

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

May 12, 2010

Council Chamber, 8th Floor

CONVENE: 9:01 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Gladys C. Baisa, Member
Councilmember Sol P. Kaho‘ohalahala, Member (In 9:52 a.m.)
Councilmember Bill Kauakea Medeiros, Member
Councilmember Wayne K. Nishiki, Member
Councilmember Joseph Pontanilla, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Danny A. Mateo, Vice-Chair
Councilmember Jo Anne Johnson, Member

STAFF: Kirstin Hamman, Legislative Analyst
Camille Sakamoto, Committee Secretary
Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

ADMIN.: Marian Feenstra, Executive Assistant, Office of the Mayor (Item Nos. 2(12), 2(14), 2(16), and 2(17))
Darlene Endrina, Executive Assistant, Office of the Mayor (Item Nos. 2(12), 2(14), 2(16), and 2(17))
Michael Kahooohanohano, Lieutenant, Department of Police (Item No. 28)
Barry Aoki, Sergeant, Department of Police (Item No. 28)
Peter A. Hanano, First Deputy Prosecuting Attorney, Department of the Prosecuting Attorney (Item No. 28)
David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel

Seated in the gallery:

Victor Ramos, Captain, Department of Police (Item No. 28)

OTHERS: Kenny Barr (Item No. 28)
Andrew Dunne (Item No. 28)
Tamara Paltin (Item No. 2(14))
Malcolm Findley (Item No. 28)
Irene Bowie, Executive Director, Maui Tomorrow Foundation (Item No. 2(14))
Mike Moran (Item No. 28)
Kenny Barr (Item No. 2(14))
Steve Tenney, President, Maui Amateur Radio Club (Item No. 28)
Three (3) additional unidentified attendees

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PRESS: *Akaku: Maui Community Television, Inc.*

CHAIR MOLINA: . . .(*gavel*). . . The Committee of the Whole meeting for May 12th, 2010 will now come to order. For the record, we have in attendance Committee Members Gladys Baisa, Bill Medeiros.

COUNCILMEMBER MEDEIROS: Morning.

CHAIR MOLINA: Wayne Nishiki.

COUNCILMEMBER NISHIKI: Morning.

CHAIR MOLINA: Joe Pontanilla.

COUNCILMEMBER PONTANILLA: Good morning.

CHAIR MOLINA: Mike Victorino.

COUNCILMEMBER VICTORINO: Good morning, Chair.

CHAIR MOLINA: And Committee Chair Mike Molina. Good morning, Members. First of all, I'd like to thank you all very much for making yourselves available this morning. As we all know, this is a non-Committee week. This is a time for all Council Members to meet with their constituents and attend other events related to your...to our jobs. So I certainly do appreciate you being here. Excused this morning, we have Committee Vice-Chair and Council Chair Danny Mateo, and Committee Members Jo Anne Johnson, and Sol Kaho'ohalahala. We did receive a call from Mr. Kaho'ohalahala. He is on his way from the West side. Members, we have a somewhat busy agenda this morning and so we need to get started. But before we do that, the Chair would like to also introduce Staff to you. We have our Legislative Analyst Kirstin Hamman, and Committee Secretary Camille Sakamoto. And from the Administration we have Corporation Counsel David Galazin, and also Ms. Marian Feenstra and Darlene Endrina. Good morning, everyone. And we'll start first with public testimony on our one, two, three...four agenda items--or was that five? Five agenda items. Oh, boy, quite busy today. Before we start public testimony, the Chair would like to go over a few ground rules with you. You'll be given three minutes to testify with one minute to conclude. Please state your full name and any organization you may be representing, and please turn off all cellphones and pagers and whatever other noisemaking devices you may have so as not to disrupt our proceedings this morning. So let's get started. We'll start first to testify on Committee of the Whole Item 28, we have Kenny Barr to be followed by Andrew Dunne.

...BEGIN PUBLIC TESTIMONY...

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MR. BARR: Good morning, Mr. Chairman, Members. My name is Kenneth Barr, I'm a resident of Kihei, and I want to speak to the cellphone bill, and I'm not going to stand here and oppose it. But in your initial meeting I, I gave some testimony as to how that we as taxi drivers rely on cellphones to get our business nowadays, because none of us can afford dispatchers anymore. And I'd asked you for...to grant us an exemption while we're in the process of doing our business, meaning having a taxi dome on our roof and taking an incoming call. I'm not interested in using a cellphone for personal business, to talk to my wife or anything like that, just to do our business. And I noticed that Mr. Mogilefsky had sent, I think, Mr. Chairman, his own suggestions of wording of the ordinance which I can see that you didn't, you didn't take his...anyway...his suggestions. And I did see that you granted a few exemptions, and certainly I'm not gonna consider ourselves in the category of the emergency people or the police. And that's all I...that's all I want to say. I just, you know, there's only about 200 of us on the road, and it's just really important that we just take the call and go do the run. And it's for our business, it's not, not personal.

CHAIR MOLINA: Okay.

MR. BARR: So thank you.

CHAIR MOLINA: All right. Thank you, Mr. Barr. Committee Members, questions for the testifier?

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: And it's not more so a question, just to let you know, Kenny, that I will bring it, bring it on the floor and let the body decide on that, so I am bringing it forward.

MR. BARR: Thank you very much.

COUNCILMEMBER VICTORINO: Okay. So, you know --

MR. BARR: Okay.

COUNCILMEMBER VICTORINO: --I will do my best on that one and try to help in whatever way I can. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Member Baisa?

COUNCILMEMBER BAISA: Yes. Thank you, Chair. And thank you, Mr. Barr, for being here this morning.

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MR. BARR: Thank you.

COUNCILMEMBER BAISA: During your testimony, you said something that I think is very relevant. If we're going to try to identify when you are officially, you know, using your cab to...for business.

MR. BARR: Yeah.

COUNCILMEMBER BAISA: You mentioned a dome on the top might be --

MR. BARR: Yes.

COUNCILMEMBER BAISA: --might be an identifying mark.

MR. BARR: Yes. And also...I mean the police are...I mean when they go by if they see you on the phone, but for some reason if you're at a light and you're having a...like what they would identify this guy is still on his phone then of course pull over and question 'em, you know. But most of the phone calls we would get are no more than 30 seconds. You just get the information and you go do it. In my case, I have a tape player. If it's an advance reservation I ask them four questions and tape it. Just a simple tape player, don't have to write anything down. So I'm just looking for the simplest...just the simplest exemption really, yeah.

COUNCILMEMBER BAISA: I understand what you're trying to say, and it's very important that we don't hurt business. So we'll be talking about that, as Member Victorino said. Thank you.

MR. BARR: Thank you very much for considering that.

CHAIR MOLINA: Thank you. Committee Members, any other questions for the testifier? Seeing none, thank you for your testimony, Mr. Barr.

MR. BARR: Thank you, Mr. Chairman.

CHAIR MOLINA: Next to testify on Committee of the Whole Item 28, we have Andrew Dunne followed by Tamara Paltin.

MR. DUNNE: Good morning. My name is Andrew Dunne, I'm a resident of Kula, and I would like to testify in very strong support of a bill limiting the use of handheld devices and electronics, mobile electronics while driving. In January of this year, I was riding my bicycle on Kula Highway, wearing a helmet with a flashing red light on the back of my bicycle, wearing a vest with a reflective strip on it, and a motorist on his cellphone made a left turn directly into me in the school zone right in front of King Kekaulike High School. I required emergency surgery to save my life. I had to have my spleen removed. I had my kidneys damaged. I separated my shoulder. I was out of work for two months.

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I'll continue to feel the effects of this accident for the rest of my life, and the motorist was not charged with any crime or did not receive any ticket whatsoever even though the police determined he was completely at fault since he made a left turn directly into me while talking on the cellphone. So I would like to just add my personal experience in this matter that if, if there had been a law that had prevented this or had made him think twice about using his cellphone while driving that might have made a difference. Or if he had been using a hands-free device rather than having one hand on the phone and the other hand on the wheel while he was not paying attention and making a left turn in a school zone it might have prevented me from over \$100,000 in medical bills, and it might have prevented, you know, trauma to his family as well. And that's all I have to say.

CHAIR MOLINA: Thank you, Mr. Dunne. Committee Members, questions for the testifier? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: And good morning, thank you for being here, and thank you, you know, for sharing your tragedy there. It makes it more real for us to hear that. As a bicyclist, have you heard from other bicyclists if they were in any accidents relating to the use of cellphones while vehicles were driven?

MR. DUNNE: Pretty much every cyclist I know has had a close call with someone on a cellphone. Whether or not they've actually been in an accident, there's a few people who've been run off the road, there's a few people who, like you said, they have, have almost been hit. And so I think, I think if you asked pretty much any of the cyclists Upcountry or, or anywhere on the island they, they would have a similar story, not, not quite as bad as mine, but, but to the point where they were scared for their lives.

COUNCILMEMBER MEDEIROS: Well, thank you for that response, and I'm certainly glad you're here to testify this morning.

MR. DUNNE: So am I.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yes. Thank you. And thank you again for being here, and we hope this will be the first step in preventing tragedies that had happened to you and others. I'm curious. The question I have for you is you said the police did not charge that individual with any...anything?

MR. DUNNE: I have the police report here, and --

COUNCILMEMBER VICTORINO: Yeah.

MR. DUNNE: --as far as I know he did not even receive a ticket for, for a failure to yield or...

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COUNCILMEMBER VICTORINO: Yeah.

MR. DUNNE: Yeah.

COUNCILMEMBER VICTORINO: I'm curious, yeah, 'cause...and, and as far as you know no charges were ever pressed so that...

MR. DUNNE: As far as I know no charges were...yeah. And that, that actually speaks to another point is that I think the legislation is necessary, and also I think enforcement of the legislation would be very important that people actually receive tickets for, for violating the ordinance or the law.

COUNCILMEMBER VICTORINO: 'Cause in your case I could see other...I mean failure to yield. I mean, yeah.

MR. DUNNE: Exactly.

COUNCILMEMBER VICTORINO: We, we won't go into that, 'cause, Chair, it's not what we're here to discuss today.

MR. DUNNE: Right.

COUNCILMEMBER VICTORINO: But I'm just surprised to hear nothing was done, and especially as badly injured as you were, sir.

MR. DUNNE: Exactly.

COUNCILMEMBER VICTORINO: I'm, I'm, I'm surprised. But anyhow hopefully this will start, and, and hopefully in the future other measures can be...and, and, and maybe tighter enforcement, Mr. Chair, might be what we really ought to be looking at like what they're doing with speeding right now, as you read in the paper this morning in the last few days. Thank you very much, and I wish you a speedy recovery, and, and hopefully in the future this never happens to you or anybody else in Maui County.

MR. DUNNE: Thank you.

CHAIR MOLINA: Okay. Thank you. Committee Members, any other questions for the testifier? Seeing none, thank you for your testimony, Mr. Dunne. Next to testify we have Tamara Paltin, and she'll be testifying on Committee of the Whole Item 2(14) followed by Malcolm Findley.

MS. PALTIN: Aloha, Council and everyone in the room. Thank you for the opportunity to testify today. When I arrived and I got the agenda, I read that for the Planning Commission Mr. Soares has withdrawn his application, but I still would like to testify on

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that. Seeing as you folks, the Council, are the body in charge of approving or disapproving who gets nominated to the Planning Commission, I would just like to request like for any nomination that comes through that you consider that the Planning Commission is for the island of Maui and that the...all the members on the Planning Commission reflect the population of Maui, in that districts that have planning going on for them, that have a lot of planning like the West district get fairly represented. I think the last person from the west district on the Planning Commission was Dr. Iaconetti, and West Maui hasn't been represented since. This seat has been vacant for not too long now, but I think it's really important that there's a good balance of people, not just one type of person; otherwise, why wouldn't there just be one or two people on the Planning Commission. And Maui County has like a lot of females, a lot of youth, and nothing against who the Mayor appoints...or I respect those people, but I think that the people appointed to the Planning Commission should be like qualified, educated, have good knowledge of Maui, have a love for Maui, and just really reflect the population. If, if it's just one type of person that's on there and it doesn't reflect the diversity then it's kind of a disservice to the whole population. And as you folks have the power in you to approve or disapprove any nominations I would request that you guys really think about that when any nomination comes through. I know the last time the nomination came up there were a lot of people that said that they had applied. I don't know if any of them had been contacted or interviewed. I also applied. I never did get contacted or interviewed, and I'm still willing to serve. Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Paltin. Committee Members, questions for the testifier? Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. Tamara, I, I, I'm a bit concerned just because even after, Mr. Chairman, we had sounded our concerns about the process, are you saying again that...I know you came and testified the last time. Since that meeting you did put in an application and again no response from this Administration?

MS. PALTIN: I contacted the Administration and I asked them what could be done so that if I wasn't selected the first time, like what would make me be more approved in their eyes. And they said possibly applying for another board or commission that I was interested in. And I looked through the openings. There wasn't really much, anything else I was interested in, and I didn't want to run into a similar problem as Mr. Bob Pure that had been nominated before where he was already on the Board of Ethics, and then he was applying for another commission since the Planning Commission was where my interest was. I didn't put in another application, because they said that my application would be on hold, but I added on to it a curriculum vitae which has like a list of my education and qualifications and whatnot. But that was the only correspondence I had between the Administration. I was not interviewed or anything like that. I just...it was just kind of like a what could I do? And then I was...I responded I didn't want to run into the same problem as Mr. Bob Pure by applying for a commission that I wasn't really interested in and then not being eligible for the Planning Commission because of being on another commission.

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COUNCILMEMBER NISHIKI: So, so you had really no interview, number one, and they asked you to apply for another commission because they felt...what, you were not qualified?

MS. PALTIN: They didn't say that.

COUNCILMEMBER NISHIKI: If that was the reason...I mean --

MS. PALTIN: That was the reason . . . *(inaudible)* . . .

COUNCILMEMBER NISHIKI: --if this is something you want to serve on, and why would they tell you to go serve on something that you don't even like. Is that the impression that you got? Just go apply another...to another commission?

MS. PALTIN: I, I didn't really know what to think. I just was trying to see what they wanted from me as an applicant to the Planning Commission. But I, I would think maybe they thought I was unqualified or something, and that service on another commission would help me somehow get qualified. I did mention that I was on...have been on...a part of the Maui Nui Marine Resource Council which was endorsed and it's similar to a commission, and I've been attending those meetings pretty regularly. We have a meeting tonight that I'm attending. So in my opinion I was thinking that the Maui Nui Marine Resource Council is similar to a Planning Commission or something, and so I felt if that wasn't enough then I would just take my chances on then...on my curriculum vitae, turning that in.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR MOLINA: Okay.

COUNCILMEMBER NISHIKI: I guess we're going to have that discussion later on, yeah, Mr. Chairman, just because it still seems like some of our concerns are landing on *deaf* ears. And it bothers me when all of us talk about not wanting or not, not wanting, but trying to get people to serve, and here you have somebody that's sincere, and they get the...what I call the brush off. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Nishiki.

COUNCILMEMBER MEDEIROS: Mr. Chair?

CHAIR MOLINA: Hang on, Mr. Medeiros, I'll recognize you in a second. Ms. Paltin, just for the record, have you served on any other County board or commission prior to your applying to the Planning Commission?

MS. PALTIN: No, just that Maui Nui Marine --

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CHAIR MOLINA: Just the Maui Nui.

MS. PALTIN: --Council, and then the Ka Ipu Kukui Fellows which is sponsored in part by the County.

CHAIR MOLINA: Okay. Thank you. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, and good morning. Thank you for being here and your testimony. So when applying to the Planning Commission you were willing to commit to five years I believe and the schedule that the Planning Commission has?

MS. PALTIN: Yeah. We actually...and my job just had days off selection again, and I'm kind of high up on the seniority, but I specifically chose Monday, Tuesday, just in case. I mean I wouldn't mind a weekend day, but I just held out hope that perhaps something would happen, and I, I requested Monday, Tuesday. Tuesdays aren't really a highly requested day so, and with my level of seniority, I'm...I feel pretty confident that I would be able to have Tuesdays off with the days-off selection occurring yearly and my seniority level at my job.

COUNCILMEMBER MEDEIROS: Okay. So you, you felt confident that because of your seniority and your flexibility in your work schedule you would be able to attend the meetings and make that commitment. Good. So you, you never got a response from the Administration that your application was received and being reviewed, and then when you weren't selected you didn't get any response of why you weren't selected?

MS. PALTIN: That's not correct. I, I did get a response that it was received.

COUNCILMEMBER MEDEIROS: Okay.

MS. PALTIN: I never got a response why I wasn't selected. I did get a response that it would be on hold for...I think it was two years or something...for a while. I don't remember specifically.

COUNCILMEMBER MEDEIROS: Okay. Your, your application would be held in file by the Administration for possibly another consideration?

MS. PALTIN: Correct.

COUNCILMEMBER MEDEIROS: Okay. Thank you for your testimony. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Member Medeiros. Members, any other questions for the testifier?

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COUNCILMEMBER VICTORINO: Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: You know just to tack on to Ms. Paltin's...in the past and a number of Administrations that I applied for boards and commissions and wasn't selected too, Ms. Paltin. So don't worry about being not selected, 'cause I know that feeling. And in most cases I was never given a reason other than, your...the response was your application will be kept on file for "x" amount of time, and, and, and, and that was it. So, Ms. Paltin, I think this is something that has gone on for a long, long time. It's not just you or just recently. I think it's an accepted practice. Maybe somewhere along the line, Mr. Chair, we, we, we'll have to look at making or asking the Administrations to change that procedure, and make it something that...I don't know if a reason should be given other than at this time, you know, because sometimes somebody else is selected. Nothing against you or me, but maybe they felt better with that person versus us, you know, so I understand how you feel, but I just wanted you to know you're not the only one. And I know the disappointment of not being chosen, and I applied for a number of boards and commissions. It was just not Planning. I did Water. I did couple other ones and weren't selected. So anyhow, Chair, just that maybe something we have to look at in the future. Maybe direction needs to be given by the Council to the Administrations so that they can tell us why someone is not selected. Or if somebody is selected what was the reason for them and not somebody else? So, Ms. Paltin, please keep it up. I mean keep trying. Okay?

MS. PALTIN: Is it okay to respond to that?

CHAIR MOLINA: Um, keep, yeah, if you keep it real, real brief, please.

