

COUNCIL MEETING

June 3, 2009

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, Historic County Building, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Wednesday, June 3, 2009 at 9:28 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable Jay Furfaro
Honorable Daryl W. Kaneshiro
Honorable Lani T. Kawahara
Honorable Derek S.K. Kawakami
Honorable Bill "Kaipo" Asing, Council Chair

Chair Asing: Can we have the first item please?

PETER NAKAMURA, COUNTY CLERK: The first item is the approval of the agenda.

APPROVAL OF AGENDA:

Mr. Furfaro moved for approval of the agenda as circulated, seconded by Mr. Kawakami.

Chair Asing: Any discussion?

Mr. Bynum: Yes Mr. Chair.

Chair Asing: Yes, go ahead.

Mr. Bynum: I would like to make a motion to amend the agenda by adding a resolution to clarify Council rules.

Mr. Bynum moved to amend the agenda by adding a resolution to clarify Council rules, seconded by Ms. Kawahara.

Mr. Bynum: Time for discussion?

Chair Asing: Okay, go ahead.

Mr. Bynum: Our Council rules say that any member can introduce any bill or resolution and I think that is pretty clear, and in spite of that, repeated request that I have made to add Council agenda items have been refused. And I think it is appropriate that we have a discussion regarding that and clarify

that rule, so I am making this motion, and if you want to discuss it now, we can. If you would like to move it a different part of the agenda, but our rules call for an ability to add an agenda item by a vote.

Chair Asing: Thank you. We will move this item to the end of the agenda. Thank you. With that, can we have the first item please?

Mr. Nakamura: There is a motion and a second on the approval of the agenda Mr. Chair.

Chair Asing: Okay, all those in favor say aye?

The motion to approve the agenda was then put, and unanimously carried.

Chair Asing: Motion carried. Next item please?

Mr. Nakamura: The next matter is approval of the minutes of the following meetings of the Council.

MINUTES of the following meetings of the Council:

Council Meeting of May 20, 2009

Public Hearing of May 20, 2009 re: Bill No. 2312 and Bill No. 2313

Public Hearing of May 27, 2009 re: C 2009-184

Mr. Kaneshiro moved for approval of the minutes as circulated, seconded by Mr. Chang.

Chair Asing: Any discussion? All those in favor say aye?

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

Chair Asing: Next item please?

Mr. Nakamura: Mr. Chair, at this time, we have a request to take up on page 4 of the Council's agenda a LEGAL DOCUMENT, communication C 2009-206.

LEGAL DOCUMENT:

C 2009-206 Communication (05/21/2009) from the Housing Director, recommending for Council approval a Third Amended Agreement for Kaua'i Lagoons Affordable Housing to allow for an extension of time up to August 17, 2009 for the developer to obtain Certificates of Occupancy for 82 of the required affordable housing units:

- Third Amended Agreement (Kaua'i Lagoons Affordable Housing)

Mr. Bynum moved to approve LEGAL DOCUMENT: C 2009-206, seconded by Mr. Chang.

Chair Asing: Any discussion? If not, all those in favor say aye.

The motion to approve LEGAL DOCUMENT: C 2009-206 was then put, and unanimously carried.

Chair Asing: Motion carried. Next item please?

Mr. Nakamura: We have a request also to take up on page 3 of the Council's agenda, communication C 2009-200.

C 2009-200 Communication (05/14/2009) from Angelica Tran, representing Waimea High School's 9th Grade Class, requesting agenda time to make a presentation regarding traffic safety from Intersection's Beach (also known as "Intas") to First Ditch (in the vicinity of Kekaha Gardens) and recommending a change to the speed limit on Kaunualii Highway from 50 m.p.h. to 35 m.p.h.: Mr. Kawakami moved to receive C 2009-200 for the record, seconded by Mr. Chang.

Chair Asing: I believe that they are going to do a presentation, so with that, what I would like to do is suspend the rules.

There being no objections, the rules were suspended.

Chair Asing: Can we have the representative up please?

MARK O'DAY, WAIMEA HIGH SCHOOL TEACHER: Good morning. For the record, my name is Mark O'Day, a teacher at Waimea High School.

Chair Asing: Good morning.

Mr. Bynum: Good morning.

Mr. O'Day: I would like to first start off saying thank you Council Chair and Councilmembers for allowing our 9th grade class to present their participation in a democracy issue that they feel strong about. I would like to introduce the students who are here today. Behind me is John Medeiros, Marah Golding, Anna Hartsell, Angelica Tran, and Ally Wright, and a parent supporter, Ui Wright. Just a little bit about the course. The 9th grade social studies... one of the course is called... one of the courses classes is called participation in a democracy... when one of the benchmark requires the students to actually participate in the political process. So with the little direction from me, we did find a potential problem on the westside that the students decided that it could be changed and they broke into groups of their choice. And in their projects or their groups, they worked on things like e-mailing public officials, testifying before a public body like they are

going to do today... initiating data collection and public support and they would like to present their findings to you this morning. So I would like to, again, step out of the way and let the students do what they do best. Thank you.

ANGELICA TRAN: Good morning.

Mr. Bynum: Good morning.

Chair Asing: Good morning.

Ms. Tran: My name is Angelica Tran and I am a member of the 9th grade class at Waimea High School. I would like to thank you for your time today to hear our presentation and John Medeiros will be giving it.

JOHN MEDEIROS: Good morning everybody.

Ms. Kawahara: Good morning.

Mr. Medeiros: For our class participation in democracy, we were to find the problem in our community. We found that there is a beach called Inters or Intersections. It is on the westside and it is a stretch of Kekaha Beach, and it is at the intersection of Akiaola Road and Kaumuali'i Highway. Many, many students go to that beach right after school. I can recall that we were riding on the bus and as you pass the parking lot, you can see tons of trucks and sometimes the whole back is loaded with fins and bodyboards, and surfboards. It is pretty popular, it is a family friendly beach, it is just famed. It is located... it is about half a mile long... right at the intersection and it is away from the shrimp ponds and first ditch. And Kaumuali'i Highway is marked with the two (2) orange marks on the presentation. And right there is Inters right between the lifeguard stand. The problem with it is the speed limit. It resides in the 50 mile per hour zone and it is really convenient that right after Inters is a 35 mile per hour speed limit sign that opens up to Kekaha, so all of Inters is in a 50. I would like to call up Allyson Wright to present the data that we found on April 16 and April 20, 2009.

ALLYSON WRIGHT: Hello, my name is Allyson Wright and like (inaudible) said before, I am a 9th grader at Waimea High School. Data collection was from April 16 to the 20 and what we did was we stood in front of the lifeguard stand and we counted the amount of cars that were parked that passed, cars that left, and arrived as well as U-turns. I am not sure if it is illegal or not, but we counted U-turns too and that is a picture of a U-turn and how dangerous it can be because of how fast people are going. If you have a blind spot and you cannot see a car coming, that could have caused an accident.

Mr. Medeiros: Our proposal is that the speed limit sign that starts Kekaha or the rest of Kekaha town, and we would like to move it near the pavilions or even near First Ditch to make all of Kaumuali'i Highway as well as Kekaha

Beach a 35. The benefits of this would make the whole roadway and the beach much safer for pedestrians, drivers, and other beachgoers. You can reduce the chances of vehicle collisions or collisions with a pedestrian, prevent future accidents, and ultimately save lives. The picture was a roadside memorial for a crash in 2007.

