CHAIR VICTORINO: . . . (gavel) . . . Good morning. The June 29, 2010 Water Resource Committee will come to order. We have a quorum present, and may I introduce the Members that are present this morning? Starting off with our Vice-Chair of the Council, Mr. Michael J. Molina.

COUNCILMEMBER MOLINA: Good morning, Chairman.

CHAIR VICTORINO: And our Upcountry and beautiful representative, Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair, and thank you.
CHAIR VICTORINO: You’re more than welcome. Our representative from the Island of Lanai, Mr. Sol P. Kaho‘ohalahala.

COUNCILMEMBER KAHO‘OHALAHALA: Good morning, Chair.

CHAIR VICTORINO: Our representative from the East Maui District and here this morning, Mr. Bill Medeiros.

COUNCILMEMBER MEDEIROS: Aloha and good morning, Chair.

CHAIR VICTORINO: Good morning. And finally, our other Member of the Committee, the Council Chair and the representative from the island of Molokai, Mr. Danny Mateo.

COUNCILMEMBER MATEO: Good morning, Chairman.

CHAIR VICTORINO: And finally, our Vice-Chair and representing the Kahului District of Maui, Mr. Joseph Pontanilla.

VICE-CHAIR PONTANILLA: Good morning, sir.

CHAIR VICTORINO: Okay, perfect. All the Members are present this morning. Thank you very, very much. It is 9:04 and we’re starting a little late, and I do apologize for that. From the Department this morning, we have the Director from the Water Supply, Mr. Jeffrey Eng.

MR. ENG: Good morning.

CHAIR VICTORINO: And also from Corporation Counsel, Deputy Corporation Counsel, Mr. Edward Kushi.

MR. KUSHI: Good morning.

CHAIR VICTORINO: Okay. Our Legislative Staff...our Legislative Analyst, Ms. Kim Willenbrink.

MS. WILLENBRINK: Good morning, Chair.

CHAIR VICTORINO: Good morning. And our Committee Secretary, Ms. Tammy Frias.

MS. FRIAS: Good morning.

CHAIR VICTORINO: Good morning.
ITEM NO. 1(1): WATER SUPPLY RULES (DEFINITION OF AGRICULTURAL CONSUMER)
(C.C. Nos. 05-46, 06-228, and C.R. No. 10-43)

CHAIR VICTORINO: Okay. Today we just have one item, and I purposely did this because I wanted to make sure that we could come to some resolution to this definition called “agricultural consumer”. And I will start by opening up public testimony. We will limit public testimony to three minutes, with one minute to conclude. Please, all testifiers, if you would state your name and who you represent, we would appreciate that. But before we even do that, if I could ask everyone to put their phones on silent or vibrate or any noise-making device, I would appreciate it. Decorum will be followed in this Chamber.

Okay, public testimony. With no objections, I’m going to start public testimony. Committee Secretary, do we have any public testimony this morning?

MS. FRIAS: No, Mr. Chair.

CHAIR VICTORINO: Wow. Okay. I’m going to allow, if with your approval, I’m going to allow public testimony to be open for maybe the next half an hour or so just in case somebody is late, if that is okay with the Committee?

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Okay, no objections? Thank you very, very much. If you will all turn to your binders and turn to correspondence dated June 21st, 2010, from the Department of Corporation Counsel, transmitting a revised proposed bill titled A BILL FOR AN ORDINANCE AMENDING ARTICLE 1, TITLE 14, MAUI COUNTY CODE, RELATING TO AGRICULTURAL CONSUMER. Please, to make sure that all of you are on that page. Is everyone on that page? Okay, ‘cause I want to make sure we start out on the right foot.

As you will notice, a revision including the changing of the gross income requirement and donation requirement to $1,000 has been incorporated. If…and after, for myself, after listening to testimony, listening to many different facets of our community, I felt that the, the general consensus was $1,000 to be taken off the Schedule F and take makes it much more plausible for a lot of our farmers out there. I think this is what the United States Farm Bureau has required and so, you know, we follow them and we won’t have any challenges in that respect, yeah.

I…secondly, if you will notice, I removed the reference to expense. And at this point, I will call upon Corporation Counsel, Mr. Kushi, to explain that, because I think we all agree it was getting really confusing and, and, and really not accomplishing anything. Since we have dropped it down to $1,000 in income requirement, I didn’t think the need for that was there, plus Corporation Counsel had some, some real challenges with it. So, Mr. Kushi, if you could explain your, your reasons for asking to remove that expense part?

MR. KUSHI: Yes, Mr. Chair, I’ll, I’ll give it my best shot.
CHAIR VICTORINO: You did a good job when you explained it to me. ...(chuckle)... Go ahead, Mr. Kushi.

MR. KUSHI: Mr. Chair and Members, as it reads right now, we’re talking about Section 14.10.015(B) as in “boy”, the way it reads now is, is as follows: Agricultural consumers who receive ag, receive agricultural water rates but do not meet the minimum gross annual income requirement due to events or acts of force majeure may request a waiver of the income requirement for a period of one year from the Director. Previously, it read as follows: Agricultural consumers who receive agricultural water rates but do not meet the minimum gross annual income requirement due to events or acts of force majeure, or whose expenses result in an annual income of less than 200...$2,500 for a particular year, may request a waiver of the income requirement for a period of one year from the Director. As we had discussed previously at your last meeting, our office had some concerns about the expenses recitation. As we understand it, the qualification for agricultural rates is a minimum gross annual income of a certain level...at that time it was $2,500, now it’s $1,000. How the expenses...relates to income as set forth previously didn’t, didn’t make sense to our office as we look at the, the term “gross annual income” and when you reference expenses, then you get down to “net annual income”. So per our last meeting, I think it was decided to just take it out and just deal with gross annual income regardless of the amount of expenses any consumer would have had.

CHAIR VICTORINO: Thank you, Mr. Kushi. Questions for Corporation Counsel? Yes, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Kushi, in the section you read, what is the legal definition of that word “majeure” and, and why is that used?

MR. KUSHI: Okay. One, one minute, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Okay. So that, you know, if somebody in the public is reading this, they may know what that word means and whether it’s used primarily for legal purposes or what, what, what is that, Mr. Kushi?

MR. KUSHI: Yes. Member Medeiros, I believe the word is French in nature, force majeure. Per Black’s Dictionary, the Law Dictionary--and it is a, a word of art in the legal sense used--it, it’s defined as follows: force majeure is defined as an event or effect that can neither be anticipated nor controlled. Term...the term includes both acts of nature and acts of people.

COUNCILMEMBER MEDEIROS: Okay. And, and it was necessary to use this word or it was the best word to describe what was being expressed here?

MR. KUSHI: In our legal drafting and in consultation with Council Services, it was decided to use that term.

COUNCILMEMBER MEDEIROS: Yeah. Thank you, Mr. Kushi. Mahalo, Mr. Chair.
CHAIR VICTORINO: Thank you, Mr. Kushi. And, and I think, you know, the, the statement, act of god or act of--what you did say?--act of?

MR. KUSHI: Nature.

CHAIR VICTORINO: Nature. And act of?

MR. KUSHI: People, war.

CHAIR VICTORINO: I didn’t think...yeah, you know, yeah, and exactly because that would incorporate things such as war and other issues that, you know, we hope never occur, but if it does, then this person would, you know, be able to have some restitution in that sense, yeah? So thank you for that clarification. Other questions for Corporation Counsel? Seeing none, then let me move on. Also, I will go to...please note on the June 18, 2010, from the Chair of the Water Resources Committee, I have included a map of Haliimaile Community Garden which has 1.43 acres or approximately 62,290 square feet. I believe Mr. Eng tried to explain that at our last meeting, so I wanted to clarify that. Also, there is an e-mail in there from Teva Callender--Tova, Tova, T-O--okay, sorry, Tova Callender, which also states that they are definitely in favor of that verbiage. She is one of the lead coordinators for community gardens throughout the County of Maui, and there was a mistake made by the previous testifier, he was in error in what he said, and I think he’s contacted many of you about that. And if he hasn’t, he did contact me and apologized, and I have no problem with that. So the 22,000...square feet that we were asking for by Mr. Eng...I...and the 15 participants she felt, and most them have all told me they felt that’s a very fair and adequate way to evaluate a community garden. Okay? So, I just wanted to make sure that that was clarified, yeah?