MS. PALTIN: I just was thinking that not a whole lot of people in my age range are in the whole County in general do apply to boards and commissions. And if you made the process a little bit more open like what happens and how you do it, then maybe you would get more people applying and a better list to choose from. Just, just a thought. Maybe 'cause not, not a whole lot of people I know have ever did...have ever applied.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: Thank you.

COUNCILMEMBER VICTORINO: Thank you.

CHAIR MOLINA: All right, Members. Seeing no other questions for the testifier, thank you, Ms. Paltin, for your testimony this morning.

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MS. PALTIN: Thank you.

CHAIR MOLINA: Next to testify on Committee of the Whole Item 28, we have Malcolm Findley followed by Irene Bowie.

MR. FINDLEY: Good morning. My name is Malcolm Findley, and I'm here to testify in support of the cellphone ban. I would particularly like to focus my remarks on the safety of those who enjoy walking or need to walk for exercise such as seniors. I live in Kuau, roughly halfway between Paia and Mama's Fish House. Three or four mornings a week, I walk on the Hana Highway to Paia or to the Kuau market. Much of the Hana Highway is a two-lane road, as I'm sure all of you know, but there are very few...the sidewalks only start at the Paia Community Center. Most of the highway consists of bike lanes that are 2½ to 3 feet wide. I always wear bright clothing and walk facing traffic. I carefully observe the oncoming traffic, and I note that...noted as I...of course of my walking over the...a number of months and years that roughly 5 to 10 percent of the oncoming drivers are talking on cellphones. However what really got my attention was that of that number 20...some 25 percent are weaving, are wandering in the lane they're driving in. They're clearly not paying attention. Worse, about once or twice a month, vehicles would cross in front of me into the bike lane forcing me to step quickly onto the side of the road to avoid being hit, onto the shoulder. In virtually every instance those drivers were talking on cellphones. Sometimes I encounter tourists on the bike path who are walking with the traffic putting them at great risk of being hit from behind with no time to react. I warn them of this danger and urge that they proceed facing the traffic. In conclusion, I believe that walkers are at great risk from cellphone drivers particularly on roads where there are no sidewalks. Therefore I urge that you also consider their safety--that is the walkers--in your deliberations. Thank you.

CHAIR MOLINA: Thank you very much, Mr. Findley. Committee Members, questions for the testifier?

COUNCILMEMBER NISHIKI: Yeah.

CHAIR MOLINA: Mr. Nishiki?

COUNCILMEMBER NISHIKI: Thank you, Mr. Findley. You know we did get a communication from Captain Victor Ramos of the Police Department Internal Affairs. One of his recommendation is a high fine to underscore the importance of this proposed bill and to strongly encourage voluntary compliance. Then he goes on to give us the fines in the County of Honolulu and also the Big Island County. Honolulu County is \$97, and I don't know if it's changed. Big Island is \$150. What do you think about a \$500 fine? If you hit somebody hard with . . . *(inaudible)* . . .

MR. FINDLEY: I would suggest that...thank you for the question.

COUNCILMEMBER NISHIKI: Yeah.

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MR. FINDLEY: It would seem to me that there should be a sliding scale of fines. For the first offense, maybe 95. Subsequent offenses on up to \$500, let's say. I also was particularly moved by the previous testifier's...by the way it's a bicycle lane I'm riding [*sic*] in so there are a lot of cyclists, and the cyclists are going with the traffic. Frankly I wouldn't think of riding a bicycle on the Hana Highway without...with my back turned. But I think that another gradation of what you're, you're saying would be to have a significant fine for anybody involved in an accident that's talking on a cellphone when the accident occurs. That ought to be coupled with their...because the chances are that the, the cellphone contributed to their accident, and that there ought to be an additional penalty for that.

COUNCILMEMBER NISHIKI: Okay. Thank you very much, Mr. Findley, for coming.

CHAIR MOLINA: Okay. Thank you, Mr. Nishiki. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Good morning, Mr. Findley. Thank you for your testimony. I think it's important that we hear from people like you who are pedestrians and use the shoulders or sidewalks frequently. I, I think the two most vulnerable people or users of public ways in our communities are bicyclists and pedestrians, so it is important we hear you, your...and I just wanted to because you were asked about by Member Nishiki about the fine levels that are being considered. And I just wanted to add that in California the first offense is \$400, so they, they do put a pretty steep fine on it. But my question for you is because you mentioned you, you're out in Kuau and do your walking out there, and, and yeah, there are no sidewalks in that area. And some of the shoulders go from wide to narrow to none, so it is something dangerous. But you, you as a pedestrian you find it safer to walk against traffic than with traffic?

MR. FINDLEY: Yes. I, I observe very closely the oncoming cars, and let's say the car is the distance that you are from me at the moment. I can basically see the driver, but more importantly I can see how they're handling their vehicle, because it's going to pass within...from here to the desk to me. And if they...you can tell when somebody is focused on what they're doing. They stay in the middle of the lane. They don't make any kind of weaving driving and so forth. On the other hand, if I see them doing one of these...(*holds hand to ear in a cellphone gesture*)...I become a little more wary, and as they get closer to me I'd be...I...especially one or two cars ahead of me, that's when I really begin to pay attention as to, as to how they're conducting their...themselves, and how, how, how they're driving, and whether they seem to see me or not.

COUNCILMEMBER MEDEIROS: Right. Right.

MR. FINDLEY: So it's, it's a matter of being alert. I mean you're, you're kind of playing Russian roulette as you go along the highway. It's probably safer not to walk along there at all, but on the other hand I, I enjoy...it's, it's a beautiful walk along there. And so I guess there's a tendency to think about...I certainly, I also drive obviously, and I've seen

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a lot of people on the road talking on cellphones that I wouldn't want meet when I'm even when I'm in my car. But a pedestrian is no match for a vehicle. There's no protection. So I think that the, the pedestrians have, have a, a right to the public right-of-way that, that's an entitlement that ought to be protected, and there ought to be perhaps a separate fine, I mean an enhanced fine since they're so vulnerable for hitting either a bicyclist or a pedestrian when you're on a cellphone.

COUNCILMEMBER MEDEIROS: Okay. Thank you for your suggestions on that, your recommendations. And I just, you know, want to share my experience as similar as yours. I followed many vehicles, and as soon I see them start to slow down and weave and not signal, it's usually an indication they're on a cellphone. Because with one hand on the cellphone, one hand on the wheel you don't have a third hand to signal, so it is dangerous. So thank you for your testimony. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Member Victorino?

COUNCILMEMBER VICTORINO: Thank you. And thank you, Mr. Findley. And thank you for abiding by rule number one, always walk opposite of traffic. I mean that's what we were taught, and too many people don't adhere to that, because when you see something coming at you--like you said--you can be aware. When you walk with traffic, that's not a good thing all around. But I wanted to ask you what time of the day do you normally walk? You know, do you have a specific time, morning, afternoon, evenings? What, what is your specific time?

MR. FINDLEY: Yes, I do. I, I like to walk in the morning, so I walk sometime between 7:00 and 8:00 in the morning depending upon the time of year, how, how light it is. So I'm basically seeing the traffic coming from Haiku, folks going to work and so forth.

COUNCILMEMBER VICTORINO: I see.

MR. FINDLEY: And it's also cooler and it's just more enjoyable at that, that hour of the day for me.

COUNCILMEMBER VICTORINO: And the last question I had. You, you mentioned bright...you use bright clothes when you walk?

MR. FINDLEY: Yes.

COUNCILMEMBER VICTORINO: Okay. So...

MR. FINDLEY: I have a white hat for example, and I have several sort of t-shirts that are kind of yellowish or, or...but anyway I try to make sure I'm visible in some way.

COUNCILMEMBER VICTORINO: Very good. No, thank you. And, and, Chair, this is the kind of citizens I know are trying their best to protect and...themselves, and so we need

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to make sure we, we protect them from those drivers who are not paying attention. Thank you, Chair.

CHAIR MOLINA: Okay. Thank, thank you, Mr. Victorino. And thank you, Mr. Findley, for sharing with us the perspective of the pedestrian as well as Mr. Dunne who shared with us the perspective of the bicyclist, and I think it's important that, you know, we make sure that our pedestrians are protected. Coming down the highway we see a lot of our Community Work Day people out there on the road, you know, cleaning up the areas, and obviously one mistake by a driver with a cellphone could end up in a terrible tragedy. So I certainly appreciate your testimony this morning.

MR. FINDLEY: Thank you, Chair.

CHAIR MOLINA: Thank you. Okay. We have one more testifier. We have Irene Bowie who will be testifying on Committee of the Whole Item 2-14 followed by Mike Moran.

MS. BOWIE: Good morning, Chair and Council Members. I'm Irene Bowie, Executive Director of Maui Tomorrow Foundation. I'm here to speak on 2(14) the Planning Commission, but I do want to just add in on the cellphone ban. Yeah, I support that 100 percent. You haven't heard from a motorist, and I was rear ended ten years ago in Honolulu by somebody on their cellphone. I had a slight concussion, vertigo, and ten years later I still have migraine headaches from that. So 100 percent support of that. But I do want to speak today...I want to echo actually, actually Tamara Paltin's testimony on the withdrawal of William Soares' name, and still we're needing to fill a seat on the Planning Commission. And I, I would like to ask the Council to please, you know, continue to send a message to the Mayor's Office that we do need diversity on the Planning Commission. I'm someone that attends those Planning Commission meetings regularly, and it's very out of balance, and it's out of balance in a number of ways, professions, age range, gender. I, I think that somebody like Tamara who's obviously civic, civically minded, she's qualified, she's very interested in this position. I, I don't understand why somebody like that is continually overlooked, and we still seem to get a, you know, a fairly predictable nominations coming into that position. So that's basically it. I, you know, I'm another person--I mentioned last time I was here speaking on boards and commissions--that had applied, had never heard back for anything. And, you know, somebody like Tamara, I just think we, we, we work with her in the community, we see she's interested in what's going on in this community, and she's somebody that should be considered. So, you know, it's just really a message to the Mayor's Office to please, please give us more diversity on that Planning Commission, because it...I thought it was very telling what Tamara said. You might as well get down to a fewer number of people if everybody is going to be so like minded that votes don't really...you know, it's very predicable how things happen in the Planning Commission, and I think that needs to change. Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Bowie. Committee Members, questions for the testifier? Mr. Nishiki?

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COUNCILMEMBER NISHIKI: Yeah. You know when you say profession and then you talk about predictable, what, what do you see that pretty much is being represented there --

MS. BOWIE: I've...

COUNCILMEMBER NISHIKI: -and what is not? So that let's be fair.

MS. BOWIE: I think that visitor industry and the building trade is very well represented there and that other professions really are not, and certainly the environmental movement is not represented by any means there. I mean very slightly. So...and, and I think just gender based. I think we're, we're a County that has a lot of females in positions, so I don't understand why it's so unbalanced with that and, and youth. I mean I think we should be encouraging the young people to come in and, and be a part of this process. So in, in, in those ways I think it's, it continues to be unbalanced.

COUNCILMEMBER NISHIKI: Thank you. Mr. Chairman, maybe that should be something that we send to Administration as we discuss the nomination in this important commission. I don't, I don't think they're hearing it maybe.

CHAIR MOLINA: Okay. We'll try to make our voices a little louder on that issue, Mr. Nishiki. Members, any other questions for the testifier?

MS. BOWIE: Thank you.

CHAIR MOLINA: Seeing none, thank you for your testimony, Ms. Bowie. Next to testify on Committee of the Whole Item 28 we have Mike Moran followed by Kenny Barr. Mr. Barr will be testifying on a different agenda item. That will be Committee of the Whole Item 2(14).

MR. MORAN: Good morning, Chair and Committee Members. I thank you for the opportunity to testify this morning. Talk about these guys, these cellphones. Can tell from all this grey hair that I'm still astounded how these work. No wires, I can be on the beach talk to somebody in New York City, and so it's still...and this is an antique, you know, like the idea with some young people who laugh at me and say you don't even have a camera. Well no, to me it's a phone, that's what I use it for. I have a few different perspectives with it. I have...one of my jobs in the afternoon is as a courier, and driving around town this is the communication. If they want me to make a pickup or delivery that's not scheduled they call me on the phone. So, okay, if I can't use this what is it? It's an inconvenience. But that's a key word. Inconvenient doesn't equate to somebody being injured or even killed because somebody else doesn't want to be inconvenienced. So as my job as a courier, can I do without this? You bet I can. Reflecting on what a couple of previous testifiers, I'm a daily walker and a frequent bicyclist. So it would be kind of redundant to repeat the same things. I'll just say that I'm a different area, I live in Kihei, and I walk down a local street, Ohukai up and down every day to the beach. I have some

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dogs and I walk the dogs down. And Ohukai is one of those streets that has sidewalk in some places, other places not. I too always if I'm...there's no sidewalk I walk looking at the traffic. I've learned years go as being a walker and also a cyclist my defense is when I see a car is the eye contact. I see them but I want them to look at me. If they don't look at me I know I'm in trouble, because they don't see me. They're not, they don't make that eye contact, and of course if they're on a phone quite often they're not looking. Beyond that, I imagine you guys did some research, and I did some research too, and I found a study done by a professor at the University of South Carolina. And he made a, a point from his research that planning to speak...getting ready to speak and the speaking requires four more times brainpower than listening does. And I think...I've, I've used this, as I said, it's an old one but I have an earpiece that I can put in. I don't think that makes much difference. It's the planning on what you're going to say is the biggest distraction. So even hands free, well yes, hands free is certainly better than one that somebody has to dial or if somebody's texting while they're driving.

MS. HAMMAN: Three minutes.

MR. MORAN: These scary issues, but I think it's really better. It's like we can really do without these when we're driving. As I said, it's an inconvenience to do without it, but it's not costing anybody life or limb, and yes, I have not actually...can't say I've been hit while bicycling or driving...or, or walking, but I've had some very close ones. I've dove into bushes where the road got too narrow to avoid getting hit. So I appreciate you guys looking at this and, and full support of it. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Moran. Committee Members, questions for the testifier? Member Baisa?

COUNCILMEMBER BAISA: Thank you very much. And thank you, Mike, for being here this morning. You bring a very balanced perspective of the walker as well as the business person. I'm kind of interested in your testimony about your being a courier, and this being an inconvenience, and how you now use the cellphone in your business. Assuming that we pass this legislation, how will you then modify what you do in order to get it done? The reason I'm asking is we've had a lot of this kind of testimony, so I want to hear what your ideas are.

MR. MORAN: Sure. It's...obviously it's the two-way street. If the phone rings just like I feel what you would do if you were in a difficult situation you wouldn't answer the phone. You would let it go to voicemail. So that's the inconvenient part. Okay, the person calling you has to leave a message, you have to stop, pull over, go check the message, and then...so that's an inconvenient part, it's going to take a extra couple of minutes. But again to me that's not comparable to the danger of somebody getting hit by a car when they're...and, and, and Irene's point too, even when you're in a car you can still get injured. But, yes, the walkers and drivers feel that we're so much more vulnerable. So that's an inconvenience, and the other is if I have a question, woops, I get to an address and it's wrong, something doesn't match up. I've been assigned to go pick up here, the

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name and address don't match, I have to call in. Well, I'm already...that's not much of an inconvenience, because I'm already stopped at a location. So I had to make a call, I'm making a call. So it's mostly the inbound calls which are going to take a couple of extra minutes. But I feel what will happen, people will plan better if they realize I can't just call this guy right away and get him wherever he is to stop. They're going to have to plan a little bit, call a little bit sooner, 'cause it's going to take an extra two or three minutes. We're on Maui, we can slow down a little bit and do things.

COUNCILMEMBER BAISA: Yes. Sometimes we wonder, right --

MR. MORAN: Yes.

COUNCILMEMBER BAISA: --where we are. But it's good to hear, you know, that that's a probable solution would be to just let it go to voicemail and then pull off when it's safe and return the call.

MR. MORAN: Yes, ma'am. Right.

COUNCILMEMBER BAISA: Okay. Thank you very much.

MR. MORAN: Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Baisa. Committee Members, any other questions for the testifier? Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. Mike, I didn't ask everyone else, but I'm just figured I'd ask you. You think \$97 would deter you?

MR. MORAN: Honestly, Mr. Nishiki, it probably would deter **me**. Number one, I'm the first one to say I'm a cheap guy, and number two, I have a limited income. But I think any situation there has to be a penalty that's going to stop people.

COUNCILMEMBER NISHIKI: Right.

MR. MORAN: And would almost 100 bucks stop most people? I kind of think it would, but then we see what's going on with...right now, with...everybody that's alert knows the police are out looking for speeders. I, I went yesterday afternoon. I saw a couple of cars pulled over on the highway. This morning coming through Waikapu I saw a couple of cars pulled over there. So sometimes people have to get that punishment that the threat of the fine doesn't do it. So I think personally, yes, that 97 bucks would certainly stop me, but I would look to go a bit higher. I would think something around \$150 for a first fine would be probably more applicable.

COUNCILMEMBER NISHIKI: Yeah. I, I, you know, I, I, I've heard other people say well get 'em when they create the problem, when they actually hit somebody. Well that could be

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\$1,000 too late, as Mr. Dunne, I think. You know, I mean look what happened to him. So I'm not saying that it is bad, but I'm just saying that what would be the real deterrent, and that's what I'm saying. I, I...that's why I was going, well is \$200 a deterrent? And, and you might not say, maybe it won't, but I, I think once somebody gets it and they go **\$200**. I think that would really stop somebody, because it hits them in pocketbook.

MR. MORAN: Absolutely right, sir. And, and you're right, that's...we want to stop it before it happens, not after.

COUNCILMEMBER NISHIKI: Before.

MR. MORAN: Not after it happens --

COUNCILMEMBER NISHIKI: Yeah.

MR. MORAN: --'cause it's, it's not only the monetary thing. If somebody's injured you can have this recurring thing, yep, you're, you're, you're cured now, you're okay now, but people have headaches, they have other aches and pains, they have disabilities that go on a lifetime.

COUNCILMEMBER NISHIKI: Yeah. Thank you, Mike.

MR. MORAN: Thank you.

CHAIR MOLINA: Okay. Thank you, Member Nishiki. Seeing no other questions from the body, thank you for your testimony, Mr. Moran. Next to testify on Committee of the Whole Item 2(14) Kenny Barr followed by Steve Tenney.