I had some spare time and I looked up some facts that would benefit this presentation. I found that a car traveling at 50 m.p.h. requires 125 feet of (inaudible) come to a complete stop. So a driver traveling at 50 would have to spot a pedestrian or something that they could hit from 125 feet away. Even if they stomp on the breaks, they would still be within inches of that depending on whether or not they have good breaks. A car traveling at 35 requires less than 100 feet to come to a complete stop, so spotting a pedestrian from 96 feet away is much safer. That 30 foot difference can save lives. Thank you for listening to our proposal and for slipping us into your agenda. We greatly ask for your support and it would be appreciated. And we would like some advice as to where to go from here because to us, this is more than a school assignment, this is more than a homework project. We really want to get this done. Thank you.

Chair Asing: Thank you. What I would like to do is... what the students have done is they have come forward with some ideas and a proposal that they feel is something that is needed for the safety of the people in the community. So with that, I have a short slide presentation to make in support of your project. With that... these are some of the suggestions that we would like to make as a Council to you for your project and your establishing speed limits on a State highway... although it is not within the jurisdiction of the County Council, the Council has some recommendations. And the recommendations are and I would like to read it. Contact and make presentation to the State Department of Transportation Highways Division with the Kaua'i District Engineer. Contact Kaua'i's legislative delegation who is Senator Hooser, Representative Sagum, Representative Tokioka, and also Representative Morita who is not listed there.

Also, we would like to suggest that you garner support of community businesses and organizations. As an example, the West Kaua'i Business Association, the Kekaha Association, PMRF, and business owners, and of course, a letter of support from the County Council ourselves. With that, we have a letter here and let me just read the letter here and this is to Raymond J. McCormick who is the District Engineer for the Department of Transportation who heads the Kaua'i District. Let me read the letter. Dear Mr. McCormick: This is to inform you that the Kaua'i County Council at its meeting held on June 3, 2009 supported reducing the speed limit along Kaumuali'i Highway in the vicinity of the intersections with Akiola Road and mile marker 28 which is First Ditch as presented by Waimea High School 9th graders assigned to the participation in government project. In light of the above and in the interest of safety, your favorable consideration in reducing the speed limit as described above is appreciated, and I am sure that all the Councilmembers agree with this, and I will be signing it, and sending it over to the

District Engineer. So with that, these are our recommendations. We would like to congratulate you on a job well done. We are not exactly sure as to the kinds of criteria that the State uses for establishing speed limits, but we would suggest you work with them, and we will support you in that endeavor. So with that, Councilmembers, any comments?

Mr. Chang: Thank you Chair. Congratulations to the 9th graders. What a great presentation. I think your presentation actually is extremely timely because as we all know this weekend is graduation. So I think that will create a lot of awareness because normally during graduation is when we have had accidents and some of them certainly causing death. But I did want to point out... I noticed that you counted 26 parked cars and about 162 cars passing within a 15 minute interval and what is very interesting is the dates that you gave the 16th and the 20th is a basically a Monday and a Friday. So I would imagine that would be a lot more during peak hours during the weekends, but another great point that you mentioned... I think a lot of the visitors and the local residents will be at Intersections or the First Ditch area because it is close to a lifeguarded area with pavilions and what have you, and many of us know that, you know, Polihale, although spectacular has a lot of currents in that area and many of our visitors through guidebooks are... suggested that they go to Kekaha Beach Park. So I want to commend your stats on that and I think unless you are a walker or a jogger or you ride bike, I don't think a lot of people realize how fast people drive throughout this whole island. It could be on the westside, it could be on the eastside, it could be in neighborhoods, and it just seems that nobody respects even a 35 mile an hour speed limit, and especially because of that stretch leading out to PMRF. But I want to commend all of you for taking that initiative and that thought, and especially reminding everyone that this weekend is graduation and all those parties. So it is just a reminder that we all need to slow down and be very cautious and I want to commend you. As I mentioned, your survey was done on a Monday and Friday and consequently that is only a 15 minute period. Again, a reminder, the weekends are a lot, lot more packed, so thank you for taking that time and initiative because I also noticed that during that 15 minute span, there were 12 U-turns and I think if my memory serves me correctly, a couple of... maybe two (2) or three (3) years ago, there was a visiting Japanese couple in a van that did a U-turn near and around that area, and unfortunately, it was hit head on causing some fatalities. And that is where you are going to turn around because that is where the beach you were guided to, so thank you very, very much. I think it was an excellent presentation and as the Chair says, on the Council level, what we can do is to certainly help you out, and please contact Senator Hooser and our Legislative Delegation or Representatives Sagum, Morita, and of course Tokioka. Thank you. Congratulations.

Mr. Medeiros: Thank you very much for your time.

Chair Asing: Councilmember Kawakami?

Mr. Kawakami: Thank you Mr. Chair. I would also like to commend your school teacher Mr. O'Day. He was my school teacher too a long time ago. Not that long ago, but I just want to commend on your eagerness to get involved. This is something that will benefit your whole community and I think just on the westside itself because there are a lot of straight aways, people tend to speed, and I just want to bring up the point of how important that Mānā drag strip is too, to give youngsters and adults an option to get off the streets, and bring the races to the drag strip. But I really want to commend the data that you guys collected. It is not like you guys just came and said, oh, we think that this is a problem. You guys put some time and effort and it makes the job of your elected officials much easier to support your proposal when you come prepared like this, so good job. Thank you.

Chair Asing: With that, Councilmember Kawahara?

Ms. Kawahara: Thank you guys for your presentation and I just want to say how proud I am of Waimea 9th graders to come here and do such a great presentation. I want to applaud you because you are participating actively in your government. It sometimes takes people a long time to do that if at all, so I am really glad to see you start doing it early. I encourage you also to also continue to do it throughout your lives. The issues that you are going to want to address are things that are important to you... are going to happen throughout your life and you do need to be sure to try and have a voice and be sure to talk to your officials and work with your government because that is what it is there for. It is there to serve you and meet your needs and meet your concerns, so thank you very much and congratulations on your presentation. As Chair Asing says, the Council is very pleased to be able to write a letter asking for the support of the State Engineer, so thank you, and thanks for bringing up the conditions, so that we know what is happening. Thank you.

Chair Asing: Councilmember Bynum?

Mr. Bynum: Just thanks a lot. I appreciate your concern. I mean when you look at what you presented, it is just logical right? It just makes sense and we all know what that area is like, so why somebody didn't act on this sooner, like that is what we need good citizens for, so thanks for being good citizens.

Chair Asing: Councilmember Kaneshiro?

Mr. Kaneshiro: Thank you Chair. Mark O'Day, I just wanted to thank you for coming up with such a brilliant way of presenting this because at times, you know how the wheels of government moves. It does take some time and as I sat here when they said that they were Freshmans, I was wondering how we are going to get this accomplished with graduation almost coming up in a week or so, or when you are going to be moving on to be a Sophomore next. But I believe this project is a great project to carry on. Don't stop here. We brought some awareness to the public and hopefully the *Garden Island* will put a nice article in

the paper and people will see that. When people see that even if they are driving along and they still see that the 50 miles hasn't been changed to 35 miles... what you brought up, what you students have brought up here before the public will reflect back into their minds and say, wow, you know, they are actually right. This is for the safety of everyone here on the island of Kaua'i. So just the awareness is something that I really have to give you a lot of congratulations for and your efforts. I can tell you right now, this is going to have some positive benefits, but I would encourage you to continue to work to hopefully see this, you know, as you work through the government process that this can be accomplished. And, again, I really like the idea where we have students participating in government process like this. I think it also helps us as Legislators to make our job easier, so thank you so much again. I want to thank you for all.

Chair Asing: Thank you. Councilmember Furfaro?

Mr. Furfaro: Thank you. First of all, to the Freshman and the student body, thank you very much for bringing this to the table and I am going to ask the Chairman who has shared his letter... the intent of the letter to go over to the State Highway's Engineer, but I would like to suggest if I could that we have some kind of formal acknowledgement that it is unanimous from this Council and the word unanimous be entered into your letter. I would also like to ask if you could expand on behalf of the Council, the question regarding the interpretation of U-turns and perhaps they could also respond to the student body on... is that legal, illegal, or what in fact are the typical standards for U-turns on State Highways. I would ask if we could expand your correspondence to include those two (2) items Sir.

