaua'i paid eighty-two percent (82%), and Maui and Hawai'i was below Kaua'i. Yet, you see who gets the bulk of the TAT tax? Kaua'i is last. We should be ahead in TAT more than Maui and the Big Island, because Kaua'i always seem to be doing his share, and yet we are the lowest on the totem pole. I heard remarks made on the collective bargaining. Yes, you have four (4) bargaining units here that the County has to deal with, but yet the Administration has fifty-three (53) positions that out pays the four (4) bargaining units. That is kind of ridiculous. Fifty-three (53) department people compared to four (4) unit members, total, I do not know exactly what it is for the County of Kaua'i. The firemen, policemen, UPW, and HGEA are the four (4) bargaining units. Those four (4) bargaining units go to four to five percent (4% - 5%), but yet I am trying to figure out why all of these department heads. Collecting bargaining is twenty dollars to thirty dollars (\$20 - \$30) top maybe compared to eight thousand dollars (\$8,000) of the cabinet member positions. Secondly, what are the five (5) worst roads that the County has to repair? I mentioned it to Larry Dill once. What about the Hulē'ia/Halemalu Road—oh, that is not a County road anymore. That is in jeopardy. Why did they let it deteriorate? About fifteen (15) years ago, they repaved it, widened it, they fixed it all up, and the County paid for it. How come today it is in jeopardy? The same thing happened with Puhi Road. Is was in jeopardy and yet, the County is going to fix it with State funding. They let everything deteriorate so bad that yet now they are blaming the things that are not theirs anymore because of liability. Those are the kind of things that they are trying to pull the blinds over the people's eyes as taxpayers, so now they are crying for more tax. It is inadequate personnel that is doing...I have not seen a County road maintenance crews out patching any road since I have been retired. I have talked to couple of folks that work with road maintenance and they...

Council Chair Rapozo:

Joe, your time is up.

Mr. Rosa:

Like I said, I have more to say yet.

Council Chair Rapozo:

I know you do.

Mr. Rosa:

Thank you.

Council Chair Rapozo:

Next speaker.

BRUCE HART: For the record, Bruce Hart. It was a very interesting discussion. I learned a lot of new things. There is something that upsets me a great deal and that is this TAT. Councilmember Yukimura actually said that there was a threat that we would get less just because we are expressing our frustration with the State. That is not constructive. The State has a responsibility to the Counties. They have taken on that responsibility of their own accord. They have a responsibility to meet the obligations that they have committed to. If they want to take all of our TAT, I mean they are taking a huge portion of it in comparison

to what we should be getting, and then they are not meeting the obligations that they have promised. That is serious. Then they threaten whenever we...and this was in the paper sometime back too, one (1) of them said in effect that if we did not back off, maybe we would not even get the repairs to our roads that they were suggesting, not promising, but suggesting. Again, that is not constructive. That just makes everybody angrier. The State does not seem to have a good grip on this issue. If we got more of the TAT, we would be more willing, the people, to develop. This whole homestay, TVR, Bed & Breakfast (B&B) issue could be a plus if we got the TAT. Why should we be for more development whenever we do not benefit from it? Again, this thing with the State and the TAT, forty-five percent (45%) is what Council Chair and Vice Chair's article in The Garden Island newspaper said would be a fair amount. Now, I am not good at facts and figures, but I do not have to be to know that four percent (4%) is not enough. Thank you.

Council Chair Rapozo: Anyone else?

SANDI KATO-KLUTKE: Good afternoon, I am Sandi Kato-Klutke, and I am here to speak in favor of the quarter percent (0.25%). We talk about the TAT, and we talk about how we should get more money from the State. We go there every year and beg. We walk the halls and we ask. One of the things that came back was "if we give you more, are you willing to accept a high TAT percent tax that you have to charge your visitors?" But the visitors do not include the people that come to this island. It includes all of you. It includes every one of us when we go and stay at a hotel or any resort. Resort property tax, if you raise that in order to be compensate to repair the roads, bridges, or public transportation, we pass it on to all of you. The owner does not pay the tab. They will tell us to increase the rates so that they can get their money back. I sincerely believe that the quarter percent (0.25%) is not something that the people of Kaua'i will object to. I have asked the people around me and I have asked the people that serve on boards and they are all agree that a quarter percent (0.25%) is a quarter percent (0.25%). It is less than you telling me that you are going to raise my property tax, fuel tax, or my vehicle tax. Also, everybody wants more public transportation. I live in Kapahi. I tell you that the kids walk to Kapa'a Ballpark up above my house because there is no public transportation. Rain or shine they are walking and there is no sidewalks. They walk where the cars are going. I believe we should help them as well. I sincerely ask each and every one of you to please vote for the quarter percent (0.25%). Thank you.

Council Chair Rapozo: Thank you. Mr. Sit.

PETER SIT: Good afternoon, Peter Sit, General Manager of Pono Kai Resort. I have submitted my written testimony and I am here to share our support for Bill No. 2610, Draft 1 pertaining to the quarter percent (0.25%) on our GET. While we do not like the idea of more taxes, we feel that this is a sensible proposal and opportunity to improve the quality of life on Kaua'i for all. This is fair to all islanders, including our visitors that use the roads and bridges. The alternate plan to finance the roads, bridges, and transit improvement for this island is more taxes for the property owners. We will not support any alternate proposal that require increasing taxes on the hospitality segment. We feel that we have contributed our fair share. The tourists that comes in to pay the TAT is being taxed as it is. We do not get the TAT from the State, we need to work harder to do that, but we should not penalize the visitors that are coming to us. My personal feeling and thought is, the visitors did not create this problem. They are here to provide opportunity for us and for the islanders as well. We are constantly penalizing the people that feed us. That is not fair. To have a quarter percent (0.25%) increase is very fair because everybody

pays that tax, the tourist; the visitors, as well as the islanders. Thank you for your time.

Council Chair Rapozo: Thank you. Anyone else for the first time?
Second time?

Mr. Bernabe: Matt Bernabe, for the record. I would like to continue by saying that if we are serious about fixing the roads and saving ourselves fiscally, we need to not just look at revenue. We need to look at what is damaging the roads as far as what we can litigate. I have talked to many County employees. They come to me and have exposed problems that they themselves have sometimes gotten in trouble from the Administration for trying to rectify some of these problems. Mr. Kuhaulua, who is from the North Shore, works at the Hanalei Transfer Station. He was pulled over with an overloaded County vehicle by the Department of Transportation (DOT) weight station. They did not issue a ticket although they are supposed to issue even to a federal vehicle and because we do not have a functioning Human Resource and communication system, not only did it not get resolved, but I think he got somewhat discouraged for grumbling. With that said, we looked into the other Counties and they have a small scale to make sure that they are the right weight. The reason I say this is two-prong. One, if that truck gets into an accident, we are liable for being overweight. Two, how many of our vehicles are overweight exponentially damaging the roads? Here is an idea, maybe the County should set up a few weight stations and start fining people who are overweight, including our own vehicles, and maybe we can slow the damaging of our roads. We already have problems with water underneath the pavement, we also have roots...let us not make it worse by our own actions. This is an area that we could police up as a county. We could make these types of subtle changes so that we are not overloading our vehicles. It is bad enough to have the private sector doing it, but we are doing our own vehicles and we do not care about this? Is this not an area of improvement so we do not have to get taxed to bail us out from all of our bad mistakes and all of the cards the State has handed us? This is an area that we can tighten the belt. This is what I call, "tightening the belt."

Council Chair Rapozo: Next speaker? Anyone want to speak a second time?

Ms. Mindoro: Leilani Mindoro. This is going back to the personal, not the UPW version. I was telling you about the transportation and my focus, while it is on roads and I have seen potholes and actually where I live the potholes just got fixed, again. But a seventy-four (74) year old lady now almost eight (80), legally blind, her conversations with the bus drivers and the other socialization that she gets from the bus...but sometimes the bus cannot meet her needs because there are so many transporting that need to be done that they are getting there two (2) minutes before their appointment or even getting there late. The doctors and the community have been really accommodating to the lateness, but without that transportation...I can tell you that my mom went out three (3) days this week and she was like, "This was awesome. I talked to this person and that person." I also have a grandson who is in high school and plays football. Their football practice finishes 6:45 p.m. to 6:50 p.m. He asks, "Grandma, can you please take my friend to the bus stop?" He has to go to Kilauea. These are high school kids and that is the only way he could play football if he had transportation to get home. While I understand nobody wants to pay taxes and people live on a fixed income. I lived in Kentucky where we had a twelve percent (12%) tax and twenty-five cents (\$0.25) per one hundred dollars (\$100), I would pay that twenty-five cents (\$0.25) for that child to be

able to get home, to be able to do his homework, and still be able to graduate, go on to college – just little things. Who else is going to give somebody a ride all the way to Kilauea from Kapa‘a? Taxies cost a lot more than twenty-five cents (\$0.25) per one hundred dollars (\$100). Thank you very much for the time. I just wanted to share that personal aspect.

Council Chair Rapozo: Anyone else?

ELIZABETH BARTON: Elizabeth Barton, for the record. I just wanted to go back to the allocation of funds to fix roads, repaving, and things like that. I live in a very quiet neighborhood and our roads were repaved this year. I do not even know why. They were not in bad repair. I live on a cul-de-sac at either end, so we do not have a lot of traffic through. A couple of years ago, the other road where my long-term rental house is, was repaved and then the Department of Water came and dug it up to put in some pipes. It is just allocation, allocation, allocation. Thank you.

Council Chair Rapozo: Thank you. Joe, when you see the orange light, you have thirty (30) seconds, so wind it up in that time.

Mr. Rosa: As I was saying before I left, we talk about the tourists, but every tourist car that is rented out on this island, two dollars (\$2) was the last that I paid when I traveled off-island for a rental car. It is two dollars (\$2) per car that the tourists pay for. I do not know what it is now. I have not gone off-island in quite some time now. Those are the kinds of things that the tourists pay for part of the road maintenance and things, but yet I do not think we get our fair share. Everything goes to O‘ahu and the rail. The rail is in big trouble right now. I mentioned the County road maintenance, as I said they do not patch roads, but they are always on the budget for maintenance. A lot of the things I hear is not being done, but it is on the budget. Another thing when people complain to the Administration signify what is a County road in the subdivision or a connecting road to the State highway system, get the road straight. If you are going to the north side, this way, it is Kūhiō. Going to the west side, it is Kaumuali‘i. Get the road straight so that people know what has to be fixed. The County comes here and say, “We have to fix the roads,” but what is the priority? Which is the worse road that the County has compared to subdivision roads? What is the priority? When it comes to fixing roads, I know this year they are going to fix all what they can because it is an election year, so it is not priority – it is who lives on the street or subdivision. Thank you.

Council Chair Rapozo: Thank you, Joe. Anyone else? If not, I will call the meeting back to order. Oh, I am sorry.

Mr. Mickens: Thank you, Council Chair. For the record, Glenn Mickens. I did call the legislature one day. I talked to my buddy Ron over there. It was about our two (2) state hospitals, Mahelona Medical Center and the Kaua‘i Veterans Memorial Hospital. I just wanted to tell him to please make sure they keep it open. Then I mentioned the TAT and did say, “Ron, we do need more,” and he responded, “Yes, Glenn, I can give you more, but we will have to cut services to the hospitals and you are not going to like that, are you?” Their attitude, seems to be that they have given us enough and they are not going to want to give us more. As you pointed out, Council Chair, we have got to have a lobbyist, somebody over there that is really going to stay in their back pocket because we should get more of that. Thank you, Council Chair.

Council Chair Rapozo: Anyone else wishing to speak for the second time? We will have discussion. I would like to dispose of this before lunch. Nobody? Perfect. Roll call... Councilmember Chock.

The meeting was called back to order, and proceeded as follows:

Councilmember Chock: Chair, I have an amendment that I would like us to consider. It is really a compromise. We are going to run out of the opportunity to act on this in July and so this amendment is asking for... and I will just amend as circulated.

Councilmember Chock moved to amend Bill No. 2610, Draft 1 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Councilmember Kagawa.

Councilmember Kagawa: Second for discussion.

Councilmember Chock: Thank you. The amendment is a one hundredth percent (0.01%), so it is going from one-quarter percent (0.25%) to one hundredth percent (0.01%) for the general excise tax. This is a compromise for us to consider.

Council Chair Rapozo: I am sorry. The motion on the floor is to receive, so you cannot amend the motion to receive. Unless there is a motion to approve, then we are not able to make a motion to...

Councilmember Chock withdrew the motion to amend Bill No. 2610, Draft 1 as circulated, as shown in the Floor Amendment which is attached here to as Attachment 1. Councilmember Kagawa withdrew the second.

Councilmember Kagawa withdrew the motion to receive Bill No. 2610, Draft 1, for the record. Councilmember Kualii withdrew the second.

Councilmember Yukimura moved for adoption of Bill No. 2610, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Kagawa.

Councilmember Kagawa: Second for discussion.

Councilmember Chock moved to amend Bill No. 2610, Draft 1 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Councilmember Kagawa.

Councilmember Chock: This will amount to a penny per every one hundred dollars (\$100). My interest is really to see that we have a placeholder, something that we can continue with. What I have heard around the table was that we do not have the support for it, but what can we do to make sure that we continue the conversation? I heard we are looking for cuts and we are looking for other solutions. I want us to commit to that. I want us to continue to look for where we can save, but I also want to keep all of our tools in our pockets, so we can make a good decision in the end. That is why I am proposing, if this is a compromise that will get us through this that we can come back to it in the future.

Councilmember Kagawa: I have a question for the introducer.

Council Chair Rapozo: Go ahead.

Councilmember Kagawa: Councilmember Chock, do you have a dollar amount that a one hundredth percent (0.01%) would generate? Is it even worth the state...I believe they charge a ten percent (10%) administrative fee, so is the one hundredth percent (0.01%) even worth the administrative cost and accounting cost that would be needed to enforce a one hundredth percent (0.01%) increase?

Councilmember Chock: I do not know if I can answer the administrative question, but I know that this would generate about four hundred thousand dollars annually (\$400,000) with the one hundredth percent (0.01%). I think the Administration might be able to answer what it cost to administer it.

Councilmember Kagawa: Thank you. I do not need that question answered.

Council Chair Rapozo: The State is going to take their cut.

Councilmember Chock: Right.

Council Chair Rapozo: They are going to take their cut. Whether it is forty thousand dollars (\$40,000), four hundred thousand dollars (\$400,000), one million dollars (\$1,000,000), or ten million dollars (\$10,000,000) – they are going to take their cut, because they need to take their cut. They are greedy. Any other questions or comments for the introducer?

Councilmember Kagawa: So right now it is point zero four one six seven percent (0.04167%), so it would go up to a point zero four one six eight percent (0.04168%), is that correct?

Councilmember Chock: I believe so.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Any other questions? Councilmember Yukimura.

Councilmember Yukimura: I am not going to support this amendment because I think it is playing games. Do we need these moneys or not to fix our roads? First we say we need the money and then we put forth this amendment that is going to give us four hundred thousand dollars (\$400,000) instead of ten million dollars (\$10,000,000) that we need? I think the legislature will be really offended. We heard such compelling testimony that we need these moneys. I would support passing a quarter percent (0.25%) tax, and then if we get money from some other source, we can always reduce it, but given the situation we have, it sends such mixed messages and does not make any sense to me at all.

Council Chair Rapozo: Well the reason for the amendment is because the Administration is concerned that the quarter percent (0.25%) does not have the support of the Council. If we kill it at quarter percent (0.25%) there is no other opportunity to exercise the GET authority. This is really to keep this alive going forward so future Councils can determine whether or not they are going to eliminate. If this dies, it is over. There is no opportunity for GET. The state legislature put a

time limit on it. Why not do it as an open authority and every year if you need to raise the GET, you can set a GET, but no, you have to do it now. I do not think people understand that this is a strategic measure by the State Legislature because they knew they were going to cap the TAT. They knew that they were going to cap the TAT so they forced the Councils into this position where, now you have to force the public, your taxpayers, to pay a GET. That is what this was. I can tell you as Councils pass this GET, you play into their trap. I am sick of it. I am going to be painfully honest because the Mayor and I were was up there to be told, "No, no, no, no. If you folks keep it up we are going to drop it to ninety-three million dollars (\$93,000,000) instead of the one hundred three million dollars (\$103,000,000). We are going to take ten million dollars (\$10,000,000) more." That is ridiculous, but that is what happened. I have seen it. I have heard it. The side discussions that I was called and was told to "knock it off. Pull it off Hawai'i State Association of Counties (HSAC). Stop it or we are going to cut CIP funds to your island." That is what really went on. It is worse that is what is happening in Congress, by our own delegation. You folks have to understand that. This year is an election year for everybody. You get the commitment from them or do not vote for them or do not complain because that is where it starts. It starts with our state delegation to represent this island at the square building and it did not happen this year. I am sorry, but that is the truth. I know I am upsetting a bunch of people, but tough. I was there, the Mayor was there, and we basically got screwed. That is the bottom line. Councilmember Yukimura. I am not sugarcoating nothing today.

Councilmember Yukimura: Well, I am not either.

Council Chair Rapozo: You said it was offensive, yes, I think you are right. I agree with you. Going back with this four hundred thousand dollars (\$400,000) thing, but what else the State expects us to do.

Councilmember Yukimura: They expect us to do what we need to do in order to make life better on Kaua'i.

Council Chair Rapozo: They expect us to screw the public like they screwed us.

Councilmember Yukimura: I do not believe that.

Council Chair Rapozo: Okay.

Councilmember Yukimura: And I think they are saying we have to do our share and we can certainly demand the other share as well. It is not like we are going to be able to solve all of our problems if we get the TAT. We need to fix our roads. That really personal testimony from Leilani Mindoro is so heartfelt in terms of what our community needs, in terms of the bus and the kind of people that are being served by the bus every day. We need to pull our weight and this twenty-five cents (\$0.25) on every one hundred dollars (\$100) is not much.

Council Chair Rapozo: The amendment is one hundredth percent (0.01%) and that is what we are on right now.

Councilmember Yukimura: I can talk the alternative.

Council Chair Rapozo: We are talking about this amendment.

Councilmember Yukimura: Excuse me, Council Chair, the alternative to the amendment, which we can talk about as well because if we turned down the amendment, that is the other alternative.

Council Chair Rapozo: Councilmember Yukimura hang on. We are on the amendment, if it does not pass, then we are back to the alternative.

Councilmember Yukimura: But the discussion...

Council Chair Rapozo: Councilmember Yukimura. Recess. We are going to take a lunch break. We will be back at 1:30 p.m.

There being no objections, the Council recessed at 12:29 p.m.

The meeting was called back to order at 1:50 p.m., and proceeded as follows:

Council Chair Rapozo: The Council Meeting will come back to order.
Councilmember Yukimura.

Councilmember Yukimura: Council Chair when I was rudely interrupted I kind of lost my train of thought, but I do have an amendment to propose to the amendment.

Council Chair Rapozo: Let us deal with this amendment.

Councilmember Yukimura: No, you cannot. You cannot amend an amendment...I mean you cannot amend an amendment without having the amendment there.

Council Chair Rapozo: Let us deal with this amendment on the floor, which is one hundredth percent (0.01%). If it fails, if it passes, you can make your amendment at that point. We are not going to make an amendment to amend an amendment.

Councilmember Yukimura: Point of Order, please.

Council Chair Rapozo: What is the rule?

Councilmember Yukimura: I want to ask the Parliamentarian if a motion to amend the amendment has higher precedence and is appropriate.

Council Chair Rapozo: Why do you not ask the introducer of the amendment to do a friendly amendment?

Councilmember Yukimura: Okay.

Council Chair Rapozo: I am not sure what you are trying to do, but ask Councilmember Chock if he is willing to do a friendly amendment, so you do not have to go through the process of...do you know what, think about our staff that has to prepare the amendment to amend the amendment. See if he is willing to do a friendly amendment and we can get it done that way.

Councilmember Yukimura: The purpose of an amendment to the amendment is people have other choices besides the amendment that is being proposed.

Council Chair Rapozo: What is your proposed amendment?

Councilmember Yukimura: My amendment is to change the amendment, right now, the one hundredth percent (0.01%) to one eighth percent (0.125%).

Council Chair Rapozo: We are splitting hairs.

Councilmember Yukimura: No, we are not.

Council Chair Rapozo: Councilmember Chock, are you willing to do a friendly amendment to that effect?

Councilmember Chock: What is that amount?

Councilmember Yukimura: It would be point zero zero one two five (0.00125). It is a difference between four hundred thousand dollars (\$400,000) and five million dollars (\$5,000,000).

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: The amendment on the floor is for point zero one percent (0.01%).

Council Chair Rapozo: Right.

Councilmember Chock: Are you suggesting point zero zero one two five (0.00125)?