MR. BARR: Good morning, again. Kenny Barr of Kihei. I do want to testify on this nominations to the boards and commissions. I see Mr. Soares is withdrawing his name and it gives someone else an opportunity. As most of you know, I had been on the Planning Commission for five years in the early '90s, and in my last year it was...the Mayor at that time had evened out the Planning Commission over the five years, and I believe there were four or five women on the Commission when I left. But what I really wanted to say was that in your questioning of the people, whoever the nominees are, that...and I know Mr. Nishiki has been a bulldog over all the years that he has been on his other five terms about questioning people. And you can only go so far as to people telling you the truth, but I think it's really important that you really zero in on people's profession and what that profession has to do with being on the Planning Commission. I don't want to zero in on realtors especially, but you really do need to identify that they will be approving housing divisions. And will it affect their job, and can they make a decision based on the fact that if they deny that housing division that they won't be selling the houses or just the other way around, if they approve the housing division that they may be selling the houses? And there basically is a conflict there, and it could be in other professions too. All I'm saying is that when you have people up here and you're

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questioning them that you more zero in on that, on that situation, and that's all I wanted to say about that.

CHAIR MOLINA: Thank you, Mr. Barr. Committee Members, questions? Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you, Chair. And thank you again, Mr. Barr, for being here, and I do remember when you were on the Planning Commission. So what I'm hearing from you is that an aspect of choosing commissioners that really needs to be looked at are the possible conflicts of interest?

MR. BARR: Yes. Yes. I'm not saying they get on the Commission just to enhance their own financial life, but I don't know how I can say anything different with a realtor being on a Planning Commission. He does sell houses, he does sell condominiums. Is he going to declare here that if he votes in favor of a housing project--let's just say 670--that he's not going to sell a house in 670? So...

COUNCILMEMBER BAISA: Okay. Well thank you very much. That's really interesting, 'cause, you know, we've heard a lot of testimony about gender and age and geographic location, but you bring up another interesting and very important aspect. Thank you.

MR. BARR: Okay.

CHAIR MOLINA: Thank you, Ms. Baisa. Any other questions for the testifier? Seeing none, thank you for your testimony, Mr. Barr.

MR. BARR: Thank you.

CHAIR MOLINA: Next to testify on Committee of the Whole Item 28 we have Steve Tenney, and Mr. Tenney is the last person to have signed up for public testimony on our agenda items. The Chair will offer anyone in the gallery one last opportunity to come up and sign up for testimony on our agenda items for today. Good morning, Mr. Tenney.

MR. TENNEY: Mr. Chairman, Members of the Committee, good morning.

COUNCILMEMBER NISHIKI: Morning.

MR. TENNEY: My name is Steve Tenney, and I'm the President of the Maui Amateur Radio Club. And currently as the bill is proposed there's an exemption for FCC-licensed amateur radio operators, and I'm here to encourage you to keep that language intact. It in fact is in the bill that was passed in Oahu. It's in the bill that had passed in Kauai, and it's also in the bill that passed in the Big Island. The main purpose for leaving this in the, the language of the bill is the ability to be able to use our radios in a mobile situation. A lot of what we do is in times of need or natural disasters, and unfortunately I have a radio in my home, but my CC&Rs don't allow me to have a generator, because it's fired with gasoline. So the only option is to use my vehicle's battery to run this radio. We interface

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very closely with Civil Defense. We also work with NOAA, the weather authority on hurricanes, and the American Red Cross. And I know it may be incredible to believe that with all the communication devices that are available to us today that they all fail at the same time. And I'm here to tell you that back in the late '80s when an earthquake hit Northern California during the World Series everything was shut down: broadcast TV, broadcast radio, landline telephone, cellular telephone. There was just no way of communications. My wife was on her way to Toronto. It took us four days to get communications back and forth. All we could see was...the city it was burning. We had no idea of, of what was going on, and so I know, as incredible as it may seem, these things do happen, and that's when the amateur radio community steps in. We had people from our club referring and transferring messages from California to other parts of California. We had a member of our club dispatched to New Orleans to help with the communications situation during Hurricane Katrina, and as recently as this last year, he was dispatched to American Samoa to help out during the aftermath of that tsunami. So we just want to encourage you to hopefully leave that language intact. We feel we provide a very positive community service, and we look forward to serving you in the future. Thank you.

CHAIR MOLINA: All right. Thank you, Mr. Tenney, for your testimony and for highlighting the contributions of our CB radio operators and Ham radio operators around the world. Committee Members, questions for Mr. Tenney? Seeing none, thank you for your testimony. Committee Secretary, have we had any other signups for public testimony on any of our agenda items this morning?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MOLINA: Okay. Members, no other individual have signed up for testimony this morning. Any objections to closing the public testimony for our agenda items today?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. So ordered by the Committee.

...END OF PUBLIC TESTIMONY...

CHAIR MOLINA: All right, Members, let's get to work.

ITEM NO. 2(12): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (BOARD OF VARIANCES AND APPEALS) (C.C. No. 09-15)

CHAIR MOLINA: First on Committee of the Whole Item 2(12). The Committee is in receipt of a correspondence dated April 6th, 2010, received April 7th, 2010, from the Mayor, requesting consideration of the nomination of Bernice Vadla replacing Sandra Duvauchelle to the Board of Variances and Appeals for a term expiring on

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March 31st, 2013. The Council must approve or disapprove the nomination by June 6th, 2010 or the nomination will be deemed approved. And I will first recognize Ms. Feenstra to give us a brief overview on this consideration of Ms. Vadla to the Board of Variances and Appeals.

MS. FEENSTRA: Good morning, Committee Chair Molina, Council Members, and persons in the gallery. Mayor would like to thank you for considering her nominees today as well as the nominees that are being considered. Our gratitude goes out to the previous members who served on the boards and commissions for their hours of volunteer service that they have provided to the community. Mayor's selections that are before you today are members of the community that she feels are highly qualified and willing to serve. So we appreciate your consideration.

CHAIR MOLINA: Okay. Thank you. Committee Members, questions related to the nomination of Bernice Vadla to the Board of Variances and Appeals? Seeing none, then the Chair will offer a recommendation. The Chair will recommend the approval of Bernice Vadla replacing Sandra Duvauchelle to the Board of Variances and Appeals for a term expiring on March 31st, 2013.

COUNCILMEMBER PONTANILLA: Mr. Chairman, I move to support or support the nomination of Bernice Vadla to the Boards of Variances and Appeals.

CHAIR MOLINA: Okay. Is there a second?

COUNCILMEMBER VICTORINO: Chair, I second the motion.

CHAIR MOLINA: Okay. Motion to approve has been made by Member Pontanilla and seconded by Member Victorino. Discussion, Members? Seeing none, all those in favor signify by saying "aye".

COUNCILMEMBER PONTANILLA: Aye.

COUNCILMEMBER VICTORINO: Aye.

CHAIR MOLINA: All those oppose? Thank you. The Chair will mark it seven ayes with two excusals, Members Mateo and Johnson.

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VOTE: AYES: Councilmembers Baisa, Kaho‘ohalahala, Medeiros, Nishiki, Pontanilla, Victorino, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson and Vice-Chair Mateo.

MOTION CARRIED.

ACTION: Recommending APPROVAL of the nomination of Bernice Vadla to the Board of Variances and Appeals.

CHAIR MOLINA: And the Chair would like to recognize the presence of Member Kaho‘ohalahala to our proceedings this morning.

COUNCILMEMBER KAHO‘OHALAHALA: . . .*(Inaudible)*. . . Chair.

CHAIR MOLINA: All right. Very good, Members. So the matter will move on to the full Council for consideration.

ITEM NO. 2(14): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (LIQUOR CONTROL ADJUDICATION BOARD; MAUI PLANNING COMMISSION) (C.C. No. 09-15)

CHAIR MOLINA: Next we have Committee of the Whole Item 2(14), Nominations to Boards, Committees, and Commissions (Liquor Control Adjudication Board and Maui Planning Commission). And, Members, as you have heard, the nominee for the Maui Planning Commission Mr. Soares has withdrew his nomination to the Maui Planning Commission. And for your information on Item A., Liquor Control Adjudication Board, the Chair is going to...wants to let you know that we're going to request a discharge of Ms. Fernandez to have her matter discussed at the May 18th Council meeting because of a time sensitivity matter. So I do want to at least alert you to the fact that the Chair is going to ask for a deferral on this particular item today. Ms. Feenstra, any additional comments you'd like to make on these two nominees?

MS. FEENSTRA: No.

CHAIR MOLINA: Okay. Members, questions for the Administration on these two considerations?

COUNCILMEMBER MEDEIROS: Chair?

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CHAIR MOLINA: Okay. Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yes, for the Administration, what date did Mr. Soares withdrew [*sic*] his nomination or his application?

CHAIR MOLINA: Mr. Medeiros, I think that might be in the, in the binder.

COUNCILMEMBER VICTORINO: May 1st.

CHAIR MOLINA: It was...

COUNCILMEMBER MEDEIROS: May 1st?

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: May 1st, yeah.

COUNCILMEMBER MEDEIROS: Okay. And was there time to nominate someone else?

MS. FEENSTRA: A nomination letter did, did go down to Council on May 5th. So I'm not sure if you have it in your binders or not or if you've seen it. And that nomination was Penny Wakida.

COUNCILMEMBER MEDEIROS: Was who?

MS. FEENSTRA: Penny Wakida from Lahaina.

COUNCILMEMBER VICTORINO: We don't have that, yeah, Chair?

CHAIR MOLINA: No. No.

COUNCILMEMBER MEDEIROS: Yeah. Somewhere I saw where it...that was the name being considered. So you did submit a letter to the Council on May 5th you said?

MS. FEENSTRA: Yes.

COUNCILMEMBER MEDEIROS: Okay. All right. Thank you, Administration.

CHAIR MOLINA: Okay.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MOLINA: All right. Thank you, Mr. Medeiros. Any other questions for the Administration before the Chair makes the recommendation? Mr. Kaho'ohalahala.

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COUNCILMEMBER KAHO‘OHALAHALA: Yeah. Just a question. I, I know that when we began this...these discussions especially for the West Maui seat that there was an interest indicated. So I just wanted to know from the Administration then Mr. Cockett is not being considered at all then?

MS. FEENSTRA: Yeah. He, he was not selected as Mayor’s nominee. So, yeah, he’s not...he was considered, but he was not selected as the nominee.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And then, Chair, just for some clarification on the other applicant for the Liquor Adjudication. I need some clarification on what is the, the reason for...

CHAIR MOLINA: Yeah. Staff, if you want to add additional to...information to my comments earlier this morning. It is related to a time sensitivity. Go ahead, Ms. Hamman.

MS. HAMMAN: That’s right. Thank you, Mr. Chair. The Council’s deadline to either approve or disapprove her nomination is May 24th. So in order for the Council to consider her nomination before that date it would need to be at the May 18th Council meeting. So we don’t have enough time to...

COUNCILMEMBER KAHO‘OHALAHALA: So we’re just discharging it to the full Council then?

MS. HAMMAN: Right.

COUNCILMEMBER KAHO‘OHALAHALA: Okay.

MS. HAMMAN: That’s right.

COUNCILMEMBER KAHO‘OHALAHALA: Thank you then.

CHAIR MOLINA: Okay. Thank you, Mr. Kaho‘ohalahala. Members, any other questions as it relates to Committee of the Whole Item 2(14)? Okay. Seeing none, the Chair’s recommendation again is to defer Committee of the Whole Item 2(14). Any objections?

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: JJ and DAM)

ACTION: DEFER pending further discussion.

CHAIR MOLINA: Okay. So ordered.

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ITEM NO. 2(16): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (BOARD OF ETHICS; MOLOKAI PLANNING COMMISSION) (C.C. No. 09-15)

CHAIR MOLINA: Members, moving on to Committee of the Whole Item 2(16), Nominations to Boards, Committees, and Commissions (Board of Ethics and Molokai Planning Commission). The Committee is in receipt of a correspondence dated April 8th, 2010, received April 9th, 2010 from the Mayor, requesting consideration of the following nominees to boards, committees, and commissions requiring Council approval or disapproval within 60 days for terms expiring as indicated: first to the Board of Ethics Donald Sheridan replacing Bob J. Pure for a term expiring on March 31st, 2014 and (b) to the Molokai Planning Commission Debra Napua Kelly replacing Taryn Waros for a term expiring on March 31st, 2012. The Council must approve or disapprove the nominations by June 8, 2010 or the nominations will be deemed approved. Ms. Feenstra, any comments on these two nominees?

MS. FEENSTRA: No, no additional comments. They are...they've both been members of their communities for a number of years, and Mayor feels that they are good selections.

CHAIR MOLINA: Okay. Thank you. Committee Members, questions for the Administration as it relates to these two nominees? One to the Board of Ethics and the other to the Molokai Planning Commission. Okay. Seeing none then, the Chair will offer a recommendation to approve (1) to the Board of Ethics Donald Sheridan replacing Bob J. Pure for a term expiring on March 31st, 2014 and to the Molokai Planning Commission to approve Debra Napua Kelly replacing Taryn Waros for a term expiring on March 31st, 2012.

COUNCILMEMBER PONTANILLA: Mr. Chairman, I move to approve the nomination of Donald Sheridan to the Board and Ethics and Debra Napua Kelly to the Molokai Planning Commission.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay. The motion to approve both nominees has been made by Mr. Pontanilla and seconded by Mr. Victorino. Members, discussion? Seeing none, all those in favor signify by saying "aye".

COUNCILMEMBER VICTORINO: Aye.

COUNCILMEMBER PONTANILLA: Aye.

CHAIR MOLINA: All those disapprove? Okay. Seeing none, the Chair will mark it seven ayes, and two excusals, Members Mateo and Johnson.

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VOTE: AYES: Councilmembers Baisa, Kaho‘ohalahala, Medeiros, Nishiki, Pontanilla, Victorino, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson and Vice-Chair Mateo.

MOTION CARRIED.

ACTION: Recommending APPROVAL of the nominations of Donald Sheridan to the Board o Ethics and Debra Napua Kelly to the Molokai Planning Commission.

CHAIR MOLINA: Thank you very much, Members. We’re moving right along.

**ITEM NO. 2(17): NOMINATIONS TO BOARDS, COMMITTEES, AND
COMMISSIONS (SUBDIVISION ENGINEERING STANDARDS
COMMITTEE) (C.C. No. 09-15)**

CHAIR MOLINA: We’re now on Committee of the Whole Item 2(17), Nominations to Boards, Committees, and Commissions (Subdivision Engineering Standards Committee). The Committee is in receipt of a correspondence dated April 13th, 2010, received April 14th, 2010 from the Mayor, requesting consideration of the nomination of Raymond Phillips to the Subdivision Engineering Standards Committee for a term expiring on March 31st, 2015. The Council must approve or disapprove the nominations by June 13th, 2010 or the nomination will be deemed approved. Ms. Feenstra.

MS. FEENSTRA: Well as you know that this particular Committee is difficult to find professionals, and we were fortunate enough to have Raymond Phillips come forward and be willing to serve on this commission. He has served in the past on other commissions and has been a very good candidate for us in the past.

CHAIR MOLINA: Thank you. Committee Members, questions for the Administration related to the nomination of Raymond Phillips to the Subdivision Engineering Standards Committee?

COUNCILMEMBER MEDEIROS: Chair?

CHAIR MOLINA: Mr. Medeiros?

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COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yes, for the Administration. As we look at the application so that we can get a sense of the background of an applicant, under educational background I think it would be important if the Administration would be a little bit more descriptive. The applicant before this that we approved, educational background, graduated from UCLA. That doesn't tell us anything about what his education is about. So I think it needs to be more specific, and on, on these two, I mean on this one certainly it's impressive, you know, that he has a MBA and he has a Masters and another Bachelors in Engineering. I think it would be helpful to know what kind of engineering. There's all kinds of engineering, and that would be helpful to see how that education would apply to the work on the board or commission. So I would suggest that the Administration be a little more detailed and descriptive in background information, especially education and employment background. Thank you. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. Members, any other questions for the Administration before the Chair offers a recommendation? Okay. Seeing none, the Chair would recommend approval of Raymond Phillips to the Subdivision Engineering Standards Committee for a term expiring on March 31st, 2015.

COUNCILMEMBER PONTANILLA: Mr. Chairman, I move to approve the nomination of Raymond Phillips to the Subdivision Engineering Standards Committee.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay. The motion has been made to approve the nomination of Mr. Phillips to the Subdivision Engineering Standards Committee by Member Pontanilla and seconded by Member Victorino. Discussion, Members? Seeing none, all those in favor signify by saying "aye".

COUNCILMEMBER PONTANILLA: Aye.

CHAIR MOLINA: All those oppose? Thank you. The Chair will mark it seven ayes, two excusals, Members Mateo and Johnson.

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VOTE: AYES: Councilmembers Baisa, Kaho‘ohalahala, Medeiros, Nishiki, Pontanilla, Victorino, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson and Vice-Chair Mateo.

MOTION CARRIED.

ACTION: Recommending APPROVAL of the nomination of Raymond Phillips to the Subdivision Engineering Standards Committee.

CHAIR MOLINA: All right, Members, we are now on our last agenda item for today which is Committee of the Whole Item 28, Prohibiting the Use of Mobile Electronic Devices While Driving. The Committee is in receipt of the following County Communication...

COUNCILMEMBER PONTANILLA: Mr. Chairman?

CHAIR MOLINA: Yes, Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Before we excuse Administration I'd like to ask them a question.

CHAIR MOLINA: Oh, go ahead, Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Yeah. Because of all of the issues that we had in regards to the application form at our last meeting in regards to filling in commission...boards and commissions that the Administration is going to look at the form, revise it to provide us more information. Have you folks started?

CHAIR MOLINA: Ms. Feenstra, can you respond to Mr. Pontanilla's question?

MS. FEENSTRA: To be honest, I, I have not started on that, but it is something that we will be having Corp. Counsel also review.

COUNCILMEMBER PONTANILLA: Okay. Thank you. And, and questions like Member Medeiros had asked, you know, those are important questions and, and should be noted on the forms itself. So thank you.

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MS. FEENSTRA: Yeah. I, I guess because Mr. Phillips is a repeat member, you know, and has served on many boards, we didn't ask him for his resume.

COUNCILMEMBER PONTANILLA: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And just to respond to that reply. Sometimes people on boards and commissions when some of the Members of this Council weren't on the Council. So I think you need to be more thorough on your application so that the Members that review this have a good sense and accuracy of the background of the applicant. Thank you. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MOLINA: Members...Mr. Victorino, question for the Administration?

