

## COUNCIL MEETING

JUNE 28, 2017

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, June 28, 2017 at 8:30 a.m., after which the following Members answered the call of the roll:

Honorable Arthur Brun (*not present at 9:06 a.m. – 10:20 a.m.*)

Honorable Mason K. Chock

Honorable Ross Kagawa

Honorable Arryl Kaneshiro

Honorable Derek S.K. Kawakami

Honorable JoAnn A. Yukimura (*present at 8:37 a.m.; excused at 9:03 a.m. – 9:24 a.m.; excused at 9:41 a.m. – 10:01 a.m.; excused at 10:08 a.m. – 10:20 a.m.*)

Honorable Mel Rapozo

### APPROVAL OF AGENDA.

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

Council Chair Rapozo:                      Next item, please.

### MINUTES of the following meetings of the Council:

May 31, 2017 Council Meeting

June 14, 2017 Council Meeting

June 14, 2017 Public Hearing re: Bill No. 2650, Bill No. 2651, Bill No. 2653, and Bill No. 2654

Councilmember Kaneshiro moved to approve the Minutes as circulated, seconded by Councilmember Brun.

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 approve the Minutes as circulated was then put, and carried by a vote of 6:0:1 (*Councilmember Yukimura was excused*).

Council Chair Rapozo: Next item, please.

INTERVIEWS:

BOARD OF REVIEW:

- Christopher Alan White – Term ending 12/31/2019

Council Chair Rapozo: Good morning, sir.

CHRISTOPHER ALAN WHITE: Good morning, Councilmembers. Good morning, everyone.

Council Chair Rapozo: Welcome. You are being nominated for the Board of Review. Start by stating your name for the record and then give us a brief overview, and then we will open it up for questions from the members.

Mr. White: My name is Christopher Alan White. My mom brought us here when I was about two (2) years old. I grew up in Wailua Homesteads, went to Kapa‘a Saint Catherine’s Catholic Church, and then I went to the mainland for the later part of elementary and high school. My mom lived here and so I graduated from Kaua‘i Community College (KCC); got my Associate of Arts (AA) there, and my Bachelor’s at West O‘ahu, also through the weekend program at KCC. After that, I worked in a couple different jobs, but my main career was twenty-five (25) years as an Independent Real Estate Appraiser in Kaua‘i County.

Council Chair Rapozo: Okay. Thank you very much. Any questions for Mr. White? We do have your application and your resume, so to speak.

Mr. White: Okay.

Council Chair Rapozo: Any questions? If not, thank you.

Mr. White: Okay.

Council Chair Rapozo: That was the world’s shortest interview.

Mr. White: That is great. Thank you.

Council Chair Rapozo: Next.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Next is an interview for the Charter Review Commission, Jan TenBruggencate for a term ending December 31, 2019.

CHARTER REVIEW COMMISSION:

- Jan W. TenBruggencate – Term ending 12/31/2019

Council Chair Rapozo: Mr. TenBruggencate, you are being nominated for the Charter Review Commission, and likewise, everyone has your application. If you could, just state your name and give us an overview, and we will open it up for questions.

JAN W. TENBRUGGENCATE: My name is Jan TenBruggencate. I previously served on the Charter Review Commission for two (2), three-year terms. I have been off the Commission for the required...an excess of twelve (12) months. I am a former newspaper writer as most folks in this room know, and have been a student of the Charter since I used to attend County Council Meetings in this room starting in 1971 when the Charter was just two (2) years old. There continue to be a few parts of the Charter that need attention and would be pleased to have the opportunity to work on that on behalf of the people of Kaua'i.

Council Chair Rapozo: Any questions for Mr. TenBruggencate? If not, second fastest interview.

Mr. TenBruggencate: Thank you very much.

Ms. Fountain-Tanigawa: Next interview is for, again, the Charter Review Commission. This is for Ricky Watanabe for a term ending December 31, 2019.

- Ricky R. Watanabe – Term ending 12/31/2019

Council Chair Rapozo: Since we allocated forty-five (45) minutes for the interviews...we saved them all for you, Ricky. Okay, if you could start with your name, give us a brief overview, and then we will ask questions.

RICKY R. WATANABE: Ricky Watanabe, retired former County Clerk.

Council Chair Rapozo: Okay. That is a brief overview. Any questions for Ricky? That was the quickest.

Mr. Watanabe: Thank you.

Council Chair Rapozo: Thank you, Ricky. With that, can we have the next item?

### CONSENT CALENDAR:

C 2017-147 Communication (06/01/2017) from the Director of Finance, transmitting for Council information, the Period 10 Financial Reports – Detailed Budget Report, Statement of Revenues (Estimated and Actual), Statement of Expenditures and Encumbrances, and Revenue Report as of April 30, 2017, pursuant to Section 21 of Ordinance No. B-2016-812, relating to the Operating Budget of the County of Kaua'i for Fiscal Year 2016-2017.

C 2017-148 Communication (06/09/2017) from Councilmember Kaneshiro, providing written disclosure of a possible conflict of interest and recusal regarding C 2017-143, relating to a Water System Use Agreement between Grove Farm Company, Inc., and the County of Kaua'i, for the Adolescent Treatment and Healing Center, as he is a Project Manager employed by Grove Farm Company, Inc.

C 2017-149 Communication (06/21/2017) from Councilmember Yukimura, providing written disclosure of a possible conflict of interest and recusal regarding ES-907, relating to a Notice to Appeal of Sunshine Law Complaint (S Appeal 17-11), as she filed the appeal with the Office of Information Practices, as she is involved in the appeal.

Councilmember Chock moved to receive C 2017-147, C 2017-148, and C 2017-149 for the record, seconded by Councilmember Brun.

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 C 2017-147, C 2017-148, and C 2017-149 for the record was then put, and carried by the vote of 6:0:1 (*Councilmember Yukimura was excused*).

Councilmember Kagawa: Council Chair?

Council Chair Rapozo: Go ahead.

Councilmember Kagawa: Can we consider taking care of the Hawai'i Government Employees Association (HGEA) item since they are here? I believe it is on the agenda for first reading and we can get them out.

Council Chair Rapozo: If there are no objections, I do not have a problem with that. Clerk, can we...

Councilmember Kagawa: It is a public hearing item, I am sorry.

Council Chair Rapozo: Yes. Public hearing is at 1:30 p.m. Okay, next item.

### COMMUNICATIONS:

C 2017-150 Communication (05/30/2017) from the Fire Chief, requesting Council approval to accept a donation from the Kaua'i Lifeguard Association (KLA), of one (1) Kawasaki 4x4 Utility Vehicle, valued at \$13,710.82, to be used by the Ocean Safety Bureau for emergency response and training purposes: Councilmember

Kaneshiro moved to approve C 2017-150 with a thank-you letter to follow, seconded by Councilmember Kagawa.

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 approve C 2017-150 with thank-you letter to follow was then put, and carried by a vote of 6:0:1 (*Councilmember Yukimura was excused*).

C 2017-151 Communication (06/01/2017) from the Executive on Aging, requesting Council approval to receive and expend State General Funds for Fiscal Year 2018 and to indemnify the State Executive Office on Aging, in the amount of \$530,816.00 to be used by the County of Kaua'i, Agency on Elderly Affairs for the provision of Kupuna Care and Elder Abuse services, which includes adult day care, case management, home delivered meals, transportation, homemaker services, personal care, elder abuse, and administrative costs for Kupuna Care: Councilmember Kagawa moved to approve C 2017-151, seconded by Councilmember Brun.

Council Chair Rapozo: Any discussion or public testimony?  
Councilmember Kagawa.

Councilmember Kagawa: Can I ask a quick question of Kealoha, since she is here?

Council Chair Rapozo: Sure. With that, I will suspend the rules.

Councilmember Kagawa: Thank you, Kealoha, for being here and for doing this grant. Is this to maintain services or increase services?

There being no objections, the rules were suspended.

LUDVINA K. TAKAHASHI, Executive on Aging: It is to maintain.

Councilmember Kagawa: Maintain?

Ms. Takahashi: Yes.

Councilmember Kagawa: Is it going down or is it staying the same?

Ms. Takahashi: Staying pretty much the same.

Councilmember Kagawa: Thank you. That is it.

Council Chair Rapozo: Any other questions? Seeing none, I will call the meeting back to order.

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

The motion to approve C 2017-151 was then put, and carried by a vote of 6:0:1 (*Councilmember Yukimura was excused*).

C 2017-152 Communication (06/01/2017) from the Executive on Aging, requesting Council approval to receive and expend State General Funds for Fiscal Year 2018 and to indemnify the State Executive Office on Aging, in the amount of \$88,863.00 to be used by the County of Kaua'i, Agency on Elderly Affairs for the operating costs of the Aging and Disability Resource Center, which includes consultant services, inter-island travel, travel to conferences, postage, printing resource directory, online training programs, promotional items, replace electronic equipment, and supplies.

*(Councilmember Yukimura was noted as present.)*

Councilmember Kagawa moved to approve C 2017-152, seconded by Councilmember Brun.