Councilmember Yukimura: Well, point zero one percent (0.01%)...mine would be one eighth percent (0.125%) or point zero zero one two five (0.00125). It would be half of one-fourth.

Councilmember Yukimura introduced a "friendly amendment," as shown in the Floor Amendment which is attached hereto as Attachment 2, agreed to by Councilmember Chock.

Councilmember Chock: That is fine if you want to amend it and you want to move in that direction, for discussion purposes, I am fine.

Councilmember Yukimura: Thank you.

Councilmember Chock: Okay.

Councilmember Yukimura: I think Aida was preparing the amendment. Is she? Can we have a brief recess, please?

Council Chair Rapozo: Let us have the discussion so we do not waste time, so when the amendment comes, we can vote. Have your discussion and explain your reasons for going from...go ahead.

Councilmember Yukimura: Yes, okay. My reason for doing that is that it cuts the existing Bill, which is a quarter percent (0.25%) in half. Instead of generating ten million dollars (\$10,000,000), it would generate five million dollars (\$5,000,000) versus the one hundredth percent (0.01%), which we were told would generate four hundred thousand dollars (\$400,000) minus the ten percent (10%) that the State takes. I believe the five million dollars (\$5,000,000) is minus what the State would take. It is more "good faith" I believe. It will tell the legislature we are not just playing games and it will give us more credibility when we go before them to get more TAT in the future. I presume in the next legislative session. Because we are saying in one respect we really need this money and then to just go down to four hundred thousand dollars (\$400,000) is less than one percent (1%) of the ten million dollars (\$10,000,000), I think. It is a more realistic figure. I think it still acknowledges the concerns about a tax, but it also acknowledges the need for the money, which we know four hundred thousand dollars (\$400,000) toward a ten million dollar (\$10,000,000) a year road repair bill is not going to get us where we need to go.

Council Chair Rapozo: Let me just make a real quick comment because this number is irrelevant. It is not this Council that is going to determine what that number will be. It will be the next Council. This will not be in effect until January 2018, so it is not even going to be this Council. Whatever number you plug in this, whatever percentage you put in is irrelevant because it is going to be the next Council to determine that rate. Councilmember Chock put in one hundredth percent (0.01%) to make this a placeholder for the next Council to determine what that number will be. Now, we are talking one hundred percent (100%), one-eighth percent (0.125%), one-quarter percent (0.25%)...it is irrelevant. If you want this to stay alive so the next Council can determine the number, you support Councilmember Chock's amendment. The bill becomes an ordinance, the next Council of which some of us may not be on it, will make that determination. It is not even this Council; therefore, it is irrelevant for the number/the percentage. I think we all understanding that, correct? Do we understand that this bill is not going to drive the number and that it is the next Council? Is everybody aware of that on this Council? Then we are arguing about something that is irrelevant and we are wasting time. The fact of the matter is if you want this to be alive for the next Council to address, vote any number, as long as there is a number, and the next Council will make the determination. Please keep that in mind and going down to splitting this down to five million dollars (\$5,000,000) to four million dollars (\$4,000,000). The next Council can go up to half percent (0.5%) or they can go to point zero five percent (0.05%). They can do whatever they want. It is not this body that is going to make that call. Councilmember Yukimura.

Councilmember Yukimura: Council Chair, if it is irrelevant to securing this power, then vote for the higher figure, if it does not matter because as the one who lobbied for this power there could be an effort at the next legislature to lower it. They can change the law and they will say, "Okay, you do not need it, we will lower it. We will lower it to point one percent (0.1%)." I have talked to the Finance Chair, the Ways and Means Chair, the House Speaker, the Senate President, and they are saying "if you need it, use it. If you do not need it, we are going to take it away because we might need it." I am just thinking ahead in terms of us lobbying in the next session. The tension is already there on the TAT and we need the TAT. We need some good relationship and we have to be straight with the State Legislature if we expect them to be straight with us. We all know we have to repair our roads. I would rather we pass this quarter percent (0.25%) now and then if we get TAT moneys...

Council Chair Rapozo: Your amendment is one-eighth percent (0.125%).

Councilmember Yukimura: I know. Please do not interrupt.

Council Chair Rapozo: Councilmember Yukimura, you are...

Councilmember Yukimura: Chair, I have the floor.

Council Chair Rapozo: And I am the Chair, so if I am going to tell you, "Stick to the amendment." You are using your amendment time to pursue your amendment, Councilmember Yukimura. Stick to the amendment. You are at the point one two five percent (0.125%).

Councilmember Yukimura: I am sticking to the amendment. I am just giving you a hypothetical, which is my preference and I have the right to say what my preference is.

Council Chair Rapozo: And I have the right to keep you on track. Stick to the amendment so we can vote. Members, if you are okay with this, then I am going to shut my mouth, and sit back.

Councilmember Kagawa: I am not okay with this.

Council Chair Rapozo: Then somebody say something because I am tired of listening to this.

Councilmember Kagawa: It is not fair...

Councilmember Yukimura: Excuse me, there is...

Councilmember Kagawa: ...to have more than five (5) minutes to speak on the item.

Council Chair Rapozo: And that is my concern.

Councilmember Kagawa: You are going to have five (5) now and five (5) later. How much do you need to take?

Council Chair Rapozo: Hold on.

Councilmember Yukimura: I have the floor.

Council Chair Rapozo: No, no. This is what is happening. The Bill is one-quarter percent (0.25%), that is what is on the floor, it has been amended, and then it has been amended. I am not going to let any amendment...

Councilmember Yukimura: It has not yet been amended.

Council Chair Rapozo: Recess.

There being no objections, the meeting recessed at 2:00 p.m.

The meeting was called back to order at 2:02 p.m., and proceeded as follows:

Council Chair Rapozo: Listen, this is where we are at. The amendment on the floor right now is point one two five percent (0.125%), let us discuss point one two five percent (0.125%), let us vote on point one two five percent (0.125%), and we will move on.

Councilmember Yukimura: Point of order, Council Chair.

Council Chair Rapozo: Go ahead. What is the rule?

Councilmember Yukimura: The amendment on the floor is the one-eighth percent (0.0125%), which we were discussing.

Council Chair Rapozo: Right. That is point one two five percent (0.125%). I am reading your amendment right here – point one two five percent (0.125%).

Councilmember Yukimura: Okay. That is what I am discussing.

Council Chair Rapozo: Then discuss the point one two five percent (0.125%) and not the one-fourth.

Councilmember Yukimura: Discussions can include alternatives.

Council Chair Rapozo: I have all night, Councilmember Yukimura, so if you want to argue, we can argue. I will recess until mid-night, if I have to, but please stay on the amendment.

Councilmember Yukimura: And I am talking about the amendment.

Council Chair Rapozo: Proceed. Set the clock.

Councilmember Yukimura: I would prefer that we do a quarter percent (0.25%) tax because I am concerned that the legislature in the next legislation session because no other county has exercised this...we would just go down to whatever we are. I am trying to convince you that this is a legitimate concern. You do not have to listen to me, but I have been the one who has been lobbying for this at the legislature. They do not want to have an open-ended amount in perpetuity. They want to know what the county need and wants. If you want this option in its realistic form...if you take my amendment you are still at risk to just have it set at one-eighth percent (0.0125%) and not be able to go higher. If you really want a reasonable and realistic option, we need to set it where we want it.

Council Chair Rapozo: Comments? Councilmember Kaneshiro.

Councilmember Kaneshiro: I am ready to call for the question.

Councilmember Kagawa: Second.

Council Chair Rapozo: Is there any more discussion before we go down that road? I want to make sure we discuss this before we...again, the number, in my opinion, is irrelevant because the next Council will have the opportunity to set it wherever they want to, as Councilmember Yukimura has just said and it will not be this Council. Councilmember Chock.

Councilmember Chock: Chair, I know we are on point one two five percent (0.125%).

Council Chair Rapozo: Correct.

Councilmember Chock: My only interest was in seeing where we might be able to get to some common ground to see it move. If there is more to be said about reaching that common ground, that is what I want to hear in our closing on moving forward. If not, then this is it and we can move on from here.

Council Chair Rapozo: Let me just ask you because you are the introducer of the original amendment, was it your intention to set a number to have a number or dollar figure or was it just to be the placeholder?

Councilmember Chock: It was to be a placeholder.

Council Chair Rapozo: That is how I read it. That is how I saw it. There was no sense...it was just to keep this thing going. That is how I saw it and not to pick a four hundred thousand dollars (\$400,000) or...obviously knowing that at some point a Council will make that determination based on their needs. Councilmember Yukimura.

Councilmember Yukimura: I want to ask the introducer is it your assumption; however, that we will be able to go to the full half percent (0.5%) in keeping it as a placeholder?

Councilmember Chock: I would not make that assumption, no. My objective was for us to provide an avenue for us to continue to problem solve and come up with solutions for the future.

Councilmember Yukimura: But my question is are you assuming that we can move above what you are proposing and that we would be able to go above the point zero one percent (0.01%)?

Councilmember Chock: I would not assume that, no. I am not assuming anything at this point. What I am assuming is that we can continue to have options available to us...

Councilmember Yukimura: I know.

Councilmember Chock: ...and come up with different scenarios that we might be able to move towards together.

Councilmember Yukimura: I know, but in preserving the option, what is the nature of the option that you are trying to preserve?

Councilmember Chock: The option to problem-solve and discuss possible solutions. I do not know if I can say that any other way. A figure is something in the future that we would look towards, not to be determined at this time. If there is something, which I understand that you have, I am willing to vote on it, but that was not my intention. My intention was to keep this alive because we have a deadline to meet.

Councilmember Yukimura: And in keeping it alive, are you not assuming that we would be able to go higher than what you set it at?

Councilmember Chock: I think that is...

Council Chair Rapozo: In court, they would ask and answer.

Councilmember Yukimura: You would say no.

Councilmember Chock: I would not say either way until we get to that point.

Council Chair Rapozo: I think at the end of the day if it does not pass, there is no opportunity is what Councilmember Chock is saying. If this does pass today, there will be no opportunity with the point zero one percent (0.01%), or you can have point zero, zero, zero, zero, zero, zero, one (0.0000001), you have that opportunity for a future Council to make that determination. Any bill or ordinance can be amended and the next Council that comes in will have a tough decision, should this pass, what to set that number at. That is what this is trying to do. Go ahead, Councilmember Kaneshiro.

Councilmember Kaneshiro: I am ready to vote on this.

Council Chair Rapozo: So am I.

Councilmember Kaneshiro: I will not be voting on this amendment. The way I see it is exactly how you see it, Council Chair. We either vote on the point two five percent (0.25%) or we vote on the point zero one percent (0.01%) to keep the option of the GET alive. That is the two (2) votes. Both of them may not even get the votes either and it is dead. It is as simple as that. If you think you want to keep it alive, but you are not comfortable with the point two five percent (0.25%), then you vote for the point zero one percent (0.01%). If you do not want to see any GET, then you vote both of them down and we will see where the votes go. It is that simple, I think.

Council Chair Rapozo: Thank you. Anyone else? The motion is to approve the amendment, which is the point one two five percent (0.125%), which is one-eighth percent, roll call.

Councilmember Yukimura introduced a "friendly amendment," as shown in the Floor Amendment which is attached hereto as Attachment 2, agreed to by Councilmember Chock.

The "friendly amendment" as shown in the Floor Amendment, which is attached hereto as Attachment 2 was voted on and failed by the following vote:

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

Ms. Fountain-Tanigawa: Motion fails.

Council Chair Rapozo: That was the motion to amend the amendment, so now we are back to the point zero one percent (0.01%), correct? Okay. The original amendment.

Ms. Fountain-Tanigawa: Councilmember Chock’s amendment.

Council Chair Rapozo: Councilmember Chock’s amendment. Roll call. Does anyone have discussion on this? Roll call.

The motion to amend Bill No. 2610, Draft as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1 was then put, and failed by the following vote:

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

Ms. Fountain-Tanigawa: Motion fails.

Council Chair Rapozo: Now we are back to the main motion. Any further discussion? Councilmember Kagawa.

Councilmember Kagawa: Thank you, Chair. This has not been easy. When I get calls from the Administration and from the public, I take all of those calls seriously. These are all good people that are trying to find a solution to the backlog. When I Googled “backlog,” I saw the definition and it basically means work that has been pushed off over time, and the build-up of work over time that has been pushed back. It troubles me that we are at this point where we are trying to catch up on work that has been pushed back and we say that we are in so much trouble, we have bridges that are falling. I think we are fixing ‘Anini Bridge and Kapahi Bridge very soon. ‘Anini Bridge cannot take loads as it used to because there has been a shift and the bridge is falling. Kapahi Bridge is just damaged and needs to be replaced—they are going to fix it. But when it comes to finding pay raises for the department heads, five hundred sixty thousand dollars (\$560,000), it is no problem finding it in the Supplemental Budget. No problem finding the fat. When it comes to Complete Street Initiatives totally four million dollars (\$4,000,000) for Hardy Street and Rice Street, the matching portion, no problem. We find the moneys. There is sufficient money. But when it comes to fixing roads and bridges that we are in charge of maintaining and we have basically created a backlog, we tell the public, “We do not have money. We need to tax you if you want it fix.” I have problems with that. It is crazy that this Council, well the previous Councils have already raised, in excess, I would say between ten million dollars to fifteen million dollars (\$10,000,000 - \$ 15,000,000) per year in revenues via tipping fees, Pay-As-You-Throw, property tax cap removal, and increases to tax categories. This previous Council, without my vote, increased the timeshare tax, the hotel room tax two (2) years ago, and even if we raised ten million dollars to fifteen million dollars (\$10,000,000 - \$15,000,000) per year in revenues, we still say, “We do not have enough money to fix the roads and bridges.” Every year we have a one hundred eighty million dollars (\$180,000,000) budget, we put one point two million dollars (\$1,200,000) in and we say there is a backlog of roads in excess of one hundred million dollars (\$100,000,000), bridges in excess of probably two hundred million dollars (\$200,000,000), if we just count all the bridges. We only counted some when we gave our bridge totals, but it troubles me that the GE tax is a

very regressive tax. We had one (1) E-mail from a senior that said, "The social security did not get an increase for (inaudible)." She said the Medicare cost went up. This is a senior on fixed income and she is telling us, "Enough." You look at the statistics, the studies, and Hawai'i pays the second highest taxes in the nation per income earner. You are talking about federal income taxes, social security tax, fuel taxes that the federal government charges, the State has GET, TAT, income taxes, fuel, and vehicle weight taxes. The County charges property taxes, fuel and weight taxes, rubbish can taxes...I mean are the people taxed out to the maximum where we have to be cautious with more tax measures going forward? Absolutely. There is no doubt that the taxpayers out there are strained right now. Like I said, where is the government priority? Where is the county's priorities right now? Because when we are looking for pay raises for executive employees, no problem. When we are looking for Complete Streets and beautifications along streets and bikeways, no problem. But when it comes to fixing roads and bridge, we tell the public "unless you tax GET, you are not going to see significant improvement in the backlog." That is pretty sad. I am not going to be held with the gun to my head saying that I agree with you because I do not think more money is going to fix the problem. What is going to fix the problem is the change in our attitude that, hey, we have to start stepping up to the plate and do our functions instead of just talking. That is what it has been. It has been a lot of talk to create a backlog of twenty to thirty plus (20 – 30+) years. A lot of talk, a lot of promises, with no results. This is a big no for me. Thank you.

Council Chair Rapozo:

Anyone else? Councilmember Kaneshiro.

Councilmember Kaneshiro: I said this all last week and I am going to say it again this week. What is our responsibility? We know we are behind on roads and bridge work by over one hundred million dollars (\$100,000,000), we allocate one million two hundred thousand dollars (\$1,200,000) every year to combined two million four hundred thousand dollars (\$2,400,000) every other year to go out to bid. At this rate, we will never catch up to our obligations. I have heard the concerns, accountability for the money, what type of projects are the money going to go to, the hardships to families, and I have all of those same concerns. As far as the accountability for the money. What have we done with the money that we have had in the past? Fiscal Year 2012, we had a buildup of five (5) years of unspent roadwork money, totaling six million four hundred thousand dollars (\$6,400,000) and we spent six million four hundred thousand dollars (\$6,400,000) on road resurfacing on eighty-three (83) roads, seventeen (17) miles. We also bonded eight hundred sixty thousand dollars (\$860,000) in collector roads and received three million four hundred thousand dollars (\$3,400,000) match for another eight point seven (8.7) miles of road. Fiscal Year 2013, was our budget year. We held the money—one million two hundred thousand dollars (\$1,200,000). Fiscal Year 2014, we spent it—one million eight hundred dollars (\$1,800,000) on twelve (12) roads, seven (7) miles. Another four hundred thousand dollars (\$400,000) on three (3) collector roads with a one million six hundred thousand dollars (\$1,600,000) match. Fiscal Year 2015, this year, it is our budget year, so we did not do much. We did spend money on Puhi Road. In Fiscal Year 2016, the plan is to spend whatever money we have, which is our combined money. How much money goes into the Highway Fund and it is about fifteen million dollars (\$15,000,000) and you hear the question, "How come we cannot put all fifteen million dollars (\$15,000,000) into this fund?" The answer is that we have people that need to maintain the roads. We also sent three million dollars (\$3,000,000) of that fifteen million dollars (\$15,000,000) to transportation and buses, to subsidize the buses. One million two hundred thousand dollars (\$1,200,000) goes to our major road work and then the remaining goes to our regular maintenance. We have daily road maintenance, mowing, pothole repairs, we have three (3) baseyards; Hanapēpē,

Kapa'a, and Hanalei, we have a road and sign marking division, we have an auto maintenance division, motor pool, street light maintenance, and we have equipment to do all of this work that we need to pay for to maintain the roads. It does cost money just to maintain. What will this money be used for? We have schedules that are thirty (30) pages thick of our roads. The schedules have the road condition, roadwork to be performed, and the priority in year one, year two, and year three, what type of work is going to get done—so we have the schedule. What type of projects? Fortunately, the money is earmark specifically to public transportation. It cannot be funneled to other divisions. It cannot be funneled to other departments. The message has been clear if we have the money, we spend it on our current infrastructure, roads and bridges. Any new items bus expansion, auto maintenance building expansion, new roads, is on a case-by-case basis. The regressive nature of the tax, I understand that, but the thing about this tax though is that it spreads the burden to the visitor industry also. It sets a bigger net. The only tools that we have to raise money and pay for this kind of work is the TAT, which was capped, GET which depends on what we do may go away, and then fuel tax, vehicle weight tax, or real property tax. Those are our only tools to get money. As we go down the order, the tax base decreases and it increases the tax burden to whomever we are going to be taxing next. I understand no one wants to pay taxes, but it comes down to what is our responsibility? Is it fair that we are in this situation, we have hundred million dollars (\$100,000,000) worth of roads to do, I do not think so, but do we need to do something about it, I think so. We need to do something about it. I do not want to pass it on to future generations and kick the can down the road. If it does not pass, then it comes down to a quality of life issue. Do we want substandard roads or are we fine with it? Do we not want to pay taxes and have the roads the way they are? I am fine with that too, but I do not want to get calls saying, "Fix my road," because we have such a limited amount of money. For me, my vote is to do something about it now because if we do not do something about it now, the cost to do it is going to increase even more. Again, what tools do we have? All we have is real property taxes. All we have are taxes. If we want to get this work done, it will have to come through taxes some form or another because we are not going to have money fall out of the sky. That is why I have being supporting this the whole time. Spread the burden through a bigger tax base. It will even touch the visitor industry. All visitor spending will be taxed and then it is going to start narrowing down to the local businesses and residents. That is where I stand on it. I will be voting for it.

Council Chair Rapozo:

Councilmember Hooser.