COUNCILMEMBER VICTORINO: A question and just one more thing I'd like to add. If at all possible, you know, as, as mentioned by Mr. Pontanilla, a resume. You know, I think resumes probably are the best thing, and I always advise people to have a resume available. You know I don't know how far we can go with this, Mr. Chair. You know, we start to go into this like, you know, we want to know everything about the person, but there are certain areas that we are prohibited. And I think that should be also put forward where we are prohibited to go with this. I think this is very important. I think in the...in...and people want to know what these people are all about. First of all, I think I agree, I want to know who's going to serve what, but how far we go is very important. I think that's, that's something that has to be made. Resumes are very important, you know, and like you said earlier, Ms. Feenstra, when you're talking this nomination of Mr. Phillips, it's a special discipline. I would not qualify 'cause I do not have those disciplines, you know, and I know one Member wanted to know what specific engineering disciplines. You know, it's just hard enough to get engineers to--of any sort--to volunteer for this. So, you know, that becomes real difficult, you know, so I, I, I don't know if that's so important as knowing that he has these disciplines, you know. Because I wouldn't qualify 'cause I do not have those disciplines, and I think that's important. Which boards and commissions that we have to have--like you said, Chair--specific disciplines to be qualified, and if that's the case then I think the, the Administration should make those applications very clear and what we're asking and be specific. Time for change. These applications been around...'cause I remember this the same application I filled almost 15 years ago. So it's been around a long time. So it's time. It's like everything else. We have to change. I think now is a good time to look at it, Mr. Chair. So I wish the Administration would, would consider that, would send that down, and if they want our manao ask us, we'll send it up to them. Thank you, Mr. Chair.

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CHAIR MOLINA: Thank you, Mr. Victorino. I'm sure Ms. Feenstra has received the comments again loud and clear. And I'm hoping that --

COUNCILMEMBER NISHIKI: Chair?

CHAIR MOLINA: --in terms of a timetable--hang on, Mr. Nishiki--timetable we can get your feedback or suggestions in a timely manner so we can address this concern that's been brought up before. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. I, I, I guess for me it's frustration. For me it's repeating myself constantly. So now I'll ask the question really straight, because I think that we're just a stone throw away from each other. Do you people have any problems with young people serving on boards and commissions? And if not, why not or why do we not see young people on any board and commission?

CHAIR MOLINA: Ms. Feenstra?

MS. FEENSTRA: There's definitely no discrimination against young people, and I understand your frustration. I, I sit up here and get frustrated too, so, you know, with having the same questions asked. It's...I guess it's the process that seems to be difficult for everyone at this time. Yeah. The process is all...has been pretty consistent, as Mike said, for 15 years, and, you know, more information is now wanted. Members...people that send in applications seem to want to know why they're not selected whereas...so, you know, more things are coming up. So we'll strive at doing it better. But there's probably always going to be people that are not going to be satisfied with the answers, and, and maybe they just gotta realize they do have to wait, 'cause it is sometimes a waiting game. You apply and it takes time. But no, there's definitely not any discrimination.

CHAIR MOLINA: Mr. Nishiki?

COUNCILMEMBER NISHIKI: I'm done.

CHAIR MOLINA: Okay. All right. Thank you, Mr. Nishiki, and thank you, Ms. Feenstra.

**ITEM NO. 28: PROHIBITING THE USE OF MOBILE ELECTRONIC DEVICES
WHILE DRIVING (C.C. No. 09-290)**

CHAIR MOLINA: All right. Members, Chair would like to move on to Committee of the Whole Item 28. Member Baisa? Okay. Continuing on with Committee of the Whole Item 28. Committee is in receipt of the following County Communication No. 09-290, from Councilmember Pontanilla, transmitting a proposed bill entitled A Bill For an Ordinance Amending Chapter 10.52, Maui County Code, Pertaining to the Use of Mobile Electronic Devices While Driving. The purpose of the proposed bill is to prohibit the use

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of certain mobile electronic devices while operating a motor vehicle. And in addition to that, a correspondence dated May 4th, 2010, from your Chair of this Committee, transmitting proposed amendments to the proposed bill. The proposed amendments would clarify that exempt drivers who use a two-way radio while in the performance and scope of their work-related duties must either be operating a fleet vehicle or possess a commercial vehicle license; and clarify that portable audio or navigation equipment is included within the definition of a mobile electronic device; and add a new section to prohibit teenage drivers from using hands-free technology. So, Members, there you have it. I'd like to invite the representatives from the Police Department to come up and join us as well. And I see from the Prosecuting Office, Mr. Hanano, if you can please join us here up at the front. And while we await the presence of our esteemed law enforcement, I would like to first ask Mr. Pontanilla if you, as the introducer of the bill, if you'd like to make some opening comments before we get into Q&A.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. I, I think we've heard several testifiers this morning that were really affected by the use of cellphones in our community. And again, Chairman, when I proposed this bill, the number one issue was safety, and I've made state...statements to that in regards to several near misses and the like. And, you know, in the past few days in *The Maui News*, you know, our finest, Maui Police Department have stopped several vehicles, in fact one going 70 miles an hour on Haleakala Highway utilizing cellphone and another driver on Honoapiilani Highway going 60 miles an hour using cellphones. And I think it's about time that we move forward on this bill, and I know of your amendments, and I think the amendments will close certain loopholes. Thank you.

CHAIR MOLINA: Okay. Thank you very much, Mr. Pontanilla, for introducing this as well, and I'm so glad you mentioned that speeding on Haleakala Highway. Just this morning, two people speeding down the highway--and I'm so glad the Police are here too--one of 'em using the cellphone weaving in and out of traffic. So I'm hoping what we do here sends a very strong message to those who continue to jeopardize the safety of others. All right, Members, we have...the floor is open for questions to the Police Department as well as to the Prosecuting Attorney. Members, any questions? And by the way, you've also received a proposed amendment from Member Victorino as well. So when we come to that bridge we will consider the proposed amendments as well. But at this point, the Chair will recognize anyone on the floor who would like to ask questions with regards to the bill or any way how it's going to be enforced by the departments. We'll start first with Member Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. And we're very happy to have the Police Department here with us this morning as we work on this landmark legislation for Maui County. When we had our last meeting, I had asked the question, and I think...I don't know if anybody else did. We were looking for statistics if there were any in regards to accidents involving cellphone devices. And if I remember correctly--it's been a while since I saw the response--the response was that those statistics are not kept. If they're not kept is it possible that going forward you might be able to do that just as a

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matter of doing your accident report, add one more block so that we'd have some numbers?

CHAIR MOLINA: Department, are you able to respond? And by the way, just for the record we have in attendance from the Police Department, we have Lieutenant Kahooohanohano and we have Sergeant Aoki--let me try get your rank right--as well, and also Mr. Hinano...Hanano from the Prosecuting Office. So I guess Mr...or, or, Lieutenant Kahooohanohano, you'd like to respond to Member Baisa's question?

MR. KAHOOHANOHANO: Yes.

CHAIR MOLINA: Excuse me. Could you use the microphone? Get closer.

MR. KAHOOHANOHANO: The, the stats are not kept, because most of our motor vehicle accident, accident forms are State forms. The State has not enacted any kind of law as, as of yet, so there's no box to check as to...as far as stats is concerned, and we haven't found anybody yet is willing to admit to have been using their cellphone and getting involved in a crash. They're very rare that somebody would admit to be doing that almost at the edge of inattention to driving and getting involved in a crash. So it would be more serious an offense. But we, we don't have...we don't collect that data. Most of our forms go to the State Department of Transportation who collects all the data. As far as putting another box, at this point in time, we are not in the process of doing so.

COUNCILMEMBER BAISA: Okay. I just thought it'd be a very interesting piece of information to collect, because whether they admit it or not if they bang and they had a cellphone in their lap obviously they were on it. So just thought I'd ask.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Committee Members, questions for the Department? Well what we'll do, Members, we'll work our way down the line at this point. Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: I'll pass.

CHAIR MOLINA: Okay. Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Good morning, Department. And I, I wanted to ask, in my short research of this, there were only four states that did not have some kind of legislation regarding the use of cellphones or texting. There's different applications because of the laws are different in different states such as this research showed a ban on handheld, a ban on school bus drivers, a ban on novice drivers, a ban on all drivers, a ban on school bus drivers texting, a ban on novice drivers texting, and a crash data. So there's a lot of information out there on the internet that describes these different applications in different states. And I think for us, until we, we do have a law on this, that the states that did not have a specific law on it, they were covered by their laws which are distracted or inattention attributed to the accident. So for them a

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cellphone would be a distraction or inattention to driving. So what, what is the Department's feelings on what I have described as far as applying to Maui County?

MR. KAHOOHANOHANO: Is your question trying to address all these drivers, bus drivers or?

COUNCILMEMBER MEDEIROS: Well our ordinance as you have read it has its specific parts to it, but I'm saying that some of these other states go more into detail about who they describe drivers may...that may attribute to accidents because of their use of cellphones.

MR. KAHOOHANOHANO: And I, I don't think the Police Department would be against of enhancing the number of people that would be restricted from using these devices especially if you're a commercial operator whether it's a bus driver or a big, big rig. I mean these guys drive...bus drivers drive all these kids around. They could easily be distracted and get involved in motor vehicle crashes. Bus drivers...I mean truck drivers driving big rigs, big poundage in the back of the rig that could get involved in a crash and easily crush somebody.

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. KAHOOHANOHANO: So we're not against such an enhancement of the ordinance.

COUNCILMEMBER MEDEIROS: Okay. Thank you for that response. And maybe for the Police Department and the Prosecutor's Office, in view of what other states have as penalties, what do you think is a, a penalty that would deter people from using cellphones and being fined for using it if this ordinance passes?

CHAIR MOLINA: While the Police confer, Corporation Counsel would like to respond to your question, Mr. Medeiros.

MR. GALAZIN: Yes. Thank you, Member Medeiros. Just for you all to keep in mind, the-- sorry, my computer timed out on me--but in Title 10 you've got Article 1, which is the Traffic Code, and that's where this proposed ordinance would be housed. And if you look at 10.72 which is the Violation and Penalty Section, 10.72.020 provides that for a first offense that it...the punishment shall be a fine of not more than \$100 and for every subsequent offense not more than \$250. So if it is the will of, of the Council that a different fine schedule would be imposed I think we would probably need to look at amending this section as well, because that's where, you know, by how Title 10 is set out all of the penalty provisions would be keyed down to 10.72. So it's got a 100 maximum for first offense, 250 for every subsequent.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Corp. Counsel, for that information. So what you're saying, Corp. Counsel, is that if we don't agree to a fine in this that that fine would apply?

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MR. GALAZIN: Yes. And actually whatever...and by the terms of how that ordinance is set out already or how that section of the Code, you couldn't amend just this ordinance 10.52 to provide for a greater fine, because that would be in contravention of 10.72. So if you wanted to have a heftier fine you would need to amend that, that other penalty section as well --

COUNCILMEMBER MEDEIROS: Okay.

MR. GALAZIN: --either concurrently or, or in a separate action.

COUNCILMEMBER MEDEIROS: Okay. Thank you. And I'm sure the Chair would take that into consideration should we get to that point but question for Sergeant Aoki. Sergeant Aoki, you're, you're on the road quite a bit, I know from Lahaina to Central Maui. What has been your experience of people on cellphones? And I know, because your vehicle is such a large vehicle with those lights and everything, that maybe a lot of people, lot of vehicles see you before you get to them, and, you know, they're, they're off the phone. But in your experience what is, what has been as far as people using cellphones while driving?

MR. AOKI: Well, with the proliferation of cellphones everybody has one now.

COUNCILMEMBER MEDEIROS: Right.

MR. AOKI: And I guess back in the day everybody didn't have one. So we kind of wonder how did we get along or get, get, you know, through life without a cellphone. But every day I see somebody on their cellphone. The big vehicle that I had was the marked Excursion, and there would be days--and lots of days actually--when somebody would actually pass a marked vehicle, you know, in the multi-lane roads and I would see them on their cellphone. Yesterday we were doing speed enforcement in the Maalaea area. The one vehicle, she was traveling in the Wailuku direction, and she was on her cellphone going over 60 miles an hour in a 45-mile-an-hour zone. Some people I see on their cellphones from Lahaina all the way into Wailuku. A lot of them, they don't maintain their speeds, 'cause if you're following them you see them speed up, slow down, and speed up and slow down especially when it comes to some complicated road areas like on the Pali when there's the curves. So some of them even slow down to like 30 miles an hour and not even realize it.

COUNCILMEMBER MEDEIROS: Right.

MR. AOKI: So they'll be impeding traffic, you know, and also causing a hazard to people who are capable of driving safely. And in some instances, people will get upset, they end up passing that person on the right or on the left, and it just causes havoc on the roadway, that's with the use of cellphones.

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COUNCILMEMBER MEDEIROS: Thank you for that information, and, and your perspective on...your experience on that. And I agree, I've seen people get so frustrated that they do pass in areas they shouldn't be passing just because the person on the cellphone is driving erratically, like you say, fast, slow, weaving, you know, not, not signaling or anything. So thank you for your experience and your perspective. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Prior to recognizing Mr. Nishiki, just a quick follow-up for the Police Department. I notice in the paper that you...yesterday the Department cited roughly 70 people for speeding. Do you have any information if...how much of those 70 there was a cellphone involved or some electronic device? Do you have that statistic available by any chance, Sergeant?

MR. AOKI: We have a couple of 'em just from going through a debriefing yesterday, and there was the two, one that I had and one that I think Officer Danley had. But we usually wait till the end of day to just kind of debrief and see what, what kind of observations or what kind of citations we had. And in just those instances just for that one day we had two of 'em that were observed on their cellphone, so.

CHAIR MOLINA: Okay. Good, good point you made. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. Thank you. I was reading a communication from the City and County of Honolulu, dated February 11th, 2010, Mr. Chairman, and, and this I read when we tried to pass it the last time. In, in essence it says from Louie Kealoha, Chief of Police, currently the Honolulu Police Department has issued over 3,000 citations for this law, and then he goes on to explain, and then he talks about no problems with the structure of the ordinance. I don't know what the Honolulu ordinance is, but getting back to again and, and I don't know if it is something that we need to hear from the Department, but I would think that normally they go to court and they see sentencing occur. In the December 4th, 2009 communication from Captain Ramos, I read it earlier, but I'll read it again. In his second recommendation--I don't know if you have it in front of you also--I would recommend a high fine to underscore the importance of this proposed bill and to strongly encourage voluntary compliance. And then he goes on to give us the fines for City and County and, and the Big Island. He does not go the next step when he recommends a high fine. So does the Maui Police Department have any recommendations as to the fine? You heard the Corporation Counsel say that we would perhaps have to--not perhaps--we would have to change 10.72 in which the fine now is \$100 for the first offense and \$200 for the second offense. I don't know if we go beyond, a suspension of license, and I don't know from the Prosecutor or what will occur when and if we change this law. So first, do you have any recommendation in regards to the words of Mr. Ramos for a high fine to underscore the importance of the proposed bill?

CHAIR MOLINA: Okay. Department, prior to responding to Mr. Nishiki's questions, we do have Captain Ramos in the gallery as well. So, Captain, feel free if you want to join us, but I'll go ahead and let the Department respond to Mr. Nishiki's questions. If, if not we have Prosecutor Hanano, if you'd like to respond.

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MR. HANANO: Thank you, Chairman. Just to go back on that question about changing or whether or not the fines are appropriate. You know, if you change Section 10.72.020 you basically affecting the whole chapter, you know, because that section applies to other types of violations in the Maui County Code. So, you know, you need to be aware of that. The other thing that could be done is have a specific section within the cellphone ordinance to, you know, say specifically what the fine is for that violation, because, you know, you gotta be aware that once you mess with 10.72.020, you're affecting all other violations that apply to that penalty section. So that would be, you know, something that should be considered before messing around with the 10.72.020. As, as far as, you know, whether or not we feel that a \$100 fine for a first offense is appropriate, it's, it's hard to you say, you know, but I'll say this. Whenever you hit someone in the pocketbook, you know, that pretty much changes their behavior, and you keep getting a \$100 fine, \$100 fine, \$100 fine, you know, eventually...well it will be 100 for the first, 200 for the second, and if they get a third, you know, it'll be again 250. So, you know, after a while they'll get it, because when you hurt them in the pocketbook that tends to change behavior. And, you know, whether or not as a policy this Council, you know, wants to make, make a bigger impact, you know, that, that would be up to, up to the Council. But for us, you know, 150...I mean \$100 for the first that might be, that might be adequate.

COUNCILMEMBER NISHIKI: Do you speak for the Police Department?

MR. HANANO: No, I don't. Just for our Department.

COUNCILMEMBER NISHIKI: Okay. I want to know what the Police Department --

CHAIR MOLINA: Okay.

COUNCILMEMBER NISHIKI: --says in regards to this.

CHAIR MOLINA: Okay. Lieutenant Kahoohanohano.

MR. KAHOOHANOHANO: As, as far as I know there's no recommendation out-and-out from the Police Department as to the fine structure. I think the fine structure the way it stated in the Maui County ordinances right now is no different. Cellphones are almost similar and like to seatbelt violations right now. Seatbelt violations are 90...90...\$92 first violation, and, and it climbs as time goes on. I don't think with the structure of the, the fine structure now, I don't think the Police Department has any other recommendation to submit.

COUNCILMEMBER NISHIKI: Okay. I, I, I guess the Prosecutor brings out, Corporation Counsel, a, a concern that we may need to look at if we do decide to change that fine structure--is that true?--to make it specific for handheld equipment, this ordinance.

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MR. GALAZIN: Well if you...the problem that I could see arising, if you try and insert a fine that is \$200 for a first offense just within 10.52 and you convict somebody and try and impose that fine, I think you're going to see the defense raise that 10.72 sets a maximum at \$100. If you were to alter 10.72 and increase the amounts, you know, the way it's written, it says shall not be more than \$100 for the first, shall not be more than 250 for the second one. It's, you know, perfectly within your purview to raise those maximum amounts, and, you know, it would be up to...I don't know who sets the fine schedule necessarily, but they would not have to alter that just because you've raised a potential maximum. And then you could certainly put something, if you wanted to, within 10.52 to say that, you know, the fine shall be this amount. So you've got more to consider, and, and, and the Prosecutor's Office brings up an excellent point that if you're messing...or sorry, messing, amending 10.72 that it will potentially impact on a lot of other things. It would not necessarily do so, but it is something to keep in, in the back of your mind if you want to overhaul the minimum fines or maximum fines to begin with.