At this time, Mr. Eng, I will give you an opportunity to go over some of your concerns, and Mr. Eng still has a few concerns and I want to let him address it to you, the Members, and then we can discuss and question him about his concerns. So, Mr. Eng, I will give you the opportunity.

MR. ENG: Thank you. Good morning --

UNIDENTIFIED SPEAKER: Good morning.

MR. ENG: --Mr. Chairman and Committee Members. As you know, the Department still believes the minimum gross income should be in the order of $5,000 per year, and basically that’s to distinguish between the true commercial operators and hobbyists, backyard growers and gentlemen farmers and the like. I do understand we don’t see many supporters out there of our, of our proposal. The Department desires to protect the interest of this general rate customers who already pay higher rates in order to subsidize the current ag rate customers to the tune of approximately $2.8 million per year. So that’s the only comments I have. Thank you very much.
CHAIR VICTORINO: Thank you, Mr. Eng. And before I open up to questions or comments to Mr. Eng, I will say that although I agree with you to a point when you’re talking about the income level, but I also realize that a lot of these farmers, especially startup farming, many of the smaller farmers ‘cause they have e-mailed me, I have even had a chance to talk to some of them, the 5,000 was way out of hand or at least way out of line with them. The 2,500, many accepted, but some still wanted 1,000. And since the United States Farm Bureau had put 1,000 as the minimum, I felt that, you know, consistency was very important when it came to this aspect, Mr. Eng, and, you know, nothing against you, sir, and I do understand what you’re saying. However, I think this is more applicable to what we’re trying to do here versus, you know, any other place, you know, ‘cause I understand Oahu right now is working on one of their bills and they’re putting 10,000 into their bill, and that’s fine, you know, and Oahu’s different than Maui and I don’t like to march to their beat. We march to our own beat here. So…and I think the Members have to agree that 1,000 is more applicable to here on Maui County. So, I will open up the floor for questions for Mr. Eng or any other discussion. Mr. Molina, followed by Ms. Baisa.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman. Good morning, Mr. Director. Looking at or hearing your statements I have concern with the minimum being, you would suggest 5,000 and that, I guess, our general rate customers would be subsidizing if we go as low as 1,000. So looking ahead because if we drop it down to 1,000, so will the next Council then have to consider maybe a higher rate increase from the Department as a possibility to balance things out and, as you’ve said before, to keep the lights on and so forth for the Department? Is that a reasonable conclusion?

MR. ENG: Thank you, Member Molina. You know, unfortunately, we don’t know what the outcome of this bill will… but I guess, again, I do want to protect our general rate customers, you know. I guess I could give you an illustration. In this new fiscal year, we requested and got approved a… about a seven point… 7 percent revenue increase. In the amount that we currently subsidize of about $2.8 million per year or the general rate customers subsidize, that comes out to about 6.2 percent. So, therefore, about 90 percent of that revenue increase could be attributed to, to the subsidy. And, again, we support ag and we support a reasonable amount of subsidy. We just don’t want it to get out of control, because we, we don’t budget for anything that, that unexpected. So that is our, our concern is it could possibly open up the floodgates and we wouldn’t be prepared for it. But that’s the only comments I have on that.

COUNCILMEMBER MOLINA: Can you clarify what, what you mean by opening up the floodgates to, to what?

MR. ENG: Well, $1,000 of income isn’t really a whole lot, you know, I think a number of creative backyard growers can find a way to show on, on their general, general excise tax statement $1,000 income that could possibly qualify them for these ag rates. And, you know, we want to do all we can to eliminate any potential abuses. Even, even currently we do see some questionable applicants and we have to make a hard decision. And so we thought the biggest…the best criteria to help us in our decision is to have a a reasonable amount of, of income, and we just currently believe that $1,000 is way too little. I know, as the Chair
indicated, Oahu’s looking at something and we don’t have to go by what they’re doing, but even the Big Island board is toying with ag rates. Now their ag rates themselves are quite a bit higher. They pay something...because they pay power cost adjustment factor, I believe their current ag rates are in the order of $2.70 or $2.80 per, per 1,000 gallons. And, and I know they are looking at some definite income minimums also much greater than $1,000. But, again, it is your decision. I just really, for the record, want to state the Department’s position. Thank you.

COUNCILMEMBER MOLINA: Okay. Thank you for adding a lot of clarity or muddling the matter up a little more...(chuckle)...but, but I appreciate it because I think we have to balance the perspective of the Department with that of our farming needs as well. So, boy this is a tough one, Mr. Chairman. So I’ll just kind of state my concern with the, the low...really low amount. I think, Mr. Chairman, you had proposed 2,500 before. I don’t know if that’s the direction we may have to reconsider. But I’ll, I’ll leave it at that and hear what my other colleagues have to say about this. Thank you.

CHAIR VICTORINO: Thank you, Mr. Molina. And again, like I said, you know, we’ve toiled with this for...this is the eighth meeting we’ve met on this...so...and we’ve taken numbers from 10,000, 20,000 down to now 1,000, and whatever the Committee decides is what we’re going to bring forward. But I’m going to say today, I’m in the resolve of bringing something forward. We’ve worked hard to this point. I just need to get this in my mind, we need to get it forward ‘cause a lot of people are waiting for it. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. And I realize the angst that you have over the time that this has taken, but I think it’s been a really good thing ‘cause I think that we’re going to wind up with a bill that most of us can live with. I understand the Director...the Water Director’s concerns about subsidies. But, you know, we do subsidize a lot of the services that we provide in Maui County. So while that’s, you know, sad that it’s about farming, but we do subsidize everybody. We subsidize rubbish pickups, we subsidize free tennis courts and swimming pools and the golf course, and all kinds of things. So the subsidy part doesn’t bother me too much. I’m perfectly happy with the $1,000. I think that it is much more defensible in light of following the U.S. Department of Agriculture guidelines. So that makes it simple. I’m very happy that you were able to justify the 22,000 square feet with the community gardens, ‘cause that, of course, was a concern. We wanted to make sure that they were covered, and apparently they are covered, more than covered from what I see in this drawing. The only area left for me that I want to talk about a little bit is on Page 3 of the bill, right at the very top of it, Item C where you talk about the nonprofit organization who may qualify for ag water rates for a given year, and talk about having their Form 990-T showing the organization’s annual agricultural charitable donations to be at least $1,000. Did we have...do we have any examples of a nonprofit organization who might benefit from this section?

CHAIR VICTORINO: Mr. Eng, do you...
MR. ENG: Mr. Chairman, I'm not aware of anything. I believe this...did this come from one of the testifiers who indicated that some of his surplus or un-sellable products he would donate and, and, therefore, would need some kind of evidence? And I think...

COUNCILMEMBER BAISA: I understand the need for the evidence. I'm trying to figure out who this might apply to.

CHAIR VICTORINO: Well, Ms. Baisa, maybe in the areas like The Maui Farm, these are people--what's his name?--Mr. Bode has a...where he produces and donates a lot of the stuff. I don't...Mr. Kaho'ohalahala could help with the name, and it slips right off the top of my head.

COUNCILMEMBER BAISA: I know it came from somewhere--

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: --so I'm wondering in the, you know, the formulation of the, of the specification in the ordinance, did somebody lobby for this and do we know who it is? I'm just curious because the nonprofit organizations are generally the recipient of the donation and it's not very common that they're making donations. That, that's why I'm interested.

CHAIR VICTORINO: Mr. Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Yeah. Chair, you are correct, The, The Maui Farm is one of those places.

CHAIR VICTORINO: Yes.

COUNCILMEMBER KAHO'OHALAHALA: They are in fact trying to, as part of the farm, encourage their clients now to, to be involved in farming, and their...the products that they're, they are producing is being outlet and...to other entities. But the extra food that they get, they also donate that to, to the Food Bank as an example. So this is a nonprofit--

COUNCILMEMBER BAISA: Right.

COUNCILMEMBER KAHO'OHALAHALA: --that is supporting other nonprofits, so.

COUNCILMEMBER BAISA: So, Mr. Chair?

CHAIR VICTORINO: Go ahead. Go ahead, Ms. Baisa.