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 approve C 2017-152 was then put, and unanimously carried.

C 2017-153 Communication (06/07/2017) from Councilmember Chock, transmitting for Council consideration, proposed amendments to Chapter 5A, Article 11 and 11A, Kaua'i County Code 1987, as amended, relating to Real Property Tax, to clarify the legislative intent when a property is transferred in/out of a trust, as well as provide consistent interpretation as to the meaning of the term "transfer." Councilmember Kagawa moved to receive C 2017-153 for the record, seconded by Councilmember Chock.

Council Chair Rapozo: Any discussion? This is attached to Proposed Draft Bill (No. 2658), which will be heard later. 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 2017-153 for the record was then put, and unanimously carried.

Council Chair Rapozo: Next item.

Ms. Fountain-Tanigawa: Chair, for the next item, there is a companion Executive Session, do you want to skip that item?

Council Chair Rapozo: Yes, we can do that after the Executive Session.

There being no objections, C 2017-155 was taken out of order.

C 2017-155 Communication (06/16/2017) from Council Chair Rapozo, transmitting for Council consideration, proposed amendments to Chapter 5A, Section 5A-11A.1, Kaua'i County Code 1987, as amended, relating to the Long Term Affordable Rental Program, to adjust the 2018 tax year rental rates to the 2015 tax year rental rates, and to set the 2015 tax year rates as the base program rates going forward, with an annual adjustment using the Consumer Price Index for all Urban Consumers (CPI-U): Councilmember Kagawa moved to receive C 2017-155 for the record, seconded by Councilmember Chock.

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 C 2017-155 for the record was then put, and unanimously carried.

CLAIM:

C 2017-156 Communication (06/13/2017) from the County Clerk, transmitting a claim filed against the County of Kaua'i by State Farm Insurance as subrogee of Mark Clay Ackelson, for damage to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kagawa moved to refer C 2017-156 to the Office of the County Attorney for disposition and/or report back to the Council, 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 refer C 2017-156 to the Office of the County Attorney for disposition and/or report back to the Council was then put, and unanimously carried.

COMMITTEE REPORTS:BUDGET & FINANCE COMMITTEE:

A report (No. CR-BF 2017-11) submitted by the Budget & Finance Committee, recommending that the following be Received for the Record:

“Bill No. 2651 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B 2016-812, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA‘I, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND (*Hanalei Coastal Property, Tax Map Key No: (4) 5-8-012:002*),”

Councilmember Kagawa moved for approval of the report, seconded by Councilmember Brun.

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 approve the report was then put, and unanimously carried.

A report (No. CR-BF 2017-12) submitted by the Budget & Finance Committee, recommending that the following be Received for the Record:

“Bill No. 2652 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2016-813, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUA‘I, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND – CIP (*Hanalei Coastal Property, Tax Map Key No: (4) 5-8-012:002*),”

Councilmember Kagawa moved for approval of the report, seconded by Councilmember Brun.

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 approve the report was then put, and unanimously carried.

A report (No. CR-BF 2017-13) submitted by the Budget & Finance Committee, recommending that the following be Received for the Record:

“Bill No. 2653 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2016-812, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND (*Kekaha Coastal Property, Tax Map Key No: (4) 1-2-013:041*),”

Councilmember Kagawa moved for approval of the report, seconded by Councilmember Brun.

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 approve the report was then put, and unanimously carried.

A report (No. CR-BF 2017-14) submitted by the Budget & Finance Committee, recommending that the following be Received for the Record:

“Bill No. 2654 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2016-813, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND – CIP (*Kekaha Coastal Property, Tax Map Key No: (4) 1-2-013:041*),”

Councilmember Kagawa moved for approval of the report, seconded by Councilmember Brun.

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 approve the report was then put, and unanimously carried.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2658) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, ARTICLE 11 AND 11A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX: Councilmember Kaneshiro moved for passage of Proposed Draft Bill (No. 2658) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 26, 2017, and referred to the Budget & Finance Committee, seconded by Councilmember Kagawa.

Council Chair Rapozo: Any discussion? Councilmember Kagawa.

Councilmember Kagawa: I have a quick question for Steve. I know it is only first reading and I know that typically we do a lot of the work in Committee, and in first reading and public hearing, we just hear out public testimony. I saw that letter back when he first sent it, I did not do anything or I think I may have forwarded it to your office, and I know Councilmember Chock proposed this Bill. My question is, and I am wondering, is the Administration in support of the changes? Second, does this open up avenues for people to try and use the trust to get a Homestead rate when they should not?

STEVEN A. HUNT, Real Property Tax Manager: Steve Hunt, Real Property Tax Manager, for the record. To answer those questions, first, the Administration does fully support the amendment that is being proposed. In fact, I think if anything, it does not go far enough. I could think of other scenarios. You could have parents that transfer their property to their children, but retain a life estate; still live there, still reside there. If that life estate is recorded, then that is actually eligible for the Homestead exemption. I think that should also be eligible for the assessment cap provided they are still residing there as their primary residence. Another scenario might be upon a death of a spouse. If one spouse transfers his or her interest in that property to someone other than the surviving spouse, but the surviving spouse still retains a partial interest in the property and still resides there as their primary residence, I think that should also be consideration for not having their property reassessed at market at that time. I do understand the Council's wisdom in terms of looking at transfers and not just sales, because you will have some transfers that should be reassessed at market at that time even though they were not a sale, and that would be when you transfer your property to your kids and neither the kids nor the parents live on the property, or if the kids are now coming on to the property, but are in a different scenario—they were not the original people that were residing there. I think those are justifications why you would have a reassessment at market at that time. I can see why "transfer" was used in the context in writing that original ordinance, but I think in terms of the transfer in and out of trusts, I think that is a good step, but I think we can actually expand a little further for other scenarios that do not necessarily fit that one (1) specific type of transfer.

Councilmember Kagawa: Are you looking at proposing amendments to our code to improve? Like you said, there is room for improvement—are you looking at trying to work and do some amendments that will take care of those scenarios that are being taxed, I guess, unfairly?

Mr. Hunt: I am leaving that to the legal counsel to draft. I only proposed that because we run into these scenarios regarding home exemptions already and I think the home exemption and the cap should have some parallel in terms of running the programs where if you are doing a trust...and it is right now currently if you are the trustee of the trust and you reside on the property, you are entitled to an exemption and you are entitled to that cap. As long as it was not transferred from individual to trust or trust to individual during that period, that is where the cap got broken, because by definition, "transfer" included those scenarios and I did consult the attorneys before implementing this program. I know there were few that got caught that you did get the letters from, but that was actually the correct interpretation and we just followed what our legal guidance was.

Councilmember Kagawa: I know that when we craft laws, sometimes we are trying to solve a problem, but with these tax laws, they do not make tax laws intending it to become tax shelters. Sometimes they create laws that actually in the end creates more harm than good. I just want to make sure that when we craft these laws, we look at all the avenues and we do not do more damage, is what I am concerned about.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: As most of you know, you had gotten an E-mail from a constituent requesting the Council to look at this amendment, subsequently, a few other E-mails that came in. So I had sent out a personal request for an investigation on the item of which the response was in favor of working on it. Therefore, this amendment is before you. There was a question about some of the other issues with the tax cap and I think it was decided at that point that it might be moving us in a different direction. Certainly, if the County Attorney is okay with us adding these...what Steve is talking about as it relates to transfer, perhaps those are amendments we can consider at the table here. Of course, it was reviewed by the County Attorney and the department in its entirety. Really what it comes down to is just fairness and equality in terms of transfer and I think any entity, small or big, we see trust built upon. So this seemed like the right thing to do for everyone. Again, if there are suggestions on children and how we might be able to add that in, I just want to make sure that we have that direction with the County Attorney. At the time, we thought it was two (2) separate items. Thank you, Chair.

Mr. Hunt: If I could add one (1) more technical? Because we are processing, and a lot of this is programming that picks up when there are resets to be occurred; right now, we are continuing based on the current ordinance to process and the programming is that any time there is a transfer or deed, transfer certificate numbers are coming through, that it is creating the reset. So anybody that has been caught up in this or is effectuated if this becomes law and changes, there is no way for us to retroactively go back and screen all of the real estate transactions to see which ones fit these criterion. It would be incumbent upon the people affected that would have to come forward to us to say based on the current law, we should not be reset and then we can do it manually, but right now, we do not have the programming in place to accommodate that. We can do that in the future, and upon passage we would, but leading up to that, it is going to be incumbent on the people that were caught up in these transfers to come forward.

Councilmember Chock: Just a quick response to that. Yes, I know there was a request for that retroactive, of course I did not feel comfortable moving on that and so if that is something to be talked about as well.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Is this Bill retroactive or not?