COUNCILMEMBER NISHIKI: Yeah. I, I guess, Mr. Chairman, these are the people that are in court. These are the ones that I had expected to really get and, and hear maybe what it is, and maybe they've not thought about it. You know, but it seems to be that...no, I won't speak for you. Do you think the fines are enough for this ordinance, what, what is listed here --

MR. KAHOOHANO: For me?

COUNCILMEMBER NISHIKI: --for the first and second or should there be a license suspension? Or...

MR. KAHOOHANO: You, you...

COUNCILMEMBER NISHIKI: Yeah. I, I, I, I --

MR. KAHOOHANO: Personally?

COUNCILMEMBER NISHIKI: --I want to know from you the . . . *(inaudible)* . . .

MR. KAHOOHANO: Personally, I think the fine structure is, is adequate until we start getting some data on, on the violations as they occur. Until we get...reach that point I think the fine structure is, is pretty much set forth. Like I said, it's similar like to the seatbelt first offense fine. So I, I think we can work with it. I think we can enhance it as we need, as time goes on, but until we start getting the data we won't know.

COUNCILMEMBER NISHIKI: Let me ask you this just because you, you've heard...I don't know if you were present when the gentleman in the back was talking about if--and I don't know if this is possible--when there is an accident that occurs and someone gets hurt, is there a circumstance that that fine could be increased or whatever, jail time or license suspension? I don't know, Prosecutor, Corporation Counsel, but this was some of

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the **suggestions** that we heard from the general public, and I'd like to hear from you people.

CHAIR MOLINA: Okay. Mr. Hanano?

MR. HANANO: Thank you, Chair. In response to that question, Member Nishiki, as far as the...this particular ordinance, there is no provision that allows for, you know, let's say for an aggravated circumstance that, that you describe. However, if there's any indication that other crimes were committed in, in the course of committing this violation as well, then, you know, those charges will also be looked at it, and those penalties will also apply to, to whatever additional charges are applied. So for example in your case, if someone is using the cellphone, and they get into an accident, and we can prove that, you know, their inattention or even they were reckless, then, you know, those provisions of the Hawaii Revised Statutes would kick in, and they would also be charged with inattention or reckless or even neg injury. And, and those penalties are, you know, they're, they're jailable offenses so the person can even be arrested.

COUNCILMEMBER NISHIKI: Yeah. I, I, I guess, I guess the concern was when that gentleman that said he had that spleen condition and everything else, he didn't know what actually happened to the case. This, this, this kind of bothers me, you know, but I don't know if he would have been called to testify in that circumstance or did something actually happen? Wouldn't it bother you, I guess, if you heard some . . .*(inaudible)*. . .

MR. HANANO: Yeah. I wasn't...

COUNCILMEMBER NISHIKI: And I just want to know what the...

MR. HANANO: I'm sorry. I wasn't here for the, for the testimony.

COUNCILMEMBER NISHIKI: Oh, okay.

MR. HANANO: However, yeah, I mean if, if there is something that happened to someone and a crime was committed I'd be very concerned, you know, if nothing happened to the perpetrator. So, you know, we, we take these things very seriously, and if somebody's hurt and somebody committed a crime we'll look into it, and, you know, we'll decide whether or not any charges will be filed against the person.

COUNCILMEMBER NISHIKI: So the law--because I don't know the law--the law that we are now going to perhaps pass, should there be any kind of bodily injury the law provides for incarceration of something more than the 100 or \$200?

MR. HANANO: Well for, for us, for our Department, I don't think that's necessary, because I think there's other laws out there that deal with, with those particular situations. And I think the intent of this bill--and, you know, correct me if I'm wrong--is to just prohibit the use of it or, or . . .*(inaudible)*. . . while driving. There are, you know, very strict laws

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out there as far as, you know, not paying attention while driving or driving recklessly or, you know, killing someone in the process of driving your vehicle. So I think, you know, there, there are laws out there that, that take care of those issues, but as far as, you know, possessing a cellphone while driving there's, there's nothing under State law that would prohibit that. And I think that's why, you know, the, the Council is, is looking at that.

COUNCILMEMBER NISHIKI: Okay. And, and my last question then. For the third time, because there's the first 100, second 200, what's the third time?

MR. HANANO: The third would be basically 250. So there's no, you know, additional escalation in fines for a third offense, but like I said before, if you want to put that into, you know, the cellphone ordinance itself that, that's a possibility. And, you know, there's ways to address that. I heard Corp. Counsel mention that there might be a conflict. I don't think there would be as long as, you know, there's appropriate language that can be inserted, you know, into that section that will address any type of conflicts that may come up later on.

COUNCILMEMBER NISHIKI: Okay. Thank you, Mr. Chairman.

CHAIR MOLINA: All right. Thank you, Mr. Nishiki. Members, just for a point of information, first offense fines for the other counties, Honolulu \$97, Hawaii County \$150 maximum fine, and it's interesting they have language--which by the way all the ordinances are in your binder too from the other counties--they have language in there. For Hawaii County if the cellphone is used in a manner to cause a collision with injury or damage to person or vehicle or other property then the maximum fine would be \$500. Kauai first offense \$50; however, if you are caught using a cellphone in a school zone or construction area then the maximum is \$100. So that's a, I guess, a financial analysis if you will with the other counties as it relates to fines. Okay. Mr. Pontanilla and then Mr. Victorino. Members, I'd like to maybe give you guys a chance to ask questions and then we can go and take our mid-morning break. Mr. Pontanilla, as the introducer of the bill, you have the floor.

COUNCILMEMBER PONTANILLA: Yeah. Thank you. Just one fast question, only one question, 'cause I think I asked a whole bunch the last time. What do you guys think about suspension of license? And when do we suspend license?

CHAIR MOLINA: Mr. Hanano or the Police Department, can you respond?

MR. HANANO: I think again, you know, that would be up to the Council to, to decide, you know, at what point is enough, enough, and you want to take this guy's license away. You know, to me, you know, if you don't get it by the third or fourth time or even the second time, you know, I, I don't know, I mean that's, I think that's up to you guys to decide the severity of the penalty. And I'll, I'll leave it at that.

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COUNCILMEMBER PONTANILLA: Okay. Presently would you know when we suspend licenses?

COUNCILMEMBER BAISA: DUI.

MR. HANANO: Yeah. There's actually a lot of situations that would warrant, you know, someone's license to be suspended. You get convicted of a DUI, OUI, excessive speeding...what else...reckless driving, things of those natures. And, and again, you know, the, the, looks like the intent of this bill is to prohibit the, the possession while driving.

CHAIR PONTANILLA: Yeah.

MR. HANANO: You know, if you want to make a bigger impact on the penalty for repeated conduct, again, you know, that's maybe you could do like a separate penalty section within the ordinance to address that.

COUNCILMEMBER PONTANILLA: Thank you. And, and the reason why I asked that question is my former employment, you know, you have a lot of drivers with PUC license, and once they're convicted and they suspend the license, you know, there's no way you can come work, there's no way you can drive those vehicles. So I thought I'd ask you that question. Thank you. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Member Pontanilla. Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you. And, you know, I've listened with great interest as far as what you folks are speaking of, and I heard the gentleman's testimony earlier, yeah. And I, and I, and I can concur with him as far as in 1989 a drunk driver slammed into me and myself and my son and his friend, laid me up for six months. And subsequently four months later when I checked into the case, the guy had no license, no insurance, was drunker than a skunk, and the Prosecuting Attorney told me they let him go, because there was not enough evidence. Well I will tell you I was one very upset person. Now I'm blaming nobody. The laws are the laws. We're talking about this and revocation of, of, of, of--what you call--the license. How many times I see people who got their license revoked [*sic*] because of DUI and they're right back on the road. So that don't work, so let's, let's, let's not even think about that, because it don't work. It doesn't work. Right, Mr. Aoki?

MR. AOKI: Yes.

COUNCILMEMBER VICTORINO: Okay. Right, Mr. Prosecutor? Okay.

MR. HANANO: Right.

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COUNCILMEMBER VICTORINO: So the fines, I know what fines cost, I know what it does to your insurance, and yet every month I do two or three people that have gotten caught once or twice with DUI, repeat offenders. Thousand dollar fine, \$1,500 fine and they still do it, Mr. Chair, okay. This is cellphone, okay. I know how he feels, because I've been hit. I know exactly how you feel. I can say that unequivocally, and till today my back still pains me like this morning, helping my wife fix the bed and I turn my back again, but that's my fault. But I'm just saying I would like to see a bill that makes sense, and, you know, my amendment I think you've covered it, and we'll talk about it a little later. But I'm asking you gentlemen here that no matter what we do--I think Mr. Aoki mentioned it a couple times--if they don't care, they don't pay attention, they don't give a rip, in other words, they're going to do it again, and again, and again. And how much is enough? Taking away their license not going stop them, because I see that with DUI all the time and they're back on the road driving again. Do we lock them up? Are we're going to start locking people up for using cellphones? Maybe that's the next thing we going have to do. Okay. My question to you is very simple. Do you feel right now with what we're proposing it gives you a good tool not only to stop people or prevent people from using cellphone or handheld devices or any other distractive device? Which now you can also enforce other laws like inattention and other things, because now that becomes applicable. Is that correct, Mr. Prosecutor, because of this enactment other laws can now become applicable, because you have this cellphone ban? Would that be helpful in your, in, in adjudication of, of accidents of that nature?

MR. HANANO: Yeah.

COUNCILMEMBER VICTORINO: Yes?

MR. HANANO: Yes.

COUNCILMEMBER VICTORINO: Okay. So I think, Mr. Chair, that's what I want to see. I want to see something that then they can enhance them for doing other things like in that gentleman's case where because the person was on the cellphone--I still think other things could have been done--but that wasn't applicable, because it was no ban on use of a cellphone while driving. Now all of a sudden that can be tacked on with other things, Mr. Chair, and now we have a multiple layering of fines and, and, and, and other issues which now will affect them not only in the pocketbook immediately, but it will also affect them immediately in the insurance industry. 'Cause this is going to be a part of it, because it's starting to take effect. I have seen new changes in the insurance industry where banning on cellphones, where laws are enacted, that becomes a part of an inattention if you're involved in an accident. So, Mr. Chair, this is what we need to be focusing on. I think the other questions are very, very, very stringent. I mean I think we're going to another extent. I, I agree with Mr. Pontanilla, in commercial licensing you get something of that nature you lose your commercial license which then you lose the ability to work, and that's, I know, is a fact. So I will wait for--and I think I've asked enough questions, I've said enough--I wait for the discussion further on our amendments, and, and we'll go from there. Thank you, Mr. Chair.

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CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Members, I'd like to give you an opportunity to take a break, and when we come back, I'm going to start off with my opportunity for...to ask questions and then recognize Member Baisa after that. Members, we'll take our morning break. Let's return at 10:55. Committee of the Whole meeting for May 12th, 2010 is in recess. ...*(gavel)*...

RECESS: 10:45 a.m.

RECONVENE: 10:58 a.m.

CHAIR MOLINA: ...*(gavel)*... The Committee of the Whole meeting for May 12th, 2010 is now back in session. Thank you very much for that morning break, Members. Chair will start off this line of questioning...this round's line of questioning first to, I guess, Mr. Hanano. As it relates to appeals in court, this kind of ordinance, how much impact do you see it impacting our courts? You know, we're already busy and now we furloughs to deal with. Have you heard any comments related to this issue from our sister counties?

MR. HANANO: No, I haven't, Chair. And, and I don't expect this ordinance if passed and, and enforced to have a significant impact on our Appellate Division if that's what you're, you're asking.

CHAIR MOLINA: Okay.

MR. HANANO: I think, you know, there will, there will probably be a lot of citations issued, 'cause a lot of people do it, and basically the process is, you know, they can either pay it or they can contest it and they can have a trial. And if they do, then, you know, we'll, we'll deal with it then, and beyond that, you know, if they want to file an appeal to the, you know, Hawaii Supreme Court or, or Intermediate Court of Appeals, you know, that, that's their option. But I don't see too many cases going that far.

CHAIR MOLINA: Okay. And I bring this question up in light of Mr. Nishiki's earlier concern referencing the letter from Chief Kealoha from Honolulu, 3,000 citations in a one-year span. God forbid, I hope we don't have that many, and should we pass an ordinance we have that many. But, you know, just curious as to how it could impact our courts if we do have that many. And more question as it relates to the, to the level of fines now. As our current ordinance reads, it's \$250 or up to \$250 thereafter after the first fine of \$100. I, I am concerned with the language being "up to", because in theory if you get a second or third offense then it's basically up to the judge to fine you up to 250? So the judge could again just hit you with a \$100 fine for a second and third offense. Is, is that correct, Mr. Hanano or anyone from the Department?

MR. HANANO: That's correct, Chair.

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CHAIR MOLINA: So maybe to strengthen or send a stronger message if you will for those violating having multiple violations, maybe establishing a \$250 fine flat, minimum. Is that something that might be more helpful in getting the message to those who violate our laws multiple times?

MR. HANANO: Yes, I believe so. And, and actually I'm looking at the section right now 10.72.020, and really, you know, for the first offense it's not even a mandatory \$100 fine, it's not more than. So could be 10 bucks, 20 bucks, and same with, you know, the 250 for the subsequent. It's up to or not more than, I should say, 250. So, so, you know, that's something that, you know, the Council should consider. I've seen language in other statutes that says "not less than but not more than". So if you want to, you know, as a policy matter establish a range, you know, that, that, that would be probably better if you, you know, want to do it that way. And in some cases like excessive speeding you can get, you know, fined for the first one, fined for the second, fined for the third and jail time, you know, so it does increase in severity depending upon, you know, the, the, the repetitive nature of the conduct.

CHAIR MOLINA: Okay. Well thank you so much for that insight. That, that is interesting. I, I don't know how far we would want to go as far as implementing jail time for multiple violations, but I am sure supportive of maybe adjusting the language. You get hit for that first time minimum \$100, 'cause potentially you could get hit with, like as Mr. Hanano had said, \$10 for your first offense, and, you know, that's pocket change for a lot of people. So anyway food for thought, Members, if that is the direction we would want to go --

COUNCILMEMBER VICTORINO: Chair?

CHAIR MOLINA: --later on.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MOLINA: Okay. If this is a...this is a follow-up to this? Okay. 'Cause I do have Member Baisa waiting to ask. If this is a follow-up to my line of questioning I'll, I'll recognize that.

COUNCILMEMBER VICTORINO: Yeah. Yeah. Yeah that was, yeah, that was...but go ahead, I'll let Mr. Pontanilla go first.

CHAIR MOLINA: Okay. Go ahead, Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you. If we're talking in regards going to that direction, looking at 10.72.020 maybe we can take, take that up at a separate meeting rather than this meeting here. I'd just like to have this bill go forward --

CHAIR MOLINA: Sure.

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COUNCILMEMBER PONTANILLA: --and then talking about the fines later on that we may want to think about adjusting.

CHAIR MOLINA: Okay. So I take it your point as well, let's get the data as Lieutenant Kahooohanohano stated first --

COUNCILMEMBER PONTANILLA: Yeah.

CHAIR MOLINA: --and maybe the future Council could consider making adjustments to the fine levels.

COUNCILMEMBER PONTANILLA: Yeah.

CHAIR MOLINA: Okay. Well again that will be up to this Committee, Members, so if that's the direction you want to go the Chair has no objections. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yeah. And, Chair, and thank you for that clarification, because I was under, under that understanding even on the Big Island it was up to 150. It wasn't 150. And also I wanted to point out that from a letter received from the Prosecuting Attorney of...the City and County of Honolulu, Peter Carlisle, and it states...and I don't know where, where it's in there, but it's in our binder. And it clearly states that we have not prosecuted any cases out of this ordinance since the citation, and, and handled...it's handled under the Hawaii Revised Statutes Chapter 21., not 21, excuse me, 291-D, and all citations that have resulted with very few trials which means the pursuance, most people are just paying their fine. So, you know, if you're worried about a lot of trials from what I can see here according to the Prosecuting Attorney of City and County of Honolulu which had 3,000 citations, he's saying very few trials and that most of the people are paying their, you know, they pay for it and be done with it. But theirs one is specifically--if I may ask the question--\$97. Is that correct? It's \$97. It's not up to or minimum, a minimum, it's a \$97 fine. Is that correct?

CHAIR MOLINA: Mr. Hanano or Police Department, can you respond?

COUNCILMEMBER VICTORINO: If I read that correct...theirs, it's up to, it's \$97, that's it.

CHAIR MOLINA: And, Members, again the ordinance is in your binder as well. That, that's an interesting question to bring up. You know, this may be something if we do want to make that adjustment language change today or down the future.

COUNCILMEMBER VICTORINO: Well I think...

CHAIR MOLINA: Let's see what Honolulu has, yeah.

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COUNCILMEMBER VICTORINO: Yeah. If they can make it like \$97, I think it's under the \$100 so they didn't have to go into a whole revision of the entire statute. I think that's why they put it at \$97 if I remember correctly in reading their process. But, you know, again I'm in favor of what Mr. Pontanilla is saying that we want something out there now, and we can always come back and adjust it to what we think is fair. But I think we could set a fine of...and, a, not, \$100 from the very first offense, minimum \$100. So long as we don't go over it I don't think that makes a big effect. I would ask Corp. Counsel if that, if that would affect it.

MR. GALAZIN: No. Member Victorino, as far as I know, as long as your...if you wanted to state something specifically as long as you were under that limit I, I wouldn't see a problem with it.

COUNCILMEMBER VICTORINO: Okay. Thank you, Chair. And then I'll let Ms. Baisa, and I apologize, Ms. Baisa, but go ahead.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Prior to recognizing Member Baisa, if I could ask Staff maybe at a later point we could request some information--well it--from the Big Island County as to see how many of those first violations were at the \$150 level, and how many were, you know, below that. I think that would be helpful to this Committee in the future if we do want to adjust our fine levels. Member Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. Thank you for the opportunity. Couple questions...I mean a comment and a question. First thing I wanted to offer was my sister lives in California, lives in a rather affluent part of California close to Palm Springs. And when she--she follows very closely what I'm doing--and when she saw we were going to talk about the cellphone ban, her first reaction and advice to me was please tell your colleagues that unless we have a substantial enough penalty that people will just pay. You know \$100 to people living in Silicon Valley is petty cash, and so they just pay and they keep right on going. So she said, you know, you might want to think about that. It has to have some pain in it or it's just not going to work. So that...I just offer that. The other issue I want to talk about, and I'm very sorry to rag on this, but it is a concern for me, 'cause I hear everybody talking about possible amendments or possible further work on this bill based on experience. Well the experience has to be captured in some kind of data or we're not going to have it. And the gentleman here, who was early this morning and talked about having had an accident and the horrible medical results of it, listened to the conversation, and he provided us with a copy of the police report of his accident and pointed out to me that there is a block in here, a substantial block related to "driver distracted by". And you can fill in a little circle that says not distracted, cellular phone, other electronic communication devices, other electronic devices, other inside vehicle, or other outside vehicle, or owner/occupant. So it appears to me that if we can figure out that a cellphone was involved there's a place to put the information like it shows on the copy I think everybody has. So I'd like to hear from the Police Department how they're going to deal with this.