COUNCILMEMBER BAISA: So it appears then that we'd be talking about somebody like The Maui Farm that would be making charitable donations to like the Maui Food Bank and they would have receipts of those donations?
COUNCILMEMBER KAHO‘OHALAHALA: They would have receipts of their donations, yes.

COUNCILMEMBER BAISA: Okay. Now the reason why I bring this up is in the initial discussion we had about the income requirement, we had people saying, well, we donate to the Maui Food Bank, and so how do we get this $1,000 credit, and then there was the whole other issue of barter. So if we’re going to extend this privilege only to nonprofits, that’s one thing, but then is it going to raise the issue of people who say I also want credit for the $1,000 that I donate to the Maui Food Bank instead of having cash income. So that’s the last remaining issue for me, and if we can solve that, then I think this is ready to go.

CHAIR VICTORINO: Well, I can maybe answer that, Ms. Baisa.

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: Because on the, the Federal form there is a part for your business expense which is under farm donations, which would be inclusive of that. Because when I asked the Farm Bureau about that, they said if you donate food, you can write it off. So that is on your Federal form that you file with your taxes. So if you are donating food when you file your, your--whatever the form number is--Ms., Ms. Willenbrink, do you have the number of the form?

MS. WILLENBRINK: Would that be the Schedule F?

CHAIR VICTORINO: The Schedule F, yes, thank you. On your Schedule F--and I think you guys have copies of that in your binder--there is donations made and food is a part of that. So that would incorporate, incorporate that part.

COUNCILMEMBER BAISA: So there would be no problem with a person who could not show $1,000 worth of income, but could show that they donated $1,000 of produce or whatever it is, farm products, to, to the Food Bank or to some charitable organization, like maybe to the shelter or wherever people need food?

CHAIR VICTORINO: As best I can see, yes.

COUNCILMEMBER BAISA: I just want to be really clear, 'cause I don’t want it to come up on first or second reading. I think we better settle it now.

CHAIR VICTORINO: Because it says here, a copy of the...okay, if you read Page 2, No. 1, A copy of the consumer’s filed State of Hawaii, Department of Taxation, General Excise, Use of Tax Return, Form G-45, for the period preceding date of application would be, would be...a copy of the consumer’s filed with the Internal Revenue for profit and losses from Schedule F; and described as a commercial and operate...a commercial agricultural operation includes, and then you have all the other things down below that, and on the Schedule F there is a portion, it says donations. So it is there on the Schedule F.
COUNCILMEMBER BAISA: Chair, we had the discussion earlier in this meeting about expenses. A donation is an expense, it isn't an income item.

CHAIR VICTORINO: No. No, no, no, no, no. Now, now...okay.

COUNCILMEMBER BAISA: Oh, yes. Donation is listed as an expense.

CHAIR VICTORINO: Ms. Baisa, we'll take a five-minute recess. . . .(gavel). . .

RECESS: 9:27 a.m.

RECONVENE: 9:38 a.m.

CHAIR VICTORINO: . . .(gavel). . . Thank you. The meeting of the Water Resource Committee will reconvene. Thank you to the Members for allowing some time to go review some of the items of discussion and to look over the non-cash charitable contributions. But before I do that, with your permission, with no objections, I'd like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: . . .(chuckle). . . Okay, thank you. So at least that one's out of the way. Okay. Thank you very much. All right, Ms. Baisa, we'll go back to your question and I'll ask Mr. Eng to give his best interpretation to the question, and we'll go from that point and we'll open the floor for discussion. Mr. Eng?

MR. ENG: Okay. The question is how do we deal with those who want to donate any of their products to some charitable or organization, and in the current draft it, it does deal with and address if you're already a non, not-for-profit organization providing a donation. There's a form to verify the amount that is being donated. I think the question posed to the Chair is what about for...a, a for-profit organization or just an individual. How that would happen is--I understand taxes and I do prepare my own income taxes--is any individual can file a Form 8283, that's IRS Form 8283, entitled "Noncash Charitable Contributions"...in which if you have a non-cash item such as excess produce and you want to donate it to say The Maui Farm...Food Bank, you can do so and you claim it on this form. And then, therefore, this would entitle you to--I forget what schedule it is--but it is your itemized deductions and, therefore, it would reduce your taxable income so you would get a, a benefit in the income taxes you would pay. So that's how the...any individual can benefit by donating any of their products. But that does not necessarily, necessarily entitle them or qualify them for ag rates, but they are benefitting in the income taxes, and that's my understanding. Thank you.

CHAIR VICTORINO: Thank you, Mr. Eng. And, you know, when I look at this, this over as far as the Section 1, where you get down to the line, "whose minimum gross income from such activities is $1,000"...I think Ms. Baisa's question is donations are generally considered expense not income, although you, you subtract that from your income to get that net income or your net revenue for
your business. I think this is how this is done according to whatever I’ve learned in business. So a donation then becomes a net income. So, Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. You know, I don’t know how this thing evolved in regards to the nonprofit organizations. In regards to the ordinance itself, you know, we’re making it so tight that I don’t know if it’s workable for the Department, and maybe Mr. Eng can give us some insights in regards to C--and I don’t know who proposed this here--in regards to the nonprofit organization, they qualify. Maybe the person can explain to us why. But I...I’d like to hear from the Director in regards to C.

MR. ENG: Mr. Chairman?

CHAIR VICTORINO: Okay.

MR. ENG: Member Pontanilla, yeah, thank you for bring this matter up. I do have...

CHAIR VICTORINO: Okay. Before we do that, Mr. Eng, hang on a moment. Because I know what we’re getting into is confusion now, okay. What Ms. Baisa is referring to is donations by a for-profit farm. Am I correct, Ms. Baisa?

COUNCILMEMBER BAISA: Or an individual --

CHAIR VICTORINO: Or individual. Yeah, okay. Okay.

COUNCILMEMBER BAISA: --who is not a for-profit.

CHAIR VICTORINO: All right. And, and, Mr. Pontanilla, you’re going into --

VICE-CHAIR PONTANILLA: Oh, okay.

CHAIR VICTORINO: --the nonprofit section, yeah?

VICE-CHAIR PONTANILLA: So let me put it this way then...

CHAIR VICTORINO: So I’m, what I’m trying to do is keep them separate, if I may.

VICE-CHAIR PONTANILLA: Yeah, let me put it this way.

CHAIR VICTORINO: Okay, go ahead.

VICE-CHAIR PONTANILLA: Any business that provide goods to a nonprofit, like Mr. Eng said, can fill out a form like this and get credit for that exemptions. On the other hand, on the receiving end they, they need to also put in their income tax forms receiving of goods. So, I don’t know
how this inclusion of Form 990-T got in...got involved in this whole process. I'm so confused right now in regards to, you know, what we’re doing.

CHAIR VICTORINO: Okay.

VICE-CHAIR PONTANILLA: So that’s my comments to you.

CHAIR VICTORINO: Okay. And, and I thank you. And, and sometimes this occurs when we’re trying to...we’re talking about a...you know, we’re talking about this and then we all of a sudden shifts over to another subject matter. So let me go back and let me try separate the two if I may and then, you know, if you still have questions. The nonprofit farming really came forward because of The Maui Farm and some others who claim that they’re doing it for a nonprofit purpose. The Maui Farm is one and there’s a couple others that have discussed that matter with me and I think with Mr. Kaho’ohalahala. And I said, oh, yeah, that makes it a separate entity. They’re growing to donate. They’re not growing for profit or make money, they’re donating what they grow. Okay. So that was, that was that subject matter. That’s why that was included. The other one that Ms. Baisa has brought up is because one of our testifiers came forward and said, oh, I get...what if you get extra bananas and I can’t sell it at the market or the market will take instead of 2,000 pounds, will only take 500 pounds. Now I’ve got 1,500 pounds and they tell me, we don’t want it, it’s your kuleana, right. So he turns around and took it down to, say example, the Maui Food Bank and donates it to them and they give him a receipt, which if in my mind--and, and I’ll, I’ll stand corrected if somebody can say I’m wrong--you, as a business, would then put it under that donation form, that Form 8283, Cash to Charitable Contribution...Noncash Charitable Contributions. ‘Cause I have done that, I have done that with, with items at home which I have donated to others. So that’s the two separations now. Now the charitable group that’s receiving this normally has to file with the IRS what they receive because they then turnaround and give me, and I know for example, Boys and Girls Club, they give me a receipt every year, every time I drop off something, whether it’s clothing, whether it’s appliances, whether...not cash, all non-cash, which then I file on this form. So am I trying to, are we clear on what I’m trying to say, the two separations?