Councilmember Hooser: I agree with just about everything Councilmember Kaneshiro has said, but I am not supporting this measure. I believe he is absolutely correct, we cannot kick the can down the road. We cannot look the other way when our roads are in such bad condition. I believe other tools are more appropriate than a GE tax and I will talk about that in a second. I also believe we need to find solutions and blaming the Administration is not a solution. Yes, I wish the Administration would have found six million dollars (\$6,000,000) in cuts. This Council had its chance also and there were no six million dollars (\$6,000,000) in cuts proposed by this Council that could have been used for roads. We found three hundred thousand dollars (\$300,000) for roads or something crazy, but if there are so much fat and it is so easy to cut inefficiencies and generate these funds, then this Council could have done it also. The Administration is acting in good-faith and it is to no fault of their own...any Administration, any bureaucracy can be more efficient, but I feel that the sources of our issues and our challenges right now come down to the TAT cap, which has cost this County millions and millions of dollars. That is the source of the issue, and I believe should be source of the source of the solution. That is the tool that

should be used. Of course we do not have the legal authority to increase the TAT, but we do have the legal authority to increase the property tax on hotel properties. The hotel properties will then pass it on to their visitors, therefore, the net result equals as if we had the TAT. For a moment here, two dollars (\$2) increase in the rate would still keep us just underneath the Honolulu rate and would generate four million dollars (\$4,000,000) a year. It is not six million dollars (\$6,000,000) or ten million dollars (\$10,000,000), it is four million dollars (\$4,000,000) a year, but I think it is a good start down a path to getting our roads in shape. It would still be slightly below the Honolulu rate. If you look at national data, the top one hundred and fifty (150) urban centers around the nation for hotel taxes, Honolulu is sixty-ninth (69th). We may be second in resident tax burden, as was mentioned earlier, but we are sixty-ninth (69th) in major urban centers with regards to lodging tax rates. That is State, County, and City rates across the nation. Kansas City is the highest at eighteen point three five percent (18.35%). Honolulu is at thirteen point seven five percent (13.75%). Kaua'i is less than that because we do not have the same GE tax. I think there is room and I think it would be a start in the right direction. It would send a huge message to the legislature that if they were going to play hardball and take away our visitor industry money, our only option is to increase the tax ourselves, in effect. I believe that would be a good start. We could then measure the Administration's performance and hold them accountable to spending that four million dollars (\$4,000,000) in the coming six (6) months or a year, and then possibly consider the fuel tax, which is an appropriate use, I believe, because it is directly tied to the usage. We cannot kick the can down the road. We cannot avoid that our roads are in troubled condition and we cannot solve this problem by blaming the Administration. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: With all due respect Councilmember Hooser...

Councilmember Hooser: Wait, I forgot something.

Council Chair Rapozo: Hang on.

Councilmember Yukimura: How come you did not propose...

Councilmember Hooser: That is what I forgot.

Councilmember Yukimura: ...an increase? We just finished the budget and you did not propose an increase in the resort taxes.

Councilmember Hooser: I did not. I will say right now that if I believed that we had a unanimous support around this table, I would co-introduce that with another Councilmember tomorrow.

Councilmember Yukimura: I think the chance is gone.

Councilmember Hooser: Excuse me, could I respond?

Council Chair Rapozo: Go ahead.

Councilmember Hooser: I believe the chance is never gone whether we did it tomorrow...the income from the visitor industry tax that I am talking about would come sooner than the GE tax proposal that is on the table now.

Council Chair Rapozo: When is the...

Councilmember Yukimura: What about the fuel tax? You did not support that.

Council Chair Rapozo: When do we set the tax? When is it on the schedule for? Just for the Councilmembers to know if they want to propose something because it is not too late.

Ms. Fountain-Tanigawa: June 1st.

Council Chair Rapozo: June 1st.

Councilmember Hooser: Again, my proposal is premised on whether we have support around this table.

Council Chair Rapozo: And unfortunately with Sunshine Law, you are not going to know.

Councilmember Hooser: Exactly. Feel free, if you support this idea and like it, you could make that indication, then I would know, and we could move forward with that. That is one (1) option. Maybe it is not the option that at the end of the day will win the table, but it is the option that, I think, is more favorable than the GE tax that is on the table right now. Thank you.

Council Chair Rapozo: Thank you. Councilmember Yukimura did you want to have your discussion?

Councilmember Yukimura: Yes. I really appreciate that Budget & Finance Committee Chair's detailed accounting of how the County, the Department of Public Works, is ready to repair our roads. They have done an assessment. I really want to acknowledge that has been since Lyle Tabata and Larry Dill came onboard. They worked tirelessly with the rest of the staff. They found a way to do assessments of our roads. They developed a plan, as Councilmember Kaneshiro pointed out, with detailed listing of the roads to be paved and the only thing that is lacking is the money. That is our responsibility. Unless we pass this excise tax before us today, there will not be money. There has been so much talk about what else we could do, but there has been no real concrete action on anything. The fuel tax bills have been voted down, the vehicle weight tax bills have been voted down, the Legislature has not come forth with the TAT moneys, and nobody proposed increases to real property taxes. There is nothing else but this. This is a viable option. It disappears on July 1st of this year if we do not cease the opportunity as the leaders that we are or should be and make sure that we can address this issue because otherwise we give it to our children and that is...generations before us have not done that. They have sacrificed so that the next generation could have a good future. That is the question before us today, I believe, and we have heard testimony that people are willing to pay twenty-five cents (\$0.25) more on every hundred dollars (\$100) that they purchase. For a family with a median income of seventy thousand dollars (\$70,000), that is fifteen dollars (\$15) a month. That is three (3) lattes. Can we sacrifice three (3) lattes so we can fix our roads and perhaps expand our transit? I think we have to do that if we

are going to make life better on Kaua'i. It is a matter of being responsible and we need to fix our taxes, we need to expand our transit. Earlier today, we heard compelling testimony about a senior who cannot see, cannot drive, and how the bus system helps her get out to where she needs to go, socializes, serves so many needs and the bus system is not about providing transportation, it is also about living more sustainably on this island, and a more healthy lifestyle. It is so important in terms of our future. This is the opportunity and I hope we can somehow pass this measure. It will take effect in 2018, so if in 2017 the State Legislature gives us TAT money, we can adjust it downwards, but we have to exercise this tax before July 1st of this year and now this moment is the time to do it. I see it as a decision that, similar to the one that was made in Honolulu City Council twenty (20) years ago when by a 5:4 vote, they voted against receiving federal moneys for the rail system, and if they have done it, it would have been so much cheaper back then and probably so much easier. By one (1) vote, they decided not to and set the course. They cannot go back to the generous federal funds that were available and they are struggling now for more than one (1) reason. I really hope that we can pass it today. Adjust if we need to, next year if we can get the TAT moneys or if we are willing to raise another form of revenue, but until then, we have to do what we are called to do in being elected to this job, which is taking care of our infrastructure and making life better.

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

Councilmember Chock: Thank you. Today, what we are going to do is give up a tool and an opportunity for us to solve some of our biggest issues. I would like to personally kill the GET right away, but I would feel much more comfortable if we had a solution prior to doing so, a solution to the issues that are before us. The amendment that I proposed today was really an attempt to try and keep us on track to problem solve so that our County could prove that maybe there is a way that we can reduce expenses and save money. I am quite skeptical about that. Last week we met for our budget decision-making and as was said earlier, we amounted to three hundred fifty-five thousand dollars (\$355,000) in a deficit of one hundred thirty million dollars (\$130,000,000) of roads and bridges that we have before us and that is just to catch up. I think we did a great job. I heard Councilmembers introduce cuts that probably have never been introduced before. In fact, our County Attorney had to step in and say, "I do not think you can do that." So there is no lack of trying here. Unless there is some systemic change that we are all about and ready to do, which I have not heard as well, I do not see the answers coming forth. But what we do have is this before us. Can we materialize what we need out of our current budget? No. We did not raise our property taxes as was mentioned. But even if we just looked at the hotel industry, I got some figures right here. For property taxes for hotel and resort, and vacation rentals amount to forty-eight million four hundred thousand dollars (\$48,400,000), our TAT fourteen point nine (14.9), our total revenues for our visitor industry is sixty-three million three hundred thousand dollars (\$63,300,000), but our expenses are one hundred eighty-three million dollars (\$183,000,000). Basically what we are looking at is about thirty-four percent (34%) of our budget coming from our visitor industry. That is not quite enough, I think, to look for fat in order to contribute to the needs that we are talking about. Even if we were to raise significantly these areas, I am not sure we would be able to meet those needs. This before us is really the big question – what can we do? I just hope that we can continue to look at opportunities. I heard some discussion about revisiting property taxes. It did not happen last week so if there is an interest to see that through...the bottom line for me is I think we need to come up with solutions. That is our job. I do not want to wait until tomorrow. We have to start today. I will continue to do that in any way

I can and I would hope that we can do that together. It sounds like, from what I hear around the table, everyone wants to address the issues, but we do not have the answers.

Council Chair Rapozo: Anyone else? Councilmember Kagawa.

Councilmember Kagawa: I have some seconds left, but if the reason is money as to why we have the backlog, then in 2010, when we had sixty million dollars (\$60,000,000) or whatever in our savings, why did we not spend one dollar (\$1) more on road repaving? When we had the money, we could not do it. Now, you want the money and you are going to do it? What is going to change? That is why I am critical of the Administration. I just want to get answers. Are we going to change the play or are we going to stick to the same play that is going for losses and getting sacked every play? What is the strategy? Are we going to change the play? Yes? I do not see it.

Council Chair Rapozo: Anyone else? Okay. Go ahead.

Councilmember Kualii'i: The more we consider and the more I hear, the more assure I am of how I have to vote. Some people have talked about giving up a tool. I actually see this more as stopping the bullet. Our struggling families are about to take a bullet for our mistakes, our inefficiency, for our inability to budget better, and for our inability to set correct taxes better. A general excise tax, a regressive tax of this nature, which taxes everyone equally – the person makes one hundred thousand dollars (\$100,000) and the person making twenty thousand dollars (\$20,000) are taxed exactly the same on the basic things you need to survive on. A gallon of milk, loaf of bread, and a carton of eggs – things that the people are struggling the most amongst us now, cannot even afford. To take one (1) more penny away from them is wrong. Just by principle, it is wrong. If we were in a dire, critical situation where we could not fund our police, fire, and the critical things, that might be one (1) consideration, but we are not there. We have one hundred twenty-six million five hundred thousand dollars (\$126,500,000) General Fund, CAFR, qualified in 2015. Just ten (10) years prior, the same general fund was sixty-three million six hundred thousand dollars (\$63,600,000). It has doubled. We had a growth of sixty-three million dollars (\$63,000,000) in that last ten (10) years, the same time we let our roads get backlogged. Vice Chair Kagawa talked about 2010, that funding balance there was sixty-eight point eight million dollars (\$68,800,000), so it was nearly seventy million dollars (\$70,000,000). We are in this predicament partially because of the legislature not giving us our sufficient amount of TAT, right? That is wrong. Councilmember Hooser's idea about looking at the same source...we are talking about TAT, visitor industry, I am supportive of that. I am supportive of...and I am thinking why did we miss this during the tax situation this year...I am supportive of increasing the vacation rental tax rate up to the same rate as hotels and resorts. They are doing the same purpose. They may just be considered a mini-hotel and resort. Why is their rate lower? At least in 2017, our project budget is one hundred twenty-five million five hundred thousand dollars (\$125,500,000) in the General Fund. For the first time in many years, we are actually holding the budget the same and coming down a tiny bit. We are turning the course and maybe we are headed in the right direction. We have a lot further to go, of course, but we have not exhausted all the other possibilities. We have not exhausted all of our means of tightening the budget and cutting expenditures. We have not exhausted all of the means of looking at other taxes, fees, and licenses, or some taxes that maybe more directly connected to road repairs. It would just be wrong to create a new tax. This is a brand new tax for the County of Kaua'i. We are now getting in the business of general excise tax. Something that the State does and it is their primary revenue.

Our primary revenue is real property tax. Of all taxes, we are going to do the most regressive tax that hurts our struggling families the most. It is not right. We cannot do it. We should not do it. We still have a lot of work to do because we have the road repairs to address, but there are plenty other ways to do it and we have somethings in the works. I am supportive of anything else that might come. Obviously, eighty percent (80%) more of our budget is salaries and we cannot do it as a Council. We do not have the same day-to-day involvement in the Administration in what staff we hire, what levels we pay them, and how horrible that we are in this position. We just gave all these raises to one hundred thousand dollar (\$100,000) positions. Could we have afforded that? Of course not. How can we do that and then turn around and say, "The poorest amongst us have to pay more?" I do not care if it is one cent (\$0.01) more. They should not pay anymore when we are mismanaging our County budget. Thank you.

Council Chair Rapozo: Thank you. Anyone else? Let me just start off by saying this "roads problem" was not just discovered five (5) or six (6) years ago. I was under the bridges in 2003/2004 when I got elected taking pictures that Mr. Mickens was alerting us to. The "Shadow" was taking pictures of roadways. This is an issue that goes back a long way and we just chose other projects over these projects. Allocations, as we testified to earlier, of roads that should not be paved are being paved. Roads on the list...that one hundred million dollar (\$100,000,000) backlog that I personally looked at, are not in need of these structural repairs that that list say they are and I question that. I think we need to take a good look at that. Councilmember Kualii said it best about the regressiveness of the tax. Councilmember Yukimura said that "it is only three (3) lattes," but do you how many people cannot afford a regular coffee, much less a latte? Some people do not have anymore. They are tapped. It is not about three (3) lattes – they are broke and cannot afford anything more. What bothers me the most in all of this...and I am going to read this because I think it is highly relevant because much has been talk the TAT...at the last meeting I mentioned some groups, I said the Visitor Industry, Labor unions, all of this was not at the legislature when I was there to testify in support of this TAT. This is a letter I got I am not going to mention names, but it says, "It has been brought to my attention that you said that our group did not do enough to try and get the cap lifted on the TAT. We did indeed try to get the cap lifted on the TAT and were shut down BIG TIME," in caps, "by Senate President Ron Kouchi, Representative Tokioka, and Representative Kawakami. They would not entertain a meeting or a discussion on the subject and all said "no" to lifting the cap. End of story, period. They all said use the GET increase as your source for more funds. We tried and were met with a wall of no's, that is why you saw letters of support for the GE tax increase from us and we feel that letters of support should be taken seriously." Shut the door from the State. The State had the audacity to try to pass Senate Bill No. 3071 to use excess TAT funds to purchase six thousand (6,000) acres of land in the Big Island. Excess TAT – really? You have extra. Six thousand (6,000) acres of beachfront land for conservation – what is that worth? They do not have the number in the bill. The bill failed. Thank goodness, but the intent was to pass this bill, use the excess TAT, excess, right...no, they could not give the Counties, but they had enough to go and buy six thousand (6,000) acres. So, they come up with the senate resolution that encourages Department of Land and Natural Resources (DLNR) to do the same thing. Where you think the State will get the money to purchase this land? From our TAT. And then they come and tell us, "Raise your GET." I am not going to support any increase in the GET because it is unfair. Like I said earlier, the State put us in a position where we had no choice. Well, we have a choice. Maybe next year...and maybe some of us will not be on this table, but maybe some of them will not be at the State capitol as well and maybe we will be negotiating with new

legislators throughout the state. I am not just blaming our Kaua'i delegation because this is statewide. Every stinking county, every delegation gave us the rub, not just Kaua'i. And for whatever reason...because they like all the money for themselves. They want money to buy land on the Big Island. They want to use our money to spend on the Convention Center, on Ko Olina, and we get the scraps. Then they threaten us with going to go back down to ninety-three million dollars (\$93,000,000) and they put us in a situation where it is very difficult to let this opportunity go by, but you know what? Next year we go back and fight harder. The public...all of you out here watching this and people watching at home, you folks have to talk to the delegation. I said it earlier today, you are going to get forums this year. You are going to have candidates for Senate and House. You ask them...get their commitment now that you will give us our fair share of the TAT. I told you that I was not going to sugarcoat it today. I am sick of begging. There is no mother/son relationship. We serve the same people. That is our money. That is our money generated here by our tourists, but no, no...and if we get too loud, hey, we are going to cut ten million dollars (\$10,000,000) more from you folks. Really? Let the public...we the seven (7) of us are so visible because we are on television, all of you get to see what we do every single week, nobody sees what happens in the square building unless you go there, and so the public does not know. Well the public will know and that is what happened with the TAT forcing this body to try to push the GET. I am not falling for that. Our public deserves better. Our County taxpayers deserves better. I am sorry, but we have to find another way. With that, roll call.

The motion for adoption of Bill No. 2610, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and failed by the following vote:

FOR APPROVAL:	Chock, Kaneshiro, Yukimura	TOTAL – 3*
AGAINST APPROVAL:	Hooser, Kagawa, Kualii, Rapozo	TOTAL – 4,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Chock was noted as silent, but shall be recorded as an affirmative for the motion.)*

Council Chair Rapozo: Motion fails. Let us take a ten (10) minute recess.

Councilmember Kagawa moved to receive Bill No. 2610, Draft 1, for the record, seconded by Councilmember Kualii.

Council Chair Rapozo: Any further discussion?

The motion to receive Bill No. 2610, Draft 1, was then put, and carried by the following vote:

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

RECUSED & NOT VOTING: None

TOTAL – 0.

(*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Chock was noted as silent, but shall be recorded as an affirmative for the motion.)

Council Chair Rapozo: Motion carried. Ten (10) minute recess.

There being no objections, the Council recessed at 2:46 p.m.

The meeting was called back to order at 2:59 p.m., and proceeded as follows:

Council Chair Rapozo: Can we have the next item?

Resolution No. 2016-44 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BOARD OF ETHICS (William J. Fernandez): Councilmember Kagawa moved for adoption of Resolution No. 2016-44, seconded by Councilmember Kualii.

Council Chair Rapozo: Any discussion? Any public testimony?
There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Any discussion? Roll call.

The motion for adoption of Resolution No. 2016-44 was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Yukimura, Rapozo	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Thank you. Next item.

Resolution No. 2016-45 – RESOLUTION APPROVING THE HAWAII STATE ASSOCIATION OF COUNTIES SLATE OF OFFICERS, NOMINEES TO THE NATIONAL ASSOCIATION OF COUNTIES BOARD OF DIRECTORS, AND NOMINEES TO THE WESTERN INTERSTATE REGION BOARD OF DIRECTORS FOR FISCAL YEAR 2017: Councilmember Kagawa moved for adoption of Resolution No. 2016-45, seconded by Councilmember Kualii.

Council Chair Rapozo: Any discussion? Any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Any discussion? Roll call.

The motion for adoption of Resolution No. 2016-45 was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Thank you. Next item.

Resolution No. 2016-46 – RESOLUTION APPROVING THE FISCAL YEAR 2017 PROPOSED OPERATING BUDGET FOR THE HAWAII STATE ASSOCIATION OF COUNTIES: Councilmember Kaneshiro moved for adoption of Resolution No. 2016-46, seconded by Councilmember Kuali'i.

Council Chair Rapozo: Any discussion? Any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Roll call.

The motion for adoption of Resolution No. 2016-46 was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Thank you. Next item.

Proposed Draft Bill (No. 2632) – A BILL FOR AN ORDINANCE TO AMEND ORDINANCE NO. B-2015-796, AS AMENDED, RELATING TO THE OPERATING 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 GENERAL FUND AND GOLF FUND (*Employees’ Retirement System Excess Pension Cost - \$330,096*): Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2632) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for June 8, 2016 at 8:30 a.m., and referred to the June 8, 2016 Budget & Finance Committee, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? Any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follow:

Council Chair Rapozo: Roll call.

The motion for passage of Proposed Draft Bill (No. 2632) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for June 8, 2016 at 8:30 a.m., and referred to the June 8, 2016 Budget & Finance Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Yukimura, Rapozo	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Thank you. Next item.

Proposed Draft Bill (No. 2633) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTION 5A-11A.1, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE BENEFICIAL TAX RATE FOR PROPERTY USED FOR LONG-TERM AFFORDABLE RENTAL: Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2633) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for June 15, 2016, and referred to the Budget & Finance Committee, seconded by Councilmember Kagawa.

Council Chair Rapozo: Discussion? Councilmember Hooser.

Councilmember Hooser: We had a similar bill before us in the past, I believe. We are discussing adjusting to reflect on the new increases, but I would like to suggest that this measure, which involves the beneficial tax rate for property use for long-term affordable rentals bear some thought...it is a potential vehicle for us to improve it. For example, one (1) thought I had, I think there are lots of people renting

at affordable rates that do not qualify for this for some reason or another, for example, guesthouses. I know lots of people who have a guesthouse rent it out long-term, but because the guesthouse does not have a kitchen, they cannot qualify for the benefit, but yet they are renting out that as a long-term at affordable rates and they end up paying the commercial home use rate rather than this more advantageous rate. I think there is an opportunity and I am going to be looking at possibly submitting some amendments for that. In fact, I might introduce something that let them have kitchens because if we want to expand affordable housing, the guesthouse is a natural place to put it. There are people already renting long-term and we need to incentivize that more. I just encourage you to think about how we could expand the people who benefit from this and the people who benefit would be the renters as well as the homeowners who are renting out at bona fide/qualified affordable rates with long-term leases. I want to put that on the table so people are prepared and can think about that.

Council Chair Rapozo: Thank you. I believe this an attempt to extend...I believe it was your bill originally, if I am not mistaken, to set the numbers at the rate at the 2015 and then there was a suggestion of the community. When Ms. Sakamoto when saw the numbers starting to drop, the federal numbers starting to drop affecting many homeowners that were actually jumping out of the program because it was no longer to their advantage, in fact, they were losing money. I would agree that this would be an opportunity, using this as a vehicle, and the nice thing about this one is that the title is broad enough where we could do a lot amendments to make this a vehicle to help the affordable housing market.

Councilmember Hooser: I do not believe that the bill you are talking about was my bill, but I remember we talked about it. I know I talked about it a lot. It may have been.