Chair Asing: It is not a problem. I think we can add whatever Councilmembers feel is in the best interest of getting the job done.

Mr. Furfaro: Thank you.

Mr. Medeiros: Thank you.

Chair Asing: With that, I also want to thank you for taking on this project and moving it forward and we look forward to a successful project. So with that, thank you very much. Do you have anyone else who wants to say anything?

Ms. Wright: Actually, I would like to explain what is in the packet that you guys have. For the first five (5) pages is the slide that you guys just saw. After that is our statistics for each day. What we put on the slide was about an average, so these are more exact statistics. The next page is replies that we have from Chief Perry and Raymond McCormick. We also sent out letters to other people as well, other public officials, but they haven't returned... they haven't replied yet.

And then on the last few pages are petitions that we have passed out to the students and the students have signed and have returned.

Chair Asing: Thank you.

Mr. Furfaro: Very well done.

Chair Asing: Boy, that is a lot of work that you folks did. Tremendous.

Mr. Chang: A lot of work and they are 9th graders, beautiful.

Chair Asing: Great.

Ms. Wright: Thank you.

Chair Asing: With that, thank you very much.

Mr. Kawakami: Mr. Chair, I see a few other students and I don't know if they got to come up and get some camera time or say hi or anything, so why don't you bring them up, so that...

Chair Asing: Bring up the other students, so that they can introduce themselves as being part of the project.

ANNALISA HARTSELL: Hi, I am Annalisa Hartsell.

MARAH GOLDING: And I am Marah Golding. We worked on the PowerPoint they presented.

Ms. Hartsell: And I did the Excel sheet.

Mr. Bynum: Good job.

Chair Asing: And there is a lady on the left who did not introduce herself.

Ms. Tran: My name is Angelica Tran. I wrote the letter requesting for your time and I also helped a little bit with the PowerPoint... not as much as Anna, but, yea.

Chair Asing: There is a lady that is standing up too who has not been recognized yet.

UILANI WRIGHT: My name is Uilani Wright and I have two (2) hats in this. I am a part-time teacher at the high school and I service our ELL students,

but I also am a parent and Allyson is my daughter. So I am here to support both roles and I felt that they did an excellent job for a wonderful cause. It is opening our eyes and the public's eyes because this is an issue and like you said, it is during... it is very timely because it is during graduation, but to have the public aware of how dangerous that stretch is with the cars just zooming by. Maybe on a nice Saturday, you ought to sit there at the pavilions and just observe. It can be quite scary especially with the recent accident a couple years that was fatal and then there was one a little ways from that, that we had a fatality again, most recently this year. So we appreciate your time, we appreciate your willingness to listen to our students and I would like to applaud them too for a job well done I think. I concur with you. Thank you.

Chair Asing: Mark, do you have any closing statement that you would like to make?

Mr. O'Day: That is my pen that I am going to take.

Mr. Bynum: Thank you.

Chair Asing: Thank you very much. We appreciate that. With that, I'd like to call the meeting to order and can we have a motion to receive?

Mr. Kaneshiro: We have a motion on the floor Mr. Chair.

Chair Asing: I am sorry. Rules are suspended.

There being no objections, the rules were suspended.

Chair Asing: Glenn?

GLENN MICKENS: Thank you Kaipo. For the record Glenn Mickens. I just want to sincerely congratulate these young people for... this is quite a comprehensive report. It would be a comprehensive report for anybody, but for some 9th grade kids to go through this, getting all these signatures and everything, I just think it is tremendous and I do think that all these speed limits on this island have to be looked at. I think it goes from 25, 35, 50, and back and forth. I think it all has to be looked at, but anyway, I just really want to compliment these kids. They are going to run this island someday and for them to be as active as they are today... in a project like this, I think it shows a tremendous ability to young people. Thank you Kaipo.

Chair Asing: Thank you. Is there anyone else? If not, I'd like to call the meeting back to order.

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

Chair Asing: We have a motion on the floor. Any further discussion? All those in favor say aye?

The motion to receive C 2009-200 for the record was then put, and unanimously carried.

Chair Asing: Next item please?

ERNIE PASION, DEPUTY COUNTY CLERK: The next item goes back to page 1 of the agenda which is a communication for receipt. Communication C 2009-193.

C 2009-193 Communication (04/24/2009) from the Director of Personnel, transmitting for Council information, the third quarter reports (January-March 2009) relative to vacancies, established positions, new hires, reallocations, and promotions: Mr. Kawakami moved to receive C 2009-193 for the record, seconded by Mr. Chang, and unanimously carried.

Chair Asing: Next item please?

Mr. Nakamura: The next matter on page 1 is communication C 2009-194.

C 2009-194 Communication (04/28/2009) from Virginia Kapali, Chairperson, Kaua'i Salary Commission, transmitting for Council information, Resolution No. 2009-01, relating to the salaries of certain officers and employees of the County of Kaua'i which was adopted by the Salary Commission at its April 28, 2009 meeting, and recommending amendments to the Kaua'i County Code related to salaries of certain officers, the County Council, and Council Services employees: Mr. Chang moved to receive C 2009-194 for the record, seconded by Ms. Kawahara, and unanimously carried.

Chair Asing: Next item please?

Mr. Nakamura: The next matters for receipt on page 2 of the Council's agenda are communications C 2009-195 which is a communication from the Planning Director transmitting the Planning Commission's recommendation to Proposed Draft Bill 2291. C 2009-196 which is a communication from the Planning Director transmitting the Planning Commission's recommendation relating to Proposed Draft Bill No. 2290. Communication C 2009-197 which is a communication from the Planning Director transmitting the Planning Commission's recommendation relating to Proposed Draft Bill No. 2293. Communication C 2009-198 which is a communication from the Director of Personnel Services transmitting reclassification information and C 2009-199, communication from the Director of Personnel Services transmitting for Council information classification request.

Chair Asing: Can I have a motion to receive?

C 2009-195 Communication (05/01/2009) from the Planning Director, transmitting the Planning Commission's recommendation relating to Proposed Draft Bill No. 2291 to approve increasing the amount of the fine from \$500 to \$2,000 for persons convicted of violating, permitting, or causing the violation of any of the provisions contained in the Comprehensive Zoning Ordinance (CZO): Mr. Bynum moved to receive C 2009-195 for the record, seconded by Mr. Chang, and unanimously carried.

C 2009-196 Communication (05/04/2009) from the Planning Director, transmitting the Planning Commission's recommendation relating to Proposed Draft Bill No. 2290 to approve allowing Small Wind Energy Conversion Systems (S.W.E.C.S) as permitted use in certain County zoning districts subject to requirements and standards as set forth in the proposed draft bill: Mr. Bynum moved to receive C 2009-196 for the record, seconded by Mr. Chang, and unanimously carried.

C 2009-197 Communication (05/04/2009) from the Planning Director, transmitting the Planning Commission's recommendation relating to Proposed Draft Bill No. 2293 to approve allowing farm worker housing in the Agriculture Zoning District through the Use Permit process: Mr. Bynum moved to receive C 2009-197 for the record, seconded by Mr. Chang, and unanimously carried.

C 2009-198 Communication (05/08/2009) from the Director of Personnel Services, transmitting for Council information, the following classification request which the Department of Personnel Services will be reviewing and taking appropriate action:

- Public Works Department, Position No. 1539 (Redescription –Review of Plumber II)

Mr. Bynum moved to receive C 2009-198 for the record, seconded by Mr. Chang, and unanimously carried.