VICE-CHAIR PONTANILLA: Yeah, I think you’re clear.

CHAIR VICTORINO: Okay.

VICE-CHAIR PONTANILLA: So Item C for those nonprofit organizations that are...that qualify for this thing here...and, and the reason this thing is here is for that nonprofit organization or organizations give them the opportunity to receive ag rates?

CHAIR VICTORINO: That would be correct if they qualify and they are actual farming and they’re donating. They’re not selling now, they have no gross income, they’re making donations to the various...whether it’s Food Bank or whomever.
VICE-CHAIR PONTANILLA: So, I’m assuming that they have ag plans that is required by the Planning Department?

CHAIR VICTORINO: And, and I’m going to say by, by Planning yes, you know, they would--that’s a separate issue, Mr. Pontanilla--but yes, they would have to have had that if they were trying to qualify under agricultural and getting agricultural rates for real property, for that example, or whatever. Yeah.

VICE-CHAIR PONTANILLA: Mr. Kushi, I look at you, you get some concerns in your face.

CHAIR VICTORINO: Okay, Mr. Kushi. But before I recognize you, Ms. Baisa wanted to say something. But go ahead, Ms. Baisa, and then I’ll recognize you, Mr. Kushi.

COUNCILMEMBER BAISA: I think the point was lost as we moved on, but the point I was trying to make was let’s try to go back to what you were trying to explain what…where the issue came up. I am Joe Average Citizen, I have a very large garden, I donate what I cannot or do not sell to somebody and they give me a receipt and I have $1,000, okay, I gave them something worth $1,000. There is also an income part to that equation, ‘cause I cannot deduct my $1,000 unless I got it or I have the value. So there’s income and expense. But I think what we’re…what, what people would want to do is document that they were able to raise $1,000 worth of food and then donate it. So it’s really a zero entry as far as taxes go, but they have to verify both ends that they got it and that they gave it. And but this qualifies them, if we included them, for ag rates because they have $1,000 worth of business going on, on their little back farm or whatever it is, and I think that’s the issue. We’re…according to the way we have this now and if this is the way the Committee wants it and we just need to be very sure the parameters of what we’re doing, from what I can see here we are saying now we want to afford a nonprofit organization who farms and who donates at least $1,000 to the Food Bank or whoever they give it to, some charitable donation that is qualified by IRS, qualifies for, for ag water rates. That’s, that’s in the ordinance. Where we are saying you do not qualify because it’s not written in the law right now as we have it, is that if you are giving away $1,000, it does not count towards your gross annual income of $1,000 that qualifies you for ag water rates. This is as the ordinance stands. And I just wanna make sure that we’re all very clear what we’re passing so that when this goes out of our Committee to first reading, we won’t run into this mess again. I think we all need to be really clear exactly what we’re saying.

CHAIR VICTORINO: Okay. Mr. Kushi, I will allow you now because you’ve heard all the different dynamics. If you would now, please, address what we’re trying to accomplish here.

MR. KUSHI: Mr. Chair and Member Pontanilla, I don’t know where to begin, but…

CHAIR VICTORINO: . . .(chuckle) . . .

MR. KUSHI: And I, I regret looking at you.
COUNCIL MEMBERS: ... (laughter) ...

COUNCILMEMBER BAISA: Ooh.

CHAIR VICTORINO: This is heavy now.

MR. KUSHI: To, to Pontanilla, not to you, Ms. Baisa.

CHAIR VICTORINO: Okay. That’s...

COUNCILMEMBER BAISA: Thank you. ...(chuckle) ...

MR. KUSHI: But as I understand the bill as, as revised and as evolved, the Section C about nonprofits, it was like a throw-in by the Committee based on testimony I don’t remember from who, but...and, and this will only address nonprofit organizations whether they be a 501(c)(3)s or just an, an associated organization not for profit, and it has nothing to do with the minimum annual income requirements. It just was a throw-in to say that if a nonprofit organization can show charitable...agricultural charitable deductions of at least $1,000 for a particular year, they may qualify for ag rates for that particular year regardless of the income requirements. Now again, you know, please understand nonprofit organizations make money, they make income, they just can’t distribute profits...and so they have a balance sheet. So that’s my understanding. As drafted, the concerns of Ms., Ms. Baisa about Tom, Dick, and Harry’s who are not nonprofits are not addressed, they wouldn’t qualify. They would have to just go by the agricultural rates standards. But they have some exemptions and waivers also, acts of force majeure, if they have, you know, baby crops that won’t be produced for three or four years, they can qualify under those issues. But their charitable organizations are deductions off their annual, annual income, income to reach the net annual income, not the gross. I think the...that perhaps the confusion as I recall was former Member Dain Kane’s testimony. He’s not the gentleman farmer in that sense—he is a gentleman—but anyway, he, he brought up the situation or example of...he donating some bananas. Now whether that can be counted as income, I mean that’s, that’s not my understanding of the tax laws. So then, I guess, it...that analogy was applied to a nonprofit situation. But in any event that’s, this is what is before you. Again, you know, you could amend this section, you could be all inclusive and include everybody who donates regardless of their status, nonprofit or not. How the Department would deal with it is, is another question. And, and frankly, from a perspective of just donations by a, you know, a for-profit person or just an individual...if I had a big lot in Wailea or Kihei or Lahaina and it just cost me $1,000 to get ag rates, I’d do it—you know what I mean?—and, and I’d run up the tab over $30,000 [sic] every, every two months and I’ll get a deduction too. So, so again these are the issues that you guys use the term “unintended consequences” that may flow from this. That’s all, Mr. Chair. I think that’s enough.

CHAIR VICTORINO: Okay. Well, thank you and, and at least you brought some clarity to, to, to the issue. So, Mr. Pontanilla, then Ms. Baisa. Go ahead.
VICE-CHAIR PONTANILLA: Thank you, Chairman. I just want to thank Mr. Kushi for providing us that comments and, you know, the last statement that he made, you know, it kind of concerns me...and, you know, I see the Director nodding his head. You know, prior to we coming to Item C, the Director talked about the ratepayers subsidizing, you know, ag rates. And if we were to open up the flood gates, can you imagine how much more rate increases and, and the rate of the increases going to be? So, you know, I, I leave it, you know, I leave that comment to all of us here this morning, because I know the Director and, you know, I still want to hear from him in regards to, you know, this particular Item C and, and what it’s going to do to his Department. Somebody gotta administer this thing. And, and, you know, my previous statement about trying to make it so tight that, you know, I, I don’t think that the Department can really administer this particular ordinance that we have today. I’m fine with everything else. I’m fine with everything else that’s in there. Thank you.

CHAIR VICTORINO: Thank you, Mr. Pontanilla. Ms. Baisa?

COUNCILMEMBER BAISA: Chair, really nothing, nothing much further to discuss. I think we understand what is before us, that we’re affording some courtesy to the nonprofit organizations that qualify. We are not offering the same opportunity to everybody. And one of the reasons, of course, and I certainly understand is that while we don’t mind subsidizing the people that can come up with the $1,000, we just cannot, you know, open it to everybody because otherwise the subsidy becomes unrealistic and unmanageable. So, I think I’m clear.

CHAIR VICTORINO: Okay. Thank you. Mr. Mateo, you indicated you wanted to say something?

COUNCILMEMBER MATEO: I, I ditto what, what Member Pontanilla just, just, just stated. And I think listening to the discussion, I, I think it might be better for us to really take a look at Item C whether we want to leave it in or just get rid of it at this point and just move the bill forward without Item C. Thank you.

CHAIR VICTORINO: Okay. Thank you. Mr. Kaho‘ohalahala?