Council Chair Rapozo: I cannot remember who.

Councilmember Hooser: It may have been.

Council Chair Rapozo: Anyway, it does not matter. This makes it basically forever.

Councilmember Hooser: Right.

Council Chair Rapozo: And there are a lot of things we can do to make it better.

Councilmember Hooser: Yes. Thank you.

Council Chair Rapozo: Any further discussion? Councilmember Yukimura.

Councilmember Yukimura: I like the idea that we are keeping the status quo in terms of the key rents given that they have gone down further. Anyway, I like the basic thrust of the Bill as it is written now. I appreciate you introducing it.

Council Chair Rapozo: This Bill would allow people that are not in the program right now to jump in the program. Where the prior one was capped...only the ones that participated will now...if you are not in the program, you can jump in on the program. That is what we want. We want to encourage more people to allow affordable housing and give them incentives to make it worth their while. It could be a really good exciting bill as we go through the process. Thank you. With that, roll call.

The motion for passage of Proposed Draft Bill (No. 2633) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for June 15, 2016, and referred to the Budget & Finance Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Thank you. Next item.

Bill No. 2609 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO HOMESTAYS: Councilmember Kagawa moved to receive Bill No. 2609 for the record, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? Any public testimony?

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

Council Chair Rapozo: The rules are suspended.

The being no objections, the rules were suspended to take public testimony.

LORNA HOFF: My name is Lorna Hoff. I am going to speak on this one and maybe not speak on the next one. Having attended numerous Council Meetings, John and I are constantly amazed at how little the general public and some of our Councilmembers understand the reality of you denying nine (9) individuals their property rights, earned rights, due process of law, freedom of speech, taking our rights to earn a living, and the list goes on. It will end in lawsuits and recently John and I came again, across the copies of the Kaua'i Tourism Strategic Plan dated 2006-2015. Then it was updated to reflect 2016-2018. It takes us up to 2018. The Kaua'i Tourism Strategic Plan 2006-2015 and 2016-2018 are guaranteeing grandfathering is being part of the future; as in the past. I do not know if the public or the Council are really aware of the study. Article 4. Transition Section 7-4.1 Existing Zoning and Subdivision Ordinances states, "All existing zoning amendment ordinances, including but not limited to all existing land use permits, and all existing subdivisions, shall continue to remain in effect following the enactment of the ordinance. Section 7-4.1(c) states,

“Notwithstanding adoption of the General Plan, land use permits and subdivisions shall continue to be subject only to applicable ordinances and rules and regulations in effect at the time the application is accepted for processing,” and this is Ordinance No. 461, dated June 21, 1984 and Ordinance No. 753, dated November 30, 2000.

I do not know if anyone is familiar with this report into the future of tourism on Kaua‘i. Grandfathering is definitely part of future zoning changes and it has always been that way. I do not understand why a lot of the public and Councilmembers do not understand this. From individuals that we have spoken to, there is great dissatisfaction with the increasing taxes and other monetary burdens put on the Kaua‘i families and perhaps the County Manager would have cutoff this prejudice to senior citizens and other lawful B&B operations before it started costing taxpayers another cycle of exorbitant legal fees. John also suggested to the County Council that they consider some concise and positive language in these bills concerning...

Council Chair Rapozo: I am sorry, Ms. Hoff.

Ms. Hoff: Oops, I am off already.

Council Chair Rapozo: Well yes.

Ms. Hoff: I did not say it fast enough.

Council Chair Rapozo: You will have another three (3) minutes.

Ms. Hoff: I am going to come back.

Council Chair Rapozo: Hang on. I do not think there way anyone else. Okay, please come up. Did you sign up on this one? Matt Bernabe. Okay, you are up next, Matt.

ALEXIS BOILINI: Alexis Boilini, Marjorie’s Kaua‘i Inn. *Aloha* Councilmembers. In April 2008, the Council gave a monumental task to the Planning Department to complete and administrate an application process and complete approval of six hundred thirty-two (632) non-conforming use permit for TVRs. The Planning Director had two (2) field workers to help with this task while changes like mandatory site visits were added. All in the time of nine (9) months. Homestays and B&Bs were bifurcated from the process with the commitment that there would be a separate process for them at a later date. As Council Chair Rapozo stated, “We were not worried about them because they were residents.” Just as non-resident TVRs, resident homestays and B&B structures were built as single family dwellings. The Planning Director at the time, Ian Costa, supported the position that they did not need a permit. He stated, “We adhere to Kobayashi’s opinion that there are no Comprehensive Zoning Ordinance (CZO) standards for regulating a single-family dwelling.” That is the opinion from him and then another one of Kobayashi’s dated July 2000 and again, in 2005. The General Plan reiterates this in 2005, when it states, “TVRs and B&Bs are not presently regulated,” and the term bed and breakfast facilities must be defined. That is also found in the General Plan in 1989 and in 2000, which still has not been done, it has only been referenced to, “See Others.” This opinion triggered the creation of Ordinance No. 864, on April 2008, also known as (aka) the TVR Ordinance, which can be found in the CZO

8-17-10. Once completed a deluge of applications came into the Planning Department, which was as Mr. Dahilig pointed out was, "too short staffed to handle it."

Homestay and B&B owners were turned away. A media release had to be used to inform homestays and B&B that Ordinance No. 864 did not pertain to them. No one in the Planning Department or the tax office or new release ever informed the homestay owners of another permit process for them, only that one would be in place at a later date.

On June 5, 2013 after reprimanding the Planning Director for insufficient administrative processing of Ordinance No. 864, and the unanimous support of the Council, the Planning Department hatched a plan to thin out, through amortization, as many TVRs as possible by holding their yearly renewals for any infraction and using a new tool called "voluntary abandonment," based on Section 8-17-10(d)(2)(B), page 134 of the CZO, also found in Hawai'i Revised Statutes (HRS) 205 blah, blah, blah. Mischievous at best.

In March 2015 while the Planning Department was searching for illegal TVRs, that were the problem they arbitrarily pulled a handful of legitimate longstanding resident homestays and B&B owners who have been waiting many years for their turn to be permitted.

Unfortunately, the Planning Department's...can I go on?

Council Chair Rapozo: That is the red light. Is there anyone else wishing to testify? Matt, you signed up on the next one.

Ms. Boilini: There is not much left. I only have a paragraph left. Can I finish real quick?

Council Chair Rapozo: Do you mind? Okay.

Ms. Boilini: Unfortunately, in the Planning Department's excitement to prove that they were out fighting to rid the island of a new infestation, of short term rentals, and without the mandatory sixty (60) day notice of violation, they sent nine (9) long waiting citizens an immediate cease and desist with no quick remedy. For well over a year, they are still accusing us of being TVRs.

The doctrine of fairness is held dear in the United States Constitution. The Fourteenth Amendment tells us that similar uses must be treated similarly, even if somewhat similar – Sheffer versus Fall Church. Is it fair to give TVRs provisional use permits while waiting to be approved during the application process and denying the same for resident homestay and B&B owners trying to do the right thing? Must we continue to suffer huge financial losses just because it is an election year and this issue is driven by a strong political agenda? Is it really worth the cost of multiple lawsuits? The County Attorney wants to play out, as he says, and some will win and some will lose, but we will learn what works for us. So now we are part of a game, an agenda where there is no intention of fairness for these business owners that have been in continuous use before any of these ever changing bills and ordinances.

A comment was made that if you use the word, "grandfather," it will be an admission that we were legal. You really do not have worry about that because HRS 46.4 has already made that determination. *Mahalo*

Council Chair Rapozo: Thank you.

Ms. Hoff: Thank you Council. Lorna Hoff again. I am reading this for my husband. He wanted to have this considered, perhaps when you are doing these new bills. They do not really affect us because our application was in a long time ago. John suggests the County Council consider some concise and positive language concerning assurances that retired agricultural operators or contractors be they farmers, landscapers, or aquacultural nursery operations, will never have to go through this style of malfeasance in government in their futures, that he feels too often younger generations forget the elderly. Councilmember Kagawa just made a statement in this meeting that seniors on fixed incomes are just saying "enough already." These B&B operators are seniors on fixed incomes, they homes were their pension, and they are saying enough. We do need a change in attitude from the past thirty (30) years. I have no idea if I will be at the next Council Meeting or not, since I have to appear for criminal charges. Thank you.

Council Chair Rapozo: Thank you. Yes, come up. This is for Bill No. 2609.

Ms. Barton: Yes it is. Elizabeth Barton for the record. I just wanted to comment on this permitting for homestays. It has been a very nebulous sort of backwards and forwards thing about whether we were required to have them, whether we were not. What the requirements were? Being sent away because we did not need requirements. I think that the ones that are now being proposed are extremely unfair. I think there are very, very few houses that could meet all of these requirements. I am sure a lot of vacation rentals do not meet all of these requirements either. I think it is going to be extremely difficult and extremely hard to police. Something like this is going to take a lot of resources to see whether people are properly permitted or not. If people are able to get permitted with less restrictions, I think it will stop people from going underground and then not paying their taxes and things like that. Everybody is happy now to pay their taxes, even if the GET does go up and provide this opportunity for people to make a living as they have been doing. I do not make seventy thousand dollars (\$70,000) a year. I am lucky if I break even, even with that and my long-term rental, which makes no money. If we can make it a little clearer and a little less restrictive and maybe not back date it so much because a lot of people got so confused on where it all came out when the B&Bs were being shut down and everybody was supposed to be permitted, but nobody knew what the permitted system was required, and there were no actual permits to be gotten. Restricting the number of permits...should not be ten (10) because these people, the visitors, contribute a lot to the tourist industry here. I have had people stay at my place that actually work in huge hotel chains and they said that it was the best vacation they ever had in their lives. Thank you.

Council Chair Rapozo: Thank you very much. Anyone else? If not, I will call the meeting back to order. Further discussion? The motion on the floor is to receive. Councilmember Yukimura. Anyone else? Councilmember Chock.

The meeting was called back to order, and proceeded as follows:

Councilmember Chock: I have a question for Ka'āina. I am just wondering about unintended consequences. If we pass this now, this gets signed into law, takes effect, and we are missing like we did in the past those people not coming out. For example, we make a date, we got ten (10), we get so many, but we do not get them all. I am just curious as to is there value to perhaps setting the date further out in this transition that we...I am sorry, we are not even on the Bill.

Council Chair Rapozo: Yes, hold that thought.

Councilmember Chock: We are on the other bill.

Council Chair Rapozo: Stay right there. Any further discussion?
Councilmember Yukimura.

Councilmember Yukimura: I want to ask a question about this Bill.

Council Chair Rapozo: Sure. We are talking about Bill No. 2609.

Councilmember Yukimura: Bill No. 2609, I know, but the language is the same in both.

Council Chair Rapozo: Yes, it is pretty much the same.

Councilmember Yukimura: Can you tell me what Section 8-18.2(c), "The owner(s) benefiting under Section 5A-11 of this code for a homeowner's exemption for the respective homestay site shall be available on a 24-hour, 7-days-per-week basis during homestay operations." What do you mean by that?

KA'ĀINA S. HULL, Deputy Planning Director: This is actually taken right from...

Council Chair Rapozo: Please state your name for the record.

Mr. Hull: Deputy Planning Director Ka'āina Hull. That language was taken specifically from the Transient Vacation Rentals ordinance which requires the operators of a TVR to be available to their clientele on a twenty-four-seven (24/7) basis. That is there essentially so that if there is a problem or emergency of some sort, they have somebody to contact. We amended it a little bit to say instead of the operator, in this case the actual homeowner because the homeowner is the one to be running the homestay operation, they should be the one available to their clientele.

Councilmember Yukimura: So you do not mean that they have to be present on the premise, because otherwise they cannot go grocery shopping or do something like that, right?

Mr. Hull: No, not at all.

Councilmember Yukimura: So you just mean mainly phone contact.

Mr. Hull: Yes, they are available.

Councilmember Yukimura: They are available – that is what I am trying to define. “Available” means not physically present in the house, but available to be contacted?

Mr. Hull: I do not want to dance with words on this one and a lot of it has to do with the enforcement aspect in a sense that...

Councilmember Yukimura: That is why you have to be as clear as possible.

Mr. Hull: Yes, but we do foresee situations where, say, someone made a homestay operation and then may not be on the island. Say they have a homestay permit, but then it does not really function like a homestay because they are not actually onsite. We understand that of course people have to do chores and go out, but they have to be habituating at that site when the operation is going on. In the event that say, somebody treats it more like a TVR after they get the homestay permit and are in California, say for several weeks and if the homestay operation is still running, we can verify...once we go through a contested-case and there is an appeal, subpoena records that demonstrate that they were in fact off-island and violating this particular section of the ordinance.

Councilmember Yukimura: Do you allow TVR owners to be off-island because they are not required to be in the house.

Mr. Hull: Right.

Councilmember Yukimura: So if you say this is just like the TVR operations, the homestay operator or the Judge could say, “Well that is the source of where this language came from, then it does not mean physically present.” That is why I am trying to understand what it actually means and you probably need to really know what it means because if you enforce it, you have to know. What it sounds like to me is that you are requiring them to be residing on-island in that house during the time. Is that your intention?

Mr. Hull: That intention more comes from the actual definition of the homestay, which requires the owner to be onsite and that person qualifies for homeowners exemption under real property.

Councilmember Yukimura: Right, that has to be their primary residence.

Mr. Hull: Correct.

Councilmember Yukimura: But it is different...it can be their primary residence and they can be on vacation. If it is that you want them to be physically present on-island, it is not clear and if you want to enforce it, I think it should be clear. I am thinking what kind of language would that be if that is what you want.

- Mr. Hull: We believe it is clear enough.
- Councilmember Yukimura: Okay, well maybe the courts will have to decide.
- Council Chair Rapozo: Any other questions for...
- Councilmember Yukimura: But it does not mean physically present in the house?
- Mr. Hull: Sorry, I did not have the definition in front of me. The homestay operation shall operate under the following regulations. A transient accommodations are provided for visitors for twenty-nine (29) days or less. Homestays shall be limited to no more than three (3) guestrooms per homestay operation. During homestay operations the owner benefiting under Section 5(a)11 of this Code, per homeowner exemption for the homestay site must be physically within the County of Kaua'i, residing at the homestay operation site, and physically available for the needs and concerns of their respective homestay guests.
- Councilmember Yukimura: Okay, does physically available mean twenty-four-seven (24/7)?
- Council Chair Rapozo: Councilmember Yukimura, can I ask you a question? Are you planning to resurrect this Bill?
- Councilmember Yukimura: No.
- Council Chair Rapozo: Or are you planning to vote to receive? Because the same language appears in the other...
- Councilmember Yukimura: Right.
- Council Chair Rapozo: So I do not want to have to...
- Councilmember Yukimura: Well if I want to do an amendment for Bill No. 2619, I would like to prepare...
- Council Chair Rapozo: Bill No. 2609.
- Councilmember Yukimura: I know.
- Council Chair Rapozo: Okay.
- Councilmember Yukimura: But I am just trying to understand it in either case. I do not think it changes from bill to bill.
- Council Chair Rapozo: It is identical, so your responses Mr. Hull on this one...
- Mr. Hull: They would be identical, right.

Council Chair Rapozo: ...I assume it applies for Bill No. 2619 as well.

Councilmember Yukimura: So what?

Mr. Hull: They would be identical.

Councilmember Yukimura: Yes, I know they are identical. I am trying to get what they mean. So, physically available, but it does not mean physically available twenty-four-seven (24/7) in the house?

Mr. Hull: Not in the house, no.

Councilmember Yukimura: Okay. So actually what you mean is they need to be twenty-four-seven (24/7) available by contact...I mean by phone or text, and physically on the island?

Mr. Hull: Correct.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Any other questions? If not, thank you very much. Further discussion? Again, the motion is to receive. Roll call.

The meeting was called back to order, and proceeded as follows:

The motion to receive Bill No. 2609 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Thank you. Now, let us get to the real-deal.

Bill No. 2619, Draft 2 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO HOMESTAYS (*Restricting Homestays to the Visitor Destination Areas County of Kaua'i, Applicant*): Councilmember Yukimura moved for adoption of Bill No. 2619, Draft 2, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Can I get the County Attorney and Deputy Planning Director up? I have some questions for them.

Council Chair Rapozo: Okay.

There being no objections, the rules were suspended.

Mr. Hull: Deputy Planning Director Ka'āina Hull.

MAUNA KEA TRASK, County Attorney: *Aloha*, Mauna Kea Trask, County Attorney.

Councilmember Kagawa: I started off meeting with some of the people on the list and I made a call to the Planning Director asking him if an amendment that could satisfy a grandfathering and keep us out of further legal issues would be a course of action that could be considered. I was told that due to the pending contested-case and all of the previous action taken by the Planning Commission, it was recommended that I not go down that road and do an amendment. I am wondering is it breaching the Council's duties as stated in the Charter that we should not interfere with administrative functions from the legislative side. That is my question. Have we even looked at considering amendments that allow grandfathering when...while I got that in verbal, I did not get that in writing – that was from the Planning Director.

Mr. Hull: I will defer to Mauna Kea on the aspect of Charter and administered functions. Concerning grandfathering, I would have to say the same statements that were made multiple times before on this body. For the individuals in the cases that are going on right now are homestay operations, in general, there is nothing that this body can do to grandfather them in. The Council made a very clear statement in 2008 that homestays are regulated currently via the use permit process. If they do not have a use permit that means they are not operating legally and if they cannot demonstrate that they are operating legally, there is no way to grandfather that use in. Grandfathering means a prohibition is put in place, but for those property owners that can demonstrate they were legally doing it prior to the prohibition, then they can be grandfathered in. On that one aspect of zoning, when you look at the furthermore on the aspect of those that are on state land use agricultural lands, that is also another whole issue where those uses require a special permit. Those are not outright permitted uses under HRS 205-4.5 and therefore require a special permit. The vast majority of the cases, currently in contested-case are on agricultural lands. The Department has found them as not meeting the priorities and the objectives set under HRS 205, which is state law and that is why they are going through the contested-case process. To bring those folks into the fold, you have to amend the state process. There is nothing that this County body can do to amend state law. The only thing that could potentially be argued to somewhat bring those folks into the fold is if you, as individual Councilmembers, or as a body would like to pass a resolution urging the state legislature to convene a special session to entertain outright permitting transient accommodations on agricultural land. That is the only way that the special permit process can be removed, but it cannot be done by vote or by action of this body.

Councilmember Kagawa: Thank you, Ka'āina. That was a great explanation. On the legal side, Mauna Kea, is there any amendment that allows grandfathering even though we get recommendations from the department to layoff an amendment because there were undermine work already ongoing and decisions already

ongoing? Would any amendment breach on the line of interfering with administrative duties and functions?

Mr. Trask: First, a lot has been said about the General Plan and you have to look at that document in total. This is a section from the General Plan, it states as a matter of policy quote, "Single-unit B&Bs and vacation rentals should be allowed with development standards and a use permit requiring administrative review, and opportunity for public input." This is Section 4.2.8.2(c)(1). So, it is clear. Now, I think that...of course I would agree with the statements by the Deputy Planning Director and the Planning Director. As far as administrative interference, you have the legislative authority; therefore, if you decide to make amendments appropriately on the floor with this body and it has an effect on our enforcement program, which this body has urged us for year to do; I think that effect would be appropriate. However, if any one of you, for instance, were to give me a call or come to my office and tell me, "Hey, Mauna, hold off. I am ordering you not to prosecute or to enforce this rule against anybody," I would tell you that you are in violation.

Councilmember Kagawa: My question is a decision was made by the Planning Commission already and then it got contested. I am wondering is any amendment at that time appropriate because we are acting after-the-fact. It is not a legislative decision prior to seeing if the Planning Commission agrees or not, this is after the decision was made. That was clearly stated why our Planning Director that it would interfere and therefore layoff. I understand why I had to layoff, but then other Members are not laying off. I do not get it.

Mr. Trask: I would agree with the policy direction of the Planning Director. I think it would be poor policy to do so. The legislative bodies at all levels of government make the laws, the executive branch enforces them, and the courts interpret them. That is the definition of separation of powers through the three (3) branches of government. Let the courts do their job. The courts change their minds. We are operating off of our understanding of the Constitution both state and federal as well as Hawai'i case law, which is legend in this case. Now, if the Supreme Court of the State of Hawai'i or the US Supreme Court chooses to take a different tact, which they have, the entire English and American juris prudence is a history of courts changing their minds in establishing new rules and standards. Let that happen. I do not think you can micromanage this process. I do not think you can anticipate every left and right, up and down that they will do. So, listen to the suggestion of the Planning Department, take into consideration of the public, do what you think is right, but I mean after years of hearing go to trial, enforce these things, stick up...you know...enforce the Code. Then when we do it and it is changed, it makes the job difficult to say the least.