Mr. Hunt: The current draft I read is not being retroactive. I also have concerns not only just of retroactivity to the 2017 assessment, but all transactions that have occurred since October 1<sup>st</sup> which is our data value, October 1, 2016. Any transactions that may have involved a trust and individuals making those will be affected for the 2018 assessments. Even those need to come forward so that we...if this passes and should be effective for the tax year 2018, we still need to know those transactions that occurred that may have been from individual to trust or trust to individual where the grantor is one in the same.

Councilmember Yukimura: If they come in, then it is retroactive?

Mr. Hunt: No. If you make it effective for 2018 tax year, any transactions that have occurred leading up to that that would be impacted by this, would need to go...if you want to roll it back even a further year until 2017, those would have been transactions from October 1, 2015 up through our data value. Technically, it is kind of retroactive either way, but if you are intending it to make it effective for the 2018 year, there still were transactions that occurred between October 1, 2016 and leading up to our data value of October 1, 2017 for the 2018 year that need to come forward and say, "Hey, I was caught up in this, I was one who had a transfer, and I need my cap retained."

Councilmember Yukimura: If we want to make it all the way back to when the cap was established, then we need to make some amendments.

Mr. Hunt: There would have to be some language changes in here, that is correct.

Councilmember Yukimura: Can you develop that language for us?

Mr. Hunt: I would prefer that the attorneys develop that language for you. I am not an expert in retroactivity and language dealing with that.

Councilmember Yukimura: Okay. Because I think there are some of us who that feel that would be good remedy to go all the way back to when the cap started, in order to be fair, really. We will make that request of the attorney, but it would be important for you and Ken to review it so we are sure that we are implementing what we think we want to implement.

Council Chair Rapozo: Real quick question. When you are talking about retroactivity, are you saying someone that had come in and had that cap applied for years back?

Mr. Hunt: No, that is what the retroactivity would...so someone who say went up seven percent (7%) this year instead of three percent (3%), because market went up seven percent (7%) and they did not have that cap protection because they did a transfer to a trust, we would have to go back and reestablish their 2017 at the three percent (3%) which would then...because it is rolling, then that seventeen (17) rolls to the eighteen (18), so three percent (3%) and three percent (3%) would be multiple years. There would be some manual work in order for us to calculate that and we would have to know who was impacted by them coming in and telling us that.

Council Chair Rapozo: Do we have any idea of how many people that is?

Mr. Hunt: No. In many cases, if the values were flat or went down or did not hit the three percent (3%), they may have done a transfer and it may have got reset to market, but market was within that range and therefore was not noticeable.

Councilmember Yukimura: No impact.

Council Chair Rapozo: Yes, but it is very hard to tell.

Mr. Hunt: It is. It is case-by-case.

Council Chair Rapozo: You would have to go back.

Mr. Hunt: We do not have the manpower to go back and review all the transactions. We would have to look at every sale and transfer to see what happened and how we would impact the assessment side. That is probably an unrealistic request.

Council Chair Rapozo: Do we have an idea on the fiscal impact?

Mr. Hunt: Probably not significant.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: Just for clarification, this amendment says, "For tax year 2017." When was the tax assessment cap put on?

Mr. Hunt: The cap was put on for 2017. So we are in the first year of the cap.

Councilmember Chock: So, we are in the first year, there is no need for an amendment because this is covering it, according to what I am reading: "For the tax

year 2017, any owner who transfers property for this purpose shall file a notice” and it goes further, “On or before September 30, 2017.” I do not know if there is a need to amend it further. Can you clarify that?

Mr. Hunt: I cannot at this point. I do not have it in front of me. So, you are saying for 2017, but they have until September 2017 to apply for 2017?

Councilmember Chock: “For the tax year 2017,” so, yes, whatever happened in 2016, right, because it went into effect in 2016.

Mr. Hunt: Yes, that is how I would read this. “For 2017,” which is our October 1, 2016 data value.

Councilmember Chock: Therefore, it is there already, according to this. Is that correct?

Mr. Hunt: Yes, so they would be basically applying for an adjustment for the 2017 year and setting up the 2018 adjustment.

Councilmember Chock: Yes.

Council Chair Rapozo: Okay.

Mr. Hunt: Again, I would defer to attorney’s to see if that meets the standard of retroactivity in this case.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Does this put the onus on those who want to claim the benefits of this Bill to apply for that, right?

Mr. Hunt: Correct, that is how I do read this as well and they have until September 30, 2017 to do so.

Councilmember Yukimura: If they have this deadline, what if they do not know about this Bill?

Mr. Hunt: If they missed the deadline then they do not get the readjustment. Now, it is a one-year, so if there was an adjustment of seven percent (7%) in one (1) year and now they qualify, the forthcoming year they are set at three percent (3%), so they still have the exemption. It was just that one year that they did the transfer in that lost that and was a reset, so going forward the cap is in place again.

Councilmember Yukimura: Right.

Mr. Hunt: Theoretically, if this did not pass and they did a transfer from trust back to individual, they would lose the cap again.

Councilmember Yukimura: The problem with leaving it open-ended, that is for people to come in even beyond September 30<sup>th</sup> is what?

Mr. Hunt: Adjustments and multiple years because it is a chain. Therefore, if your start date was 2017 tax year and they come in at 2019 or 2020, then you have to go back and adjust every year because it is three percent (3%) on three percent (3%) on three percent (3%) in terms of what the caps would be.

Councilmember Yukimura: Okay, thank you.

Council Chair Rapozo: Any other questions? If not, thank you very much. Any 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 further discussion? Councilmember Yukimura.

Councilmember Yukimura: I want to thank Councilmember Chock for taking the initiative to respond to this problem and to propose this solution. I know that it will go through public hearing and a vetting process, but I think conceptually we need a solution and so I am glad that it is on the table.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: For me, a lot of these problems that come up should not have to come from the Council. When the problems come up to the department and they see that it is a reasonable complaint, such as when Ms. Sakamoto brings up the rental things, but if you see something that is odd, not working, then I think it is incumbent upon the Administration to come forward with an amendment that works better for the people of Kaua'i in a fair method. I do not think when they said, "The legislative side should not tell the administrative side how to do things," and I think this is an example. If these type of problems come up with the solutions to the Council, it is better. It should not come from the Council to the Administration and then the Administration agree with us. They are the ones that deal with the complaints on a daily basis. They are the ones that know the issues. We do not know anything about trust. Maybe Councilmember Yukimura knows a little bit about it, but for the majority of us, we do not know when a complaint is legitimate. Sometimes it is rich people that just want to save more money. I think for the most part, we are worried about the "Bruce Fehring's" that is not a rich person, that got impacted severely by a glitch that should not have been there, but I think we need a better relationship with the Administration, bringing forth the problems faster, and then we can fix them. To do it from our end, to me, is not the proper way because then what else issues are out there? Like he said, there are more issues out there. We need more efficiency on the Administrative's end, telling us what the problems are, how do we fix it, and how to make things fair for the people. I think that would work a lot better. Thank you.

Council Chair Rapozo: Anyone else? If not, the motion is to approve on first reading, public hearing will be set for July 26, 2017. Roll call.

The motion for passage of Proposed Draft Bill (No. 2658) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 26, 2017, and referred to the Budget & Finance Committee was then put, and carried by the following vote:

FOR PASSAGE:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, 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: Next item, please.

Proposed Draft Bill (No. 2659) – 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 Kagawa moved for passage of Proposed Draft Bill (No. 2659) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 26, 2017, and referred to the Budget & Finance Committee, seconded by Councilmember Brun.

Council Chair Rapozo: Any discussion before I suspend the rules? I know the Sakamoto's are here. This is just really, as we had discussed at the last meeting, to not use the Kaua'i County Affordable Housing Guidelines because it is creating a problem with landlords or with homeowners who cannot lower their rent any more than they are already charging and they are losing people out of this program. This is to set 2015 as the base year and then we will adjust it with the consumer price index (CPI), which should be a much fairer way to set the guidelines. Councilmember Kagawa.

Councilmember Kagawa: My question was to you as the introducer and you sort of answered it. The consumer price index is going to ensure that it does not stay flat or go down?

Council Chair Rapozo: Or go down, yes. Unless the CPI goes down, which is highly unlikely.

Councilmember Kagawa: Does the CPI go down at times?

Council Chair Rapozo: It does. I do not know when it went down last.

Councilmember Kagawa: I cannot think of anything, as I sit here, on Kaua'i that you buy that goes down in price. Maybe the gas went down a little bit because...I do not know what happened when the whole oil thing went down on the



stock market, but besides that, our County budget never goes down. The tax that we collect never goes down. Anything you buy at the store never goes down. To think that we are going to stay level or go down or try to help affordable housing, I think it is just ridiculous. That is why I said, that is obviously a mistake that needed to be corrected, so I am glad that you are coming forth with something that does not go down. I understand that we are trying to follow the normal United States Department of Housing and Urban Development (HUD) rates or whatever, but to say that we are sitting here trying to support affordable housing and to allow the rates to stay level or go down, and try to think that the people that are going to help with this affordable rental program is going to improve is ridiculous. It is not going to help because nothing goes down in price in cost on Kaua'i, nothing. I am glad that you are coming forward with this. Thank you, Chair. I will be in full support.