COUNCILMEMBER KAHO‘OHALAHALA: Yeah. Well, first of all, Chair, I want to advocate for C because it was testimony that came forward to us in this process by many of those nonprofits that was seeking to at least get some support in reduced water rates. Secondly, this idea of subsidy, I think I made comments earlier in this process is that when we look at what we’re talking about in subsidy, we’re actually supporting farmers. That’s what...when the Department says we’re subsidizing, what we are doing is that we’re supporting agriculture and that’s why we’re giving them those kinds of rates. So to leave the idea that somehow we’re subsidizing people in, in a manner that’s going to be penalizing the general public is, is far from the truth. I want to say that it is a support to agriculture that we’re talking about, not a subsidy for something that we feel that we get no benefit from. And why would we support agriculture is to make sure that agriculture is a vital part of our community and we have farmers that will continue to grow food that will continue to provide us sustenance, and that’s what we’re talking about. So, I want to clarify that. I think the issue that is before us right now is that--and I would agree with the, with
the explanation given by the Corporation Counsel—if we’re, we’re mixing two kinds of fruits here, apples and oranges, the nonprofits are a standalone. If they are in their organization, they have the ability to grow food and they are making these kinds of contribution, then we should support them in terms of reduced water rate. If you’re looking at the commercial entity and that person who has now flooded the market from, from their own produce and cannot sell them and is giving, they have an ability here to get benefit from that. And by providing them with these kinds of tax breaks by the IRS, they are going to benefit from that and they will get credit in the way that they’re used to. But now they’re trying to say that well, with that credit, maybe we should use that as, as a contribution or a donation so that now I can get a second benefit which is to get a reduced water rate. That’s where I think we’re mixing apples and oranges. So let’s keep the nonprofits where they are, because that was the true intent of this bill was to include them and not mix the. . .(chuckle). . . I going call ‘em oranges, into the, into the pot. And that’s what I want to say, the bill is moving in the right direction, just that we’re trying now to mix these two and they’re not coming out right. So, I wanna support what we have currently, because we have a need to support our nonprofits. The Waikikena Foundation is one of them, The Maui Farm is another one of them. The BEST Program is also talking about being able to, to have that component to, to grow their food. So, so as nonprofits move forward and they’re meeting this kind of criteria, then they should get the benefit of helping them along so, and I think that, that’s why this language is being offered and I would support that.

CHAIR VICTORINO: Thank you. And Waikikena is the one I was trying to—that’s Bode, right--

COUNCILMEMBER KAHO’OHALAHALA: Yeah.

CHAIR VICTORINO: --Mr. Alex Bode, yeah. So that’s the one I could not remember. I apologize. Mr. Molina, you have something you’d like to say?

COUNCILMEMBER MOLINA: Yeah. Question for the Director.

CHAIR VICTORINO: Go ahead. Mr. Director?

COUNCILMEMBER MOLINA: Mr. Director, just if...the concerns with related to C, would it help if the language was tightened where a nonprofit organization has to be a certified 501(3)(c) [sic]? 

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Mr. Chairman, thank you. You know, I’m not really quite familiar what an organization needs to do, but I would think because if they do have the 501(c) classification, they would be required to file this Form 990-T. You know, from your discussion this morning in regard to Item C, it sounds like there really aren’t that many organizations that fall under this category at this time, and we, really, I would not anticipate that many more, you know. So, I really don’t have a problem with Item C. The reference to individuals and for profits I would, because that would encumber the Department as far as man hours and trying to confirm donations and
contacting various organizations and recipients, and that would be a horrendous task. But Item C sounds appropriate at this time. Thank you.

COUNCILMEMBER MOLINA: Okay. So with, with regard to your concern, then how would you recommend we address, you know, that part of your concern?

MR. ENG: I would think it’s fine as it reads.

COUNCILMEMBER MOLINA: Okay. So you’re, you’re okay, for the record, with C as, as is?

MR. ENG: Yes.

COUNCILMEMBER MOLINA: Okay. Thank you.

CHAIR VICTORINO: Okay, Mr. Molina. Any...Mr. Medeiros, I would like to give you an opportunity if you have anything you want to ask, before I recognize Ms. Baisa, please.

COUNCILMEMBER MEDEIROS: Yeah, certainly. Mahalo, Mr. Chairman. In listening to the, the discussion...certainly raises some issues, and I think one is, right, whether we leave this Section C in and it apply only to nonprofits, whereas, you know, it has been brought up because the nonprofits certainly, you know, if we can help them, fine. But I, I think a nonprofit like The Maui Farm, if I’m not wrong, raises crops and produce to feed their clients, then the excess of that is what goes to another nonprofit. So they’re not growing it strictly to donate it to another nonprofit, they’re using it to feed their clients first and, and then submitting the surplus to nonprofits. So it is difficult because as Corp. Counsel brought up, there was testimony to people that are not nonprofits that, you know, would like to have the same opportunity to donate foods to nonprofits and get a value credit for it that could be applied to their $1,000 thing. So it is difficult to decide, you know, if we leave C in and we do not, you know, incorporate any other individuals or entities that are not nonprofit, or do we take C out, and that’s the discussion going on. And I understand Director Eng’s concerns about the value, the $1,000 we have placed on this, because he had recommended a higher amount so that it would lessen the cost to the regular ratepayers. So it...it’s hard to come to a total and, and clear conclusion what would work best, but I, I think the discussion has been helpful. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you. Ms. Baisa?

COUNCILMEMBER BAISA: Back to Member Molina’s question. An organization filing a Form 990-T is most...I can’t imagine that they would not be a tax-exempt organization. If you wanted to tighten it up, you could also include an IRS determination letter, and that is the letter we get as a nonprofit from IRS saying you are tax exempt, and they cite the section of the Code under which you’re exempt. Most charitable organizations are 501(c)(3)s, but there are other sections of IRS which, which make you tax exempt, and I’m not sure how...what section organizations that do agricultural pursuits are...is exempt under. But I think the 990-T is, is an adequate requirement. The other thing I wanted to comment on was the idea of nonprofits growing
produce. Nonprofits could grow produce for many reasons and they could also be selling it and then maybe donating the excess to a food bank or wherever. I know we have an organization here on Maui that raises produce and they sell some of it to Whole Foods, and the reason for that, of course, is to have income for their organization. So, you know, it isn’t that they necessarily grow and give away everything they grow. They probably sell some, use some and then donate excess.

CHAIR VICTORINO: Thank you. I think I’ve come to a point where I see there’s just really one dynamic right now, okay, whether we should leave C in or take C out. Okay, I think that’s what I see right now...oh I see a lot of C’s in front of me. Shoo.


CHAIR VICTORINO: Okay. So, you know, at the pleasure of the Committee, I will allow if somebody wants to make an amendment to remove it, fine. If they don’t and you feel like the response from the Department was adequate and that we can leave it in and move on and, and complete the task, I’ll leave the floor open to that discussion. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: After hearing from Mr., Director Eng, you know, if he’s okay with it, then fine, but don’t come back here again to complain about Item C, you know.


COUNCILMEMBER MOLINA: Ooh.

VICE-CHAIR PONTANILLA: And, and, and, you know, we all support farming, you know, and what Mr. Eng told us earlier about this subsidy, a subsidy is a subsidy, okay. Thank you.

CHAIR VICTORINO: Yeah. And, and let me say in all honesty to everyone in the room and the public at-large, you know, we want to promote agriculture and that is true, and we do subsidize agriculture like we subsidize other areas of our community which we feel is very important and very essential to the everyday well-being of this community. So yes, we will subsidize as regular ratepayers, but yes, we do it for other issues such as the parks and golf courses. So we, we do this all the time. And I think when it comes to agriculture, I, too, will say with Mr. Kaho’ohalahala that it is something that all the counties right now are grappling with, all the counties are moving to make this a reality when it comes to rates and all that. I think we’re moving in the right direction, and that’s why I really believe this discussion was great and I hope it gave you enough clarity to make a decision one way or the other. So that’s my take on all of this. And I will, I will, I will leave that at that. Unless there’s more discussion on this...oh, and, Member Jo Anne Johnson, who just arrived and is a Non-Voting Member, you want to say something?