Councilmember Kagawa: My objective was to try and stay out of trial because I know when we go to trial everybody loses. My call was...perhaps was there an amendment that could keep us out of the trial process and then I was told, "Do not go down this road of amending because we are going to undermine decisions that were already made." I just see it as mass confusion of trying to fix a problem when decisions were made...I find it more political than not political.

Mr. Trask: On that, I appreciate the acknowledgment that litigation is a drain on resources. It can be expensive; however, that is what the Office of the County Attorney now does. Personally, I got into law to go to trial – that was my whole thing. Sometimes we will advise to proceed or we will advise not to, but in this case these are important questions and I think...an attorney I very much respect once told me, “Save your speaking for the court room.” Unfortunately, I cannot do that all the time, but I think this is an opportunity to go to court and talk about it.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Just to restate, I believe I heard what you said was that if we advocate for amendments to the policy, we are within our legal authority to do so. That is what you said, right?

Mr. Trask: Legislative action is your purview, correct.

Councilmember Hooser: The only other thing I would...it is a slight correction, if I could, for the record. I also believe you mentioned that you have been advocating enforcement for many years and this is my fourth (4th) year and I do not believe I ever advocated for enforcement on homestays and B&B. The vast majority of the discussion has all been on TVRs. It has not been on homestays and B&Bs. Again, I do not believe that I certainly have advocated for that, I may be wrong, but I do not believe so. I think it has been on TVR – just for the record. Thank you.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: It is really about unintended consequences. Kind of what I have been seeing and what Councilmember Kagawa talked about regarding the contentious, confusing process, and then us changing the policy as you folks are going through these contested hearings. Do you think it is something to consider in terms of providing a grace period to attempt to have others come to compliance? I am thinking that there are people out there on the side lines, and I am not advocating they continue to break the law, but I am thinking about us in your process. I do not know what that suggestion would be...thirty (30), sixty (60), or ninety (90) days that might at least allow you folks to have the community to have more clarity in what the process is, the direction we are headed, and how we can come into compliance.

Mr. Hull: Councilmember Chock, the department would not have really too much of an objection. In fact, we could be supportive of a grace period to allow people because quite frankly there is at least three (3) applications that I am aware of that are very close to being expected that are, I want to say, in the pipe. We have deemed them complete, but they are very close to being accepted and to make sure they have their fair day in court, so to speak. We would have no problem of allowing a grace period particularly because even if this ordinance is adopted, the cap of ten (10) is still in place. I know there is always going to be a worry of...okay, if we extend it, there is going to be the floodgates and everyone is going to be pouring in. Quite frankly, the cap of ten (10) that was instituted back in 2015 around June or so...there was a

flood that came in before the June ordinance was adopted, but after that cap of ten (10) was put in place, we received three (3) applications, two (2) of which the applicant withdrew. As of date, January 1st where the new cap of ten (10) went in place, aside from those three (3) that we are talking to and they may have been deemed complete today, I am not sure, but as of yesterday, there were zero (0) applicants. We would not anticipate floodgates and even if there were floodgates, the cap is still in place.

Councilmember Chock: My fear is that some people are waiting because they are seeing what is going on here and trying to wait it out and see what the direction will be – if we can make some other changes to it. If we did consider, what would be appropriate from your perspective? How long do you think?

Mr. Trask: If I can object. I think whatever that would be would have to be found in a rational basis to understand that...like you could not pass any law that says, “This is the rule of Kaua‘i,” whatever it is, “Except for Ross, Arryl, Mason, Mel, and KipuKai.” You cannot pass a law like that.

Councilmember Chock: Yes, I am talking about time, though.

Mr. Trask: But look at the kind of...I mean, really, what is this defining class? Has the class been defined yet? I have not seen. In my legal career, I have done criminal defense, criminal prosecution, and civil law. I have gotten people out of jail, I have put people in jail, I got people out of mental hospitals, and I have seen the gamut of the law in effect. Ignorance of the law is never a defense. The law is what it is. It is not necessarily the clearest thing, but it makes it sense. I just think that if any of the testimony today is correct, we will find out. Once we get a ruling, a decision in order from the Planning Commission, from the Circuit Court, or whatever, you will be the first to know. I suggest that you make your policy changes and the calls therefore at that time because then you will know what the courts are looking at, then you will know what the facts...after a credibility call is made. After analysis of the true facts and circumstances and not just what is said to you on the floor, and then see what you want to do then.

Councilmember Chock: I am not sure if I understand. Are you saying that we should defer this until you get to these?

Mr. Trask: No, when you are talking about, “What is a good idea” and you are looking at policy implications, I am just trying to color that as well. I am saying that as you heard people here today cite the Planning Commission representatives on the record, they cite statements made on this floor in their briefs, I just think we should keep it off, and stay the course until we know that a change needs to be made.

Councilmember Chock: Good, good. I think we are talking about two (2) different things although. I am asking if there is a timeframe you think should be feasible for your department to get a handle on things, if this was to move forward. Should we do it and how long?

Mr. Hull: To be clear, Councilmember Chock, are you talking about a non-substantial amendment that would state this ordinance goes into effect on this date?

Councilmember Chock: Yes, basically. I am indifferent. I am just trying to figure out...I do not want things to unintentionally occur and that I why I am asking. If you are saying no, do not worry about it...

Mr. Hull: I cannot give you a specific number, but if a number is proposed from this body and it gets instituted, we would not have any objection to it.

Councilmember Chock: Okay.

Mr. Hull: Like I said, just because the cap is in place...let me be clear, the department could not recommend it any date past December 31, 2016 because that is essentially when the cap goes away. We would say...we could be supportive of any additional time up until December 31, 2016.

Councilmember Chock: Right, so we had it for more than a year, we can have it to the end of the year, and that is it. Anybody who is out there and wants to come in, come in now, if not...

Mr. Hull: Coming in now because particularly the cap is still in play and it is on a first come/first serve basis. Like I said, we issued press releases, we did everything to make sure people came in and like I said, last year's cap, three (3) people came in. This year's cap, to-date, we may have accepted two (2) today, but yesterday that number was zero (0).

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: If this law passes or when this law passes, would those who are in contested-cases who are on agricultural...well, who are outside the VDA area, will everything just be moot?

Mr. Hull: No. In fact, the Office of the County Attorney testified previously that if the application has been accepted and the law changes, those that have been deemed complete and are in the process, are reviewed under the old law. They would proceed through with the contested-cases. There is another case that still is a deferred case and it will be reviewed under the old law. Should any application be accepted from now until the time the ordinance goes into effect, it is essentially reviewed under the old law. That process can be lengthy, but the standards of the old law still apply.

Councilmember Yukimura: Okay.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: In the application process, if someone comes in and says, "They are homestay, they want to do this work," do you folks then go out and

inspect whether or not it is a homestay and see if they are in compliance based on the standards? Do they have time to come into compliance at that point? How long does it take to do that? That is what I am talking about in terms of acceptance of the application.

Mr. Hull: Prior to the homestay issue arising, the department just look the applications at face-value as it was represented and as it was represented those structures and uses are in compliance. It has been since revealed that in many of the applications we have been reviewing now, that is not the case, where it represents something in the application, you have something totally different occurring on the ground. Since that time, the department has amended its procedure whereby we will not deem any application complete until we get an onsite inspection. That onsite inspection verifies that they are in compliance with all of the zoning codes. Now, some folks maybe in complete compliance and therefore we can stamp them in with their completed application. Some folks may have somewhat non-substantial compliance issues; a small wall structure that all they have to do is get a Class I zoning permit, which they can do within a matter of days. Others may have significant changes in alterations that need to be made to bring their structures into compliance. So, it is on a case-by-case situation.

Councilmember Chock: Thank you.

Council Chair Rapozo: Any other questions? Councilmember Yukimura.

Councilmember Yukimura: If they come in before this law is passed, then it is not a Class I zoning permit? It has to go through the Class IV and all of that?

Mr. Hull: Correct.

Councilmember Yukimura: And if they come in afterwards, then it is just the Class I?

Mr. Hull: If they are in the VDA.

Councilmember Yukimura: You are just giving out permits so as long as they meet all these standards, then there is no public hearing or anything like that.

Mr. Hull: No.

Councilmember Yukimura: But they have to be in the VDA.

Mr. Hull: Correct.

Council Chair Rapozo: Any more questions? I have a question and I think the only other Councilmember that can pretty much appreciate this dilemma is Councilmember Yukimura because we were here back in 2006-2007 when we were going through the discussions of the TVRs. We did make it a point to separate the B&Bs because...I said something very similar to that effect that it is a different category and we are going to deal with it later. At that time, the County was well aware that these

B&Bs were operating and yet no action was taken back then. I am struggling with that today because I am seeing all of these people going through contested-case hearings and I am thinking how much money have they spent and yet, back in...what year was that Councilmember Yukimura, when...2008 was when they really...

Councilmember Yukimura: It was when the TVR Bill passed.

Council Chair Rapozo: Right, but they made it much more less restrictive. That is when you and I were not on the Council anymore.

Councilmember Yukimura: Oh, that was 2009.

Council Chair Rapozo: 2009 when they took out the requirement for onsite visits and just...but I guess my problem is and what I am struggling with right now is we did not do anything back then. The County did not do anything back then. You were not here, Mauna Kea. The County Council said we are going to deal with them later, they are not a real big problem, and so we are going to deal with them later. The impacts are not the same or whatever the case was. Right or wrong, that is what the decision was. Then, it is ten (10) years later or so, we have operators saying, "We went to the County and the County said, "There is no process. Just keep on operating." I have heard that from enough operators that I question whether or not that happened or not. My question is who has the burden in all of this to prove that the County did not say that or did say that? Who has that burden?

Mr. Trask: If it is a permit application, then the applicant has the burden to show by preponderance of the evidence that their use complies with the zoning district and everything else. If it is an enforcement case, then the Planning Department is moving the thing forward and the Planning Department bears the burden, like the Office of the Prosecuting Attorney.

Council Chair Rapozo: Right. So, in this case, can the Planning Department prove that back in 2006, 2005, 2004, 2003, or whenever how far back these operators have operated, can the County prove that they were informed that they have to get a special use permit?

Mr. Trask: There are two (2) issues on that. One (1), the Planning Department is not substantiate any of those claims. Furthermore, under Kaua'i Supreme Court case law, hypothetically speaking a Planning employee at the front counter did say something to that effect, did make a representation. Only the Planning Commission can grant these permits. Therefore, the person who was solicitating that advise cannot rely on that representation and will not be legally binding on the County. Even in contested-case, there has been testimony on this – who as that person? "I do not know, I did not get a name." Well, what did they look like? "Oh, brown like you." Okay. That is it. If that is the evidence and that gets weighed. That is why these things should vetted in a contested-case proceeding, a due process hearing, versus on the Council floor.

Council Chair Rapozo: I guess I am trying to figure out a way to get through this without contested-case hearings. Is there a mechanism, a way to get through this without contested-case hearings? Is there a way? I am not sure. I am going

to be honest and again, this is not reflection of either of you because you were not here, but I have no doubt in my mind that back in those days, the Planning Department basically said, "Hey, no problem. Wait." Because the County Council knew. It was the topic of discussion on this table. We said, "We are not going to deal with them yet. We will address them later." Initially I said, "We have to put our feet down." As I heard the stories and read the testimonies, I am thinking...I remember because I was here. I remember having the discussion. I remember having the discussion and we all agreed at the time, I do not know if all, I do not know what the votes were, but we all agreed in some sense we were going to deal with the B&Bs later. To me, and I realize ignorance of the law is no excuse, but at that point, what message did we send to the B&B operators as a Council or as a Planning Department. That is what I am struggling with today and I am trying...and I see Councilmember Yukimura nodding because I know she is in the same place. We did not address it then and now all of a sudden...and I am really troubled with that. The other part of me is like we have to get a handle on these things, but as you have already admittedly said, there is no rush of applications flying in because not too many people want to convert their homes to B&Bs.

Mr. Trask: On that point conversely I would just add that as the people in the public who are subjected to this issue are confused about the process because of what is on the floor. Likewise, County employees are confused about the process when this is vetted on the floor. When you vet this thing publicly and you make these statements, the civil servants do the best they can with what they have. The Kaua'i culture and everything like that, they want to do the right thing and so I can see how much confusion this creates when you talk about this during the pendency of all of these proceedings on both sides. I think the legislative body has to take responsibility before that, at least in part.

Council Chair Rapozo: I think my responsibility is to consider all and everybody's voice deserves to be heard on this table. That is kind of what I am at and I am struggling. I am going to be honest, I am struggling. Councilmember Yukimura.

Councilmember Yukimura: I agree with the County Attorney that we need to create a class based on a rational basis, and so I do have an amendment that I want to propose, but I am thinking I need to modify it because we could create a class of those who have been longstanding operators. We could allow them to apply for Class I zoning permits based on the standards that will be granted to those in VDA areas, and because of their longstanding status, and there only about nine (9) of them so they would not create a really major problem, maybe do that. That would avoid the contested-case, but would not allow anything else outside the VDA area. County Attorney Trask...

Council Chair Rapozo: Just a clarification, Councilmember Yukimura. Are you thinking about proposing a special class that would require Class I?

Councilmember Yukimura: That would be allowed to apply for a Class I zoning permit that is...which is the standard that this Bill, if passed, would set. It would allow them to go through that class. I proposed this amendment in Committee, but I was not fully understanding what the Deputy Planning Director has clarified today, which is that these longstanding operators are not really going to be precluded because they are not in VDA areas because they have applied a long time back. They are...

Mr. Hull: Okay, I see what you are saying, correct.

Councilmember Yukimura: Right? They are not going to be held to this standard.

Mr. Hull: Right.

Councilmember Yukimura: But I think the problem that we are seeing is that there is ongoing contested-cases and set by standards that are not fully set until this Bill passes so there might be a way to actually accomplish what the Council Chair is looking for.

Mr. Trask: Again, that is your legislative purview, but I am not afraid to go to contested-case on these things. Just so you know.

Councilmember Yukimura: We are not afraid either.

Council Chair Rapozo: It is not about being afraid, Mauna Kea. It is not about that. It is about these operators that have been operating for a long time. It is about these operators that back in 2006, 2005, and 2004 were not told to stop.

Mr. Trask: Okay.

Council Chair Rapozo: That is what this is about. I am not afraid to go to court. Let us go to court and these people will tell you, "Let us go to court." I hate settling things, but it is not about that. It is not about who is going to win or lose. I do not know about a Class I and whether or not to allow these operators to apply for an after-the-fact special use permit, which is what they should have had back then and they go through the whole process of...I am not sure, I guess what I am saying is that I have done a lot of thinking lately and I guess I am feeling sorry for these people because as I am being reminded, as I am reviewing the minutes of past meetings that...even us on the Council back then. I am surprised we are not named as defendants in the lawsuits and we may be one day because I remember the discussion.

Mr. Hull: Could I respond to Councilmember Yukimura's question?

Council Chair Rapozo: Sure.

Mr. Hull: The Department has three (3) concerns with such a proposal. One (1) is the idea of crafting legislation for a specific group of people, and I will defer to Mauna Kea on that. Generally, we would not support necessarily crafting specific legislation for eight (8) or nine (9) people quite frankly. Secondly and more to the point is that, even though it might be intended to only be for nine (9) people, I firmly believe there are other homestay operations out there that have just decided to go underground and no avail themselves to the use permit process, which that could potentially...if you are saying it is now outright permitted, that could potentially be a floodgate scenario. Third, those that are in the contested-case, say something is drafted for them, those that are in the contested-case, you take out the use permit process, you take out the Class IV zoning permit process, that does not remove the special permit

process which is required to go before the Planning Commission. It will still be in contested-case. You could reduce it all the way down to a Class I for these folks, they will still be in the Planning Commission and they will be fighting the Department because the Department has taken an interpretation of how a special permit can be approved. So, they are still going to be in the contested-case scenario.

Mr. Trask: Regarding the Class I and retroact, I would have to go research retroactivity of the law because...

Councilmember Yukimura: This is not retroactive.

Mr. Trask: Well I think it may be because the Planning Department's position has always been this use permit process has always been the process. That was further reiterated in the 2000 General Plan where it states what I just stated that B&B should be through a use permit process. It is only if you believe what you are hearing that you are going to make this amendment. If the use permit process is in fact the process, then that would be a retroactive law because you are changing the rules going back to the '76 or whenever that was.

Councilmember Yukimura: Chair?

Council Chair Rapozo: Councilmember Kaneshiro's hand might be sore already, but I do not want to stop the relating discussion.

Councilmember Yukimura: Mine is a related.

Councilmember Kaneshiro: Mine is a follow-up.

Council Chair Rapozo: Councilmember Yukimura, finish your questioning and then we will go to Councilmember Kaneshiro.

Councilmember Yukimura: I am not removing the special permit. I recognize that you cannot remove that, so let me make that clear. I am not trying to define a class of nine (9). I am trying to define, by certain objective criteria of paying Transient Accommodations Taxes by certain time, completed applications by a certain time, although I think I have to find out what the right deadline is, but the nine (9) is about the floodgate issue. That is the question. I think if we make it tight enough, we can avoid floodgate and the thing about the Class I permit is in fact you are proposing to do that right now. You are proposing to remove the use permit requirement for operators in a VDA. That is what you are proposing to do. So if we were to allow that for this particular class that is carefully defined, I do not see why not.

Council Chair Rapozo: There is a question in this right?

Councilmember Yukimura: No, I am responding so that they could respond to the...

Council Chair Rapozo: Okay.

Councilmember Yukimura: We are problem-solving right now.

Council Chair Rapozo: I understand, but...

Mr. Hull: To that, Councilmember Yukimura, I can appreciate that there are just...and I believe it is really seven (7) or eight (8) that are in contested-case right now, but I would have to double-check. I can appreciate wanting to help that group out, but quite frankly we know that there are other operators out there, like I said, who have decided not to avail themselves to the process. They are aware of the process, but...

Councilmember Yukimura: Do they meet the criteria that I am setting up?

Mr. Hull: Some of that we can get into, but what I am trying to get at is that...we cannot anticipate how many people will come once you change the process from a use permit process to a Class I. Essentially when the TVR ordinance was adopted, we had two (2) people on staff. We knew there were a fair amount out there, we did not know how much. A previous speaker said there were sixty hundred fifty (650) TVNCU issued to a certain point. There are four hundred fifty (450) today, but there were three thousand to four thousand (3,000 – 4,000) applications that flooded our office.

Councilmember Yukimura: I am not talking about TVRs.

Mr. Hull: What I am trying to get at, Councilmember Yukimura, is when the TVNCU process opened up to get these permits, over-the-counter three thousand to four thousand (3,000 – 4,000) came in. I cannot anticipate...I do not suspect it will be less than that, but I cannot anticipate two hundred (200), three hundred (300), four hundred (400), one thousand (1,000). I cannot anticipate, therefore I cannot necessary say at this point say I can support this because it may be a staffing and resource issue for my office.

Councilmember Yukimura: Alright, that is partly a policy that we need to make.

Council Chair Rapozo: Hang on. Councilmember Kaneshiro.

Councilmember Kaneshiro: I am glad I wrote my question down. The process we have now for use permits, is it any different than the process the homestays would had to go through back in 2006?

Mr. Hull: No. Well, with the exception that the recent amendment that was made is that homestays now have to have a homeowners exemption and cannot utilize a guesthouse. Back in 2006, there was no homeowners exemption required and you could use guesthouses. Aside from that, the use permit process is exactly the same. You have to go to the Planning Commission and get a Class IV zoning permit accompanying it.

Councilmember Kaneshiro: Okay. I think there are people that might have had...I am sure that there were people that had their communication crossed between "Do I need a use permit or not?" They probably got mixed messages. We have opened

it up and we have allowed people to get their use permit now, we have done it, and the process is no different now besides those two (2) things. Thank you, I got my answer.

Council Chair Rapozo: Any other questions?

Councilmember Yukimura: Can we have a recess? I would like to work on an amendment.

Council Chair Rapozo: Are there any other questions for these two (2) fine gentlemen? If not, let me just ask this question – are we set on passing this out today? Is anyone thinking of a deferral?

Councilmember Yukimura: I would not mind working on a few more things, but...I would not mind another two (2) week deferral.

Council Chair Rapozo: What is the pleasure of this body? If people are ready to vote and they are ready to move, then we will move. Councilmember Chock.

Councilmember Chock: As Planning Committee Chair, when we had this on last week's agenda it sounded like there was this amendment and we could not get it done. What I am hearing is that maybe there is a way to do it and there was a request for deferral, which was denied. I am in a position where if there is something we need to investigate more on, I am open to it. I would have hoped that it would have been done in Committee, but here we are.

Council Chair Rapozo: I think we posted early. Scott asked me and I am assuming that we have not posted, but if you folks want more time, I will...not right now ma'am, I am sorry. Councilmember Kaneshiro.