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CHAIR MOLINA: Okay.

COUNCILMEMBER BAISA: It's important, because, you know, even the Prosecutor said if we're going to change this law we need to have some data. Well, we gotta collect it or we're not going to have it.

CHAIR MOLINA: Okay. Lieutenant.

MR. KAHOOHANOHANO: And, and I apologize, because I was unaware, totally unaware that there was a cellphone section in the report. This is a relatively new report enacted last...September of last year, and a lot of these things are, are just "fill in the blocks" type of deals. Our Records section does not track the data. They send the data all to the State Department of Transportation for tracking of the data. I've been told they have, they have not captured anything, so there's no tracking of whether a cellphone has been used in, in a particular accident. It's something that we can look at. I don't know if the Police Department record section will be able to, to...they would have to review every report by, by hand to see if cellphones were involved in a motor vehicle accident by distraction or otherwise, but that's something that we can look at. All I know now is that there is no data collected as to how many accidents are related to use of a cellular telephone.

COUNCILMEMBER BAISA: Thank you very much. I just think again that it's important if we are going to track the effectiveness and proposed changes to what we have before us, 'cause we all know there is urgency to pass something, and we're all talking about well let's come back and look at the penalty section and let's look at how we implement it. We've got to have some data to base that on; otherwise, all we're basing it on is, you know, the testimony we get or what we hear. But it'd be nice to be able to say, you know, we had 100 accidents and in 80 of them a cellphone was involved, because then it makes us in a much stronger position when we make these laws. 'Cause, you know, at the same time, we're having people tell us that they want the law. You know, when you sit behind this desk you always have the other side that says no. So I like to, you know, have some kind of rational nexus for doing laws, and I think collecting the data is not that big a deal. I tell you what I'm really worried about. I'm really worried about our patrol officers who already have so much on their plates, and can you imagine the number of stops they're going to have to make to catch all these cellphone people? You know, I drive up and down Haleakala Highway every day, and I would tell you that almost every car that I encounter the driver is on a cellphone, almost every car. You can just...I mean it's just the way people commute in the morning and commute in the afternoon, they're on their cellphone. So I think you guys are going to be really, really busy. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Baisa. And, Members, I've been reminded we do have a 2 o'clock Budget and Finance meeting. I know this discussion, we can go on all day, and it's a very, very good one. So I'll...we'll go a second and final round of questions for the Department, and after that the Chair will give you a recommendation. And for our Police Department and Mr. Hanano, our Secretary has requested if you could just again identify yourself at least one time for the record so you can make that

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distinction when doing our minutes. Member Kaho'ohalahala, questions for the Department or the Prosecuting Attorney or Corporation Counsel?

COUNCILMEMBER KAHO'OHALAHALA: I guess, you know, the only other question I have at this point is when we're looking at what would be allowed, would be equipment that's already installed in the vehicle like audio. You said navigation equipment. And, you know, I'm just thinking handheld devices right now have the same capabilities of using GPS as, as tools. In fact, those are applications that are oftentimes given to people who are looking to find location and stuff. So, so lacking that in the, in the vehicle installed, you know, this has served as a tool for, for helping assist in terms of direction. So these will be banned as well...correct...in the ordinance as it's written?

CHAIR MOLINA: Mr. Galazin?

MR. GALAZIN: Yes. Thank you. The way that it was drafted before, I think part of the reason that we put in that these handheld devices were to be prohibited but that audio equipment and navigation equipment or the equipment installed in a motor vehicle for the purpose of providing emergency assistance was precisely because, you know, I think there's a...some of these devices, you know, like, like a navigation device, I think, can be moved from vehicle to vehicle. And "installed" is not defined in here. So there could be a case where somebody has a navigation device, just a navigation device that they, that they move from one vehicle to another. And I think the, the intent was to allow that although I think there's an amendment proposed that would actually prohibit that, so, you know, as, as is the will of the Council. But even though a device could be capable, you know, an iPhone could be capable of providing navigation assistance, because it does so many other things it would certainly fall under the prohibition even if the person were purporting to use it solely for its navigational features.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Yeah. I just...I, I think we're trying to capture as much as we can, but in the process there going to be some unintended kind of issues where we're not in...we're not thinking of, of including, but in fact it's going to be impacted. So I, I just want to look at these tools that are supposed to be helpful as well to, to drivers, you know. But nonetheless I mean I agree that there's a, a need for us to come to some, some kind of a decision, but I want to make sure that we are also considering those other unintended kinds of issues that also gonna be impacted or affected. So, so thank you. With that, Chair, I'll pass.

CHAIR MOLINA: Okay. Thank you, Member Kaho'ohalahala. Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I just wanted to ask first, maybe I, I guess of all three up there, the Prosecutor's Office, the Police, and our Corp. Counsel. In describing the information earlier about what other jurisdictions have throughout the 50 United States, and it, it varies among the states, but in three of them they do not have any ordinances, but they fall back on their laws about inattention and distraction as a

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means of citation to the person using a cellphone. So do we have that same law that can be applied here?

MR. HANANO: We, we do have reckless driving and inattention laws on the books. The problem with, with those laws and mainly inattention is in the past, you know, we could charge someone and the officer could cite or arrest someone for inattention if they did not use due care, meaning they're negligent. Recently the Hawaii Supreme Court came out with a case that, that bumped up the, the conduct or the state of mind to not just negligence but reckless. So, you know, in the past we, we probably could go under inattention, but because of that case it will be very hard to prosecute someone for just holding their phone and, and, and driving or even using the phone while driving for recklessness. You know, if there's other factors like speeding or whatever, you know, cutting people off, tailgating, aggressive driving, you know, we probably could go with, with inattention or reckless, but because of the, the case law we would need a higher standard.

COUNCILMEMBER MEDEIROS: Okay. Thank, thank you for sharing that. My, my next question then, unless the other Members had a response, would be that, Mr. Chairman, we consider, for me I, I'd like to consider a higher fine. And my reason is that like the gentleman this morning testified about getting hit as a bicyclist, if the fine isn't substantial enough then people would brush it aside and just say well I'll pay the fine again. For this gentleman who got hit, you know, there was no second, third or fourth chance for him not to be in that accident, and so I think we should have a substantial fine. Gets the attention of the violator and makes them change their behavior. Some will not, as we have heard from the Police and Prosecutor's Office. But a substantial fine will, yeah, at least get some of them to change their behavior and consider the law more seriously. Too many times we have laws that have very small fines that doesn't change behavior. It just have them pay the fine over and over again. So I, I would, you know, recommend something much higher so that for, for the gentleman on the bicycle if that person that hit him had either had a fine before that was very significant he may have changed his behavior. Or that operator may have also heard from other people that got cited for a large fine that got his attention, and maybe he wouldn't have been using his cellphone then. So I think for the bicyclists, the pedestrians that are very vulnerable on our road against, you know, a machine of the kind of caliber we have in...on the road today. And for me it's not only vehicles. You know, we're not trying to propose something that hurts business but what makes a business equipment or vehicle driver safer in using a cellphone and not creating an accident than any of us? I think, like myself, if I get a call on the cellphone I put the person on hold, drive to the shoulder, and, and do my conversation. I think we all can do that if we, you know, put our minds to it, and think about the safety part. As far as the businesses, certainly we support them and don't want to put any additional cost to them, but I, I think a law like this first is to be considered is the safety part. The inconvenience to business, you know, is not so much a safety part. It's just a business cost item. So I would like to see a, a higher penalty, and if we're going to do that at another session then, you know, I'll make my proposal on that. But I think the safety of the people, whether they're bicyclists, pedestrians or

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vehicle operators, should come first. Other jurisdictions banned everybody except safety responders. That's all that's exempt. They don't allow trucks to be able to use it or delivery vans or so forth. So I'd like for that to be considered. Thank you, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. And when we get to that point when the Chair offers a recommendation, if that is an amendment you would like to do at this meeting you have that prerogative as well. And you bring an interesting perspective when you said pull over to the side of the road to use your phone. A quick question to either Corporation Counsel or the Prosecuting Attorney or even the Police Department. If this law is enacted and you decide to pull over on a right-of-way on a public highway or public road and do your phone conversation there, the Department...Police Department sees you on that phone, are you still subject to a fine because you're off on a public road using your cellphone?

MR. HANANO: The answer to that, Chair, is yes. You, you can fall within the prohibition of the ordinance. And, and the reason for that is because the ordinance references operate, operate as in 291E-1 which is the same section that is in the OUI statute that would be considered, you know, as long as the engine's on and you're on a public road and you're holding the cellphone that would be considered operation. It's, it's the same with the person who's intoxicated, engine on, on the side of the road, they're in the driver seat, and, you know, that, that would be considered driving, a DUI, operating the vehicle while DUI.

CHAIR MOLINA: Okay. Thank you for that clarification response. I think that's important for the public to know. Sergeant Aoki?

MR. HANANO: I think Sergeant Aoki has a comment.

MR. AOKI: Hi, Members. Sergeant Aoki. I was asked to identify myself. I'd like to think our police officers would have more common sense than to cite somebody stopped on the shoulder making their phone call. Because the whole intent of this ordinance is to prevent people from actually driving on the roadway in, in motion instead of just stopping on the side and doing what they think is right. So I'd like to believe our officers would have more common sense than to try to cite somebody stopped on the side of the road.

CHAIR MOLINA: Okay. And, Sergeant Aoki, you make that point, and that's, that's good, too, because someone could be just, you know, you may have a vehicle emergency that you have to come someone to help. So I guess pretty much judgmental on, on the part of the officer. Yeah.

MR. AOKI: Yes.

CHAIR MOLINA: Okay. Thank you. Corporation Counsel, you want to add comment to that?

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MR. GALAZIN: Yeah. Just to, just to add clarification on, on what operate means by reference to the State statute. You know, it's either driving or as, as it's put, assume actual physical control of the vehicle, and, you know, I don't know if the Prosecutor wants to elaborate on this, but I, you know, I believe, as it's written, if you're pulled over to the side of the road and, and the keys are, are out, you may be an occupant but I don't believe that you have actual control of the vehicle. And if he wants to elaborate that, that may be up to him, but I think the intent here is to make it as broad as possible, make it clear. If people want to pull over and use their phones that, that make sure the car is off, it's not...they're not two seconds away from pulling out into traffic again, because that makes it difficult for the police to tell what their future intent might be.

CHAIR MOLINA: Or maybe pull over, sit, sit in the passenger seat maybe, not behind the wheel as you're making that call. I don't know. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Thank you. I think the last time we met many of us stated that we wanted to wait to see what the State Legislature was going to do. Well, they did nothing. I think that was an indication of our commitment to now act by calling this so-called meeting to deal with this issue. We have no excuses today but to act. Personally I feel again a stronger fine, but I think for Mr. Pontanilla, the introducer of this legislation and for many of us that want to see safety in Maui County--we're the last County--we have no excuses today not to pass something out. So I am eager to pass an ordinance out just because I don't want to further embarrass myself. I've not heard from the Prosecutor nor the Police Department against this. I've heard from a person that was injured, and I hope it wasn't from the time that we decided not to pass it out that someone like this gentleman got injured. You know I have no other excuses today. So I'm ready to act, Mr. Chairman, and support Mr. Pontanilla's ordinance.

CHAIR MOLINA: Okay.

COUNCILMEMBER NISHIKI: Thank you. And I think that the people of Maui County...we can talk about repeat offenders or whatever, but if it saves one person's life or keeps a person from being maimed then it is our responsibility to pass this ordinance. Thank you.

CHAIR MOLINA: Okay. So noted, Mr. Nishiki. And as I kept my commitment to you, I was one of the five that requested a deferral to get one, more information to see what the State would do, and I did state at that time if the State did not act I would bring this matter back to Committee as soon as possible. So I too am in favor of acting on this ordinance today. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you, Chairman. And I just want to say, you know, in regards to Sergeant Aoki's statement that, you know, yeah, you know, we have police officers that are out there, and, you know, you know, just pulling on the side of the road doesn't mean that, you know, he's going to pull out right away. You know, common sense always proves right to me. But fast question, and a yes or no from

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Prosecutor here. You mentioned about if, if the vehicle is running then it might be considered as a moving vehicle, but once you turn it off it doesn't. Corporation Counsel is saying you turn it off, pull out the key, again is considered not running. So can you comment on that, Prosecutor?

MR. HANANO: Yes, Member Pontanilla. For the record, First Deputy Peter Hanano for the Department of Prosecuting Attorney. To answer your question, basically the, the case law interprets operate basically to mean as stated in the statute, but also as long as the key is in the ignition and the engine is running that would be considered operation.

COUNCILMEMBER PONTANILLA: Okay.

MR. HANANO: If the key is in the ignition but the engine is off then that would not be considered operation.

COUNCILMEMBER PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MOLINA: Thank you, Mr. Pontanilla. Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, Chair. And I too, like Mr. Nishiki and like, like you for example, I deferred this to see what the State was going to do, and I understand the State failed to come to any kind of resolution, because theirs included shaving, eating, and anything that would be distractive driving. Okay. You want me to be honest? I'd like to have a bill that says everything. Because I tell like you guys how many people you see out there eating, shaving, women putting on mascara, not to be particular, men who are doing...I mean let's be honest. But since we're on cellphone let's stay with cellphones. Okay. Let's, let's keep with the subject matter at hand. And that's why the State failed, and I think we being the last County needs to put something in action. And I would agree with Mr. Pontanilla this, this with your amendments, and I will, I will say that I will refrain from putting my amendment forward now, because I would like to see how this bill works out. So maybe at a future date I would like to see. If it's done, becomes a real challenge, then at that point in time we could bring an amendment out. As far as additional fines, again high fines will stop, but the repeaters will continue to do it. Okay. And I'm saying if we made it \$100, for most people \$100 is a lot of money. You get whacked once or twice or at the second time minimum 250, I'll tell you most people going stop, because in Honolulu I've been told that about...they only have about 12 percent repeaters, repeat offenders. That's...and I'm checking the stats from Honolulu. So that told me that 88 percent of those that were caught that 3,000-something people, 88 percent didn't do it again, 'cause that \$97 was a whack they couldn't afford. Now grant you if we had everybody who lived in Silicon Valley I'd be worried, but we have everyday people out there. A lot of them are...\$97 that'll stop them. That will stop them. The other problem comes up is, you know, and I, and I, I hope that, that once we pass this that the entire State now will know that we have a cellphone law like California, because California did it as a state. We're doing 'em as counties. So all these people that come in from the mainland...and they don't come from

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California, everybody. There are some states that, you know, like Mr. Medeiros said there's four states who don't ban it yet. You know, they start driving around they're going to be whacked. So I hope we get the message out once this is all said and done to our visitors industry to make sure they understand that this is part of the, the equation now. But bottom line is I, I, I, like you, Mr. Molina, would like to see something done today. You know, I think it's time to bring it forward. Let's put the bill out, let's get it done, so people understand they cannot use their cellphones or **any handheld device**. Let's use...because there are other devices, you know, iPads now and all these other things that are very distractive. You know, actually my personal feeling is I'd like to ban any video or...video screens in vehicles. I see that all the time, right? Right, Officer Aoki? I mean Sergeant Aoki.

MR. AOKI: Yes.

COUNCILMEMBER VICTORINO: Isn't that a major distraction? So but again I don't want to go too far. I'll stick with this. Let's get this done, sir, and then from there I'm willing to go any further, put anything else in the future. But I will defer mine to give you a chance, because yours kind of incorporates that. Your, your language does incorporate it from what I read, and so I will defer mine and work with yours and go from there. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. The Chair has heard all of your comments and is ready to offer a recommendation, Members.

COUNCILMEMBER VICTORINO: Recommendation.

CHAIR MOLINA: Okay. The Chair will ask for a motion to approve A Bill For An Ordinance Amending Chapter 10.52, Maui County Code, Pertaining To The Use Of Mobile Electronic Devices While Driving. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you, Chair...Chairman. I move that we approve the prohibiting the use of mobile electronic devices while driving.

COUNCILMEMBER VICTORINO: I second the motion, Mr. Chair.

CHAIR MOLINA: Okay. The motion to approve has been made by Councilmember Pontanilla and seconded by Councilmember Victorino. All right. We have the motion on the floor. The Chair, with your indulgence, would like to offer some amendments at this point, Members, if there are no objections?

COUNCILMEMBER PONTANILLA: No objections.

COUNCILMEMBER VICTORINO: No objections.

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CHAIR MOLINA: Okay. Members, if you'll note, Chair would like to ask for a motion to amend Section 10.52.260(c)(2) of the proposed bill by adding the following after the word "duties". Okay. And it shall read, and who: (1) are operating fleet vehicles; (2) possess a commercial driver's license, pursuant to Section 286-239, Hawaii Revised Statutes; or (3) possess a commercial driver's instructional permit, pursuant to Section 286-236, Hawaii Revised Statutes.

COUNCILMEMBER PONTANILLA: So move.

CHAIR MOLINA: Is there a second?

COUNCILMEMBER VICTORINO: So moved, Mr. Chair.

CHAIR MOLINA: Motion and a second. Okay. It's been moved by Member Pontanilla seconded by Member Victorino. And, Mr. Pontanilla, if you'll beg my indulgence to discuss the proposal or proposed amendment with the body.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. I, I have no discussion to add to your proposal at this time.