COUNCILMEMBER JOHNSON: I didn’t want to say anything, but I wanted to ask a question, because it was one that had been asked before, and I’m...if it was answered, fine. But basically under
HRS 205--and I'm just paraphrasing 'cause this is not exact--when you are on an agricultural lot, 51 percent of the land that you’re on must be committed to farming. So because it appears that you’re going with the $1,000, if 51 percent of that lot is to be committed to farming and it’s a serious farming operation with a legitimate farm plan, how does that square with HRS 205 which requires that you have to have the majority of your land in some type of active agricultural production? And I don’t know if Mr. Kushi can answer that, but that was the one thing that troubled me about setting the limit so low at $1,000, because you can’t...you could have maybe no income because of losses. But if you’re a serious farmer and you’re meeting the purpose and the intent of HRS 205, then...what’s that about? So if I could have some kind of an explanation.

CHAIR VICTORINO: Mr. Kushi, if you would, please?

MR. KUSHI: Mr. Chair, Member Johnson, I don’t know. I just had...I didn’t look at it. I...I’m just looking at it from the perspective of ag water rates. And, and your argument sort of makes sense, but we’re just looking at the income thresholds, not the percentage of square footage. But I don’t know.

COUNCILMEMBER JOHNSON: Yeah. And, and I guess what my bigger, you know, what my basic concern goes back to is, is what we’re doing realistic given the context of the State law? I personally think that a higher amount rather than a lower amount because if there are exemptions for nonprofits. If you are a serious farmer, you’re not going to make...how you’re going to live if that’s your principal income and that’s what you’re doing as the principal use on the land? Let’s get real, that’s not...you know, unless you’re a subsistence farmer, that’s not reality. I mean, I was born and raised in Wisconsin, but I didn’t fall off the turnip truck yesterday. . .(chuckle). . .

CHAIR VICTORINO: Well, I, I thank you for the comments. But if that was reality, then why does the United States Department of Agriculture recognize $1,000 as minimum income? Now that is the branch that should understand agriculture business throughout the United States if I’m not, if I’m not mistaken. I’m not here to...while people fall out of branches and all that. Let’s keep it to the point we need to do. At this point in time, the bill was proposed based on a lot of public testimony, including nonprofits, including community gardens. We’ve taken this for agricultural rates and agricultural rates only. We’re not talking real property, we’re not talking land use, we’re not talking anything of that nature, except water rates. That’s all this issue is all about. And that’s why all of these other things are inclusive, which is not included in the Hawaii Revised Statutes. It is not that point. This is not what this is all about. It is about water use and agricultural promotion. We have small farmers. The Farm Union came and said we’ve got small acreage and we’re growing, and we need this help. So this is what this is all about. Months of testimony—that is exactly right—months of testimony is this is what is evolved from that, nothing to do with HRS. HRS, I believe in my mind, is really dictating farm, the agricultural and...I mean the land use and as well as probably real property, and that will be coming very soon to us in that form, but that’s another issue and another conversation.
COUNCILMEMBER JOHNSON: Yeah. Thank you, Mr. Chair. I appreciate that. And what I’m looking for is because the subject matter, in the past we had the definition of agriculture basically as an overarching definition. The Mayor, who was on the Council at that time, made a pledge that we would deal with the definition of agriculture. I want to be consistent. That item got filed and it never got dealt with. So, I understand what you’re saying, but in the best of all scenarios our laws, whether it’s an ordinance that exists in Water, whether it’s an ordinance that exists in another department, we always strive for consistency. And I’m saying that given what the other laws are, the unintended consequences that if you set precedent in one area, it will carryover into another area, and that’s my point. I understand what you’re doing. I’m not disrespecting little farmers, that’s not the point. The point is when you, when you make a decision it, it sometimes spills over into other areas and has an unintended consequence of setting a precedent for the definition of agriculture. You may...you’re not doing that, I realize. And I’m not even a Member of this Committee. I’m not trying to throw a monkey wrench into the works, but I’m...ultimately it may fall to someone else after me. But whoever deals with the Committee work as a part of economic development as a definition, a land use definition, and a definition of agriculture in our ordinances, we should always strive to be consistent. That’s the only point I make. You guys are going to do whatever you’re going to do, and then I will choose whether or not I support it at the Council level or do not support it. That’s my prerogative. But I’m not telling you what to do. I’m asking a question in the context of the bigger picture, because this is critical to water, but it also spills over into other areas that may or may not have anything to do with water. ‘Cause there are some crops, believe it or not, that require little or no water. So there you have it. Thank you.

CHAIR VICTORINO: And, and I will thank you, Ms. Johnson. There have been efforts by the various groups—if I’m not correct, Mr. Eng—by yourself and your Department with Real Property and also Planning to work together to formulate a concurrent definition of ag. Okay. They have been working on this. They realized—and I think, Mr. Eng, you can correct me if I’m wrong—that there are points where water, land use, and real property separates, they go on different paths at that point. And that’s why this has been incorporated the way it has. And very soon, and I think in Budget and Finance if I’m not mistaken, Mr. Pontanilla, a definition of ag is being brought forward by the Finance Department. And I may be wrong, but this is what I’ve been told by, by the Finance Department, because they realized they need to get something done, too. But the point I’m trying to make at this, this juncture, the unintended consequences that you’re referring to, I still do not believe will have any bearing on this water rate setup for agriculture, for agriculture consumers. That is my total belief on that. And I use what the public has said, what the United States Agriculture Department has said. I’ve tried to keep it focused in this area. I included the nonprofits, I included the community gardens, because they came forward and they are sustenance farmers who do it for no income, they do it for family use and all that. And I said, yeah, I think that...that’s reasonable, so we included that. Would that be included in, in HRS, 51 percent use of the land? I believe in the community gardens probably, but maybe not some others. I’m not sure on, on the nonprofits. So, I will say the bill that’s before us to be moved out today is the bill that we have worked to get to this point. And unless I hear other comments, I’m going to make my recommendation to the Committee. Mr. Kaho‘olahala?
COUNCILMEMBER KAHO‘OHALAHALA: Yeah. Thank you, Chair. I appreciate what Member Johnson is bringing in and, and I don’t know how...if, if some kind of statement in here makes reference to State, State law, you know, so that we’re acknowledging the fact that that does not preclude that as, as its current definition for, for ag. Chair, but I would like to also ask for consideration on Item D of the bill, and this is where we’re saying that, The parcel owners of a community garden may qualify for ag water rates by submitting annual written application. What I would like to offer is that if we could amend that to say, “The parcel owner or its lessee”, because remember, a community garden may not be the owner of that property, but they’re leasing that property to, to have a community garden. And if we leave it the way it is, then what we’re saying is that it only goes to the benefit of the, the parcel owner and yet the water bill may be being paid by the lessee. So, so I...I’m just asking that consideration.

CHAIR VICTORINO: Mr. Eng or Mr. Kushi, would you like to address that? I think this...that basic question came up somewhere in these discussions earlier.

MR. KUSHI: Mr. Chair, Members, Kaho’ohalahala, currently if a lessee applies, not the parcel owner, what the Department does is contact the parcel owner and confirm his, his permission, and in some instances they pay a six-month’s deposit. So it, it is allowable. But if you want to put it in, that’s fine.

COUNCILMEMBER KAHO‘OHALAHALA: I think just to...just...

CHAIR VICTORINO: Mr. Eng? One moment, Mr. Kaho‘ohalahala.

COUNCILMEMBER KAHO‘OHALAHALA: Yeah, go ahead.

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Thank you, Mr. Chairman. Yes, I...my memory kind of recalls language somewhat like that. Basically for a lessee we contact the parcel owner to even have him held responsible for paying the bill in case a lessee or renter backs out. So we have language to cover that.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. So is, is this then inclusive of the lessee? Is that what you’re saying?

MR. ENG: I would say your recommendation would be, would be suitable. Yeah.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Then I would like to offer that then, Chair, as an amendment to the...this current language. And is, is just a statement like “or its lessee” an appropriate amended language?
CHAIR VICTORINO: Mr. Eng or Ms. Willenbrink, if we added "the parcel owner or lessee", would that be appropriate of the community garden?

MS. WILLENBRINK: Mr. Chair, I agree that it's probably already covered in the Administrative Rules which are being codified at this time. However, for more clarity I think it would be fine, but if you would like a final opinion from Corporation Counsel, I might recommend that.

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: Yeah. Mr. Chair, I would suggest the following --

CHAIR VICTORINO: Okay, go ahead.