Council Chair Rapozo: This was a result of...this is probably a couple years old now. Tina Sakamoto was the driving-enforce of this and I told her that we would get it on the agenda so we can have the discussion. I am not sure where this will end up, but at least we will get it on the floor to have the discussion. Councilmember Yukimura.

Councilmember Yukimura: I wondered whether the Housing Agency has reviewed this and whether they have any comments on it?

Council Chair Rapozo: The Housing Agency?

Councilmember Yukimura: The Housing Agency, yes.

Council Chair Rapozo: I am not sure if we sent it over to the Housing Agency.

Councilmember Yukimura: Can we do that prior to the public hearing?

Council Chair Rapozo: If we have not already, we can send it over.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Any other questions? If not, any public testimony? I will suspend the rules. Tina.

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

TINA SAKAMOTO: Good morning, Council Chair, Vice Chair, and Members. My name is Tina Sakamoto. Yesterday, I attended the County's co-hosted Kaua'i Landlord Summit event and unfortunately, there was no information provided, nor discussion regarding this County's Long-Term Affordable Tenant Occupied Rental Program. There was no information at all and I think it is a vital program and a quite valid program that would benefit tenants and landlords. Once again, I would like to let landlords know that this County program offers approximately fifty percent (50%) reduction in real property tax to participating landlords who partner with the County to provide the much needed affordable

housing. Now, to this proposed Bill, I would like to say again, it accomplishes three (3) things. It adjusts the program levels for the 2018 year to the 2015 tax year, which means landlords do not have to reduce their rents to participate. The second is that it sets the base for subsequent years as adjusted by the cost of living index method. Thirdly, which is important, it streamlines the application process and eliminates that cumbersome method of establishing a long-term rental rate. I do support the intent of this proposed Bill. A suggestion is to develop and somehow redefine the long-term affordable rental to eliminate the terminology regarding the eighty percent (80%) Kaua'i median and maybe something that will address not to exceed the maximum long-term rental rates established in 2015 as adjusted annually thereafter beginning with tax year 2019 according to the current applicable consumer price index for all urban consumers. I think that is about it and I will be back for the public testimony. Thank you.

*(Councilmember Yukimura was noted as excused.)*

Council Chair Rapozo: Thank you. Anyone else wishing to testify? I do not have any questions, but Steve, did you want to say something?

Mr. Hunt: Steve Hunt, Real Property Tax Manager, for the record. I did have a couple technical comments on the Bill. The Bill requires that the rental rates be established on October 1<sup>st</sup>, which is great for our office and great for those of affordable rental landlords that have leases that are expiring in the fourth quarter of the calendar year. The CPI-U figures do not typically come out until February, so that leaves us with two (2) options: one is to use the prior year's annual CPI, or if you wanted to be a little more contemporaneous, you could use the mid-year that you come out with a mid-year, typically around August. You could do a mid-year to mid-year comparison if you wanted it to be the most accurate. Either way, it would be nice to have that spelled out as to which, because it says most recent and I am not sure what we are supposed to be using as the division processing. The other thing that I saw in the draft Bill was that it refers to the CPI-U but makes no reference as to which CPI-U, I am assuming Honolulu, which is the only metropolitan statistical area within the State, but it could be interpreted as national CPI-U, if it is not clarified. Finally, under the definitions, Section "A", it say "Long-term affordable rental is defined as a dwelling where the monthly rent does not exceed the maximum housing cost based on eighty percent (80%) of the Kaua'i median household income as set forth by the Housing Agency." But then later in the Bill, it tells you not to use that. Therefore, the definition may need to change because I think there is conflict in that.

Council Chair Rapozo: Yes, I think that is what Tina was suggesting that we make it the same.

Mr. Hunt: Those are my only three (3) technical issues on the Bill. I do want to offer a few philosophical, just for your consideration. In the past under this program, we actually had qualifying affordable rent levels that were at or exceeded market rent levels. I think that is when it was based on one hundred percent (100%) median rent income and also when there was some economic issues. When unemployment was high, we had an issue with that and I think that is why we

went to the eighty percent (80%) to begin with. We actually had inversion where market rents were lower than the affordable and we were giving breaks to those, so that something to consider. If you are having the affordable rents affixed to the CPI-U and it is a compounding multiplier, I think it is important to remember that the CPI-U is not a housing index measure. It is an inflation or a deflationary measure and that also includes the bundles of goods that include food, medicine, energy, and durable goods in addition to housing. Therefore, any sector of that is increasing faster than housing, the CPI could be going up much faster than the housing market. I think that is something to consider and I guess what happens when the inflationary index is not necessarily tied to incomes. For instances, the Honolulu CPI goes up by four percent (4%) but median household income goes up by one percent (1%). If that sustains for a prolonged period of time, you are essentially going to be pricing out the tenants. What was affordable, and it may be affordable relative to market rent, but it may still be unaffordable to the people's income levels, you could be replacing those people that should be getting the eighty percent (80%) median income with people that can afford higher rents, gap housing market, and again, there is no tie in our program to mandate that the tenants that are being occupied have to qualify. That is just a systemic problem and I do not think there is a solution and certainly if we require tenants to submit their income tax returns to show they are qualified, the program would not work. I do not know how you are going to get over that hurdle, but I just wanted to be out there that by affixing it to CPI, if it does not keep pace with the income levels for people's homes on the median, then you could be pricing people out of the market. That is all I have.

Council Chair Rapozo: Thank you, Steve. Any questions for Steve?  
Thank you. Did you want to come back up, Tina? Please.

Ms. Sakamoto: Tina Sakamoto. I did want to address some of the same concerns on the compounding rate, which Steve mentioned, whether it would be simple or compounding rate. As far as the annual adjustment period, I think it is calculated monthly, so a third method would be...you could go either with the annual inflation rate of a prior year or maybe an average of the twelve (12) months proceeding, October 1<sup>st</sup>, so it might bring it at a little bit more current. That is a third method. When I was looking at the U.S. Department of Labor's statistics, it looks like there was only...and for the period 1970 to 2017, it looked like there was only one (1) period where there was a negative CPI-U adjustment and the rest all fell and varied, but in the current rate, no more than three point two percent (3.2%). Right now for 2016, we are at the one point three percent (1.3%), so it is just more information for you. Thank you.

Council Chair Rapozo: Thank you. Anyone else? Seeing none, I will call the meeting back to order.

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

Council Chair Rapozo: Further discussion? Councilmember Kagawa.

Councilmember Kagawa: Thank you, Council Chair. For me, again, it is Kaua'i, State of Hawai'i, we are very unique. It is hard to compare us to the mainland. I was just watching a show on Home Network and it was about the person who had won the lottery, trying to buy a house in the outskirts of Las Vegas. For the price of four hundred thousand dollars (\$400,000), he could buy a fabulous house with a swimming pool and everything. On Kaua'i, you cannot even buy a Hanamā'ulu duplex. To say, let us compare CPI, with the mainland and Hawai'i, it is apples and oranges. Rents go along with the price of housing. This place over here is crazy. It is incumbent upon us to try and help. I know you can look at it as, "Well, now you raised and follow the CPI, then you can have people charging more than they should." I think if you look at our community and you know our community, a lot of the local people that rent to people they know, they do not charge them anymore than they have to, no matter what the CPI is. It can be one thousand eight hundred dollars (\$1,800), but they might keep it at one thousand one hundred dollars (\$1,100) because we are a small tight knit community and there are a lot of people who are not only after the dollar. They will just make enough to make money and be comfortable. They will not follow the maximum amount that they can go it, so that in itself is a false truth. We are a unique place and I do not think setting the numbers will set off this alarm that was brought up. In some cases, it may, as Steve is correct, but in most cases, I do not believe the local people are like that. We are seeing evidence of people who complain two (2) years ago that have dropped out of the program and said, "I cannot do this no more. I am going to rent at market." We did not listen, we kept it at a lower level than it was a prior year, and they jumped out of the program. What is affordability? Are we only looking to affordable rentals to house homeless or poverty level? Affordable level, to me, for Kaua'i, means middle-class also that cannot yet buy a house or even higher than middle-class, but just trying to save up money so they can buy a house at these crazy prices on Kaua'i. How are we going to help? That is the question that we need to ask ourselves. You cannot help anybody expand the program by keeping it at the same price or less than last year. That is not helping. Thank you, Council Chair.

Council Chair Rapozo: Thank you. Further discussion? Seeing none.  
Roll call.

The motion for passage of Proposed Draft Bill (No. 2659) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 26, 2017, and referred to the Budget & Finance Committee was then put, and carried by the following vote:

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

*(\*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Brun was noted as silent (not present), but shall be recorded as an affirmative for the motion.)*

Council Chair Rapozo: Next item, please.

Ms. Fountain-Tanigawa: Next item are Bills for Second Reading.

BILLS FOR SECOND READING:

Bill No. 2651 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B 2016-812, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND (*Hanalei Coastal Property, Tax Map Key No: (4) 5-8-012:002*): Councilmember Kagawa moved to receive Bill No. 2651 for the record, seconded by Councilmember Kaneshiro.