Councilmember Kaneshiro: I am ready to vote. We have been dealing with this from 2015. I am pretty much ready to vote.

Council Chair Rapozo: Okay. Councilmember Kagawa.

Councilmember Kagawa: I am ready to vote as well. I would like to take Mr. Hull's advice and perhaps the Council can consider a resolution of this body for the legislature to consider doing exactly what he said. If the legislature is the one that generally determines appropriate agricultural uses, these are agriculture ones that we are talking about, right? If the legislature is the one that oversees proper land use and any amendments to other than agricultural purposes, then certainly let us do it the proper way. Let us try and see if the legislature can address it and therefore it will open the door for everybody that falls under that category where they have a piece of property and is not farmable and can be used for alternative purposes to make it useful and allow them to succeed in keeping their parcel and residents. I am open to that suggestion. I think it is cleaner than grandfathering. We heard why grandfathering is dangerous and can possibly open floodgates is the other thing I mentioned. Yes, there are a lot of B&Bs that I believe are out there that I do not have permits that I believe maybe could fall under the amendment. A lot of the residents that have talked to me with the B&Bs they are not pleased that the B&Bs are next to them. It is not all positive as some may say.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: It seems like we get closer every time we talk in terms of various aspects of this issue. I think giving it another week or two (2) to work on the language is not going to hurt anything. We can do both, I think. We could do a resolution to the legislature and we can work on our own bill. We all know the legislature does not work in a timely or efficient manner.

Council Chair Rapozo: And they are not very happy with you right now.

Councilmember Hooser: Just me? I mean let us cut to the chase; we could do this with four (4) votes. The legislature, you need twenty-six (26) in House and thirteen (13) in Senate, and it not going to happen, certainly not anytime soon, but not to say we should not try. In the meantime, we have a responsibility here and I think we should do everything in our power to try to come up with a solution that is fair and equitable, period. Thank you. I support a deferral.

Councilmember Yukimura: I support a deferral.

Council Chair Rapozo: Oh okay, I thought...

Councilmember Yukimura: Are we ready for a motion?

Council Chair Rapozo: We already have a motion. The motion is to approve.

Councilmember Yukimura: Yes, but if we defer, then we need a motion.

Councilmember Kualii: I am ready to vote.

Council Chair Rapozo: You are ready to vote. Okay. Are you ready to introduce the amendment?

Councilmember Kualii: She wanted a recess.

Council Chair Rapozo: Yes.

Councilmember Yukimura: No, and there were some loose ends that I wanted to work on too, but the main thing is the amendment that I have prepared that I need to alter. Can we just refer it back to Committee?

Council Chair Rapozo: I...

Councilmember Yukimura: Oh, our agenda is already set.

Council Chair Rapozo: Yes. We can do a two (2) week deferral.

Councilmember Yukimura: We can refer it back to...

Council Chair Rapozo: We can do a two (2) week deferral to the Council.

Councilmember Yukimura: Okay, that is fine.

Council Chair Rapozo: If you are going to defer it, I would suggest that.

Councilmember Yukimura: Okay.

Council Chair Rapozo: Is there any more discussion?

Councilmember moved to defer Bill No. 2619, Draft 2, seconded by Councilmember Chock.

Council Chair Rapozo: No discussion. Let us do a roll call.

Councilmember Kagawa: Council Chair, I have a process question.

Councilmember Yukimura: Is there a problem?

Council Chair Rapozo: Yes, Councilmember Kagawa.

Councilmember Kagawa: We did not offer public testimony. There are people that have been waiting from 8:30 a.m.

Council Chair Rapozo: No, we did.

Councilmember Yukimura: No, we did on the previous bill.

Councilmember Kagawa: No, not on this Bill.

Council Chair Rapozo: I am sorry. I apologize.

Councilmember Yukimura withdrew the motion to defer Bill No. 2619, Draft 2. Councilmember Chock withdrew the second.

Council Chair Rapozo: With that, I will suspend the rules. I apologize. It has been a long day. Do we have registered speakers? Thank you, Councilmember Kagawa, for reminding me.

Councilmember Kagawa: No problem.

Mr. Bernabe: Matt Bernabe. First, I would like to apologize for being lost earlier. I was confused of the similar bills on the agenda. I would like to start off with, I like this second draft a lot better than that other one. There was some language that has been cleaned up. I will go over a few areas that I still have some concerns and things that I want to point out. As the Chair pointed out that...and I so appreciate his compassion of the history of this subject, it is hard to say who is to blame; the County or the operators. In the very first section, the very first sentence, "The

Council finds that their own General Plan was flawed.” Then it goes to, “The General Plan implementing actions for non-conforming alternative visitor accommodations.” Right there, we have the language and I have already read testimony that was right out of the 2000 plan that points out that the County is partly, if not a big portion of the blame, for where we have ended up currently. With that said, I like this bill a lot more, but regarding some of the areas that was actually named in the 2000 plan – that is where you have to watch out too. Areas in Moloa‘a were literally the example of what this conundrum is. So, I would be careful moving forward in that area. Now, towards the end of this, the fund; the transient accommodations enforcement account, I like the fact that it is to fund enforcement; however, when you reach two hundred fifty thousand dollars (\$250,000) and it goes into the General Fund, I do not see any language that dictates where it is going, how will it be monitored, it just gets lost into the fund there, and I would like to see that since we have been talking about roads. We should have it earmarked for it to go to roads or something. Something more specific. Just funneling it back to the General Fund, I would like to see some tightening up on that language there. There was another thing I wanted to point out, but maybe I will remember it by round two (2). Thank you.

Council Chair Rapozo: Thank you. Next.

Ms. Fountain-Tanigawa: Lorna Hoff, followed by Eddie Henry.

Ms. Hoff: Here we go. I would like to go back on all these bills you are looking at. I would looking at your Tourism Strategic Plan for 2006 – 2015. If people will have to prove that they went in to ask for permits and they were not...and we keep saying they were not there, why would the Kaua‘i County Tourism Strategic Plan that was done by people we paid say in here on page 23, 1(g) that they support the development of regulations to appropriately license, monitor, and enforce B&Bs and individual vacation units? They are supporting this development that is evidently not in place. Thank you.

EDDI HENRY: Thank you. Mr. Chair, thank you for your comments earlier recollecting those times with the whole TVR fiasco. I am sorry, Eddi Henry. That is the way things happened. I do not know if the process has it such that you can ask us questions, because the questions you asked...no? Because if you really want to know what is going on, why not ask the people that have applied for these permits, like myself and the nine (9) others that are in contested-cases? We are going through it. You are relying on information from the Planning Department to make decisions on this very important matter. The problem is that the Planning Department is less than forthright as to how this whole thing came down. I even expressed personally to Mr. Trask that he is advising you incorrectly, based on the misinformation that the Planning Department is giving you. Mr. Chair, you expressed that in the past, with the whole TVR situation, you folks got wrong counsel advice. You got misinformation from the Planning Department. You folks are going down the same road again, which all of you are trying to prevent from happening. I turned in my application and part of the special permit process has five (5) questions, very specific, as to whether or not they can approve for the special permit. Let me read to you because it briefly describes what I am trying to describe happened with the Planning Department. Item for the special permit asks, “Unusual conditions trends and needs have arisen since the boundaries and rules were established.” I explained and this is for the Planning

Commission, this is under testimony, this is absolutely the truth. Upon purchasing the subject property in 2006, I applied for a use permit. I was turned away as the process was in limbo at the time. In 2008, a much anticipated ordinance differentiating between TVRs and owner-occupied properties which was termed "homestays." The ordinance stated homestays would be addressed at a later date. Pressure from the community initiated the County Council to address the lack of enforcement of illegal TVRs.

Council Chair Rapozo: Excuse me, I have to stop you there because your first three (3) minutes are up. Do we have anymore registered speakers?

Ms. Fountain-Tanigawa: No further registered speakers.

Council Chair Rapozo: Is there anyone else wishing to testify for the first time? You can come back after everyone for a second round. Thank you.

Ms. Boilini: Alexis Boilini, for the record. Councilmember Kaneshiro, I just wanted to mentioned that in 2006 there was no process in 2006. As a matter of fact, there was not one (1) permit issued from 1999 to 2014. There were only eight (8) total from 1988 – 1999, so there really was not a process. I wanted to make that clear. Last week, at the May 11, 2016 Committee Meeting, Deputy Planning Director Hull was kind enough to read an opinion from the General Plan in 2005, which stated that agricultural district Chapter 205(6) provides opportunities for developed use, now found in 2005. He commented after he read that that the Planning Department does not interpret the language the same as the General Plan did in that case. Today, I brought in and you have it, the Attorney General's opinion number 6337. The opinion states that in 2009, "special permit petitions are intended to allow certain unusual and reasonable uses within agricultural and rural districts. Its purpose is to provide the landowner relief in exceptional situations that would not change the essential character of the district, nor be inconsistent therewith and basically analogous to a variance. Its function is not to effectuate a boundary change to create a new district. Such powers are legally vested in the Land Use Commission to be exercised under different procedures and different criteria." Members of the Council and Planning Department keep saying, "The County must follow the State law." I think it would be a reasonable request for the County to ask the Planning Department why they felt they could simply recommend a blanket denial of all homestays and B&Bs on agricultural land without them having their proverbial right day in court. It has been over a year and, my piece of property, which is an eighty percent (80%) slope of an acre piece of property, and it is "E" soil. You have to climbing ropes to get down to our only two (2) planted trees, which are avocado trees and my husband uses mountain climbing ropes and we only grow them because they are over our cesspools, which apparently we are going to have to change. So, I am just saying that there are those unusual situations and we were not even given a site visit yet. It has been a year and a half and it said there is a required site visit. I have requested that several times and my answer was that it was not appropriate at this time. I just wanted to bring up that part. Thank you so much.

Council Chair Rapozo: Thank you.

Councilmember Yukimura: Question.

Council Chair Rapozo: Excuse me, Alexis. Councilmember Yukimura, restate or rephrase, please, no...

Councilmember Yukimura: Do you have a copy of the 2009 Attorney General (AG) opinion if you could make that available?

Ms. Biolini: I do. It is attached to my testimony, which I passed out.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Anyone else wishing to speak for the first time?

Councilmember Yukimura: It is not attached.

Ms. Barton: Elizabeth Barton, again. I apologize for my previous testimony should probably have been for this Bill and not the previous one. The thing about the homestays being only in the VDA, I think why the Planning Department has not been inundated with permit requests is because people there do not homestay, they vacation rent. People do not live there to rent out rooms, they have a house there that they never live in and they vacation rent it. The other thing is with the permitting process, obviously, if we are not in a VDA then there seems to be no point in even applying. I think that is why a lot of people have held off. They are not sure what is going on. Is it VDA? Are we going to be able to get a permit or apply for a permit if we are not in that area? I think the Planning Department has not been easy to deal with and they also have made the things that we need to be compliant with, almost impossible for a house to have all of the boxes checked. For instance, if you have a cesspool, forget about it. I have a cesspool, my house was built in 1985, and that is not that long ago, but the County was still okaying cesspools. I do not think septic tanks in my area came in until after that. Should I not be able to get a permit because I have a cesspool that I had absolutely no problem with and the people next door with a septic tank have to pump every six (6) months? It is very difficult and I think that the overrule process is for people to be able to continue to live in their house and make a little bit money. That is all we are trying to do. We are just trying to make a living, pay our taxes, be responsible citizens, and be able to stay here. We are not big business people. We are not big profit-makers. We just need an easy process that we can actually fulfill to be able to be outside the VDA and be able to get our permits without being hugely restricted by the number of things we have to comply with. Thank you.

Council Chair Rapozo: Thank you. Anyone else for the first time? Second time?

TINA SAKAMOTO: Good afternoon, Tina Sakamoto. This special class is being portrayed as long-time, law-abiding residents who want to generate extra income by renting out a room as a homestay. I think we should take a closer look at this special class because it would appear that it is a commercial business owner with a designed home to accommodate Transient Vacation Rentals or altered to accommodate. Somehow some have illegal lockout private separate entrances on agricultural land, three (3) to six (6) homestay rental rooms, self check-in, owners off-island during the homestay operation, and did operate without the proper permits; therefore, they

benefited financially for a period of time. This land permit in perpetuity is going to raise the property assessments, which will affect the surrounding residential owners by creating a higher real property tax. A point in case is one (1) being sold for over two million dollars (\$2,000,000), so that is going to affect the residential homeowners, they are going to have to pay higher taxes based on that sale. I think that is may be a more accurate picture and I think what you are forgetting is those people are local residents who chose to follow the law and are not afforded this special class treatment. They have lost revenue. They lost opportunity to have something, which these people benefited illegally, so they have suffered damages. When you are talking about this special class, I think you have to take a better look at actually what you are trying to provide some preferential treatment to illegal operations. Thank you.

Council Chair Rapozo:

Thank you. Anyone else?

SAM LEE:

For the record, my name is Sam Lee. I do not know where to begin, but I will start in the middle by saying that I have heard so much discussion about what the General Plan said. Today, I heard for the first time what the Kaua'i Tourism Plan stated. Neither of those plans have any effect of law. They are advisory plans that the people and the government of this county can take or leave. Generally, it serves as a useful guideline for policymakers like yourselves, but it does not equate to law. The law in this case, in most of these cases, is a state law applicable to agriculture lands and to the zoning code which specifies that Transient Vacation Rentals of all sorts should be confined or are to be confined to the VDA. That has been on the books for years and years and for whatever reason, good or bad, what has happened is that it happened as a result of lack of enforcement, like the previous testifiers stated. Meanwhile there are thousands of us who live in and amongst or are surrounded by an unknown number of TVRs and B&Bs. To say that this class, as it is being proposed, will be limited to nine (9) or maybe more realistically seven (7) people, to me makes no sense whatsoever. When I pose to you the question, "How many unpermitted B&B operations are there out there? Whether they be in the Residential zone or the Agriculture zone." The answer is, none of you folks, none of us in the audience know, and neither does the Planning Department know. How in the world, if you open the door by creating a special class that there might not be...you know...five (5), ten (10), or fifty (50) who are longtime operators on agricultural land or whatever the criteria is that you want to set that will not come forward and say, "Listen, my circumstances are exactly the same. I have not chosen to come forward and speak; however, my situation is no different."

Council Chair Rapozo:

Thank you. Next speaker.

CAREN DIAMOND:

Good afternoon, Councilmembers. Caren Diamond. First, I want to say I support Bill No. 2619, Draft 2 and I would ask you to support it. I would ask you to support it today without amending it, specifically. In reading the amendments that were proposed besides them being almost exactly what was proposed last week at the Committee Meeting and not approved, it feels especially wrong. I feel like we are missing a bunch of history here. We are missing what zoning is all about. We are missing what planning is all about. This is not a new issue and transient accommodations and the problems associated with it have been rampant in our communities for a while. When the Council passed the laws in 2008, that was after a lot of study, a lot of stakeholder meetings, a lot of consultant groups, and a lot of people

that came together to come up with some plans. One (1) of the reasons that...I will read and quote, "The B&B issue was separated out from it because it already had a process," and the process was called the use permit. It was a process that was legal. It was a process that was required by the CZO. It was a process that was also being followed by people at the time. When the Council took B&B out and made the laws for TVRs, essentially it was not because they wanted to stick everybody on the side and said you do not need anything. It was because you already had that requirement. That is why the B&B was separated from the rest of it. I do not think it was any responsibility of anybody else after that to make sure that B&B owners came into compliance other than their own selves to come in and submit applications and go through the Planning Commission process that was available. That process was available then and it is available now. With the amount of transient accommodations that have really deteriorated and impacted neighborhoods, this Council should make the decision that we really do not need any more transient accommodations in residential areas. That is just what I ask you to do today. Thank you.

Council Chair Rapozo: Anyone else of the first time? Anyone else for the second time? Please come up in the order that you spoke the first time. Who was first, Mr. Bernabe?

Mr. Bernabe: Matt Bernabe for the record. I remembered what I wanted to say. There is a section in here that is being taken out. There is a line in there that I like that I think is honest and should be more exploited and the testifier right before me can point out what she just did, but the fact that we grandfathered in TVRs that have illegal grandfathering in, if we were to look at all of that, just makes this B&B argument even more strong. I will say the word...although the Council bifurcated the issues of homestays and the TVRs, why did they do that. That is the history we want to look at more than just this little on the surface rationale that we just heard. If this was race; white and black or if this was local and transplant, this would be polarizing, but this separation of how we treated one (1) entity and the other entity, other than that fact that it is one (1) person that lives onsite versus in many cases an LLC that is not even here in the County owning the property and profiting. They are inflating the value of the rest of us by just upping the rent. It is not just about sales at this point. I think that should not be taken out, it should be incorporated somewhere so that we know that as a county we made a mistake and we treated these two (2) people differently. That is what this all boils down to and I think that is what Council Chair was trying to allude to earlier. At a certain point, us the County, if it is the Administration, the Planning Department, or the seven (7) Councilmember at any given time, we are part of the problem that we are dealing with right now. If we are going to ask, "Who do we blame? Who do we believe?" In my opinion I have enough language written that I can blame the county as being really a big part of this. I just think that you folks have to be careful because when you folks go and put in language and I do not have to repeat it, to entice somebody to come and create the business or enterprise, which is the catch. If you turn these people down, we might end up owing them the loss of potential revenue. I am pretty good with law. I am not a lawyer. I have a lot of lawyer friends who are good lawyers and I talk to them. Be careful County. Be careful.

Council Chair Rapozo:

Next.

Council Chair Rapozo, the presiding officer, relinquished Chairmanship to Councilmember Kagawa.

Councilmember Kagawa: We will take a one (1) minute recess until Chair comes back.

There being no objections, the Council recessed at 4:38 p.m.

The meeting was called back to order at 4:45 p.m., and proceeded as follows:

Councilmember Kagawa returned Chairmanship duties to Council Chair Rapozo.

Council Chair Rapozo: I apologize for my quick departure, but mother nature called. Go ahead.

There being no objections, the rules were suspended to take public testimony.

Ms. Boilini: I just wanted to mentioned a couple of things. There was a comment that said that the CZO said that B&Bs needed a use permit. The CZO today still has no use permit process under this...Bed & Breakfasts are not required under the graph in chart of structures needed a use permit process, to this day, it is still not in there. I just wanted to dispute that. Another comment that was made was that none of us know how many B&Bs there are in this room and that is not true. We know how many B&Bs there are. There are only three (3) B&Bs on this island and everybody keeps confusing us. There are three (3) bed and breakfast on this island. The language for bed and breakfast, and the reason I am bringing this up is the use by the record own of property who is also the resident of the property or the use is proposed, the thing I have a problem with is being a bed and breakfast as opposed to a homestay, a homestay might have one (1) bedroom or a couch or whatever, and they are at home... but you are talking about a bed and breakfast of two (2) or three (3) rooms, in my case three (3) rooms and we are a business. I have always told you. It is around the clock service that we are giving. It is twenty-four-seven (24/7). To say that I have to be there twenty-four-seven (24/7) and I can never go on a vacation is really...that is a restriction that would be very difficult for me that might not be difficult for a homestay. I do have a stand-in innkeeper, a babysitter, so to speak. If I have to go home, my mother died this year and I had to be there quite a bit and I wanted Michael to be with me, I cannot just turned away the people who have made reservations a year in advance. There needs to be something to massage in that way. I hope you will all do that. What else was I going to say? That is about it. We sit here and we sometimes complain and we are trying to state our cases, but I do want to mention how I appreciate the thoughtfulness today and really trying to get to the bottom of this and hammer it out. I hope that you continue doing it because we have been in business a long time. We have been on the island for a long time and we want to continue the business. Our guests wants us to continue it. It is really important, I think, to have bed and breakfasts still on the island and most of the people that complain here really do not know what a bed and breakfast is. They still think that we are TVRs and I know that is a problem, but we have never been a problem. We never had any complaint and as far as I am concerned, I think they are great on agricultural land because we are so far from any

neighborhoods and there is no noise. Thank you. I do not know what else to say, but thank you.

Council Chair Rapozo: Thank you. Anyone else for the first time?

JULIE SOUZA: *Aloha* Council. Julie Souza for the record. I just want to say that it is neither here or there. We made a mistake with the TVRs. We should not make the same mistake with grandfathering these bed and breakfasts in. I attest to the fact that because these TVRs were grandfathered in, all of a sudden my neighborhood is just TVRs, and I am the only one (1) there. I cannot sit here quietly to say and think that we only have three (3) bed and breakfast here, but that is not the point. We have more. We have lots more that we know of. I pray that we do not make the same mistake again by letting these be grandfathered in. Leave our bed and breakfast, whatever TVRs in the residential area, not on agricultural land. Agricultural land is for agricultural land. We should not be here helping pay their mortgages, which is what it comes down to. We are paying their mortgages, not helping these people that are coming from the mainland. Put them in the hotels. That is where we get our revenues from, mostly, on more ways than one. I know you folks had a long day and you must be saying, "Enough already," but thank you very much.