MR. KUSHI: --to state "The parcel owner or its lessee or licensee" 'cause sometimes they don't want to subdivide and they just license the area out, which is permittable in the ag, Agricultural zones.

CHAIR VICTORINO: Okay. Okay. Do I have a motion to amend, as stated by Mr. Kushi?

COUNCILMEMBER KAHO'OHALAHALA: So move, Chair.

MR. KUSHI: Me? I don't make motions.


CHAIR VICTORINO: Huh? Oh, yeah --

COUNCILMEMBER KAHO'OHALAHALA: Chair, I would like to...

CHAIR VICTORINO: --by recommended, recommended to me by Mr. Kushi, my recommendation is to. I'm sorry, excuse me. . .(chuckle). . .

COUNCILMEMBER KAHO'OHALAHALA: I so move.

VICE-CHAIR PONTANILLA: Second.

CHAIR VICTORINO: Okay. It's been moved and seconded, by Mr. Kaho'ohalahala and seconded by Mr. Pontanilla to add the verbiage: The parcel owner or lessee or licensee of a community garden may qualify for agricultural rates by submitting an annual written application to the Director, with the following information, da, da, da. Any discussion? Seeing none, all those in favor of the amendment, say "aye".

COUNCIL MEMBERS: Aye.
CHAIR VICTORINO: Opposed? Okay.

VOTE: AYES: Chair Victorino, Vice-Chair Pontanilla, and Councilmembers Baisa, Kahoe‘olahala, Mateo, Medeiros, and Molina.

NOES: None.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment.

CHAIR VICTORINO: Anything else? Yes, Mr. Kushi.

MR. KUSHI: Yes, Mr. Chair. If nothing else, the Department and our office would have one concern on Page 3 of the bill, Section 5 --

CHAIR VICTORINO: Okay.

MR. KUSHI: --which reads: “This ordinance shall take effect upon its approval.”, so that everybody understands and the Department can implement this. Currently there are ag water use...water consumers who have applied annually and have...they are on the books, and they have...some of them have no income requirements. Now when this bill takes effect, then the income requirements would apply. So as to, to consideration of those already on the books, we would interpret this section to say that when they apply again next year, then the annual income requirements would apply.

CHAIR VICTORINO: Do we have to put that in there or would that be...

MR. KUSHI: No, it’s just clarification and it will be in your minutes. So it will take effect upon approval, but it wouldn’t affect the existing annual...the existing ag consumers who have already applied, but they will be applying next year.

CHAIR VICTORINO: Yeah. Any questions on that statement?

VICE-CHAIR PONTANILLA: So...

CHAIR VICTORINO: Go ahead, Mr. Pontanilla.
VICE-CHAIR PONTANILLA: Just clarification, July 1ˢᵗ, 2011?

MR. KUSHI: Whenever you pass this.

VICE-CHAIR PONTANILLA: Oh, okay. Thank you.

CHAIR VICTORINO: So whenever this would go, I guess, second reading and, and at that point in time it would --

MR. KUSHI: Right.

CHAIR VICTORINO: --yeah, and signed by the Mayor, yeah? Okay.

MR. KUSHI: Right.

CHAIR VICTORINO: And then anybody who applies thereafter, right, who are presently covered then would have to follow these requirements? Am I correct in saying that, Mr. Kushi?

MR. KUSHI: Right. Example, Mr. Chair. A brand-new potential agricultural consumer --

CHAIR VICTORINO: Uh-huh.

MR. KUSHI: --is not on the books right now. When this thing passes August 1ˢᵗ, he applies in September, he will be subject to the requirements. Kula Ag Farm, Kula Ag Farm, et cetera, ABC, they’re on the books right now, they’ve applied in April of every year. So their next application will be April 2011, that’s when the requirements to Kula Ag, ABC would apply.

CHAIR VICTORINO: Okay. Anything else? Yes.

COUNCILMEMBER KAHOʻOHALAHALA: Yeah. Chair, this is just a comment that I want to make, and that’s on the definition of community gardens. And I know that originally I had asked the Water Department too, because this was suggested language to explain why the, the area of 22,000 square feet and why the specific number of people in a community garden. And I, I just want to express my concern that I don’t know that every community garden is going to meet this as a minimum standard, and then community gardens change in size and shape depending on how many participants you have. But we fixed a number here that makes it immovable in terms of how a community garden can be described or defined, and because of this definition, I have some concern on, on that. And I just want to state it for the record that that has been my earlier concern from when this was suggested and then it’s still being incorporated into the language of the bill. And I still have concerns about that definition, because I think it’s too limiting. And then we’re using, in this case, we’re using the Haliimaile Gardens, Community Garden as the, as the standard for community gardens, and it’s, it’s to say that any other attempt to create
community gardens will not be considered if they don’t meet this standard. So I just want to, for the record, just to put my comments in that, yeah. Thank you.

CHAIR VICTORINO: Thank you. Any other discussion? Seeing none, I would...the Chair would like to make his recommendation if I may.

VICE-CHAIR PONTANILLA: Recommendation?

CHAIR VICTORINO: If there’s no further discussion, I will entertain a motion to pass on first reading the proposed bill, as revised and amended, entitled A BILL FOR AN ORDINANCE AMENDING ARTICLE 1, TITLE 14, MAUI COUNTY CODE, RELATING TO AGRICULTURAL CONSUMER, and the filing of this report, 010-49.

VICE-CHAIR PONTANILLA: Mr. Chairman, I move that to first reading a bill entitled A BILL FOR AN ORDINANCE AMENDING ARTICLE 1, TITLE 14, MAUI COUNTY CODE, RELATING TO AGRICULTURAL CONSUMERS.

COUNCILMEMBER MATEO: Second.

CHAIR VICTORINO: Thank you. Let me make a correction, Committee Report 10-43. I apologize for the mistake.

VICE-CHAIR PONTANILLA: Okay.

CHAIR VICTORINO: Any more discussion? Yes, Mr. Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Chair. I, I will support this, but I do have some reservations more on the threshold, the income threshold in light of some of the concerns expressed by the Director. I guess maybe it’s the fear of the unknown. I mean, I’m not going to be on this Council next term, but if this Department comes back and asks the next Council for another rate increase, it’s again, again will be put on the backs of our consumers, the general rate customers. I can’t recall how many years in a row we’ve approved increases for the Department, but in light of the times that we live in, how much more can our general rate customers take in terms of increases? So that is where my concern lies. You know, I think that we’ve come down significantly from the original threshold that was proposed, $10,000. I think the Maui County Farm Bureau proposed at one time 20,000, we brought it down to ten, then we brought it down to five, then more recently, Mr., Mr. Chair, I know you proposed 2,500. Maybe that might have been a fair compromise, but, you know, you’ve also mentioned the Farm Bureau, U.S. Farm Bureau have recommended 1,000. And as Mr. Pontanilla stated earlier, a subsidy is a subsidy. And, you know, we all want to support ag, but there is a limit on who it’s going to impact and the unknown consequences way down the road. So that is where my reservations lie, but I guess for the sake of moving something out of Committee and I’m sure we’ll hear comments as assuming this gets out of Committee and it gets to the Council. But, you know...those of you who’ll return and if there is another proposed increase from the Department as Mr. Eng had stated, 90 percent...
of this last 7 percent increase went towards subsidizing, I guess, was it ag rate consumers. So, you know, it’s just something to keep in mind and you having to respond to the consumers or to our constituents out there down the future if you are going to raise water rates again on the general rate customer. So, I’ll just state that for the record. So I’ll support, but with reservations. Thank you.

CHAIR VICTORINO: Thank you. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I think this has been a very productive morning. We’ve had quite a few meetings, but I am comfortable with what we’re passing out of Committee today, and I certainly understand the concerns that are raised about rate increases. But I also am comfortable with the idea that this is an attempt to create a law that’ll work, and some of us will be here next year, we hope, and if we are or we aren’t, the Council that is here will have the opportunity to amend this bill if it turns out to be something that’s detrimental. So in support of agriculture…I come from that area, that’s the area I represent. I certainly wish all of our ag consumers the best and I hope they do very well in producing lots and lots of money and that this $1,000 becomes ridiculous. Thank you.