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 Bill No. 2651 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Rapozo	TOTAL – 6*
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(\*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kauai, Councilmember Brun was noted as silent (not present), but shall be recorded as an affirmative for the motion.)*

Council Chair Rapozo: Next item.

Bill No. 2652 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2016-813, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND – CIP (*Hanalei Coastal Property, Tax Map Key No: (4) 5-8-012:002*): Councilmember Chock moved to receive Bill No. 2652 for the record, seconded by Councilmember Kagawa.

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 Bill No. 2652 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Rapozo	TOTAL – 6*,
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(\*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Brun was noted as silent (not present), but shall be recorded as an affirmative for the motion.)*

Council Chair Rapozo:                      Next item.

Bill No. 2653 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2016-812, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND (*Kekaha Coastal Property, Tax Map Key No: (4) 1-2-013:041*): Councilmember Kagawa moved to receive Bill No. 2653 for the record, seconded by Councilmember Chock.

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 Bill No. 2653 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Rapozo	TOTAL – 6*,
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(\*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Brun was noted as silent (not present), but shall be recorded as an affirmative for the motion.)*

Council Chair Rapozo:                      Next item.

Bill No. 2654 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2016-813, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION

FUND – CIP (*Kekaha Coastal Property, Tax Map Key No: (4) 1-2-013:041*): Councilmember Kagawa moved to receive Bill No. 2654 for the record, seconded by Councilmember Kaneshiro.

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 Bill No. 2654 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Rapozo	TOTAL – 6*
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(\*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua‘i, Councilmember Brun was noted as silent (not present), but shall be recorded as an affirmative for the motion.)*

Council Chair Rapozo: Executive Session.

EXECUTIVE SESSION:

ES-908 Pursuant to Hawai‘i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua‘i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on the retention of Special Counsel services provided to represent the Council regarding: (1) actions taken by the Director of Human Resources regarding the pay adjustment request for the County Clerk; and (2) how to proceed with a complaint against the Administration pertaining to a possible violation of the separation of powers, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-909 Pursuant to Hawai‘i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua‘i County Charter Section 3.07(E), the Office of the County Attorney, requests an Executive Session with the Council, to provide the Council with a briefing and request for authority to settle the case of Christina Pilkington vs. County of Kaua‘i, et al., Civil No. 14-1-0123 (Fifth Circuit Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Councilmember Chock moved to convene in Executive Session for ES-908 and ES-909, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? The rules are suspended, if you could come up.

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

ANA MOHAMAD DESMARAIS: Hello Council, good morning, *aloha*. I had read that on the agenda there were interviews.

Council Chair Rapozo: If you could just state your name.

Ms. DesMarais: Yes, Ana DesMarais, for the record. Thank you. I read there were interviews today for the Charter Review Commission. I just wanted to note that if you folks could check any conflict of interest for any future hires. I am not sure if that is part of your interviewing process, but for the General Plan and the latest addition to the Planning Commission, I felt that there was a disconnect with the testimonies and their decisions. Maybe there could be a possible conflict of interest, which if it is the same process here where the Councilmembers step out and they do not vote, maybe that could be a future process to consider for the other agencies as well, not just the Council. I do not feel that the General Plan that you are going to receive is the one that the community desires, so maybe there can be some conversation about that. As far as this separation of powers, obviously it is an executive session, so I am not exactly sure what you folks are going to be discussing, but I just wanted to state if there is anything that I have requested of the Council, of the County, to make decisions moving forward, I wanted to read why I feel that you do have this power. There was something that I could not put my finger on until recently which made me very confused as to how this situation has persisted. The fact that Hawaiian issues are being considered as international issues, by where the Secretary of State needs to be involved is being used as an excuse to prolong the inevitable. The American and other business owners and representatives that feel the Hawaiian issues are being resolved by the Hawaiian homelands and the like, to implement what is rightfully expected, the fact is that they would be wrong and are misinformed. For Hawaiian families to be on a waiting list for decades for a home and have someone die before being served is unacceptable to our standards of conduct. Even those that have homes are not up to code of equal standard and quality of life, since those profiting off this false pretense of capitalism, in essence falsehood, are living at a higher quality in all regards.

Council Chair Rapozo: Ana, I...

Ms. DesMarais: Is that not part of what you folks are talking about?

Council Chair Rapozo: It is far off and I was hoping you were going to bring it back in.

Ms. DesMarais: Yes, it is just a suggestion that I have been making about the County tax to even it out to the Hawaiian families and the plantation era families from the profiting off, specifically, the land, air, sea, river, and spring.



Council Chair Rapozo: What is on the agenda today is the request to go into Executive Session for the specific separation of power issue.

Ms. DesMarais: Yes, I do not know if I am requesting of the Council is in breach of your separation of powers. Therefore, that is why I wanted to say that what is happening here can be fixed and I feel the County has the power to do that. I am not sure if that is what you are discussing since of course it is behind closed doors. I appreciate all of you and is it possible to bring this on to an agenda item for discussion in the future or is this something that cannot be done here?

Council Chair Rapozo: We can talk about that. If we can tie it down to a specific issue that involves the County, we can definitely put it on.

Ms. DesMarais: Also, with the housing and everything, I am going to comment in the public hearing, but it is also involved in an E-mail that I sent earlier. I appreciate all of you. Thank you so much.

Council Chair Rapozo: Anyone else wishing to testify? Just because you raised the question.

*(Councilmember Yukimura was noted as present.)*

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

Council Chair Rapozo: Basically what happens is the Salary Commission puts a resolution to the County Council with pay raises for appointed people, elected officers of the County. The resolution comes to the Council and it gets approved or rejected. Long story short, the pay increase for our Clerk was sent over. The pay adjustment forms were sent over, and the Administration did not process it and they felt that they had the authority to withhold it. That is what we are going to be discussing today. Any other questions? If not, the motion is to go into Executive Session.

Councilmember Yukimura: Can I say something?

Council Chair Rapozo: Yes.

Councilmember Yukimura: The way I understand the law is that Human Resources (HR) cannot certify a payroll increase without a showing that the appointing authority has authorized it, and the appointing authority, under the Charter, is the County Council. We have not had that matter on the agenda. I believe the Human Resources Director is following the law.

Council Chair Rapozo: That is what we are going to talk about in the session, but it does involve a personnel issue. Councilmember Kagawa.

Councilmember Kagawa: Did the Council approval on the salaries not set the amount for the second tier of pay increases? We set that maximum amounts, right? I think that action is the Council's vote on the pay increase. Maybe you did not support it, but the majority did.

Council Chair Rapozo: Go ahead.

Councilmember Yukimura: The Salary Resolution is an establishment of caps. It is not the establishment of the specific salaries to the specific positions, and that under the Charter has to be done by the appointing authority and also has to be done as a Sunshine Law as a specific subject so that everybody knows that it is being done.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: I want to clarify the reason why we are going into Executive Session on this matter is because it involves personnel matters. Is that correct?

Council Chair Rapozo: That is correct.

Councilmember Chock: Thank you.

Council Chair Rapozo: And until Mauna Kea raises his hand and says we are crossing the line, I would like to have the discussion out as much as possible. I guess for me, and I am going to speak in general terms about the separation of power. We have the legislative branch, we have the executive branch. When we send over whatever we send over, their job is not to scrutinize or send it back like the school teacher with a red pen. If there is an issue with this Council or the actions that were taken...or a Councilmember has a problem with the actions that were or were not taken by this body, that is our issue. It is not the Administration's issue. That is the significance of the separation of powers, so no one across the street and I will be honest with you, this has happened enough times and that is why it is on the agenda. Whether it was forgetting iPads, whether it was forgetting Wi-Fi—their job is not to question something...if it is in the budget and the Council approved in the budget, it is there. You do what you need to do. You do not sit there and say, "Should I or should I not." No, that is not your roll. Can you imagine if every item that we approved in the County budget, we told the Administration, "No, no, you have to come back and tell us exactly what you are going to use that money for." No, it does not work that way. We approve the funds and they do what they do with it. Likewise, there should be this mutual reciprocity, but with this issue, it did not happen. I am upset about it because regardless if a Councilmember feels that we should have had a Council meeting, then that Councilmember can bring it up with the Council and not HR to tell us, "No, I am not signing that payroll adjustment." That is not their role. Councilmember Chock.

Councilmember Chock: Just so that I understand, is the decision here that we need to make whether or not we have something on the agenda to approve

the raise or is the question that it has already been done, so we do not need to take any further action?

Council Chair Rapozo: Well, it has not been done and that is the frustration. That is why I am considering filing a complaint because it is not their function. That is not their role, in my opinion.

Councilmember Chock: Sorry, Chair. Is there a need for further action by this body in order to ensure that this raise is granted?

Mr. Trask: I am sorry.

Council Chair Rapozo: That is going to be up to this body. I think Councilmember Yukimura believes that is required.