C 2009-199 Communication (05/13/2009) from the Director of Personnel Services, transmitting for Council information, the following classification request which the Department of Personnel Services will be reviewing and taking appropriate action:

- Prosecuting Attorney, Position No. 2801 (Redescription – Review of Special Investigator)

Mr. Bynum moved to receive C 2009-199 for the record, seconded by Mr. Chang, and unanimously carried.

Chair Asing: Next item please?

Mr. Nakamura: The next matter on page 3 of the Council's agenda. These are matters for approval.

C 2009-201 Communication (05/04/2009) from the Executive on Transportation, requesting Council approval to receive and expend \$400,000 of a Section 117-Surface Transportation Projects Federal earmark for a comprehensive Multi-Modal Land Transportation System Plan for the County of Kaua'i: Mr. Chang moved to approve C 2009-201, seconded by Mr. Bynum, and unanimously carried.

Chair Asing: Next item please?

Mr. Nakamura: The next communication is C 2009-202.

C 2009-202 Communication (05/08/2009) from the Housing Director, requesting Council approval to decline the repurchase of Unit No. 602, Hookena at Puhī, located at 2080 Manawalea Street, Līhu'e, Kaua'i, Hawai'i, 96766, and provide the owner with a one-year waiver of the resale restriction: Mr. Kawakami moved to approve C 2009-202, seconded by Mr. Kaneshiro, and unanimously carried.

Chair Asing: Next item please?

Mr. Nakamura: The next communication for approval is communication C 2009-203.

C 2009-203 Communication (05/15/2009) from the Prosecuting Attorney, requesting Council approval to apply for, receive, and expend the following Byrne Justice Assistance Grant (JAG), pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA) in the amount of \$191,079 for salaries and training for the Office of the Prosecuting Attorney, as well as to replace AED Equipment, support the K-PAL football and cheerleading programs, and provide training and overtime for the Kaua'i Police Department. These funds will be expended for this program from July 1, 2009 to June 30, 2010: Mr. Kawakami moved to approve C 2009-203, seconded by Mr. Kaneshiro, and unanimously carried.

Chair Asing: Next item please?

Mr. Nakamura: At the bottom of page 3, next matter for approval is communication C 2009-204.

C 2009-204 Communication (05/20/2009) from Hawai'i Association of Counties (HSAC) Vice President Derek S.K. Kawakami, requesting Council approval of the proposed slate of HSAC Executive Committee Officers for the Fiscal Year 2009-2010 term as follows:

- Derek S.K. Kawakami – President
- Nestor Garcia – Vice-President
- Dennis "Fresh" Onishi – Secretary

- Joseph Pontanilla – Treasurer

Mr. Furfaro moved to approve C 2009-204, seconded by Mr. Chang.

Chair Asing: Any discussion? Go ahead.

Mr. Furfaro: First of all, I want to thank Mr. Kawakami for his early work as Vice-Chair or Vice-President of the association. I am very pleased to see the slate of officers and him becoming the President of our association.

Chair Asing: Thank you. Councilmember Bynum?

Mr. Bynum: Just also would like to express my appreciation and congratulations. It is great to have the President of the Kaua'i County Councilmember. Thank you for your service.

Mr. Kawakami: Thank you.

Chair Asing: Any further discussion? If not, there is a motion to approve and a second. All those in favor say aye?

The motion to approve C 2009-204 was then put, and unanimously carried.

Chair Asing: Next item please?

Mr. Nakamura: The next matter on the top of page 4 is communication C 2009-205 and if we could move this to the end of the agenda Mr. Chair.

Mr. Furfaro moved to put C 2009-205 to the end of the agenda, seconded by Mr. Kaneshiro, and unanimously carried.

Chair Asing: Next item please?

Mr. Nakamura: The next matter for approval are Committee reports.

COMMITTEE REPORTS:

BUDGET & FINANCE COMMITTEE REPORTS:

A report (CR-B&F 2009-17) submitted by the Budget & Finance Committee, recommending that the following be approved as amended on second and final reading:

“Bill No. 2312 A BILL FOR AN ORDINANCE AMENDING CHAPTER 17A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO BUS FARES FOR THE COUNTY BUS SYSTEM.”

Mr. Kaneshiro moved for approval of the report, seconded by Mr. Furfaro, and unanimously carried. (*See later for Bill No. 2312, Draft 1*)

A report (CR-B&F 2009-17) submitted by the Budget & Finance Committee, recommending that the following be approved on second and final reading:

“Bill No. 2313 AN ORDINANCE AMENDING ORDINANCE NO. B-2008-672 AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2008 THROUGH JUNE 30, 2009, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL FUND (Prosecuting Attorney),”

Mr. Kaneshiro moved for approval of the report, seconded by Mr. Furfaro, and unanimously carried. (*See later for Bill No. 2313*)

PARKS/TRANSPORTATION COMMITTEE REPORT:

A report (CR-PKT 2009-01) submitted by the Parks/Transportation Committee, recommending that the following be received for the record:

“P/REC 2007-2 Communication (3/15/2007) from Tim Bynum, Parks & Recreation Committee Chair, requesting that the Administration be present to provide the status on responses to the January 19, 2006 follow-up questions regarding Bill No. 2149, Relating to Camping at Lydgate Park,”

Mr. Furfaro moved for approval of the report, seconded by Mr. Bynum, and unanimously carried.

Chair Asing: Next item please?

Mr. Nakamura: The next matters are first reading on page 5 of the Council's agenda. The first bill for first reading is Proposed Draft Bill No. 2290.

BILLS FOR FIRST READING:

Proposed Draft Bill No. 2290 – A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE 28, CHAPTER 8, KAUAI COUNTY CODE 1987, RELATING TO SMALL WIND ENERGY CONVERSION SYSTEMS: Mr. Bynum moved to receive Proposed Draft Bill No. 2290 for the record, seconded by Mr. Kaneshiro.

Chair Asing: Any discussion? Go ahead Councilmember Bynum.

Mr. Bynum: Thank you Mr. Chair. This bill regarding small wind energy conversion... I wanted to just take a moment. The bill that came from the Planning Commission is further down and the Planning Commission staff and the staff there did, I think an outstanding job of working on the bill and made

changes that I largely support, so the motion here is to receive, and we entertain I think the bill that came back from the Planning Commission.

Chair Asing: Thank you. Any further discussion?
Councilmember Furfaro?

Mr. Furfaro: Yes, again, I would see the bill that came back from the Planning Commission is the one that is in front of us on the small wind energy conversion system in particular because we need to clear our understanding of expectations of DLNR as they wanted some sort of compliance with the endangered species act and I think it is covered better in the piece that comes back from the Planning Department, so I would second this... move to receive wholeheartedly.

Chair Asing: Thank you. Any further discussion? If not, we have a motion and a second. Roll call.

The motion to receive Proposed Draft Bill No. 2290 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Motion carried.

Chair Asing: Next item please?

Mr. Nakamura: The next first reading bill is Proposed Draft Bill No. 2291.

Proposed Draft Bill No. 2291 – A BILL FOR AN ORDINANCE AMENDING SECTION 8-24.1, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE: Mr. Furfaro moved for passage of Proposed Draft Bill No. 2291 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 8, 2009, and that it thereafter be referred to the Planning Committee, seconded by Mr. Kaneshiro, and carried by the following vote:

Chair Asing: Any discussion? If not, roll call please.

FOR PASSAGE:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Can we have the next item please?

Mr. Nakamura: The next bill for first reading is Proposed Draft Bill No. 2293.

Proposed Draft Bill No. 2293 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUA'I COUNTY CODE 1987, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (Farm Worker Housing): Mr. Bynum moved to receive Proposed Draft Bill No. 2293 for the record, seconded by Mr. Chang.