CHAIR MOLINA: Okay. Members, I'd like to share with you why I'm proposing this amendment. This is based basically on the Department of Prosecuting Attorney for the City and County of Honolulu which supported similar language during this year's Legislative Session. For House Bill 20...2225, which did not pass, the Honolulu Prosecutor's Office noted that the language would help to clarify the City's ordinance, and the amendment will help police officers to identify when drivers using two-way radios are doing so in the performance and scope of their work-related duties. The officer would be able to see either that the person is operating a fleet vehicle or check to see if the person possesses a CDL license or CDL instructional permit rather than merely having to rely on the driver's assertion that the driver is using a two-way radio in the performance and scope of work-related duties. So I believe, Mr. Victorino, this was somewhat related to your proposed amendment. So that's --

COUNCILMEMBER VICTORINO: Yes. Thank you, Chair.

CHAIR MOLINA: --my rationale for this proposed amendment, Members. Any additional discussion? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I would like to ask, how do we design...describe fleet vehicles, and what is the requirement to be considered a fleet vehicle?

CHAIR MOLINA: Maybe we can ask Corporation Counsel or the Prosecuting Attorney to add further clarification to Mr. Medeiros' question.

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MR. GALAZIN: Can you repeat that, please? I was conferring with the Prosecutor.

COUNCILMEMBER MEDEIROS: Yes. I'd like to know what is...how do you describe a fleet vehicle or what is required to be considered a fleet vehicle?

MR. GALAZIN: That's actually what we were discussing. I don't believe that in the Hawaii Revised Statutes there's a set definition for fleet vehicles. There is one section that refers to registering a fleet vehicle, but that would probably be something that we would need to define, because I don't believe that's anywhere within the Code or within the HRS outside of that one section. And if you give me a minute I can pull up that section. I believe there's a requirement that it be 25 vehicles or more in the fleet.

COUNCILMEMBER MEDEIROS: Okay.

MR. GALAZIN: But let me verify that.

COUNCILMEMBER MEDEIROS: Okay. And while he's verifying that, Mr. Chairman, that, that would have been my question. If it's something that a one-vehicle company can register their vehicle as a fleet vehicle we're going to have a lot of fleet vehicles out there, you know, if that's considered, you know, exempt by this ordinance or this bill. So Corp. Counsel is trying to find out. He, he thinks a fleet vehicle is when you have at least 25 or more vehicles, but he's trying to confirm that right now. And because we see a lot of groups with fleet vehicles starting from rent-a-cars to Maui Electric...

CHAIR MOLINA: UPS.

COUNCILMEMBER MEDEIROS: Yeah, UPS. I mean all the big companies are fleet vehicles. So we're exempting a lot of cars on the road that are using fleet vehicles license plates. Corp. Counsel?

MR. GALAZIN: Yeah. Yeah. The section in the HRS is 286-53.5 which allows a registered owner or lessee of a fleet of 25 or more vehicles consisting of commercial motor vehicles, commercial trailers or passenger automobiles that could apply to the Director of Finance for license decals, registration cards. So that would be the only section of which I'm aware that deals with, with fleet vehicles, and if the intent were to follow that State statute in terms of what we mean by saying fleet vehicles it'd be easy just to reference that.

COUNCILMEMBER MEDEIROS: Yeah. Thank you, Corp. Counsel. So, Mr. Chairman, as Corp. Counsel has described, is that the intent of the bill that when we say fleet vehicles it'll be 25 or more vehicles, and that it would be registered as a commercial vehicle besides a fleet vehicle?

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CHAIR MOLINA: Yeah. I believe that was the initial intent. Now if, Members, you would want it to be more specific as to what, you know, fleet I would presume more than one vehicle. So it could be, you know, like what we have is what, 25, I guess.

COUNCILMEMBER MEDEIROS: Yeah. Under the HRS.

CHAIR MOLINA: Yeah.

COUNCILMEMBER MEDEIROS: Yeah.

CHAIR MOLINA: But again it will be a policy of this Committee if we would like to add more specific language to what is it, what constitutes a fleet.

COUNCILMEMBER MEDEIROS: Right.

CHAIR MOLINA: Maybe, Mr. Galazin, what would entail if we...well it is HRS so we cannot change that.

COUNCILMEMBER MEDEIROS: Right. Right.

MR. GALAZIN: Right.

COUNCILMEMBER MEDEIROS: And my, my question is right now in respect to the introducer of this if that's what he considered, you know, to be...

CHAIR MOLINA: Yeah. Well I based this on, on language, a recommendation from the Honolulu City --

COUNCILMEMBER MEDEIROS: Oh, you did?

CHAIR MOLINA: --and County. Yes.

COUNCILMEMBER MEDEIROS: I'm sorry.

CHAIR MOLINA: The Prosecutor's Office.

COUNCILMEMBER MEDEIROS: Okay. Okay.

CHAIR MOLINA: This is something that they had wanted to add to the State bill, but again the bill never materialized, and in, in their opinion it would help to help the police officers, you know, provide more specifics for them and strengthen the bill. So that is, you know, why, why I'm offering this. And again it ties into Mr. Victorino's proposed amendment as well --

COUNCILMEMBER MEDEIROS: Right.

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CHAIR MOLINA: --to address some of the concerns from our commercial operators on the road.

COUNCILMEMBER MEDEIROS: Right. Okay. Thank you, Mr. Chairman, for the consideration.

COUNCILMEMBER VICTORINO: Mr., Mr. Chair?

CHAIR MOLINA: Thank you. Mr. Victorino?

COUNCILMEMBER VICTORINO: And, and, and some clarification. Rent-a-cars even though may go under the word fleet do not have commercial licensing. They are registered as individual private automobiles. Even though may be under an Avis fleet, a Budget fleet it is not considered fleet. And the Police Department can verify that, that any time you...those kinds of vehicles are still considered private passenger, because they are available to the public for public use. When you're talking fleet, that would be exclusively for you or your employees for the use of it, and, and that's an insurance term I'm using, 'cause you cannot just lend anybody a fleet car. Like the County of Maui must be specific on who can drive the vehicles. It must be an authorized employee driving the vehicle, not just you or I just pick up a...go out there and grab a van and we go somewhere. We have to be authorized and sign out for it and have to be an employee of the County of Maui. So there is some very strict rules, Mr. Galazin, and if you can go look 'em up. I mean I, I know that much about that area. So if we're worried about fleets like rent-a-cars that's not something to worry about, because they are not registered as commercial vehicles. They have private passenger license plates on 'em. Okay. So there is that distinction so that's why I think the City and County was trying to do that --

CHAIR MOLINA: Right.

COUNCILMEMBER VICTORINO: --in Oahu.

CHAIR MOLINA: That's right.

COUNCILMEMBER VICTORINO: So I absolutely agree. I've been looking into these matters that's why. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. And to further expound on that, you know, some companies already have instituted their policies as far as using cellphones like Verizon. But I think with...by implementing this into an ordinance it will almost send a message to all companies with fleet vehicles that, you know, you better, you know, not only adhere to the law, but also institute some policies as it regards to phone usage if they don't already have that in, in their own employee policies as well. Any other discussion on the proposed amendment, Members? Seeing none, all those in favor of the proposed amendment signify by saying "aye".

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COUNCILMEMBER VICTORINO: Aye.

COUNCILMEMBER PONTANILLA: Aye.

CHAIR MOLINA: All those oppose? Thank you. The Chair will mark it seven ayes with none opposed for the proposed amendment.

VOTE: AYES: Councilmembers Baisa, Kaho‘ohalahala, Medeiros, Nishiki, Pontanilla, Victorino, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson and Vice-Chair Mateo.

MOTION CARRIED.

ACTION: APPROVE amendment (Section 10.52.260(c)(2)) to main motion.

CHAIR MOLINA: Okay. Members, moving on to the second amendment that I have proposed to you. And by the way, Members, it’s also addressed in your binder on a May 4th, 2010 letter. My apologies for not making that...making you aware of that earlier. The Chair will now entertain a motion to amend the definition of mobile electronic device in Section 10.52.260(D) by deleting “audio equipment, navigation equipment, or” from the last line of the first page of the proposed bill, and adding the phrase “audio, navigation, or” after the word “providing” and before the word “emergency” on the second page of the proposed bill.

COUNCILMEMBER PONTANILLA: So move.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR MOLINA: Okay. It’s been moved by Member Pontanilla, seconded by Member Victorino. Member Pontanilla, any comments before the Chair expounds on the proposed amendment?

COUNCILMEMBER PONTANILLA: Chairman, if you can, please?

CHAIR MOLINA: Sure. Members, again the rationale is once again based on from what City and County of Honolulu, Department of the Prosecuting Attorney supported similar

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language as to when they proposed this amendment for a House Bill 2225 during this Legislative Session. And as we know, the bills were not addressed, or maybe they might have been briefly addressed, but the Prosecutor's Office indicated that this would help to clarify the City's ordinance by ensuring that the only permitted audio and navigation equipment would be those installed in the vehicle and not portable audio or navigation equipment. So basically it would, I guess, exempt what...the audio equipment that's in the vehicle already, installed...factory-installed, and not...and would be...I guess basically prohibit anything portable being brought into the vehicle. So that is the clarification or the rationale for this amendment, and based on what the City and County was recommending for a State bill. Questions, Members? Or...Member Baisa?

COUNCILMEMBER BAISA: Chair, as I read the definition as it says now it says equipment installed in a motor vehicle. If I heard you correctly you said factory-installed? Because you could install it later, and then it's installed.

CHAIR MOLINA: Yeah. Let me make that clearer. Yeah.

COUNCILMEMBER BAISA: ...*(Chuckled)*...

CHAIR MOLINA: Factory or well...or, or installed later, yeah.

COUNCILMEMBER BAISA: Yeah.

CHAIR MOLINA: But I guess the whole intent was not to allow for portable stuff, you know, that would require the use of your hand.

COUNCILMEMBER BAISA: Right. So, so as you're going to allow equipment that is installed later as well as stuff that comes with the car?

CHAIR MOLINA: I guess that's the way it...we...

COUNCILMEMBER BAISA: I mean if I read it now that's the way it is.

CHAIR MOLINA: Staff, can you...add further clarification based on what City and County had?

MS. HAMMAN: That's right. I, I think Councilmember Baisa is correct. It would include factory-installed or anything installed later as long as it's installed, and I believe the purpose of the amendment was to prohibit things like MP3 players, portable devices, anything that you could use with your hand.

CHAIR MOLINA: Right.

COUNCILMEMBER BAISA: Or moving your GPS thing from car to car. It'd have to be installed in your car.

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MS. HAMMAN: That's correct.

COUNCILMEMBER BAISA: Okay.

CHAIR MOLINA: Yeah, minimize hand usage I guess in short, as much as possible.
Mr. Kaho'ohalahala followed --

COUNCILMEMBER KAHO'OHALAHALA: Yeah.

CHAIR MOLINA: --by Mr. Nishiki.

COUNCILMEMBER KAHO'OHALAHALA: I, I guess that was my question as well, because earlier we talked about the fact that you would move a GPS from one vehicle to another and to place it within whatever holding devices that there might be. And you said that that would be considered as equipment that's installed. Yeah.

MR. GALAZIN: Yeah. And again it might depend on, on the actual...the exact nature of the type of device you're talking about. I think if it's a device that's solely handheld even if it's navigation equipment would now be prohibited, but something where you could affix it to some portion of the car, and it has a permanent or at least semi-permanent housing for it then that would be, that would probably be considered installed. And I don't know if, you know, the Prosecutor's Office has any other comments to make on that --

COUNCILMEMBER KAHO'OHALAHALA: Yeah.

MR. GALAZIN: --that would, that would change it.

COUNCILMEMBER KAHO'OHALAHALA: Okay. I, I just want to be sure that, you know, this obviously is, is a lifestyle change for all of us, and equipment is changing to accommodate, and there are more and more new devices that are coming about to help alleviate some of these kinds of issues that we are currently trying to address. So are we forward thinking enough to make sure that we are making allowances for equipment that would be considered useable and safe within vehicles as well? Or are we just blanketing across only based on our current experience with no idea of, of what might be happening tomorrow, you know, in terms of how these issues could be supported? So that's, that's my concern is that is our language so --

CHAIR MOLINA: ...*(Inaudible)*...

COUNCILMEMBER KAHO'OHALAHALA: --concrete and so fixed that there's no real room for allowing some of those things that might improve upon this? And, you know, because people right now have devices that are attached to their ear. Okay. That's now going to be alleviated. Would it? If you have, you have a phone now that's attached to your ear, how is that going to be applied in, in terms of the, the language as...

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MR. GALAZIN: Well, I think no matter the types of devices we're talking about or what kind of service they're providing, you know, you...we have to make sure that we're understanding that we're defining use as in holding it while operating the motor vehicle. So if there's a device that is, you know, a headset or an earpiece that, that you do not need to hold then that would be permitted. And again, you know, this navigational equipment if it is affixed somewhere where if you need its assistance you can physically touch it without holding it I think again that would be something where if, if your hands are free, if you're not holding the device then it would be permitted to be used.

COUNCILMEMBER KAHO'OHALAHALA: Okay. No one's buying all of their, their vehicles based, based on a holding apparatus. Right. And if there are new factory-installed kinds of devices that's things yet to come. For the people that are currently in place and driving a regular car if they wanted to take advantage of being hands free then they would have to be adding another kind of device to their current vehicle. So how does this apply to that?

MR. GALAZIN: If you're asking about something that's installed later?

COUNCILMEMBER KAHO'OHALAHALA: Yeah. I mean I didn't...my car is 15 years old, but I still drive it today and I use a cellphone. How do I accommodate that kind of a person, you know, and does this allow or disallow us from doing that?

MR. GALAZIN: Well cellphone use would still be allowed as long as you do not have to hold the device while you're using it, and that's, that's how it reads right now. You know, if the intent were to ban all use of, of cellphones whether with a hands-free device or not that we would be looking at a different bill. So if there is equipment out there, and frankly I'm not up on the technology that's available, but if there is technology out there that allows one to activate their cellphone and have communications without having to hold anything, whether it's, like I said, a headset or, you know, a speaker in the car, what have you, that would be permissible as long as it's installed in some fashion and, and does not have to be held in order to be used.

COUNCILMEMBER KAHO'OHALAHALA: Okay. And again I'm trying to go back to the GPS. When you get that and you, you use that as an equipment that you're going to rent as an example from a rental they give you something that's portable. You walk to your car perhaps and you place that in a holder. Okay. That makes that legal?

MR. GALAZIN: The way I read the bill if it's placed within the holder that would probably constitute being installed and that would be permitted. And I don't know if the Prosecutor has any different thoughts on being able to enforce it, but that would be how I read the construction of it.

COUNCILMEMBER KAHO'OHALAHALA: Okay.

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CHAIR MOLINA: Mr. Hanano, are you able to comment?

MR. HANANO: Yes, Chair. I think there's two issues. One is, you know, what does "install" mean under the proposed amendment, and the other one is use or using. And, and I think I know what Member Kaho'ohalahala is talking about. It's...and I have one of these things too. It's a, you know, GPS device that's portable, but you can mount it to your windshield or someone else...somewhere else in the vehicle. You know, if, if you were mounting it somewhere else and you're not holding it I think that probably would not qualify as use or using, because you need to hold it. Whether or not it qualifies under being installed in the motor vehicle that's another question, and I think it depends on, you know, the intent of this Council as to what they want that term "installed" to mean. 'Cause basically what will happen if, if someone gets convicted of using a, you know, device such as that where they're mounting it to windshield or someone [sic] else in the vehicle and they challenge it and they say, you know, well, you know, it was installed, and then, you know, what will happen is we're going to have this big debate in the Hawaii Supreme Court about what "installed" means. And what they're going to do is they're going to look at what the intent of this Council is as far as what "installed" means. If you, you know, if the intent is to, to not make something like that fall under "install" then they're going to follow that, and they're going to say because, you know, the intent by this body was not to include situations like that, we're going to interpret installed to mean, you know, something else. So again it goes back to, you know, what this Council wants that term to mean. If you want to be real clear do a definition, you know, to specifically say, you know, does not include, you know, portable GPS devices which can be mounted on whatever. You know, I mean that, that will probably be the clearest way. But absent that, you know, the, the appellate courts will probably have to look into the, the history...the legislative history which will mean, you know, what the intent of this Council was at the time the bill was passed.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Chair, I'm just trying to clarify whether or not we're talking about a vehicle that has equipment already installed at the time of purchase, or are we in fact saying that installed means that we can come back with devices that can be attached to a vehicle that doesn't currently have factory installation of these kinds of equipment. So, so that's where I want to be clear on.

CHAIR MOLINA: Sure. No, and perfectly understandable. I guess we have to define what is "installed", you know. I guess it's just a very broad word at this point, and, you know, it's interesting that something like this could even go to Supreme Court to be challenged. So I'm hoping, you know, it never gets to that point if that's, that's the case. But anyway Chair appreciates your comments on this proposed amendment. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. You know, you, we, we're really getting out there, and, and, and for what was going on, and I'm curious, Mr. Chairman, you're making all of these amendments, but does the City and County of Honolulu truly have this on their ordinance? Or is it something that they tried to get in the Legislature and they don't even

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have this on, on, on their ordinance? Why I say this is it's getting, you know, as technology changes we need to --

CHAIR MOLINA: Yeah.

COUNCILMEMBER NISHIKI: --create an ordinance. Okay. So let's not think that we're going to do something so perfect. I just want to put that on the record. Finally, you know, as I'm listening to you guys talk, I'm going, you know, we're trying to get an ordinance so that people don't get diverted from driving a safe vehicle away from all of these electronic things. All of these things that we're talking about is diversion from actually paying attention and driving a vehicle. Okay. Now if we're going to make all these changes to accommodate it, what are we really doing? We're, we're now allowing these people to hear from one ear, look at something else, do all of these things. When we're...the bottom line is to get these people away from doing this. Driving is a situation is where you have to operate this vehicle, this iron vehicle, and to me our ordinance is saying anything that diverts or takes away from your attention, we don't want you to do it. And so, you know, if this is confusing the issue, if this is something that they have not looked at in, in regards to making sure that it's...the language is proper, then let's not do it right now if it's going to be challenged in court. Is our language that we have now clear enough? I don't know what Honolulu has, but Mr. Victorino said how many people challenged, very few. So, you know, if it's making it more confusing then I say let's not do it.

CHAIR MOLINA: Okay. The Chair...

COUNCILMEMBER NISHIKI: I want to pass it out. I want to pass something out today.

CHAIR MOLINA: Yeah. And, and we will, we will whether it be with amendments or without. But again the Chair proposed this because City and County of Honolulu were the pioneers if you will of the first legislation to ban electronic devices. So I, I adhere to a lot of what they have, you know, done. They were the first, they've come up with the data. So these are just some suggestions from them. Staff, has City and County implemented this particular language in their current ordinance at this point?