Councilmember Chock: So, that is the question of the County Attorney?

Council Chair Rapozo: Correct.

Councilmember Chock: Thank you.

There being no objections, the rules were suspended.

Mr. Trask: For the record, Mauna Kea Trask, County Attorney. At this point, there are certain matters that are considered personnel issues, being executive session, and a lot of these matters may not be in executive session. At this point, I think it would be appropriate to go into executive session, figure out what the salient issues are, discuss those therein, and then have the public ones discussed outside. Just for clarity, what I am hearing on the record right now, I am not sure where we are standing on this issue. I would like to clarify that in the back, so as to keep those appropriate matters confidential and then come out here and keep those appropriate matters public.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: I have worked for the Council from 1991 as an Analyst and we have been approving the County Clerk and Deputy County Clerk's increases with this same process for the past twenty-six (26) years. Twenty-six (26) years that I have been here and probably before that, it has been the same way, and now HR is saying we have to do it a different way. Okay, let us do it a different way, but I think the point we are trying to raise is that we have been doing it this way ever since I can remember as a staff member and now as a Councilmember, and now it is going to change? That is why I have an issue with it. Why now? Is it because one (1) Councilmember does not like the way it is? Well, she has been sitting on the Council or has been the Mayor for the past thirty something years. Why did she not raise it earlier? What are we trying to do it here? Why now? Do we want to waste time?

Mr. Trask: For the record, we are talking a lot about historical practice and law. Both have their value. Over the course of time, the Charter has changed—the Salary Commission, the setting of salaries, and the resolutions past pursuant to that have changed. Recently, what was Salary Resolutions Nos. 2016-1, 2016-2, and 2017-1—that process added some layers to it. I am happy to discuss those legal changes and give you that appropriate legal advice in the back—I am ready, but to be clear in speaking and preparing for today, the issue is not whether or not to approve the salary raise for the County Clerk. It is not even a relevant discussion for the Administration; that is the County Council’s authority. In fact, in speaking with the Administration, they have no objection at all—Jade does a great job. I understand that it is more of a process issue and doing it correctly as a body and the Sunshine Law. So if we can talk about those matters first, I think we can resolve it.

Council Chair Rapozo: But Mauna Kea, who is HR to determine that it is a Sunshine Law issue or not? Where in the HR manual; Blue Book, Yellow Book, Green Book, or whatever color book they use, that tells them, “We need to police the Council?” That is my problem. That is not their function.

Mr. Trask: I understand and this may be all my fault, actually. I would like to speak about these legal matters in the back. If you want to have all these discussions up front, I would like to take a recess just so I can clarify some matters because some of these memorandums say confidential, but I am not sure they are and we can have the discussion wherever you please.

Council Chair Rapozo: We put the public open session language and we put the accompanying executive session language in an event there is a matter that you believe we need to go into executive session. What I am asking, I do not believe is an executive session item. Really, does HR or any anybody across the street have the right or the authority to tell the Council “no?”

Mr. Trask: I can give that answer right now.

Council Chair Rapozo: Yes, Mauna Kea, what is the answer?

Mr. Trask: May I have one (1) moment, I am going to grab my materials.

Council Chair Rapozo: You said it, whatever happened prior to that document getting over to HR is irrelevant. The fact of the matter is that they had no right or authority to reject a payroll adjustment form that was submitted by this side of the aisle.

Mr. Trask: Okay. Again, under 15.01 of the Charter, the Department of Human Resources is established for the purposes of personnel administration based upon merit principles, devoid of any bias or prejudice, and generally accepted methods governing classifications and positions, and the employment conduct, movement, and separation of public officers. They are under 15.04. The director of human resources is the head of the department and shall be

responsible for the proper conduct and for the execution of what is called, “The human resources management program,” prescribed in this Charter. The human resources management program in the Charter under 15.05A, C, and H, respectively, covers classification, recruitment, selection, employment, deployment, promotion, evaluation, discipline, and separation of County employees. Administration of employment policies and training related to employee benefits, conduct, development and safety, and other related duties as maybe determined by the Mayor. So, what happened was...do you want to talk about this process—we can do it here.

Council Chair Rapozo: Yes. Let us just be specific to the point that is on the agenda.

Mr. Trask: I want to give you a little bit of background because it is important. As you know, I am going to start with some history because again, this really starts in early 2016. February 5, 2016, the Salary Commission adopted Salary Resolution No. 2016-1 to increase the maximum salaries of all elected and appointing officers as defined in 23.01D of the Charter. This resolution specifically included the County Clerk’s position. The Council at that time rejected Resolution No. 2016-1 and expressed concerns about the County Councilmembers receiving an increase in maximum allowable salaries. The Salary Commission then went back and amended the salary to remove the following positions: Executive Branch—Director of the Office of Economic Development, Liquor Director, Parks & Recreation Director and the Deputy, Housing, Boards & Commissions Administrator, the County Clerk, Deputy County Clerk, and the County Auditor. The Salary Commission then passed Resolution No. 2016-2 and went into effect on July 1, 2016. It included raises for the following Executive and Boards & Commission appointed officers. Under Salary Resolution No. 2016-2, you had the Mayor, the Managing Director, the County Engineer and the Deputy, Director of Finance and the Deputy, the County Attorney and the Deputies, Office of Prosecuting Attorney and all Deputies, Human Resources, Kaua’i Police Department (KPD) and Deputy, Kaua’i Fire Department (FKD) and Deputy, Planning Director and Deputy, and the Managing Engineer for the Department of Water and the Deputy, the County Clerk was not included in that Resolution. On May 6, 2016, the Director of Human Resources sends memorandums to all the appointing authorities for those department heads, Fire, Police, Planning, and the Water Engineer, they sent the memorandums to the appointing authorities, which are their respective commissions. Remember, the Department of Water is semiautonomous, so they are separate, but they still got the same memorandum from HR because the human resource program, regardless, is Countywide. Those memorandums were entitled “Regarding pay adjustment requests for their respective appointees.” It included a sample memorandum on it and then they were informed of the maximum amount to set their appointees salary at and that they may set the salary, an amount below the maximum pursuant to the Charter and the resolution. If they wish to adjust their appointing salaries, they may do so by submitting a memorandum, which a sample was provided. In that memorandum it states simply, “At the blank date, Commission Meeting, the members of the Commission voted to implement a pay adjustment for the Director of, with name. The adjustment increases their current salary amount to blank on the effective date. We respectfully ask for assistance in processing this request.” In response to that memorandum, between May and December 2016, all the respective

Commissions including the Department of Water, met at an agenda meeting and voted to set their appointees' salaries and memorandums were then sent to HR informing the department of the same pursuant to HR's request. Those memorandums were processed and the salaries were adjusted appropriately. January 19, 2017, as the Council is aware, the Salary Commission passed Resolution No. 2017-1 which set the maximum salaries for those County officers that were removed from Salary Resolution No. 2016-2. Now, this resolution included the County Clerk and amongst other people, such as the Liquor Director, Parks & Recreation, all the people who were left out before. This passed through Council on February 22, 2017. On May 13, 2017, consistent with what they did in 2016, HR sends all the memorandums to the respective appointing authorities: Mayor, Council Chair, and Boards & Commissions for their respective authorities. The only Boards & Commissions other than...under the Sunshine Law...and this is where I get involved. Under the Sunshine Law, the County Councils are considered Boards & Commissions. So the two (2) Boards & Commissions that received these memorandums were Liquor and the County Council. Liquor's memorandum went through the Boards & Commissions Administrator, and Council's memorandum went through the Chair. That is consistent with Council Rules 3(A)5.9 and 11, respectively. Chair is sent all matters and is the one that assigns things out accordingly. The memorandum identified appointing authority as the County Council consistent with Charter Section 5.01(A) which states that the Council is the County Clerk's appointing authority or the County Clerk shall be appointed and removed by Council and that the salary of the County Clerk shall be set pursuant to Article 29 of the Charter. That is why I think this is a mistake because thereafter the memorandum is sent...memorandums are sent back and forth and HR asked our office if...can we take a recess real quick? I just want to ask one (1) question.

Council Chair Rapozo: Let us take a ten (10) minute caption break.

There being no objections, the Council recessed at 9:41 a.m.

The meeting was called back to order at 9:55 a.m., and proceeded as follows:

*(Councilmember Yukimura was noted as excused.)*

Mr. Trask: Aloha, for the record, Mauna Kea Trask,  
County Attorney.

Council Chair Rapozo: You asked for the break, so we took the break.