Council Chair Rapozo: Thank you. Anyone else first time? Second time?

Ms. Henry: Eddi Henry. I do not even know where to go after those testimonies. The previous testimony from Mr. Lee and from the community, once again, the problem is TVRs, non-owner-occupied properties. We are not advocating that commercial usage be in residential. Residential is zoned residential. They keep saying that we are basically still breaking a law, there was a use permit process back in place then and there is now. Yes, there was a use permit process. The problem is that the Planning Department was not processing any of the applications. The last...and this is in black and white, clear as day, the last use permit was issued in 1998 from the records from the Planning Department. I do not know what else you need to show that they have not processed use permits regardless of us applying. When I went to apply for my permit, Mr. Hull brought to my attention the non-process application back in 2006 in my file that they did nothing with, which he said he would retain in my file after he had consulted with County Council and I had legal ground.

Where I left off is the number 4 question for my special permit, "Describe the situation as brief as possible." Upon purchasing the subject property in 2006, I applied for a use permit. I was turned away as the process was in limbo at the time. In 2008, a much anticipated ordinance differentiating between TVRs and owner-occupied properties which was termed homestays at the time. The ordinance stated homestays would be dressed at a later date. Pressure from the community initiated the County Council to address the lack of enforcement of illegal TVRs. In response, the Planning Department and a clumsy vigor mistakenly targeted homestay operators, innocent law abiding homestay operators became collateral damage for the sins of the TVRs and lack of departmental effectiveness of the Planning Department. It is clear that we were not given due process.

Council Chair Rapozo: You have thirty (30) seconds.

Ms. Henry: This is the process we are going through now and we are just a handful of Bed & Breakfasts regardless of this deluge. Remember, there are only ten (10) applications a year, and they thought all of these people were...it is just a handful of us, Bed & Breakfast. We all refer to each other, we know each other; nine (9) plus myself. The nine (9) contested-cases. We are on agricultural land, not residential.

Council Chair Rapozo: Okay. That is your six (6) minutes.

Ms. Henry: Okay. Thank you.

Council Chair Rapozo: Who was after? Elizabeth Barton, did you want to go again? You do not have to.

Ms. Barton: Elizabeth Barton. It was referred to just recently in the news that people that people that stayed in homestays, Bed & Breakfasts, like Airbnbs and things, and I think it was in Honolulu, actually spend more per head than people that stay in hotels per day. That was all.

Council Chair Rapozo: Thank you. Tina.

Ms. Sakamoto: Tina Sakamoto. I will make this quick. Ignorance of the law is no excuse. There was a process in place to allow homestays and permit them. Some choose to follow it and some did not. If there is no evidence, if there is no basis to prove what the he said/she said – then we really do need to follow the process of the law. I urge you to pass Bill No. 2619, Draft 2, without the amendment. We have been going through this recently for over a year and much has been just repeated. I think you need to take action and again, I am urging passage of Bill No. 2619, Draft 2 without an amendment. Thank you.

Council Chair Rapozo: Thank you. Next.

Ms. Fountain-Tanigawa: Sam Lee.

Council Chair Rapozo: Mr. Lee did you want to testify again? Next. You do not have to if you do not want to. I am just going down the list so there is some order in the court.

Ms. Fountain-Tanigawa: Caren Diamond.

Council Chair Rapozo: Caren Diamond. Okay, next.

Ms. Fountain-Tanigawa: Julie Souza.

Council Chair Rapozo: Julie? Thank you. Next.

Ms. Fountain-Tanigawa: That was the last speaker.

Council Chair Rapozo: That was it. Did you want to testify again? Ms. Hoff, did you testify? Oh, you did twice already.

Ms. Fountain-Tanigawa: She skipped her turn after Matt.

Council Chair Rapozo: Did you want to speak again? Okay.

Ms. Hoff: Lorna Hoff for the record. In listening to everyone, as a taxpayer and there is no money in all this talk...I appreciate the fact County Attorney Trask became an attorney and became an attorney to go into trial law. But as a taxpayer, I become concerned when people in our government have the tendency to not consider the repercussions what it will cost the taxpayer. I have to agree with Sam Lee and Julie Souza. I do not want any more TVRs anywhere. If you made a mistake with the TVRs, then you made a mistake and you grandfathered them in. B&Bs and homestays have that right that the TVRs did. Ms. Sakamoto said that you suffered damages, well if a home sold for two million dollars (\$2,000,000) that was next to you, the way I look at that is if you have your house appraised or for sale or whatever you choose to do, that appraisal for two million dollars (\$2,000,000) is going to up the cost of what your house is worth. What Ms. Sakamoto said about this permitting...

Councilmember Yukimura: Sakamoto.

Ms. Hoff: Excuse me...she said everything is not black and white, it is a he said/she said, but when I listened to Ms. Henry before me, she has it in black and white and it is written that there was no permitting in place. These things really have to be considered and looked at not on face-value, but just to save the taxpayers money and maybe we can have those really nice roads. This should be really thought out. *Mahalo*.

Council Chair Rapozo: Thank you. That ends the public testimony.

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

Council Chair Rapozo: I am sorry. Mr. Lee.

There being no objections, the rules were suspended to take public testimony.

Mr. Lee: Hi, it is Sam Lee again. I was sitting back there listening to testimony and just thinking about this a little bit. My personal experience, I am not talking about somebody told me this, I have heard this said from high county officials including members of this Council, the highest authority in terms of County law, highest officials in the Department of Planning of this County all saying that there was a process in place to obtain legal permits since the '80s. In fact, we also heard that there were somewhere between six (6) and a dozen people who actually took advantage of that opportunity, applied, and received permits. What I am getting around to wondering is this discussion about what the County should have done, could have done better, and all of this really boils down to the fundamental question – was there valid law in place? Was there a process in place? What answers were given or were not

given is discussion as far as I am concerned. We have law and process that has been on the books for many, many, many years. What I am asking what the rest of the residents and farmland owners on this island are asking is...we are not asking for any favors. The people out in the community. We are asking for you folks to abide by the law. That is all. That is it. We have no excuses. We have no axes to grind. Just follow the law, please.

Council Chair Rapozo: Thank you. With that, I will call the meeting back to order. Councilmember Yukimura.

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

Councilmember Yukimura: Could I ask for the Planning Department to answer one (1) question?

Council Chair Rapozo: Planning Director. I know we took an unexpected break, but we did not call it a caption break, so the captioner did not get her break and we are set for a caption break at 5:00 p.m. Let us see if we can move this as quick as we can.

Councilmember Yukimura: I just want to ask if...because there was testimony in this period just came to us that no use permits for homestays were issued between 1999 and 2006, is that correct?

There being no objections, the rules were suspended.

Mr. Hull: I do not have the specific records on that.

Councilmember Yukimura: We want a follow-up. In fact, I would like to know how many permits for homestays were issued from 1980 to 2008.

Mr. Hull: I can tell you the number I do have as of this date, we have had forty-four (44) complete applications reviewed...

Councilmember Yukimura: Right.

Mr. Hull: ...by the Planning Department.

Councilmember Yukimura: Right.

Mr. Hull: Twenty-one (21) of those received approval.

Councilmember Yukimura: Yes, thank you for that information. If you could just get us information on how many use permits were issued between 1980 and 2008 and then 2008 to...when did you start your TVR enforcement – 2014? Okay, thank you.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: When we were in Committee, the amendment was floated that was in disagreement with the Planning Department. I have been told that a new amendment is being proposed and I just wanted to make sure that we are headed in the right direction, if we are going to defer. What I did not hear in the last discussion was that you folks had been working together and there was an opinion properly vetted by the County Attorney. We said we were going to move in that direction, but it got deferred. I got assurances that it is a different amendment, but if the same amendment is floated or the same direction that we were in, what the concerns are and what the outcome is from your perspective...the concerns I heard you vet, actually today.

MICHAEL A. DAHILIG, Planning Director: I want to first state that the Department has always been concerned about equity. Mike Dahilig for the record. In the application of the law, we take the black letter of the law very seriously. So, when we look at Ordinance No. 864, what is clear in the preamble as decreed by the Council was that there was always a process for this. To create a new grandfathering mechanism while you had a consistent process running pre-2008, would in effect create a situation that would de facto open the door for many, many individuals to come in to this process. As much as we have tried and asked time and time again, how to create or carve out exceptions, we from an equity standpoint of the law cannot open up the process for a limited amount of people – we have to let it open. If there is any lesson we have learned concerning after-the-fact grandfathering is that after-the-fact grandfathering is fraud for misrepresentation, fraud for submittal of incorrect information, and led to in effect a situation where our Department was almost brought to its knees because of the implementation of that information. What is proposed in this amendment is similar to those items that created a whole lot of litigation for the County. In fact, it cost thousands and thousands of dollars. You can probably get that information from the County Attorney. If the amendment is substantially similar to what has been proposed constantly to try to grandfather and carve out an exception of people that have already been available to a certain type of process and to tie it back to pre-2008, I will have no choice, but to recommend a situation that the Bill not be signed by the Mayor. We have tried and tried again to try to figure out how to do this and believe me, there has been a lot of sweat equity put in by my Deputy Director, as well as myself, and the Office of the County Attorney to try to meet that objective. Again, without any judgement of whether it is right or wrong, how we provide that exception is what we were having trouble with without opening the door for a pre-2008 opening of all...potentially existing grandfathered Bed & Breakfast owners to come in and say, "Here are my documents. Please give me my permit."

Councilmember Chock: Okay. Thank you.

Councilmember Kagawa: It seems like we are going to try to finish it today.

Council Chair Rapozo: Yes, we are. We are going to finish it today.

Councilmember Kagawa: Maybe we should take the caption now. If you said the caption was at 5:00 p.m., she is going to get another fifteen (15) minutes of questions. We might as well take the caption break now.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: I am not supportive of a deferral to do the same thing that we have done in the past.

Council Chair Rapozo: Right, I think I have heard enough that we are going to move today.

Councilmember Chock: If there is a different direction that is fine. I know the concerns that have been voiced, they are my concerns as well, but if this is the road, I want us to look at a different way. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Mike, were you not the County Attorney in...

Council Chair Rapozo: As far as process, if we are going to take more time, I will need to take a caption break.

Councilmember Yukimura: Okay. Are you asking me something?

Council Chair Rapozo: I thought you were going to respond as far as moving forward or are we ready to wrap this up, if not, we are going to take a caption break.

Councilmember Yukimura: Take a caption break.

There being no objections, the Council recessed at 5:08 p.m.

The meeting was called back to order at 5:18 p.m., and proceeded as follows:

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I thought we were going to defer, so I have not worked on my amendment and I need time, and so I move to defer.

Councilmember Yukimura moved to defer Bill No. 2619, Draft 2, seconded by Councilmember Hooser.

Council Chair Rapozo: Roll call.

The motion to defer Bill No. 2619, Draft 2 was then put, and failed by the following vote:

FOR MOTION:	Chock, Hooser, Yukimura	TOTAL – 3,
AGAINST MOTION:	Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 4,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: We are back to the main motion. Like I said almost an hour ago that if we were going to defer, we were going to defer an hour ago,

we went into the discussion; a lot more discussion, so we are going to go until we vote tonight. I do not think we need any more deferrals other than to work on amendments. Councilmember Yukimura, I will give you the time to work on your amendment at this time, we can take a recess, but we are going to finish this tonight, as was indicated by the failure of the vote to defer. Any further discussion? The motion on the floor is to approve. Councilmember Kaneshiro.

Councilmember Kaneshiro: In regards to my question earlier, the point I got was that the fact is there is a process now for a use permit and everyone has had a fair chance to apply for that. I feel like we are going in circles and we are trying to circumvent the system. Everyone is open to apply for that now, a lot of people have, and maybe they got a recommendation that they did not like and now we are trying to circumvent it. I feel like we are going in circles. We heard from our County Attorney. We heard from the Planning Director. We heard from everyone as far as are we able to circumvent it and it seems like the answer is no. We have been dealing with this from 2015, I believe. It is not fair to keep everybody hanging this long. It is pretty torturous.

Council Chair Rapozo: The circle is going to stop tonight. I can guarantee that one way or the other. I agree. To have people keep coming and coming and coming...with no more information, it is just the same circular discussion. We are going to vote on this tonight. Is there any other discussion? Councilmember Yukimura is going to work on her amendment. Have you folks taken a look at the proposed amendment or the thoughts of the amendment, or the idea, or concept?

There being no objections, the rules were suspended.

Mr. Hull: All we have is the language that was presented today, but it is virtually the same language that was presented in Committee.

Council Chair Rapozo: Okay. Did that fail in Committee?

Mr. Hull: Correct.

Council Chair Rapozo: Any other discussion? Councilmember Yukimura.

Councilmember Yukimura: I am working on the amendment. Can I have fifteen (15) minutes?

Councilmember Kualii: I have a question.

Council Chair Rapozo: Go ahead.

Councilmember Kualii: It would not make sense for this to be the same amendment, it would not change my...

Councilmember Yukimura: It is not the same.

Councilmember Kualii: Okay.

Council Chair Rapozo: Any other discussion? Okay. We will take a fifteen (15) minute recess.

There being no objections, the Council recessed at 5:21 p.m.

The meeting was called back to order at 5:38 p.m., and proceeded as follows:

Council Chair Rapozo: I will call the meeting back to order.
Councilmember Yukimura.

Councilmember Yukimura: Just to verify, there is a motion to approve on the floor, correct?

Council Chair Rapozo: Yes.

Councilmember Yukimura moved to amend Bill No. 2619, Draft 2, as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 3, seconded by Councilmember Hooser.

Councilmember Yukimura: May I?

Council Chair Rapozo: Sure.

Councilmember Yukimura: With deference to the County Attorney's concern, I changed the Findings and Purposes. I hope it is better per his opinion. Then the substantive changes are on page 2, Section 8-18.1(b) and this creates a class of homestay operators who will be allowed to apply for homestay zoning permit under this ordinance to operate their homestay outside of the VDA, if they can show that: (1) "They have been paying transient accommodation taxes and excise taxes since 2008, (2) Their completed application was accepted by the Planning Department by December 31, 2015," which I believe was the deadline for the ten (10) that had to be applied for per year. "(3) Their operation meets the development standards for homestay specified," in this bill which we are considering, (4) If they are located on land zoned "Agriculture," the soil on the agricultural lands are classified as Class D, E or U," which triggers the State Land Use law which allows reasonable non-agriculture uses, of these Class D, E or U lands, and the owners simultaneously apply for that special permit under Section 205-6.

Council Chair Rapozo: Discussion? Councilmember Kagawa.

Councilmember Kagawa: I want to hear the Planning Department's take on this amendment. What is your feeling? Do you support it? If it does pass, this body, is your plan to still recommend veto by the Mayor?

Council Chair Rapozo: The rules are suspended. Go ahead.

There being no objections, the rules were suspended.

Mr. Hull: I guess we need clarification from Councilmember Yukimura. I do not see any difference between what was presented in Committee and what is now being presented today.

Councilmember Yukimura: The main difference is that they will be allowed to apply for a Class I zoning permit, which is the permit that is allowed under this ordinance. So, it is not a use permit, which has been said to be repetitive to what they are already going through.

Mr. Hull: Essentially, it is just changing the permit.

Councilmember Yukimura: That is a big change.

Mr. Hull: But there is no change in the overall policy.

Councilmember Yukimura: It is a...

Mr. Hull: It is still looking at the same group of requirements.

Council Chair Rapozo: Okay, so getting back to Councilmember Kagawa's question...

Mr. Hull: The Department could not support this.

Council Chair Rapozo: Okay.

Mr. Hull: And further, I think too, the Director's discussion on...the overall saying that there are things in here that are moot and inapplicable, but then further to the Director's discussion concerning the litigation aspects as well as the deluge, I can defer to him.

Mr. Dahilig: Mike Dahilig for the record. If asked on this compared to the previous amendment that was proffered, we believe that the concerns are substantially the same as the last amendment and could not support this amendment as written.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Just to clarify then, one (1) of your concerns was that this would open up a floodgate to a lot of other applications that would cause a big processing burden on your Department? That is one (1) right?

Mr. Dahilig: The potential is there, correct.

Councilmember Yukimura: Okay, one (1) is the floodgate, and then two (2) is? What is the other concern?

Mr. Hull: The others were the same thing we provided on in Committee. When you look at Subsection (b)(2), "Their completed application was

accepted by the Planning Department by December 31, 2015.” There are array of applications that already have been accepted and being complete and are through the process right now, which essentially you are trying to circumvent the process as it is to say, “they were required to have use permits.” They are going through the process and just to say, “No, here you have a Class I zoning permit,” which still does not address the fact that they still have to go through the Planning Commission for a special permit. Furthermore, again with Subsection (b)(4)...this is a moot point in that you have to get a special permit for these types of operations for all soils, regardless of Class D, E or U.

Councilmember Yukimura: And I am...

Mr. Hull: So to state it in a County ordinance is a...

Councilmember Yukimura: Okay. So, I do not think you understand the use of this requirement. It is limiting the class. It does not allow long-term homestay operators on Class A, B, and C lands to belong to this group. It is saying that only if you are on bad agricultural lands do you then have to get a special permit under Section 205-6. Because if you are on Class A, B, or C you do not belong to this class and you cannot get a permit. It is being used to be restrictive.

Mr. Dahilig: Even if that information was provided as part of the docet that is given to the Department to accept. As much as it has been referenced orally that this refers to a Class I permit, there is nothing that I can find in this proposed amendment that is specifically points to a Class I permit. But if it is a Class I permit, it essentially reduces the transparency for the public to understand what information is being heard by the regulatory body. You are going from a use permit to a Class I zoning permit and the Class I zoning permit is ministerial. All that information in effect does not get vetted publicly, will not be subject to contested case hearing to allow for interveners and those who are affect by the public to actually come in and say, “Hey, we object to the veracity of this information that is being provided.” I see this as changing the process and in fact makes the process less transparent because it actually creates a situation where the Planning Department is the reviewing agency or approving agency versus it going through public process and the Planning Commission.

Councilmember Yukimura: I understand...

Mr. Hull: Furthermore, Councilmember Yukimura, if I can also interject on Subsection (b)(2). You have essentially...

Councilmember Yukimura: Wait. Can we finish one (1) subject, which is the subject about the Class I zoning permit and then go on to that? The Class I permit is the permit that is required under this Bill, although it does not say so explicitly, which is one (1) of the things I wanted to try to fix too. It is basically per your testimony that for homestays within VDAs – it will be a Class I zoning permit.

Mr. Dahilig: So Class I zoning permit...

Councilmember Yukimura: So it just gives the people in this class the same rights as the people that will be applying for homestay permits under this law if this Bill passes into law.

Mr. Dahilig: I would concur with that statement in a sense that the current process for TVRs is if you are within the VDA to apply and obtain the Class I zoning permit, this would align those that are outside the VDA to the type of process for inside the VDA.

Councilmember Yukimura: Right.

Mr. Dahilig: The current Bill right now talks about those Bed & Breakfasts or homestays that are within the VDA that have the same rights as single-family TVRs. This would create a dichotomy where you would have non-VDA TVRs being outright prohibited and non-VDA homestays being required to have the same permitting process as the ministerial process within the VDA.

Councilmember Yukimura: That is correct and it will be for a very select group of people that have to meet these very strict requirements. In order to exam the floodgate issue, we have to see how many out there would qualify. I doubt that there is a whole lot, but I am open to receiving information to show me otherwise.

Council Chair Rapozo: Okay. The question was asked, the Planning Department does not support the amendment, and we need to move on.

Mr. Hull: If I could point out one (1) thing Chair on this amendment.

Council Chair Rapozo: Sure.

Mr. Hull: To be clear there is not a single person that could apply for...that this would be created for. That is what I was trying to say regarding (b)(2). It can only be described as a topological nullification in a sense that their completed application was accepted by the Planning Department by December 31, 2015. The County Attorney has presented to this body that if they are accepted under an old process and the law is changed, they are reviewed under the old process meaning they still have to go through the use permit process route. Now, if they decide to pull out and say, "I am going to go through the new process, they would reapply," and that time would be after December 31, 2015, meaning they could not apply for this. There is not a single individual because that requirement nullifies the whole root.

Councilmember Yukimura: I think...except that by putting this in the law, if it becomes law, it will allow them to be treated differently.

Council Chair Rapozo: We are not going to have a legal debate here. I can tell you that...I would not support this. I am going to be upfront right here because of the transparency. The special use permit process, I think, would be fair, but this process, there is no way that I would support an over-the-counter permit without any opportunity for the public to participate. Are there any questions? If not, I am going to bring it back to order and we are going to vote or discussion it.

Councilmember Yukimura: Council Chair?

Council Chair Rapozo: You have a question for them? Hang on.

Councilmember Yukimura: No.