Chair Asing: Any discussion? If not, all those in favor say aye?

The motion to receive Proposed Draft Bill No. 2293 for the record was then put, and unanimously carried.

Chair Asing: Next item please?

Mr. Nakamura: The next bill for first reading is Proposed Draft Bill No. 2317.

Proposed Draft Bill No. 2317 – A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE 28, CHAPTER 8, KAUA'I COUNTY CODE 1987, RELATING TO SMALL WIND ENERGY CONVERSION SYSTEMS: Mr. Furfaro moved for passage of Proposed Draft Bill No. 2317 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 8, 2009, and that it thereafter be referred to the Planning Committee, seconded by Mr. Bynum.

Chair Asing: Any discussion? If not, roll call please.

The motion for passage of Proposed Draft Bill No. 2317 was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Thank you. Motion carried. Next item please?

Mr. Nakamura: The last bill for first reading is Proposed Draft Bill No. 2318.

Proposed Draft Bill No. 2318 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUA'I COUNTY CODE 1987, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (Farm Worker Housing): Mr. Furfaro

moved for passage of Proposed Draft Bill No. 2318 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 8, 2009, and that it thereafter be referred to the Planning Committee, seconded by Mr. Kaneshiro.

Chair Asing: If not, do we have anyone in the audience who wants to speak on this item? No, okay. With that, Councilmember Furfaro?

Mr. Furfaro: Yes, I just wanted to point out that this is the draft that came from the Planning Department. It is pretty comprehensive in some of the goals we wanted to extend. I did want to voice my concern that the dollar amount that was associated with this for revenues for farming activity, I do have some concern with... out of the first draft especially as it relates to 35,000 being attributed to a small farm. I would like to have some further study on that as well as the fact that I would like to get some HUD information regarding to the value of housing as it relates to not setting the hours for the standard too high, but fair and parallel to what is expected out of HUD. Those are the only two (2) concerns that I have of the piece that came back from the Planning Commission.

Chair Asing: Thank you. Councilmember Kaneshiro?

Mr. Kaneshiro: Thank you Mr. Chair. Councilmember Furfaro made a good point. For me, I would probably work with the Farm Bureau and get a survey... get a survey of all the farms that are on the island and look at the... you know, the potential revenues that are generated by farms and average this all out because when I look at something like this with the \$35,000 being revenue generating from a farm especially if you talk small farmers, it might be quite difficult to achieve, so that was one of the first things that popped up in my mind also. So, you know, other than that, the bill covered much of the things that probably, you know, we can work on and support that came from the Planning Commission, so I do have some reservations about placing a dollar amount on what farmers need to produce or earn off a farm before being able to even have some type of a farm worker housing. So that is my concern that I have at this point, so thank you Mr. Chair.

Chair Asing: Thank you. Any further discussion Councilmembers? If not, roll call please.

The motion for passage of Proposed Draft Bill No. 2318 was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Thank you. Next item please?

Mr. Nakamura: The next matter is a... are bills for second reading. The first bill for second reading is Bill No. 2312, Draft 1.

BILLS FOR SECOND READING:

Bill No. 2312, Draft 1 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 17A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO BUS FARES FOR THE COUNTY BUS SYSTEM: Mr. Furfaro moved for adoption of Bill No. 2312, Draft 1 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Kaneshiro.

Chair Asing: Any discussion? Councilmember Kawahara?

Ms. Kawahara: Thank you Chair Asing. I just wanted to mention that I was worried about the bus fares because there wasn't much of a turnout for the public hearing, but I think that is a condition of people that actually are using the bus and may have difficulty getting to a meeting at a specific time. I was reassured by information that was given to me from the Cost Control Commission and the Executive Director herself from the Transportation Agency that stated that they believe there wasn't going to be a significant impact for the people riding the bus in this slight increase. One concern that I did have was why was it for an increase for one year and then a second year, but overall, I do like to support this bill. Thank you.

Chair Asing: With that, what I would like to do is suspend the rules.

There being no objections, the rules were suspended.

Chair Asing: Glenn?

GLENN MICKENS: Thank you Kaipo. For the record, Glenn Mickens. Daryl, thanks for this information. I really appreciate this. The question that was asked before, how much does it costing... \$4.2 million and I think Jay pointed out 80... I don't know what \$4.2 million divided into \$570,000... it will be \$590,000 I guess by the time the new thing is added on. (Inaudible)... I think he said something like 81% Jay. All I am wondering is, has it been investigated to find out... I understand that in Northern California they had this problem with the increased cost of operating these buses, so they went to a taxi type of thing where they had a contract with the taxi company up there. The taxi companies were on a standby basis when elderly people (inaudible) people called and they could pick them up, take them shopping, take them to the hospital whatever. They found out it was far cheaper than operating these buses, but I just wonder whether this has been investigated here on Kauai. I note the buses when I sit over here sometime.

They are empty most of the time. I don't know how many people are actually riding these things, so, you know, I just think maybe it might be more cost effective if some system like this were investigated because I did hear it worked. But, anyway, Daryl, again, thanks for getting this information. I do appreciate it. Thank you Kaipo.

Chair Asing: Is there anyone else? If not, I'd like to call the meeting back to order.

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

Chair Asing: We have a motion on the floor and a second. Any further discussion? Councilmember Furfaro?

Mr. Furfaro: Mr. Chair, I just want to acknowledge Mr. Kaneshiro for filling the request and getting the information to Mr. Mickens and thank you very much Mr. Kaneshiro.

Chair Asing: With that, any further discussion? If not, roll call please.

The motion to adopt Bill No. 2312, Draft 1 was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Thank you. Next item please?

Mr. Nakamura: Last bill for second reading is Bill No. 2313.

Bill No. 2313 – AN ORDINANCE AMENDING ORDINANCE NO. B-2008-672 AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2008 THROUGH JUNE 30, 2009, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL FUND (Prosecuting Attorney): Mr. Kawakami moved for adoption of Bill No. 2313 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Thank you. We will take a caption break at this time and then we will return for the executive session before we take the last item. With that, we are in a caption break now.

There being no objections, the Chair called for a recess at 10:16 a.m. The meeting was called back to order at 10:50 a.m., and proceeded as follows:

Chair Asing: With that, County Attorney.

Mr. Bynum: Mr. Chair.

Chair Asing: Yes.

Mr. Bynum: I have a motion pending on the floor.

Chair Asing: Not yet. We are going to have... let's finish the agenda.

Mr. Bynum: Are we going to do the executive session first?

Chair Asing: Yes.

Mr. Bynum: Then reconvene?

Chair Asing: Yes. We still have one more item on the agenda besides the executive session.

There being no objections, the rules were suspended.

ALFRED B. CASTILLO, COUNTY ATTORNEY: Council Chair, Councilmembers, Al Castillo County Attorney. I have three (3) matters that I would like for you to consider for executive session. This would be ES-386, ES-387, and ES-385. Let me read the first one, 386.

ES-386 Pursuant to Haw. Rev. Stat. sections 92-4 and 92-5(a)(4), and Kaua'i County Charter section 3.07(E), the purpose of this executive session is to provide Council with a briefing and to request authority for a possible settlement proposal in the case of County of Kaua'i vs. Darius Wu, et al., Civil No. 08-1-0173 (Fifth Circuit Court) and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-387 Pursuant to Haw.Rev.Stat. §§92-4 and 92-5(a)(4), (6) and (8), and Kaua'i County Charter section 3.07(E), the purpose of this executive session is to provide the Council a briefing on Planning Commission of the County of Kaua'i vs. Patricia W. & Michael G. Sheehan, Sr. Permit Numbers: Special Management

Area Use; Permit SMA (U) 87-8; Use Permit U-87-32; Special Permit SP-87-9; Class IV Zoning Permit Z-IV-87-40, (Order to Show Cause Hearings) 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-385 Pursuant to Haw.Rev. Stat. Sections 92-4, 92-5(a)(4) and (8), and Kaua'i County Charter section 3.07(E), the purpose of this executive session is to provide the Council a briefing on the Charter amendments adopted in the 2008 General Election and other related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to legal ramifications and/or requirements and/or claims and/or potential claims relating to this agenda item.