Mr. Trask: Essentially what this comes down to is I was asked the question regarding...Council Chair pursuant to past practice/history, sent a memorandum regarding setting the County Clerk's salary. The question came to me, "Who is the appointing authority?" So clearly under the Charter...without any malice, I read 5.01(A), it says "The County Council is the appointing authority." Then it came a question of what was the agenda, for record purposes for the Sunshine Law, the County Council being the board and commission, what date was the meeting. Like Council Chair said, there was not a specific agenda item, but as the Chair has correctly noted, the Operating Budget was approved on May 31, 2017. The salary

was set via Operating Budget, that is what you have to do. All salaries are set by the Operating Budget. The question was, "Is that sufficient for notice purposes?" I was asked that question. In speaking with the Director of HR, she does not have an opinion either way, she really does not get involved in this issue. It is not appropriate, it is just a processing thing for her. The question was asked to me, I made it an issue. I looked at Sunshine 92.7(A) and I did not think it was. I asked couple of deputies in my office and called Office of Information Practices (OIP), just to be sure, because in doing this I would have been changing historical practice and I do not take that lightly. How we do things for a long time is important and there are reasons for that a lot of people do not know anymore, but in speaking to OIP, they said, "Yes, it was unlikely." There are current appeals and Sunshine Law issues before this Council that I have to defend, so I thought not only per my reading, OIP's reading, but also practically, taking the conservative route would be appropriate to just set this item for a vote, so if it is done without the appropriate "Sunshined" agenda, that action could be appealed and the action taken pursuant to that, which is the setting of the salary could be undone. I opined it, I was not told to do it either way. I apologize for creating this issue, but honestly, it was in good faith and it is what everyone else did, Department of Water, same thing, semiautonomous. They were sent the same memorandum, they went through the process. That is where I am at. I reviewed previous memorandums and I did not feel comfortable with following that precedent.

Council Chair Rapozo: You did not create the issue. You did your job. You advised HR what you believed was appropriate. I guess the frustration for me was rather Councilmember Yukimura could have brought it up here at our body and she did not. She went down the road and spoke to...or however she got the word across and then it comes back and almost like in defiance, like, "No, we are not going to..." and that is my concern. We sent over a requisition, we send over whatever we send over...I mean there was a time that we sent over our travel information or if someone had to go to a conference and the Administration said, "We need to see all the appointments you have scheduled." Excuse me, as we respect their duties, their functions, and their roles, I think that needs to be the same—the way they treat us. They have to appreciate what we do and I put that on the agenda because if this is the way it is going to go then let us go get a definition of what the separation of power is. I think there is a misconception. It is almost like the State and the County, like the State is the superior government over the Counties. They control us like little pawns on the chessboard and I feel the same way with the Administration, like they are the supreme government entity on Kaua'i and we are like little children. That is not how it works. You have the executive branch and you have the legislative branch, both equal and both with the same authority on their side of the aisle. That is where I think people are forgetting. Maybe the former Chairs allowed that to happen, but this one will not. I am tired of it and we need to be allowed to do our job and when we send over a payroll certification, it needs to get processed. If a Councilmember has an issue with the way we got to that end, then bring it up here with this body, file a complaint or challenge the Chair, but we are wasting a lot of time today. I am glad that we could have this discussion in the open. For me, Mauna Kea, the cleanest way as you stated, "Post the thing, we will take the vote," and the vote will be approved. We approved the Salary Resolution, not everyone, but most of us approved the Salary Resolution for the increase. We went through extreme budget sessions and the

majority of the Council, I believe unanimously, approved the salary for the Clerk. Historical precedent is that once it gets approved, the payroll certification goes across for the adjustment, and it is done, but no, this year is different. "Timeout. Let us hold it back."

*(Councilmember Yukimura was noted as present.)*

Council Chair Rapozo: At the Committee of the Whole for next week, we will post the Executive Session, and we will take the vote. Councilmember Kagawa.

Councilmember Kagawa: Mauna Kea, you went over the summary, so I just want to make clear that the votes for the Salary Resolution No. 2016-1, the first tier, what were the vote totals from this Council?

Mr. Trask: I tried to locate that, but I could not find it.

Councilmember Kagawa: 3:4, I will help you. Do you see anything in this County that ever pass with a vote of minority vote of three (3)?

Mr. Trask: You are right, it is a reverse with the Salary Commission.

Councilmember Kagawa: It passed by a vote of 3:4, let us make that clear. I voted against it. Now, the second time, when we voted for the second tier, which included the County Clerk's pay, what was the vote total?

Mr. Trask: If you can provide that, I do not know.

Councilmember Kagawa: 6:1. Let us make sure, that was a strong approval of the County Clerk's increase as well as the rest of the second tiers, or the second resolution.

Mr. Trask: I agree.

Councilmember Kagawa: 5:2, excuse me, I do not want to miscount.

Mr. Trask: The County Clerk's Office is excellent.

Councilmember Kagawa: So, it is a strong vote of approval, 5:2 compared to 3:4. You will never see 3:4 anywhere and I do not know how that happened. The other thing is that I have never seen a communication where you single out one (1) person to say the County Council will approve the County Clerk's pay at a certain amount. I mean I would like to see that for every Department Head, amount because I have got some real issues with some of those on first tier, such as the Acting County Engineer, who does not have a license. I am not sure what his pay went up to, and based on performance, I would have problems if he went up to the maximum. We do not get to ratify that, so yes, if we are going to open it up, the Acting County Engineer does not have a board overseeing him like that the Department of



Water. Let us have all of those brought forth by HR and bring Sunshine upon all. Let us not only bring Sunshine upon the Council. Let us bring Sunshine to all, that is what I want to see and let us have those discussions about whether certain individuals are deserving of their pay increase. That is where I am coming from. It is either one (1) or all...do not just pick on pet peeves when we do not like it, so we want it this way. If we are going to pick on something, let us open it all up. Let us open all the windows. I would like to see that. If the Sunshine Law is requiring to ratification of individuals to go up toward the maximum levels, then let us have those communications brought forth. I think the public would appreciate that.

Mr. Trask: On that point, two (2) things, you are right, the Salary Commission Resolution becomes in effect unless rejected by a vote of five (5), by the County Council. You are absolutely correct. It is not like anything else, that is per the Charter. As far as the other Boards & Commissions and appointing authorities, the Department of Water on December 13<sup>th</sup> sent a memorandum to HR regarding the posting of their agenda and the approval of the manager's pay. At its June 6, 2016 meeting, the Fire Commission did the same. The Civil Service Commission on May 27, 2016 did the same. The Planning Commission on May 24, 2016 did the same and to the Liquor Commission just did theirs. As far as Boards & Commissions as appointing authorities, yes, they did.

Councilmember Kagawa: I am not really satisfied with that. I would like to see language where the Council actually has the final vote. If they are going to require the Council to have a vote in front of the public on the County Clerk and Deputy County Clerk's pay, I want to see all of them come through. Can we work on that type of language? Certainly, I would not agree with all of the approvals going up to the maximum. Based on performance, from what I see on this end, I certainly would not rubberstamp even the Mayor's increase. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Just so that I understand this. The HR Director has sworn to uphold the law and the Charter, the law, requires that the appointing authority approve a pay raise, correct?

Mr. Trask: Well, the Charter actually says, "5.01(A), the council shall appoint and may remove the county clerk. The salary of the county clerk shall be set pursuant to article XXIX." It says that, under 29.03, "the respective appointing authority may set the salary of an appointee at a figure lower than the maximum figure established by the salary commission for the position, provided that elected officers may voluntarily accept a salary lower..." okay, the respective appointed authority may set the salary lower. Under Council Rule 2(A)(4), a physical majority of the entire membership of the Council shall constitute a quorum and an affirmative vote of the majority of the entire membership shall be necessary to take any action. So, in looking at all these things, the question was asked of me and I looked at that, I opined on it, then I learned that there was historical practice that provided guidance as to what was done. That is why, Chair, acted in good faith. I have no evidence to support that he did not. I then reviewed those historical matters and I did not see how that was done. I am talking to the fact that the Charter has changed

over time. It was different before, so I think everyone is acting in good faith here. There is a misinterpretation and I am sitting in the middle. That is why I am taking responsibility for the guidance provided and suggesting the reasonable, obvious solution, which is posting, given the authority, the body, the opportunity. For the record, I support the County Clerk's pay adjustment she does an excellent job.

Councilmember Yukimura: Okay, I have not finished.

Mr. Trask: Oh, I am sorry.

Councilmember Yukimura: Thank you. I am glad you are saying that the appointing authority, which is the Council, has not yet approved the pay raise and so if we post a meeting and we take a vote, then that will be an action by the appointing authority? I, too, have no objections to the pay raise. The only thing is that we follow the law.

Mr. Trask: To the best as I can understand, I think that would be the wisest course of action.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Any other questions of Mauna Kea?

*(Councilmember Yukimura was noted as excused.)*

Councilmember Chock: I have discussion.

Council Chair Rapozo: Okay, thank you, Mauna Kea. Any public testimony, while the rules are suspended?