Council Chair Rapozo: Are you done with them?

Councilmember Yukimura: Yes.

Council Chair Rapozo: Okay. Councilmember Yukimura.

The meeting was called back to order, and proceeded as follows:

Councilmember Yukimura: I am amenable to changing it to a use permit and that is what was in Committee. I understand your concerns, so if you would consider voting for it, if it is a use permit, I will withdraw this one and resubmit as a use permit.

Council Chair Rapozo: I was not here at the last Committee Meeting, but from what I understand, it did not pass the Committee. What is the discussion on that? Let us go around and not waste time on making an amendment that is going to fail. What is the discussion as far as...apparently you had it at the last Committee Meeting. Councilmember Kaneshiro.

Councilmember Kaneshiro: At the last Committee Meeting, I think there was no difference between the applicants that applied for a use permit now and then putting this amendment in and them applying for a use permit. They are still the same requirements and that is why I voted against it last week.

Council Chair Rapozo: Okay. I am just asking if anyone is interested in that amendment resurfacing. Anyone? Okay. Go ahead, Councilmember Hooser.

Councilmember Hooser: I am fundamentally interested in passing an amendment that would accomplish the goals that Councilmember Yukimura has described. I think she is making a good-faith effort to do that. Unfortunately, it is clear that the Administration does not support that and so we will not get support from the Administration to help us figure out the language. It seems like the County Attorney also feels this is not a good idea and so we are not going to get support there to help us solve the issue. I do think in time good people can sit down together and look at all the various paths to get to where we want to go and figure it out. I would like to, as you had mentioned earlier Chair, support a deferral and keep working on this. I will be supporting an amendment like I supported the last amendment as a statement of principle that I feel we need to have an end product that is fair and just, and attempts to deal with this very small group who has not been treated fairly or justly in my opinion. I will not be supporting an end product that does not deal with that. I realize where the wind is blowing on this Council and it does not look like it is going that way. I am not interested in beating a dead horse and spending hour after hour if the majority of this Council does not have the same motivation that I have or others might have around this table. It is the majority that is going to decide this and that is how I feel about this.

Council Chair Rapozo: Thank you. Councilmember Yukimura.

Councilmember Yukimura: I am willing to work with the Planning Department. Their concern about floodgate is a very legitimate one and I think I can draft something that can avoid it, but I need some data and I would ask for the data. I need more time.

Council Chair Rapozo: I am not sure what more you can do that is going to change the minds of the Planning Department. I think we heard clear from the Planning Department that they do not support this and in fact, they would recommend to the Mayor to veto. I see their point whether we agree or disagree. I am not sure what more can be done as far as data and what more information you need.

Councilmember Yukimura: In terms of data, I want to know about the applications that were denied and withdrawn, I want to see if they can come back under what I am proposing because I think they would be the ones that would be the potential floodgate. They numbered only sixteen (16), so I am not sure how much of a floodgate, but I would have to look at the specific situations to see how similarly situated or not they were in order to know whether they would qualify under these requirements that I have been building. My amendment last week was about they had applied by December 31st, Mr. Hull brought up the issue of completed applications, so I incorporated it into that. That is the process of creating amendments as objections and concerns comes up. You think about how you can craft it differently to address those concerns. That is what I am asking time to do.

Council Chair Rapozo: Does the Planning Department have the number of completed applications as of December 31, 2015? Do you know that number today? Okay. I am curious, what is the number? That would determine the floodgate right there.

Councilmember Yukimura: That is correct.

Council Chair Rapozo: How many completed applications were submitted to the Planning Department or accepted, meaning that they were completed, by December 31, 2015?

There being no objections, the rules were suspended.

Mr. Hull: The completed applications submitted were forty-four (44).

Council Chair Rapozo: How many?

Mr. Hull: Forty-four (44).

Council Chair Rapozo: Forty-four (44). So the potential impact to Kaua'i, should this pass, is forty-four (44)?

Mr. Hull: No.

Councilmember Yukimura: Twenty-one (21) have already been approved.

Mr. Hull: Well...

Council Chair Rapozo: Well, to qualify for this amendment, they had to have been paying TAT and GET since 2008, and their completed application was accepted by the Planning Department by December 31, 2015.

Mr. Hull: The concern is not those who have submitted applications, but also those that we have shutdown that decided not to apply.

Council Chair Rapozo: No, this is pretty clear. The completed application was accepted by the Planning Department by December 31, 2015.

Mr. Hull: Well...and that is what I was trying to point out, Chair, also with that specific language, nobody can apply. Because if they submitted a complete application, it means we have them in our process right now.

Council Chair Rapozo: Right.

Mr. Hull: Meaning, they are going to be reviewed. If the law changes after an application is complete, it is in the process and it is reviewed under that use permit process, so...

Council Chair Rapozo: Again, I will not get into a legal argument about that, but like I said, worse case scenario – forty-four (44)?

Mr. Hull: I cannot anticipate just that because it may lend itself open for other individuals to come at us with legal objections, being that they were not allowed...they decided not to apply, but were shut down by us.

Council Chair Rapozo: Any more questions for the Planning Department. Thank you.

The meeting was called back to order, and proceeded as follows:

Councilmember Yukimura: Chair, I appreciate that you can see that I am trying to make sure the floodgate does not occur. I think that is all our goals and I will have to work more on...I understand it was not my first choice to say it is a Class I zoning permit and I can work on that, but I need time.

Council Chair Rapozo: The amendment is on the floor. If there is no more further discussion, we are going to take a vote on this amendment.

The motion to amend Bill No. 2619, Draft 2, as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 3 was then put, and failed by the following vote:

FOR AMENDMENT:	Hooser, Yukimura	TOTAL – 2,
AGAINST AMENDMENT:	Chock, Kagawa, Kaneshiro, Kualii'i,	

	Rapoza	TOTAL – 5,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapoza: We are back to the main motion. Discussion?
Go ahead.

Councilmember Kagawa: I am going to support the original intent of the Bill to keep B&Bs in the VDA, but I also want to acknowledge that as I stated and I think the people that met with me have convinced me that something had to be tried to fix the problem. I do not see success with the County in the court of law – we seem to suck at that. I mean when you talk about all types of cases, yes, not one hundred percent (100%) of the time, but we really do not have a good track record, at least of recent history. Trying to avoid that was my goal, but having talked to the Planning Director, I have expressed to the Council to the people I met with, they even proposed some amendments that I have shared with the Planning Director and the answer from the Planning Department was, “I am sorry. This is an area that is difficult for us to support. Decisions have been made. We have listened to the Council tell us get a handle on the TVR issue.” When they sent the cease-and-desist letters out, it was to address the TVR problem. They did not want TVRs to get denied when they get cited for any misuse and to say, “Hey, we are a B&B.” They wanted to take away that loophole. This Council here almost did a Section 3.17 investigation on the Planning Department because we were so frustrated with the lack of movement on the TVR issue. It is not solely in Kaua‘i. It is statewide, big problem, Nation-wide as well. This is not an easy issue. It definitely is not something that is a good thing for society, for our County, but at some point, we need to have some type of regulations. That is sort of what Mr. Lee had expressed and I agree. We have to have a fair, legal process out in the open that...and certainly doing legislation to target certain individuals, I can see the problems with that. Not always do we see a problem and are able to fix it that way we see. Sometimes we just have to unfortunately take a step back, listen, and find another way of dealing with the problem and one (1) we brought up was possibly working with the State legislature. I do not know how realistic that is, but certainly it seems like some of these are agriculture properties that are not farmable. How do we, as a County and a State, help these properties to succeed without just relying on growing vegetables or animals when the property does not dictate that it is best use? Thank you.

Council Chair Rapoza: Councilmember Chock.

Councilmember Chock: Thank you. I will also be supporting this moving forward. I want to thank Councilmember Yukimura, I think that her intention is definitely something I support in trying to accomplish. I was just trying to write some of what I think has been discussed around the table and agreed upon in the process that has been before us and those that are in question. As I said, I did support a deferral because I think that more work needs to be done on it - that did not pass. I have to deal with what we have on the table and so if there is...I believe there is more work to be done even on this current Bill, but I do think this is a good first step to get things under control so that we can actually step back and plan for a better structure on how to move forward. Right now, we do not have a handle on it and we probably will never have a handle on it. At the very least what we can do is to create parameters for us to more easily administrate and that is something that not only the Council or past Councils

have asked for, but I think the Planning Department is trying to put a good first effort in it. I want to support this next step with the anticipation that it is just the beginning because a lot more work has to be done either at the state level or relooking at how we expand or classify the VDA or homestays and TVRs within those surrounding areas. With that, again, I will be supporting this. Thank you.

Council Chair Rapozo:

Councilmember Kaneshiro.

Councilmember Kaneshiro: I said it before, but we have been at this since last year. I really feel for the families that are being affected. The Hoff's, they are my family's neighbor. I had no complaints about their operations. I lived there our entire lives, but this is not about picking and choosing who we want and who we do not want to operate homestays. We are setting policy for the entire island here. I have heard that we are taking away private citizens' rights and people's needs for supplemental income, but we do have zoning laws that we need to follow. Agricultural land is for agriculture activities, Residential is for residential activities, Commercial is for commercial activities. If you are going to waiver from those, then you need a use permit. Unpermitted homestays have, even to this day, the ability to apply for a use permit. The process is in place and everyone has had a fair chance to apply for it. For me, I am not going to interfere or circumvent the process for the permits that are in the process. We do set future policy and our decision will be based on island-wide policy. Do we believe transient accommodations should be restricted to the VDA? I will voting in support of this.

Council Chair Rapozo:

Councilmember Hooser.

Councilmember Hooser: I will not be voting in support of it. I think the County has mishandled this badly from the beginning and the TVR issue and the hysteria if you would and they are very valid concerns about the TVR issue swept the Bed & Breakfast and the homestay people up in it. To my knowledge, this Council has never encouraged immediate or strong enforcement of this issue. We were very concerned about the TVR issue and then the County went out and issued cease-and-desist notices. Once you do that, then we are caught up in this whole legal thing. I think the County overreacted. People talk about fixing the problem, but I do not know what the problem is. We have asked several times from the Administration to tell us how many Bed & Breakfasts are out there? How many homestays are out there? What is the problem and we get shown charts and graphs or red dots all over the island only to find out that those red dots were TVRs. I think to this day, there was only one (1) Bed & Breakfast on the North Shore that I would recall anyone ever mentioning. That person potentially and a number of families, longstanding families, and members of our community who have dedicated themselves to our community and worked hard and they think they played by the rules will be put out of the business and seriously hurt financially, personally, and they do not deserve this kind of treatment. I do not know what the problem is. If the problem is noise, we deal with the noise. If the problem is parking, we deal with the parking. If the problem is changing the character of neighborhoods, then we restrict them to certain...for so many areas, but we do not solve the problem with a sledgehammer and hurt people ruining their lives as a result. I think it is a travesty. Even restricting them to VDAs, what is that? Does it limit how many can be in VDAs, so those neighborhoods that we talked about, Princeville and other neighborhoods where there could be an unlimited number of homestays there. We can

all talk about how badly we feel about these families and how much we want to help them and I think if we truly and sincerely felt that way, we could defer this measure and we can sit down with the Planning Department, the County Attorney, and various people to come up with a proposal that is fair, just, and does not open the floodgates, but deals with this problem that we have created, in my opinion, in a fair and equitable manner. I will not be supporting this at all. Thank you.

Council Chair Rapozo: Thank you. Anyone else?

Councilmember Kualii: I am supporting the Bill. The comment made today about after-the-fact grandfathering opening the door, I think that is a valid statement and that we should not make the same mistake that was made with TVRs. I appreciate everybody's testimony today. I appreciate the hard work of our folks and the Planning Department, and the County Attorney as well. I do think that sometimes in an effort to create fairness for a small special group in our community, you could end up creating unfairness for the community at-large.

Council Chair Rapozo: Anyone else? Councilmember Yukimura.

Councilmember Yukimura: It is reasonable to prohibit homestay operations outside of the VDA. That is a policy line that I can draw, but to penalize, criminalize, and treat longstanding residents of this island, who do not number a whole lot, if we can create a rationally-based class is a terrible failure of government, I believe. It is a difficult balance this thing about fairness and unfairness, but I believe we can find a way to make this law fair, not open the floodgates, and not cause any extra trouble, if we would only give the time to do it. I feel like what is another two (2) weeks to be able to work on that? I am very concerned about how the use permit process is being administered on homestays because I think Council Chair and myself both felt that the main compatibility factor is whether neighbors are complaining and all of a sudden there are a lot of other factors that define compatibility that I do not think have been APAed, but I could be wrong. It does not seem like a fair process. To require in the application for special permits under State agriculture law, to show greater agriculture incomes than other household income where the soils are Class D, E and U, and have slopes that do not even enable or support farming is a travesty of the application of our agriculture laws. It states that reasonable non-agricultural uses can be made of these lands and that special permits should be allowed for that and if we have created an interpretation of State agriculture law without APAing that too appears to be illegal. To make these people have to go to court is also wrong when we could actually cure it by doing a proper legislative action creating a fair law. I cannot support this Bill without amendments that incorporates some fairness because it is really wrong what we have done up to now.

Council Chair Rapozo: We have five (5) minutes left. Any other discussion? If not, I think you heard my concerns. Being here throughout the TVR fiasco back in 2006, 2007, and 2008 is very frustrating. It is frustrating – he said/she said. It is just sad how people got hung up or tied up in this mess. Is there a solution out there? I am not sure. I really do not know. I think there is an opportunity to work with the group, with the Planning Department, and with the attorneys and try to figure out a way because litigation is the worst way. Contested-case hearings are the worst way to get resolution. That gets appealed to the court and ends up in the court. The reason why

I did not support a deferral is because it has been going in circles for years now. I think we got to a...what they heck is that when you go...it was just more of the same and we need to move forward on this. Today is the day that this thing will go through. I am not completely satisfied with the way the Bill is written, but at this point, I do not have any options or suggestions. It is very clear that the Planning Department and the Administration is fixed on moving forward and going down that road of litigation. Unfortunately, that is where we will go. I do not support that. I wish there was another way, but that is their call. Councilmember Yukimura.

Councilmember Yukimura: I could possibly find another way if you would just give me some time to do that. Two (2) weeks is not...

Council Chair Rapozo: It is not up to me, Councilmember Yukimura. It is up to the Members on this body.

Councilmember Yukimura: But you were the fourth (4th) vote.

Council Chair Rapozo: Well, and I told you why. At 4:30 p.m., we had made the decision that we were going to finish it today.

Councilmember Yukimura: We can change our minds.

Council Chair Rapozo: Yes. I am not changing my mind. We are going to go through. Anyway, any more discussion? Roll call.

The motion for adoption of Bill No. 2619, Draft 2, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Kagawa, Kaneshiro, Kualii	TOTAL – 4,
AGAINST ADOPTION:	Hooser, Yukimura, Rapozo	TOTAL – 3,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: 4:3.

Council Chair Rapozo: With that, we have one (1) Executive Session. It is a matter that had been deferred on May 4th, ES-848. Is there any interest of this body to get this done or do we want to receive it for the record?

EXECUTIVE SESSION:

ES-848 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, on behalf of the Council, requests an Executive Session with the Council to provide the Council with a briefing, discussion, and consultation regarding the Quarterly Report on Pending and Denied Claims. This briefing and consultation involves the 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 receive ES-848 for the record, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to receive ES-848 for the record was then put, and unanimously carried.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 6:17 p.m.

Respectfully submitted,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

JADE K. FOUNTAIN-TANIGAWA
County Clerk

:dmc

(May 18, 2016)

FLOOR AMENDMENT

Bill No. 2610, Draft 1, Relating to Establishing a General Excise and Use Tax Surcharge

Introduced By: MASON K. CHOCK

Amend Bill No. 2610, Draft 1, by amending Section 2, proposed Section 5-3.1 to read as follows:

“Sec. 5-3.1 Pursuant to Section 3 of Act 240, Session Laws of Hawai‘i, Regular Session of 2015, codified as Section 46-16.8 of the Hawai‘i Revised Statutes, there is hereby established a [one-quarter percent (0.25%)] one hundredth percent (0.01%) general excise and use tax surcharge to be used for purposes of funding the operating and capital costs of public transportation within the County of Kaua‘i as specified herein. The excise and use tax surcharge shall be levied beginning January 1, 2018.”

(Material to be deleted is bracketed. New material to be added is underscored. All material is new.)

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(May 18, 2016)

FLOOR AMENDMENT

Bill No. 2610, Draft 1, Relating to Establishing a General Excise and Use Tax Surcharge

Introduced by: Councilmember JoAnn A. Yukimura

Amend Bill No. 2610, Draft 1, by amending proposed Section 5-3.1 to read as follows:

“Sec. 5-3.1 Pursuant to Section 3 of Act 240, Session Laws of Hawai‘i, Regular Session of 2015, codified as Section 46-16.8 of the Hawai‘i Revised Statutes, there is hereby established a [one hundredth percent (0.01%)] one eighth percent (0.125%) general excise and use tax surcharge to be used for purposes of funding the operating and capital costs of public transportation within the County of Kaua‘i as specified herein. The excise and use tax surcharge shall be levied beginning January 1, 2018.”

(Material to be deleted is bracketed. New material to be added is underscored. All material is new.)

years outside the VDA to apply for use permits as long as they comply with existing standards.”

2. Amend Bill No. 2619, Draft 2 by amending Section 3 of the Bill to read as follows:

“SECTION 3. Chapter 8, Article 18, Section 8-18.1 of the Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-18.1 General Provisions for Homestays

(a) A homestay operation shall operate under the following regulations:

(1) Transient accommodations are provided for visitors for twenty-nine (29) days or less;

(2) Homestays shall be limited to no more than three guest rooms per homestay operation;

(3) During homestay operations, the owner(s) benefiting under Sec. 5A-11 of this Code for a homeowner’s exemption for the homestay site must be physically within the County of Kaua‘i, residing at the homestay operation site, and physically available for the needs and concerns of their respective homestay guests; and

(4) No other individual or designated representative may act on the owner(s) behalf to meet the requirements of Sec 8-18.1(a)(3).

(b) Homestay operations are prohibited outside of the Visitor Destination Area (VDA)[.], provided that homestay operators outside the VDA shall be allowed to apply for a homestay zoning permit under this ordinance to operate their homestay if they can show that:

(1) They have been paying transient accommodation taxes and excise taxes since 2008,

(2) Their completed application was accepted by the Planning Department by December 31, 2015,

(3) Their operation meets the development standards for homestay specified in Sec. 8-18 of the Kaua‘i County Code, as amended; and

(4) If located on land zoned “Agriculture”, the soil on the agricultural lands are classified as Class D, E or U, and said owners simultaneously apply for a special permit under Section 205-6 of the Hawai‘i Revised Statutes.”

(Material to be deleted is bracketed. New material is underscored.)

(May 18, 2016)

FLOOR AMENDMENT NO. 1

Bill No. 2619, Draft 2, A Bill For An Ordinance Amending Chapter 8, Kaua'i County Code 1987, As Amended, Relating To Homestays

Introduced by: JOANN A. YUKIMURA

1. Amend Bill No. 2619, Draft 2 by amending Section 1 of the Bill to read as follows:

“SECTION 1. Findings and Purpose: The Council finds the 2000 Kaua'i General Plan recognized the need “to develop a clear policy regarding B&Bs and vacation rentals.” The General Plan recommended an implementing action to amend the CZO to facilitate the permitting of existing, nonconforming alternative visitor accommodations. The Council complied with the policy of the General Plan and grandfathered existing single-family transient vacation rentals (SFTVRs) that registered and met the prior use requirements established in Article 17 of the CZO.

In Ordinance No. 864, the Council further found that:

This bill does not apply to a bed and breakfast unit (“Homestay”). It is the intention of the Council to address these units as a separate matter after establishing a regulatory framework for single-family transient vacation rentals. Homestays are presently regulated through the use permit process.

[Although the Council bifurcated the issues of homestays and SFTVRs, it is now appropriate to adopt a clear and specific standard and review parameters under which homestay applications can be processed.

The purpose of this bill is to restrict homestay operations to the Visitor Destination Areas (VDAs) and to establish additional standards under which homestays operate.]

When Ordinance 864 regulating SFTVRs became law in 2008, it defined homestays as a separate group to be regulated in the future. By transmitting this bill for adoption, the Planning Department, through the Planning Commission, is now defining the standards and process for homestays.

The County by adoption of this bill and the standards therein will be establishing a clear pathway for homestays in the future. It is also providing a pathway for the small group of homestays that have been operating in good faith for many years to apply for use permits and other necessary permits.

The purpose of this bill is to restrict homestay operations to the Visitor Destination Areas (VDAs) [and], to establish standards under which homestays operate, and in the interest of fairness and equity, to allow a limited class of longstanding homestay operators who operated in good faith for many