Chair Asing: Thank you. What I would like to do is... Glenn? Al, let Glenn come up please.

GLENN MICKENS: Thank you Kaipo. Just for one quick question. It is regarding this ES-385. Is there anyway that we can get anymore information what this is about. The other two (2) are pretty explanatory. 385 says, Charter amendments adopted in the 2006 General Election, so that is going to be more than one Charter amendment that happened in 2008 election, but is there any other information that we could be privy to or is that going to be in executive session.

Chair Asing: Executive session as stated here Glenn.

Mr. Mickens: Okay, thank you.

Chair Asing: Thank you. I'd like to call the meeting back to order now and have a motion to move into executive session.

Mr. Furfaro moved to go into executive session on ES-386, ES-387, and ES-385, seconded by Mr. Kaneshiro, and unanimously carried.

Chair Asing: We are going to move into executive session.

There being no objections, the Chair called for a recess at 10:53 a.m. The meeting was called back to order at 1:45 p.m., and proceeded as follows:

Chair Asing: With that, Mr. Clerk, can we have the next item please?

Mr. Nakamura: Mr. Chair, we are back on page 4 of the Council's agenda on communication C 2009-205 for approval.

C 2009-205 Request (05/22/2009) from the Office of the County Attorney for authorization to expend additional funds up to \$20,000 for special counsel to represent the Planning Commission of the County of Kaua'i in Planning Commission of the County of Kaua'i vs. Patricia W. & Michael G. Sheehan, Sr. , Permit Numbers: Special Management Area Use; Permit SMA (U) 87-8; Use Permit U-87-32; Special Permit SP-87-9; Class IV Zoning Permit Z-IV-87-40 (Order to Show Cause Hearings) and related matters: Mr. Furfaro moved to approve C 2009-205, seconded by Ms. Kawahara, and unanimously carried.

Mr. Furfaro: Excuse me Mr. Chair, I think you might have had someone from the audience.

Chair Asing: Oh, my apologies. Was there someone who wanted to speak on this item? Bruce? No, okay. Thank you. I'd like to call the meeting back to order.

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

Chair Asing: We are now... I will call the meeting back to order and the item that Councilmember Bynum wants to add to the agenda, in my opinion, is precluded by Charter 92-7(d) Sunshine Law. With that, I would like to have...

Mr. Bynum: Mr. Chair?

Chair Asing: Hold on. I would like to have the County Attorney up.

There being no objections, the rules were suspended.

Mr. Castillo: County Attorney Alfred Castillo.

Chair Asing: County Attorney, before I have you say anything, let me just read Hawai'i Revised Statute Chapter 92-7(d) and I am going to read it into the record. No board shall change the agenda once filed by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled provided... and this is the most important part. Provided that no item shall be added to the agenda if it is of reasonably major importance and the action thereon by the board will affect a significant number of persons. In my opinion, the subject matter that Councilmember Bynum is making reference to is the Council rules and it is major in nature and, therefore, does not even qualify for that to be added. So I would like to have your opinion please.

Mr. Castillo: Council Chair and members of the Council, good afternoon. Can I have a few minutes to review what I have just been handed?

Chair Asing: Sure.

Mr. Castillo: And may the record reflect that I was handed by Councilman Bynum or Councilmember Bynum three (3) pages. One appears to be... I don't know if everyone has it.

Mr. Bynum: I just passed it out.

Mr. Castillo: One appears to be the e-mail communications, one is a... the second page is a letter dated February 17, and the next page is a resolution.

Mr. Furfaro: May I ask a question Mr. Chair?

Chair Asing: Go ahead.

Mr. Furfaro: This seems to be very close to the material that was read by the Chair, but can I just ask that since this response came from your office, have you seen this before?

Mr. Castillo: Wait, wait. No, a... I have not seen it... first of all, I have not seen it before and second of all, I hazard to give it any attention right now because I don't want it to become an agenda item if it is not one that is appropriate to be an agenda item. So, right now, I will take a look at this and I will give you what the County Attorney's ruling is on it.

Mr. Furfaro: You have answered my question because this seems to be someone of a legal background that has sent a response and you have said to me that you have not seen it, therefore, I would support your request for a recess.

Chair Asing: Thank you. What I would like to do is I would like to call for a recess, so that it will give you some time to read the item.

Mr. Castillo: Okay, thank you.

Chair Asing: With that, thank you.

There being no objections, the Chair called for a recess at 1:50 p.m. The meeting was called back to order at 2:00 p.m., and proceeded as follows:

Chair Asing: County Attorney, have you read the items before you?

Mr. Castillo: Yes I have.

Mr. Bynum: Mr. Castillo...

Chair Asing: Mr. Bynum, let's have some order here.

Mr. Bynum: I asked to be recognized.

Chair Asing: I asked the question of the County Attorney. Please have the courtesy...

Mr. Bynum: You made a statement.

Chair Asing: Please have the courtesy... I asked for an opinion, didn't I?

Mr. Bynum: You made a statement.

Chair Asing: Did I ask for an opinion?

Mr. Bynum: And you made a statement.

Chair Asing: Yes.

Mr. Bynum: I would like to also make a statement.

Chair Asing: Shall we do it in order like we normally do?

Mr. Bynum: If the County Attorney is going to make a ruling, that precludes me from having the same privilege...

Chair Asing: I am asking for an opinion.

Mr. Bynum: I am asking...

Chair Asing: Please have the courtesy of having some order here and I have asked for an opinion and you want to intercede by asking something else. We normally have people recognized and move, and I have made a statement, I have asked a question of the County Attorney, and I deserve an answer before we move onto the next person. With that...

Mr. Castillo: Yea, I... with that being said and how this thing is progressing, I think my legal advice and my legal opinion falls under an unanticipated issue that requires executive session. And under... pursuant to H.R.S. Chapter 92 of the Hawai'i Revised Statutes, I request that we go into executive session for the purpose of discussing the... for the purpose of consultation because it involves your powers, your duties, your privileges, your immunities, and/or your liabilities as the County Council as they relate to this question. And it

is not even an agenda item at this point in time, but I would like to brief you or give you advice on the law regarding all of this... all of the issues involved.

Chair Asing: With that, let me ask this question. With your answer, is it legal for us to move into executive session at this particular time?

Mr. Castillo: First... yes, it is because it is unanticipated and the questions that arise out of this particular set of circumstances, require that we go into executive session because it touches upon liabilities and duties as the Council.

Chair Asing: Okay. I am going to ask that we move into executive session, but prior to moving into executive session, I will recognize Councilmember Bynum.

Mr. Castillo: But I caution... wait. I am sorry. I just want to make sure... I am sorry to interrupt. What I would warn is, Councilmember Bynum, you cannot touch upon the reasons why you want to go into this because you will be arguing your point regarding the issues that you want to present regarding potential agenda items that were not docketed for today. We would be in breach of the Sunshine Law, so I caution you that I would have to stop you if you try to do that.

Mr. Bynum: And I would appreciate that guidance. Can I have the floor Mr. Chair.

Chair Asing: Yes.

Mr. Bynum: Thank you. The Chair has made a statement that he believes that the motion that is allowed for... under... and he read the law... that is allowed for under the Hawai'i Revised Statutes is... violates Sunshine.