GLENN MICKENS: For the record, Glenn Mickens. First, I really want to compliment Mauna Kea. I think he is doing a heck of a job. I have yet to hear, as many of the years I have sat here ever heard somebody admit that they were wrong, that they made a mistake, and he did. Everybody makes mistakes, but I have never heard it come from them. I just want to compliment him and I want to completely agree with Councilmember Kagawa on salary increases. I do not think it should be tied to...(inaudible) obviously, you are going to get a cost of living increase, but I think it should be strictly tied to performance. If people are not doing their job, why should they be able to keep on getting increases, and the last ones, again, went to the upper-tiered people. People who are already making over one hundred dollars. A couple in a family that you know about is making two hundred some thousand dollars in their family. There is something really wrong with this situation. If it is going to be an increase, I think Councilmember Kagawa said that five (5) members should have to vote on it...you should be the governing body then to look at salaries and say whether they should or should not be increased. It should not be up to a Salary Commission or somebody else making that call. You folks control the budget. You control the purse strings and doing that, I think this is all part of it. When people are making an outrageous amount of money whether it is overtime or anything else,

something should have to be done about it. Thank you, Mauna Kea, for what he is doing. He is open to the public and I like it. Thank you very much.

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

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: I just wanted to get some clarification on process. Moving forward, my understanding is that this discussion will be on an agenda for the Council to take a vote on. Is that correct?

Council Chair Rapozo: This matter, the vote on the pay adjustment for the Clerk will be in executive session next week in the Committee of the Whole.

Councilmember Chock: Okay. One of the things that has come up in this discussion and I think is very interesting...and this has nothing to do with the Clerk's position at all, I totally support it, but certainly the Salary Commission gives the maximum, which is the ceiling and then my understanding is that the Administration goes through their own evaluation process as we do on our side. They determine at what level and what the actual adjustment should be and that is something that will be handled by the Council as a whole. That has not happened that way. Has it just been the Chair's recommendation and then on the agenda?

Council Chair Rapozo: Yes, I believe...and this does not happen a lot. We only had a few since I have been on the Council, but historically, once the Council approves the resolution, then it just moves forward.

Councilmember Chock: Right.

Council Chair Rapozo: I think what Mauna Kea read in the Charter regarding the Council or the appointing body may set the salary lower, I think if there was an attempt to set the salary lower than what was already agreed upon or voted on, then I would think you would have to call the body together and say, "Hey, I do not think they should get a lower salary." Up until that point, this body has already...and yes, not in...the Resolution was posted, the budget was posted, so I am not sure where the concern is that this was not a posted item because it was posted. If anyone had a problem in the public with the salary of any of those people on the Resolution, they had an opportunity to come and tell us, but that is the Sunshine Law requirement.

Councilmember Chock: So, basically if the salary is passed by the Council and if there is a member or members who have an issue with the maximum, then that is when they should make a request for it to be on the agenda and put into executive session for discussion. Is that correct?

Council Chair Rapozo: Yes.

Councilmember Chock: Thank you.

Council Chair Rapozo:

Councilmember Kagawa.

Councilmember Kagawa: It is frustration with the rhetoric that Councilmember Yukimura talks about, "Let us follow the law." Well, the reason why we are in this whole debate and frustration goes back to when the original Salary Commission recommendations were chopped up in the first place. It was never supposed to happen that way. The purpose of the Salary Commission is to establish increases for executive-level pay, which is not civil service positions. There is no part in the Charter that says that it should be chopped up, they should set the ranges in different tiers, and that is exactly what she voted to do. Former Managing Director Nakamura contacted me back then asking me if I would be willing to support that and I told her "no." I said the intent is not right to go and chop it up and make it how you want it, especially with a majority vote of three (3) to win. To me that is sad. In sports, it is like a forfeit win. I think when that happened, that set off all of these other things. If we are going to learn from this, then let us learn to do things the right way the first time. When she says, "Follow the law," she needs to talk to herself and follow what is right because when you do things wrong, then what was wrong comes back to bite you later. For me, it is not funny. It is just ridiculous why we are here and why we do things that way and then we complain later. It is old. It is tiring and I do not know what else to say. Thank you.

Council Chair Rapozo: Any other discussion? I do not know if anybody did anything wrong. I think Mauna Kea did not make a mistake. He advised his client when HR asked the question. Again, I think if we had discussed this on our side, the legislative body, if there was a concern and if any one of you had come up to me and said, "Hey, Chair, I would feel more comfortable if we put it on the agenda," I would have placed it on the agenda. Nobody is going to oppose that, but that did not happen. That is the frustration. Today's meeting would have been the Executive Session to approve but no, now I am asking for fifty thousand dollars (\$50,000) to file a complaint against the Administration for violating the separation of power, which I am going to withdraw, by the way, but I am just saying why did we do it this way? I do not know what the motivation is or was, but it is frustrating. I have not denied any single agenda request from any single Councilmember for as long as I been the Chair, whether I agreed or disagreed. I think everybody knows that. Yes, it is frustrating, but we will get through it like we do the rest. Right now, we are still on the Executive Session item. I guess the motion for me would be to receive the Executive Session.

Councilmember Chock moved to receive ES-908 in open session, seconded by Councilmember Kaneshiro, and carried by a vote of 6\*:0:1 (*\*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Brun was noted as silent (not present), but shall be recorded as an affirmative for the motion, Councilmember Yukimura was excused.*)

Council Chair Rapozo: Let us go back to the open session item, C 2017-154 and I will entertain a motion to receive, and then we can go into Executive Session.

Ms. Fountain-Tanigawa: Chair, this is on page 3.

C 2017-154 Communication (06/15/2017) from the County Attorney, requesting authorization to expend funds up to \$50,000.00 for Special Counsel services to represent the Council regarding: (1) Actions taken by the Director of Human Resources regarding the pay adjustment request for the County Clerk; and (2) The process involved with filing a complaint against the Administration pertaining to a possible violation of the separation of powers, and related matters: Councilmember Kaneshiro moved to receive C 2017-154 for the record, seconded by Councilmember Kagawa.

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

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

Council Chair Rapozo: Any discussion? I did hear from Mauna Kea that HR was willing to proceed and process the request even with all of this and that is what I had asked for two (2) or three (3) weeks ago, but it took a threat of a complaint, then all of a sudden, it is, "Oh, yes, I can process that." I am not blaming HR, I think she is caught between a rock and a hard place, but at the end of the day, we have to maintain our independence as the legislative branch. We need to do that much more aggressively than we have in the past and we can still get along. Our action does not say that we do not get along, but we also have to make sure that our value in this entire system, the relationship between of the executive and legislative branches is respected as well. If there is no further discussion...Councilmember Kawakami.

Councilmember Kawakami: I am just getting thoroughly confused because I thought we were here because of a process issue on following the law and so are they now saying that they are willing to just process it without us going through that process that we had this lengthy discussion on? I am a little confused as to which direction we are going. I thought we had vetted that there was a process that prior customary practice was not the right way to do it, or may not have been the right way to do it, so we are going to go ahead and do it the way they suggested doing it. Now, they have said, "Just process it and forget this thing."

Council Chair Rapozo: No, no, no. She was willing to process it, but...I asked Mauna Kea to come up and...he took a break and he came and asked me, "Mel, which way do you want to go on this? Do you want to go in the back and discuss this?" There are some former County Attorney opinions as well that obviously we are not able to release, but I told Mauna Kea just tell me what you feel. What do you think is the best way to do it and he suggested, recommended that we take the vote, and that is what my recommendation is, that we do next week. As far as what I had been told prior to today's meeting, in the last couple of days, I guess, they were willing to allow the adjustment to go through.

There being no objections, the rules were suspended.

Mr. Trask: For the record, County Attorney. That is why I apologized. I just do not know how to do it even though HR is willing to do it currently. Given that the question was raised and the likelihood of litigation regarding that question because of the difference understanding what the law is and what is right, the best thing and I believe the legal thing is to post. That is not HR making that call, that is me. HR is willing to proceed, I just do not know how to do it.

Council Chair Rapozo: I think what Councilmember Kawakami is saying is we spent the last hour defending the way we do things and being told that it was against the law and now hearing that they were willing to move forward without...

Mr. Trask: And that is why it is the County Attorney's fault.

Council Chair Rapozo: That is why we listen to you and we will post.

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

Council Chair Rapozo: The motion is to receive.

The motion to receive C 2017-154 for the record was then put, and carried by a vote of 6\*:0:1 (*\*Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Brun was noted as silent (not present), but shall be recorded as an affirmative for the motion*).

Council Chair Rapozo: With that, that concludes our agenda. We will convene in Executive Session on the lawsuit item, but as far as BC, we are adjourned at this point, and we will see you at 1:30 p.m. for the public hearing. Roll call for the Executive Session.

The motion to convene in Executive Session for ES-909 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Rapozo	TOTAL – 6*,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1
RECUSED & NOT VOTING:	None	TOTAL – 0.

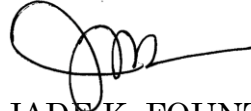
*(\*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Brun was noted as silent (not present), but shall be recorded as an affirmative vote for the motion).*

Council Chair Rapozo: Thank you, BC.

ADJOURNMENT:

There being no further business, the Council Meeting adjourned at 10:20 a.m.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized loop followed by several smaller loops and a horizontal line extending to the right.

JADE K. FOUNTAIN-TANIGAWA  
County Clerk

:dmc