MS. HAMMAN: No, they have not, Mr. Chair.

CHAIR MOLINA: So they have not. Okay. Well, I've heard some of your concerns, and since they have not implemented it in their language, and probably because they had anticipated something would happen at the State level. Now we can choose to be pioneers, maybe creating potentially stricter...maybe the strictest legislation in this State of all the four counties or we can be status quo. Members, I'm fine with either, but again I, I threw out these amendments for your consideration to have something that has some teeth in it. Because if it is the intent of this body to send a message to this public that we need to, you know, wean ourselves off of using electronic devices while driving in the, in the interest of protecting the public then by all means let's do so. But we can take a

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conservative approach as well by putting something with less teeth out there. Let's wait and see, get the data. I can live with both, Members, but for me I thought I'd be a little bit more aggressive with this, get it out there, show the public that, you know, the Council is concerned about the public safety. So you can take that at whatever level of...degree of concern you want, you know, just get something out quick, or let's put a bill that's even more effective or potentially, you know, can be strengthened. And hopefully without the legal challenges or minimize the potential legal challenges that could, and again could be out there. Corporation Counsel, you have a comment?

MR. GALAZIN: Yes. A comment, Chair, thank you. In this discussion and I think to boil it down, the way the draft was originally presented audio equipment and navigation equipment whether or not it is technically installed would be a permissible device to be used within a vehicle. The amendment that the Chair is proposing would require that these things be installed as well. And whether or not that creates a problem in term of defining if an iPod is installed, if, you know, a navigational device is installed or not that may be something that, that could be problematic and we may have to deal with or fight a battle down the road, but those are the two things. Either the Council would want to allow audio devices and navigational equipment whether or not installed or whether these things have to be installed as well. So those are the two, I guess, to try and, and, and pare it down in the most basic sense.

CHAIR MOLINA: Okay. Thank you, Mr. Galazin. Members, I, I do certainly understand your apprehension or maybe you need a little bit more clarity on it, and added on to the fact that the City and County has not yet implemented it into their ordinance. I will yield to, to the wishes of some of you, and maybe we'll stay, stay away from this, and we'll see what happens maybe down the road if this is something a future Council will want to implement or see what happens with City and County if they do implement this. So, Members, the Chair has no problem with withdrawing this amendment at this point, 'cause I can certainly see that look of relief on some of your faces, and I don't want to hold up any type of action you may want to take. Mr. Pontanilla, as the maker of the bill?

COUNCILMEMBER PONTANILLA: Thank you, Chairman. You know I, I, I understand Mr. Kaho'ohalahala's concern, and I'm...also, you know, with your amendment that you being proposed trying to tighten this thing up, you know, may have a conflict between company installed and temporarily installed as what Member Kaho'ohalahala has been talking about. When I look at GPS itself, you know, most rental companies may rent one to you which you temporarily, you know, affix on your...in the vehicle for you to go to your destination, and that is temporarily installed. But when it comes from the factory, it's, it's permanently installed so difference. But I can withdraw this motion to move this thing forward, and, and I'd like to do that, Chairman.

CHAIR MOLINA: Okay. The Chair recognizes the --

COUNCILMEMBER KAHO'OHALAHALA: Chair, Chair...

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CHAIR MOLINA: --withdraw of the amendment by Mr. Pontanilla. Is there...the seconder would like to withdraw?

COUNCILMEMBER KAHO'OHALAHALA: Be, before you withdraw.

CHAIR MOLINA: Oh, Mr. Kaho'ohalahala.

COUNCILMEMBER KAHO'OHALAHALA: I only want a clarification in the amendment, because you made a specific change here in terms of deleting audio equipment and navigational equipment, and then reentering it later in the sentence. Is that the distinction that we're talking about?

MR. GALAZIN: Yes.

COUNCILMEMBER KAHO'OHALAHALA: Okay. And if we took the language as is without the deletion of audio equipment and navigational equipment would that leave us then that kind of a space for someone who would like to install that into their, their vehicle?

MR. GALAZIN: Yes. If, if we leave it as is then navigational equipment whether or not it's installed by a factory, whether or not it's installed later on, or whether or not it would even be handheld would be allowed.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Then I mean I, I would be in agreement with, with the language as it, as it was, you know, as it without . . . *(inaudible)* . . .

CHAIR MOLINA: Leave it as is?

COUNCILMEMBER KAHO'OHALAHALA: Yeah. Because if that's the distinction right now then I think that we need to give a little bit of support for the fact that technology is changing and that these devices obviously are going to become commonly used. And we're dealing with an entire, you know, community of users of, of equipment like this. So, so it's like if we're going to ban it all together then we, we ban everything, you know, no such thing, no radio, no TV, no nothing, you know, in a car, just drive. But we're not doing that right now, and then we're...and then we're not allowing for some of those amendments or changes to equipment or, or new inventions, and we are seeing the technology changing so that they are becoming hands free. So, so I just hope that we're leaving some space to account for these things and not be so restrictive that we cannot. So, so if, if you want to, you know, provide this as, as is, then I would be supportive of that. Yeah.

CHAIR MOLINA: Okay. All right. Thank you, Mr. Kaho'ohalahala. And, and, and you're correct in that with the way technology has just evolved, and I think Mr. Lester made a point at our last meeting about this. Our cars have become rolling entertainment centers with the advent of technology, and a lot of things becoming hands free, well we hope. Member Baisa.

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COUNCILMEMBER BAISA: Thank you, Chair. For me, you know, one of the reasons why I was kind of supportive of the idea of waiting, at our last meeting, on this issue was that I thought that being the last county to actually pass some legislation that we could benefit from the experience of everyone else and maybe come out with a law that would have less unintended consequences or less, you know, litigation involved in what we pass. So I totally understand your desire to incorporate some of the recommendations from folks who have already been down the road. And I support what Member Kaho‘ohalahala has brought up. It was concern for me about this idea of installation, and we’re not really sure what that means. So I could support your amendment, but without those what you did finally, not taking out what was there before.

CHAIR MOLINA: Okay. So basically we leave the language then as is.

COUNCILMEMBER BAISA: So just leave it the way it is. I think if we do that that we will get the best for now, and again I go back to the idea that we’re going to, at some point, have to take a good look at this and see how it goes, and we may have to amend it.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Chair would like to ask just for a short break--don’t, don’t go anywhere--to confer with Staff on a procedural question. Meeting in recess. . . .(gavel). . .

RECESS: 12:02 p.m.

RECONVENE: 12:07 p.m.

CHAIR MOLINA: . . .(gavel). . . The Committee of the Whole meeting for May 12th, 2010 will now return to session. Thank you for that break, Members, to clarify. As I had mentioned on the floor earlier, I had asked for Member Pontanilla --

COUNCILMEMBER PONTANILLA: Withdraw. Yeah.

CHAIR MOLINA: --to withdraw the proposed amendment and upon hearing comments from Members Baisa and Kaho‘ohalahala, and please correct me if I’m wrong. So if we go back to the original language what’s on the proposed amendment was to bracket out “audio equipment, navigation equipment” and reinsert those words in another area of the passage. So what we’re looking at is reinstating the bracketed-out words where it was originally located. And please me give some guidance, Member Baisa or Member Kaho‘ohalahala, now you want the underscored language taken out, taken out as well? This is to help Staff get some clarification as well as the Chair.

COUNCILMEMBER KAHO‘OHALAHALA: Yeah. Chair, if I can? In the proposed bill itself, the way that it’s written is the same language as this amendment except that you bracketed and you asked to remove and replace. So if we go back to the, the language that’s in the bill I think that’s what I’m saying I would accept. Yeah.

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CHAIR MOLINA: Okay. So, Staff, do you need additional clarification so we, we all know where we're at, what we're looking at? So we're staying with the original language then just to make it clear, right?

COUNCILMEMBER PONTANILLA: That's my understanding.

MS. HAMMAN: Yeah. I just wanted to clarify that to make sure that, I mean the effect of the motion to --

COUNCILMEMBER PONTANILLA: Withdraw.

MS. HAMMAN: --withdraw the motion is that the bill will remain --

COUNCILMEMBER KAHO'OHALAHALA: Okay. Okay.

MS. HAMMAN: --as it is.

CHAIR MOLINA: As is.

COUNCILMEMBER BAISA: Yes. No change.

CHAIR MOLINA: Okay. Great. All right. Thank you, Members. We're almost there, Members. The Chair has one final consideration for you. And, Members, the Chair will entertain a motion to amend and add a new section to be designated 10.52.260(D) and to read: Drivers who hold an instructional permit pursuant to Section 286-110, Hawaii Revised Statutes, or a provisional license pursuant to Section 286-102.6, Hawaii Revised Statutes, shall be further prohibited from using any hands-free technology to assist with the use of a mobile electronic device." Existing Section 10.52.260(D) of the proposed bill will be renumbered 10.52.260(F).

COUNCILMEMBER PONTANILLA: Mr. Chairman, I move that we add a new section, as you read, to this ordinance.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR MOLINA: Okay. The motion to add this additional section has been made by Member Pontanilla and seconded by Member Victorino. Member Pontanilla, any discussion before the Chair would . . . *(inaudible)* . . .

COUNCILMEMBER PONTANILLA: Just one quick one. You know, I...the instructional permit basically involves a lot of young, young people, and I support your recommendation in, in moving this forward. Thank you.

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CHAIR MOLINA: Okay. Thank you. The Chair would like to offer his elaboration on this proposed amendment. This was...again, we heard this recommendation from a testifier at a prior meeting, Mr. Lester, and the amendment will assure that our youngest drivers who are still learning how to drive are not distracted even with the use of hands-free technology. You know, primarily not only for young drivers but any driver. You can be of any age to get a permit, you know. The focus should be on driving first and not using any electronic devices. And for minors' sake, once a minor is able to obtain a full driver's license and of course reaching age, then the minor will be able to use the hand-free technology as other licensed drivers are. So even though you're 17 and you get your license it's not considered a license like that of being an adult. So anyway that's the intent for beginning drivers whether you're, you know, under the age of 18 or you are of age but have never received a license and just going for your license. The focus is driving first and not deal with any electronic devices whether they're hands free at that point. So drive...learn to drive first, and deal with the electronic stuff later when you're of age. So that is the rationale for this proposed amendment. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yeah. Thank you, Chair. And I can support that. I think our youth of today is...(sighs)...too entrenched with technology, and let's, let's use that word entrenched. And I'm afraid that too many of them think it's a part of their everyday life. I mean cellphones stuck to the ear. They don't even talk to each other, they're texting each other. I mean I had a friend said that his daughter and the friend were in the backseat and he's taking them to a school function and the two girls kept laughing and laughing, but never heard a word from 'em. And finally when he turned and asked them what are you guys doing, they said, oh, we're texting each other, and they're sitting right next to each other. So I think the world of technology is taking over our youth which is good and bad at times. I think in some areas it's really bad, and this is one of the areas that I can support real strict enforcement. Just like youthful drivers when they get other offenses, DUIs, caught, other things that they don't...they're not able to get their license, their...it's revoked [*sic*], and they're unable until they reach 18 to even attempt to get their license. Am I correct, Prosecuting Attorney? Okay. You said, yes, just for the record. Okay. So I think this is something I can support, Mr. Chair. I think the youth have to understand. And anybody who just got their license better be keeping their eye on the road, because I can tell guys like us who've been driving 35-40 years, we still have a hard time keeping our eyes on the road. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. Members, any other comments as to the proposed amendment on the floor? Seeing none, the Chair will call for the vote. All those in favor signify by saying "aye".

COUNCILMEMBER PONTANILLA: Aye.

COUNCILMEMBER VICTORINO: Aye.

COUNCILMEMBER KAHO'OHALAHALA: Aye.

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CHAIR MOLINA: All those oppose? The Chair will mark it seven ayes, two excusals, Members Mateo and Johnson.

VOTE: AYES: Councilmembers Baisa, Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, Victorino, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson and Vice-Chair Mateo.

MOTION CARRIED.

ACTION: APPROVE amendment (new section) to main motion.

CHAIR MOLINA: We are now back to the main motion as amended.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Members, discussion? Okay.

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: Member Baisa followed by Member Victorino.

COUNCILMEMBER VICTORINO: Okay.

COUNCILMEMBER BAISA: Thank you very much, Chair. Before we take the vote on the measure, I have one more question I'd like to clear up, and I hope it's fair...fairly quick one. How many points go on the traffic abstract if you have one of these cellphone infractions? And this is of course for insurance premium purposes.

CHAIR MOLINA: Let's see, Corporation Counsel or Prosecuting Office, and I know we have an insurance guru in the building right now, Mr. Victorino. I don't know if he could --

COUNCILMEMBER BAISA: Yeah.

CHAIR MOLINA: --add comment to...

COUNCILMEMBER BAISA: For anybody who can answer.

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MR. AOKI: Hi. I believe that would be a question for the judiciary, and they, they're the ones that apply points or non-points. Typically, points are applied a lot in moving violations.

COUNCILMEMBER BAISA: Right.

MR. AOKI: And I don't know how the insurance company uses the point system, but depending how this ordinance is classified if it's a traffic infraction or a traffic crime.

COUNCILMEMBER BAISA: Will this be considered a moving violation if you're talking and driving?

MR. AOKI: Would seem like that would be the logical way to go, because the vehicle is moving. But typically this will probably be a traffic infraction which is a decriminalized offense like safety check or seatbelt violation and those other things. Even also like a stop sign violation or a red signal...running a traffic light violation is still an infraction.

COUNCILMEMBER BAISA: Thank you, Chair. Maybe Mr. Victorino can help us.

CHAIR MOLINA: Yeah. Thank you, Member Baisa. That's a...that is a good question for all to know.

COUNCILMEMBER VICTORINO: Yeah. Well...

CHAIR MOLINA: Mr. Victorino, as our insurance guru on the Council.

COUNCILMEMBER VICTORINO: Oh, stop it now, please. Gurus are people that I'm not. Thank you. He's absolutely correct in his analogy. And each company then determines the amount of the infraction and the points they attach to the infraction. Okay. So it's really something that the companies can decide based upon the infraction. Now when that infraction--because we'll have that now as part of the, the law--involves an accident now that bumps it all up to an offense, and then the points even are doubled up, you know, in other areas. So if it's inattention, you hit somebody now and you were on a cellphone that could put inattention as part of the violation, see. So by putting this, as I mentioned earlier to the gentleman who was in the bad car accident, this guarantees if a cellphone is involved other violations can now be attached to it, and that really makes the penalty a lot heavier than just driving with a cellphone. Driving with a cellphone is like you said seatbelt and all that, that's all you're going to get fined for, and the points that will be put on is real minimal. But if you're involved in an accident based upon that then it really puts the points way up there, and you really you get charged a big, big chunk on that deal. So again it's all up to the companies themselves.

COUNCILMEMBER BAISA: Thank you very much. It appears then that that's another deterrent to think about that if you're on your cellphone and you have an accident you may also see some trouble with your insurance premium. Thank you.

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CHAIR MOLINA: Okay. Thank you, Member Baisa, for bringing up that issue. Members, I forgot to include in this motion a motion to incorporate any housekeeping changes of this proposed bill by changing the reference to the year from 2009 to 2010, and by changing the effective date of the bill from January 1st, 2010 to July 1st, 2010. Any objections to incorporate...

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: JJ and DM)

ACTION: APPROVE “housekeeping revisions” to main motion.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MOLINA: All right. Mr. Victorino?

COUNCILMEMBER VICTORINO: Just one point, one point of clarification, because I want to make sure we're, we're all...and at least for me I'm clear on it, I don't want to speak for anybody else. The first one that you added...that we added was that fleet use of two-way radios. Now that one passed as amended, right?

CHAIR MOLINA: Yes.

COUNCILMEMBER VICTORINO: Okay. The second one is the one we withdrew?

CHAIR MOLINA: That's correct.

COUNCILMEMBER VICTORINO: Okay. And that one stays as its original language.

CHAIR MOLINA: As is.

COUNCILMEMBER VICTORINO: And then the youthful drivers and instructional permit first time...that one is the last one that we passed. So when you say “as amended” those are the two amendments that are being incorporated with the original language, Mr. Chair?

CHAIR MOLINA: That is correct, Mr. Victorino.

COUNCILMEMBER VICTORINO: Okay. Just so that we're perfectly clear, because we went --

CHAIR MOLINA: Yeah.

COUNCILMEMBER VICTORINO: --in different directions, and I want, you know, the public to understand specifically what we're putting forward.

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CHAIR MOLINA: So noted, Mr. Victorino. All right, Members. The Chair's ready to call for the vote, and I, I know many of you would love to give additional comments on this, but we are somewhat pressed for time with a Budget meeting this afternoon. Assuming this gets out of Committee today, we can all make our comments at the first reading at...first or second reading at the Council level. So the Chair will now call for the vote on the bill as amended. All those in favor signify by saying "aye".

COUNCILMEMBER NISHIKI: Aye.

COUNCILMEMBER VICTORINO: Aye.

CHAIR MOLINA: All those oppose? Thank you, Members. The Chair will mark it seven ayes, two excusals, Members Mateo and Johnson.

VOTE: AYES: Councilmembers Baisa, Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, Victorino, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson and Vice-Chair Mateo.

MOTION CARRIED.

ACTION: Recommending FIRST READING of bill, as amended.

CHAIR MOLINA: The bill passes out of Committee, and will now go to the Council for first reading. Thank you very much, Members, for making yourselves available in this off-week to address this very important issue. To the Department, Police, thank you so much for your hard work and contributions, and to Mr. Hanano from the Prosecuting Office, thank you, and Corporation Counsel, Mr. Galazin. We did a lot today, Members, and Chair appreciates your professionalism and hard work on this Wednesday...excuse me...Wednesday, yeah, May 12th, 2010. This Committee of the Whole meeting is now adjourned. Time is 12:18. ...*(gavel)*...

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ADJOURN: 12:18 p.m.

APPROVED:



A handwritten signature in black ink, appearing to read "Michael J. Molina", is written over a horizontal line.

MICHAEL J. MOLINA, Chair
Committee of the Whole

cow:min:100512

Transcribed by: Daniel Schoenbeck

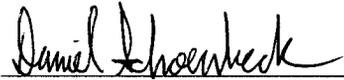
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CERTIFICATE

I, Daniel Schoenbeck, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 3rd day of June, 2010, in Pukalani, Hawaii



Daniel Schoenbeck