Mr. Castillo: Wait, wait, wait. I am sorry, I have to stop you. I have to stop you because you are going into the merits of the Sunshine Law. The purpose of what is happening right now is whether or not we are going to go into executive session and that is all. Anything outside of that would be beyond...

Mr. Bynum: The Chair has made a statement about his opinion.

Mr. Castillo: No, right now, the request from your County Attorney to protect you is for us to go into executive session.

Mr. Bynum: And we are discussing that whether we go into executive session, right?

Mr. Castillo: Well, then it is yes or no, but you want to talk about the Sunshine Law regarding what you introduced.

Mr. Bynum: Well, we haven't had the vote on introducing anything. I just want to say what this document is that I passed out.

Mr. Castillo: See, that is precisely my point Councilman Bynum. My point is, you cannot get into the subject matter that started this entire thing. The question before this body right now and my request is that we go into executive session, so that I may protect this body, and that is on the floor.

Chair Asing: Councilmember Furfaro?

Mr. Furfaro: Yes. I just want to point out that I think my... I just want to point out that I appreciate your comments Al, but while we are on breaks specifically the past modus operandi has been, by policy from the County Attorney's Office, that these responses come back to us after you have had time to digest it. I am just saying that has been the past practice. The reason that I wanted to point out and you keep using the term here... this violation of the Sunshine Law possibly could affect the body, the body, and I haven't had an opportunity to get that clarity. Not that I don't recognize what Mr. Bynum chose to pass out because I have had similar request even prior to the dated material that is there. But you are saying to us right now that immunities regarding and protection for the body is here. This is not an individual item, this is an item that affects the body based on the Sunshine Law.

Mr. Castillo: At affects... it is a whole string of things that can take into effect. You know, at first yea, it can involve the body as the Council, it can involve potential liability to a specific Councilmember. You know, and I just want to prevent any wrong doing by this body.

Mr. Furfaro: I appreciate the caution that you are passing out.

Mr. Castillo: And, and... that is all.

Chair Asing: Okay, Councilmember Bynum?

Mr. Bynum: So your argument is if we have a public discussion about what the Sunshine Law allows, that we will be violating the Sunshine Law.

Mr. Castillo: I am sorry Councilmember Bynum.

Mr. Bynum: I think we will be violating the Sunshine Law if we go into private session to discuss this.

Mr. Castillo: You know, please do not put words in my mouth.

Mr. Bynum: I asked...

Mr. Castillo: No, no, no, no. You made a statement there that was not true and I asked... well, all I am asking is I am asking that we go into executive session because these are sensitive matters that involves your powers, your duties, your privileges, your immunities, and/or liabilities, and it is... this matter was unanticipated and that is the reason why I am requesting that we go into executive session. Now, if there is a motion to defer and I don't know how that would work regarding this subject matter, but I am ready to go into executive session and to advise this body, and then we can move on from there.

Chair Asing: Thank you. With that, if there are no objections, I would be asking this body to move into executive session, so what I would like to do is excuse you and I am going to call the meeting back to order.

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

Chair Asing: And have a motion to move into executive session. With that, Councilmember Bynum?

Mr. Bynum: So you are going to have a motion and then we are going to vote?

Chair Asing: To move into executive session.

Mr. Bynum: But we can't discuss this?

Chair Asing: No.

Mr. Kaneshiro: It is not agendaed.

Chair Asing: It is not agendaed.

Mr. Castillo: Wait, wait, wait, wait. I am sorry.

Chair Asing: The meeting is now called to order. I have the floor, okay. And now as presiding officer, I made a recommendation that we move into executive session as suggested and recommended by the County Attorney. So I am following the County Attorney's lead to move into executive session and I am asking for a motion to move into executive session. Can I have a motion to move into executive session?

Mr. Kawakami moved to go into executive session, seconded by Mr. Kaneshiro.

Chair Asing: Any discussion? Go ahead.

Ms. Kawahara: I just have a question. If we go into executive session, does it... when we come back, is there any... is that going to preclude... it is possible that would preclude discussion on the item?

Chair Asing: I can't answer you Lani. I don't know.

Ms. Kawahara: So we don't know what the result will be if we go into executive session?

Chair Asing: We are taking a recommendation from the County Attorney. I think it is a reasonable move. What do we do, say no County Attorney, we are not going to agree with you and what do we do? I mean that is not the way to do it.

Ms. Kawahara: Okay.

Chair Asing: I am not going to chair a meeting and have discussions made ignoring the County Attorney entirely. I think I need to depend on the County Attorney for at least legal advice and guidance, and that is what I am trying to do.

Ms. Kawahara: Okay, I just wanted to clarify if there was a set thing that would come out of it. Thanks.

Chair Asing: Okay. So we had a motion and a second to move into executive session.

Mr. Furfaro: I want to share with you... based on past practice and this item came up quite abruptly this morning. My preference would have been really to defer and see if we couldn't get a written response from the County Attorney, but it obviously looks as if I do not have the votes for that. But on his advice to get this to the next step and see if it can even be put on the agenda based on the fact that this item seems to be of a serious nature and should have gotten the appropriate agenda time, but my preference would have been to defer.

Chair Asing: Okay. Any further discussion? If not, all those in favor say aye? Roll call vote please.

The motion to go into executive session was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Chang, Furfaro, Kaneshiro, Kawakami, Asing	TOTAL – 5,
AGAINST EXECUTIVE SESSION:	Bynum, Kawahara	TOTAL – 2,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Mr. Nakamura: Five (5) ayes, two (2) no's Mr. Chair.

Chair Asing: Motion carried. We are going to move into executive session. Prior to moving into executive session, we have a certificate that is going to be presented by Councilmember Kawakami.

Mr. Kawakami: Bynum.

Chair Asing: I am sorry. Councilmember Bynum and with that, we are in recess.

There being no objections, the Chair called for a recess at 2:14 p.m. The meeting was called back to order at 4:16 p.m., and proceeded as follows:

Chair Asing: With that, can we have the County Attorney up.

There being no objections, the rules were suspended.

Chair Asing: County Attorney please.

Mr. Castillo: Alfred Castillo, Jr., County Attorney. Council Chair, members of the Council, good afternoon again.

Mr. Bynum: Good afternoon.

Ms. Kawahara: Good afternoon.

Mr. Castillo: I have reviewed the proposed amendment to the agenda and in actuality it is not only a proposed amendment, it is an addition to the agenda. There are different rules and regulations and laws that apply in this case or with this issue. And basically, no board shall change the agenda and I am reading from the Sunshine Law. No item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Now this is the Sunshine Law. Our County ordinance... I am sorry, our County Charter gives the Chairman as the Presiding Officer of the Council certain latitude and certain amount of discretion. Now, the first analysis is to look into the nature of the proposed change in the agenda and looking at the item whether it is just nominal or whether it is of reasonably major importance. What I submit and my ruling as your County Attorney is that the proposed resolution encroaches upon the duties of the Chairman as the Presiding Officer of the Council. Therefore, it is of reasonably major importance and the way that the County Council is runned in this County affects all of the people of this County. Therefore, the Sunshine Law in this case definitely applies. What it means for the people of this County is that an agenda item of this nature to be in conjunction to follow the Sunshine Law... what it means is you have to post it on the agenda. It has to be posted and there are rules and regulations regarding the

posting of a proper agenda item. And in this case, it was not done within the appropriate amount of time. What it means is that the people of Kaua'i did not have the opportunity to know what was placed on the agenda and that is the reason for the Sunshine Law. Based on that, the mere nature of this bill or this resolution being proposed is in violation of the Sunshine Law and should not be considered at all. It is inappropriate, therefore, I submit to this body that this matter not be considered and because I don't want this body to violate the Sunshine Law. That is all.

Chair Asing: Thank you. Councilmember Bynum?

Mr. Bynum: Having heard your opinion, could one make a motion to add this item to the following agenda?

Mr. Castillo: The... what I submit that you should do is follow the County Charter and follow the resolution regarding how bills are placed on the agenda.

Mr. Bynum: So I have done that and the bill was not placed on the agenda, so I would like to look at the Council rules and discuss what my efforts have been.

Mr. Castillo: You know, I caution Councilmember Bynum that what I see here is your attempting to voice your opinion regarding the County Attorney's opinion regarding the Sunshine Law and your voice saying, the very nature of what you wanted to introduce. It is not proper at this time and... so I respectfully ask you to heed my advice regarding not violating the Sunshine Law.

Chair Asing: Thank you. Councilmember Furfaro?

Mr. Furfaro: Yes, so to the County Attorney, what I am hearing is... and I guess we would have to make a motion on "no" to amend today's agenda. That is your recommendation.

Mr. Castillo: No, my recommendation is it is improperly before this board.

Mr. Furfaro: Okay.

Mr. Castillo: And to... the reason why I am saying that is to vote on it and to say discussion invites a violation of the Sunshine Law which I say we should not do.

Mr. Furfaro: Okay, and I want to make sure that I use the term today because as you spoke earlier, clearly in my opinion is the rules of the Council

which, in fact, puts us in a very awkward position with the laws of the Sunshine rules as they apply to us.

Chair Asing: Okay. Anything else? Go ahead Councilmember Kawahara.

Ms. Kawahara: Thank you Al and I want to say that I hope after I ask you this question we will still be friends. This was all in the act of democracy and I wanted to find out and be sure what we are doing here before we continue. My question here is, what government agency... well, I am going to tell you. What government agency administers the Sunshine Law?

Mr. Castillo: Okay.

Ms. Kawahara: Which you just spoke so eloquently on and said that you want us to follow...

Mr. Castillo: No, I... first of all, let me address your comment about can we still be friends.

Ms. Kawahara: Smile.

Mr. Castillo: No, you have your duty as a Councilperson and I have a duty to defend and protect the constitutions of the United States and of this State. I have the duty to protect this County. In terms of administering the Sunshine Law, I have given you legal advice regarding the Sunshine Law. It is my duty. If you want to go against this... against my recommendation, my advice, then I cannot tell you what to do. You are a Councilperson, you have the constituent to answer to, but I can only tell you what the law is and why we shouldn't get into this area. And I ask that, you know, what we are doing right now is talking about the proposed amendment which I say this should end right now because it is in violation of the Sunshine Law. This is not agendaed, properly agendaed.

Ms. Kawahara: Okay.

Chair Asing: Okay, Councilmember Kawahara.

Ms. Kawahara: Thank you. I want...

Mr. Castillo: You're welcome.

Ms. Kawahara: You still didn't say whether we are going to be friends, but that is okay. The... according to what I am reading here, the OIP oversees the uniform information practices act and that is the agency that administers the Sunshine Law. The question and you will stop me, I am sure, because I ask if you would. The question here was, we were proposing to change to

add an agenda item and there is a disagreement between... well, I would disagree with what your finding was and what the finding that I am going on is an OIP finding.

Mr. Castillo: Again, here we discuss... you know, the OIP in 2002, September, did say that a proposed resolution that is not agendaed is not... you cannot discuss it because it will be in violation of the Sunshine Law.

Ms. Kawahara: Yes.

Mr. Castillo: Again, Council Chair, you know, I ask that we stop this line of questioning because what we are doing is we are talking about a non-agended item that is in violation of the Sunshine Law. I don't know how many times I have to repeat myself.

Ms. Kawahara: Okay. So I just want to finish what I wanted to say.

Chair Asing: Go ahead.

Ms. Kawahara: Thank you Chair Asing. The 2002 ruling that you are speaking of, I understand. I also understand that you can add something to the agenda if it does not appear to be of reasonably major importance or affect a significant number of people which is where the area we are having our issues and our discussion. I just wanted that on the floor and wanted to be sure that I was respectfully disagreeing or disagreeing with what you are asking us to do.

Mr. Castillo: You know, I am not asking you to agree with me, I am just giving you the legal advice based on my almost 30 years of experience.

Ms. Kawahara: And since I am not sure how far and where this is going to go, I... for point of information, is this the last time we are going to get to discuss?

Chair Asing: Yes.

Ms. Kawahara: Okay. I wanted to say that I think all of us are here and trying to do the best jobs that we can. We have all been elected to this table and as such, the constituents that we represent have the right to be able to expect that we can do our jobs well for them and being able to do that job well relies a lot on the rules of our Council. That, to me, and it is said here in my statesmanship manual from Mr. Tacbian that our Council rules are a living document and we are supposed to adopt the questioning attitude toward Council procedure... always trying to improve those procedures and what is happening today... it is my belief that I am trying to improve those procedures and Councilmember Bynum is trying to improve those procedures and whether or not we are going to be able to do it, I don't know, but I want to be sure that constituents understand what is happening

here because it is all... it is quite vague, but understandably so for me. I just want to be able to do my job and I need to be able to be sure that I can do it effectively with... and whether or not the Council rules allow me to do that is my question and I am done. Thank you.

Chair Asing: Thank you. Councilmember Bynum?

Mr. Bynum: I just want to go on record again of objecting to the executive session that we held. I don't believe there was anything that was discussed there that couldn't have been discussed in public.

Mr. Castillo: Wait.

Chair Asing: Hold on Councilmember Bynum.

Mr. Castillo: Now you are really in violation of the Sunshine Law and I caution you to stop because you cannot allude to what happened in executive session. That is inappropriate.

Mr. Bynum: I just objected to us having one.

Mr. Castillo: You cannot do that.

Mr. Bynum: I am done with that.

Mr. Castillo: You can object, but what you were alluding to was what was happening in executive session which is confidential.

Mr. Bynum: I don't think I said anything specific.

Chair Asing: Councilmember Bynum, be careful.

Mr. Bynum: I will move on from that.

Chair Asing: Be careful. You know that you are trying to expose us to executive session items. That is what you just did.

Mr. Bynum: No Sir, I am not.

Chair Asing: That is what you just did.

Mr. Bynum: No Sir.

Chair Asing: And be very careful.

Mr. Bynum: I find it ironic that the Sunshine Law is being used to censure open dialogue about... and that today we have had people express their opinion and we are dancing all around this and anybody who watches this in the public would say, what the heck is going on when it is simple and straight forward. So I just think it is very ironic that a law intended to bring Sunshine is being used to censure.

Mr. Castillo: I agree with you. I agree with you totally Councilman Bynum because it is simple. It really is simple and the simple process for the people of this community is to have Sunshine. When there is an agenda item of this significance, the people of Kaua'i need to know way ahead of time. The people of Kaua'i need to have proper notice. That is what the Sunshine Law brings about. What is being trying... what your proposal here takes away from the Sunshine Law. You can disagree, but it takes away from the Sunshine Law and it is in violation of the Sunshine Law and we have an OIP opinion, but I don't need the OIP opinion. It is basically the law.

Mr. Bynum: So it is okay to say that OIP attorney has disagreed with you. That is okay to say? The State agency had said...

Chair Asing: Councilmember Bynum, you know, I am going to call this meeting back to order and I am going to adjourn the meeting.

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

Chair Asing: So the meeting is...

Ms. Kawahara: (Inaudible)... do we take a vote?

Chair Asing: I am going to call the meeting back to order and the reason I am doing it is because we have a County Attorney's opinion that we are in violation of the Sunshine Law if we entertain it. We have that, that was just presented to us. So with that said, the meeting is now called back to order.

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

Chair Asing: And the meeting is now adjourned. Thank you.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 4:32 p.m.

Respectfully submitted,

PETER A. NAKAMURA
County Clerk

/lki