CHAIR VICTORINO: Thank you. Any other comments?

VICE-CHAIR PONTANILLA: Yeah.

CHAIR VICTORINO: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. You know, I’ll be supporting this ordinance. We’ve discussed this thing for many months now. And I, too, you know, agree with Member Molina in, in regards to the following years when the Water Department comes for rate increases, that hopefully it also provide us with numbers that will include the subsidies that we provide to our farming community. As he had stated, that he came in with a 7 percent rate increase and realistically he’s going to get about six, which equates to $2.8 million. So that’s $2.8 million that, you know, we take away from his opportunity to do capital improvement projects for the County of Maui. So come next year if there is a rate increase, then we should be mindful that we need to take care of supporting our farmers. Thank you.

CHAIR VICTORINO: Any other discussion? Mr. Kahoʻohalahala?

COUNCILMEMBER KAHOʻOHALAHALA: Yeah. Chair, I just want to say thank you for moving this forward, and I want to be an advocate for agriculture, and when we talk about these…the idea of subsidy, I want to be clear that this is a subsidy that’s going to go to people who are growing food. This is not a subsidy that’s going to go to filling swimming pools in ag, ag areas, and there is...therein lies the difference. And I would like to, to be an advocate that this is going to help us to be more able to provide food for our communities. Whether it’s for nonprofits, whether it’s for donations, it is still a better position for us to be growing more food and allowing more farmers to have that ability to grow food that we are in dire need of in this County as well.
as in the State of Hawaii. So this is a step in the right direction, and I hope that we will see the benefits of this planting of seeds. So thank you very much.

CHAIR VICTORINO: Thank you, Mr. Kaho'ohalahala. Any other comments from...

VICE-CHAIR PONTANILLA: One final one.

CHAIR VICTORINO: Mr. Medeiros first and then Mr. Pontanilla.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I, too, will support this, because, you know, agriculture is important for us in Maui County, and especially in the area of East Maui, there are not large farmers, but there are diversified farms and also large ranching. So it is important that we support agriculture through this means. My concerns and reservations would be the applying a, a size to the parcel used for community garden, as Member Kaho'ohalahala has stated, having no size applied to how nonprofits grow or qualify for their ag water rates; and also reservations of Member Johnson's presentation or, or concern about HRS 205. So there are some reservations on my part, but I am a strong advocate for agriculture, so I’ll support this bill for this ordinance. Mahalo, Mr. Chair.

CHAIR VICTORINO: Thank you, Mr. Medeiros. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. In regards to comments by our West Maui Member, you know, I agree that anybody doing farming should have a farm plan and 51 percent of the land need to be farmed, and I think it’s being implemented by our Planning Department. But more importantly, this gives an avenue for the Real Property Tax Division in, in the definition of agriculture. Thank you.

CHAIR VICTORINO: Thank you. Yes, Mr. Molina.

COUNCILMEMBER MOLINA: Yeah. For my second and last time on the motion, I wanted...because I heard it from other Members stating their support for agriculture, I guess because I didn’t say it --

CHAIR VICTORINO: Oh.

COUNCILMEMBER MOLINA: --so I’m going to state for the record, I certainly support agriculture and it’s a big part in my district, too. But you know what, Mr. Chairman, I got constituents that tell me...complain about the water rate increases, too. So somebody gotta speak up for them, Mr. Chairman, and I speak on behalf of those who have a hard time paying their water bills and other rate increases that they’ve had to deal with. We gotta be mindful of that of our working families who struggle to pay their bills. So it’s just about trying to find the right balance. But I certainly support agriculture. So, I want that noted for the record, but somebody gotta speak up for the families who get hard time paying their, their water bills, for the little guy too, so...who have to endure potentially another rate increase, whether it be from water or for our community
centers and so forth. So that’s what...that’s where I’m coming from. That’s why I stated my reservations, but I will still support the bill, Mr. Chairman. So just so you and everybody else know. Thank you.

CHAIR VICTORINO: I don’t think anyone had any doubts in our minds, Mr. Molina. But thank you for that clarification. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. And again very, very quickly, I want to say that, you know, the issue that Member Johnson brings up is a real issue and it’s been with us forever. And I really think that maybe, Member Johnson, you mentioned that that item was filed, and maybe we need to unfile that item and spend some time working on it, because it continually comes up, the definition of agriculture, whether we’re looking at planning or we’re looking at land use, or we’re looking now at water rates or whatever we’re looking at. And, you know, we had a little triumvirate of the three directors who tried to sit down and come up with something, but maybe it’s something that this Council should spend time looking at in our agricultural committee next time if we don’t get it done this year. But I think it’s important that we, we define it. Every time I see Warren Watanabe, that’s the first thing we talk about is when are we going to have a definition of agriculture. So all it would take is to create an item and maybe we can put it in Member Johnson’s Committee... (chuckle)...and she can deal with it. But, you know, it’s something we should deal with. Thank you.

MS. WILLENBRINK: Mr. Chair?

CHAIR VICTORINO: Yes.

MS. WILLENBRINK: May I just add a little clarity to this?

CHAIR VICTORINO: If you may.

MS. WILLENBRINK: I believe the item that Member Johnson was talking about stemmed from a communication about a working group that was formed in 2004, and that is exactly what this particular item came from...that, that those recommendations and that communication was pulled from the files and it is in the binder. And most of those members from that working group attended meetings here last December, we got all three departments together as well as...Economic and Develop--what’s that EOC, EO--EOC and they worked here within the Committee and on their own, and I believe those discussions are continuing and there is a movement towards one general big picture. If that’s helpful at all.

CHAIR VICTORINO: Okay. So, you know, just not to prolong this, this discussion, I agree, you know, a definition of agriculture...again, there is no way and the department says...they have said this in no uncertain term that one fits all because of the variables that are involved, whether it’s Planning, whether it’s Real Property, or whether it’s Water. I have made an honest attempt with all of your help to do something for water and water rates to define an agriculture consumer, not agriculture. I did not go into defining agriculture. I went into the definition of an agriculture
consumer for the point of water. I've incorporated or we have incorporated all these other entities, nonprofits, community gardens, even the small farmer, right, Ms. Baisa’s recommendation. I’ve used the Department of Agricultural persona as far 1,000 as their rate, even though the Farm Bureau said 10,000 and others have recommended higher. Again in the area of subsidy, I think people don’t mind subsidizing if they know food is being grown for their consumption or our consumption so we don’t have to ship in so much food or when the day comes where if there was a shutdown of our port, that we would have food for all of us to live and continues to survive on this island...so...in this County, I should say. So, I think what we have here...and I thank everyone for their manao, I thank everyone for all their efforts. I know you guys have all worked hard, each one of you brought great points. I'm not discounting any point that was made today and whether it’s from the...Ms. Johnson or from Mr. Mateo, Mr. Molina, and all inclusive, I thank you very much. But again, in conclusion, I believe this is one step in the right direction. And Mr. Kahoʻohalahala said that, this is the step in the right...it’s not the final step, it’s not the end of the journey. It’s just the beginning. And unless we take a step, we will see it back here in two weeks or next month and discuss the same thing over and over. So, I really believe this is well meaning, I think well thought out. I think it will work, but only time will tell. And whether I’m blessed to be here next time around or any of us, that remains to be to the voters and the public at-large. In the meantime, this is the step we’re going to take.

And without any further discussion, seeing none, I will call for the question. All those in favor, signify by saying “aye”.

COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: Opposed? Let the record show seven “ayes”, no “nays”. The...the Water Supply definition of agricultural consumer has passed.

VOTE: AYES: Chair Victorino, Vice-Chair Pontanilla, and Councilmembers Baisa, Kahoʻohalahala, Mateo, Medeiros, and Molina.

NOES: None.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending FIRST READING of revised bill, and FILING of committee report.
CHAIR VICTORINO: And I filed the motion, right? I did that, right? Okay, I had to make sure. Again, it’s 10:35 and I thank everybody for being here and, and again sharing. Announcements for this afternoon’s meeting? Mr. Pontanilla, your turn at 1:30 this afternoon?

VICE-CHAIR PONTANILLA: No announcement for the Budget and Finance Committee meeting this afternoon. It’s just hearing reports. Thank you.

CHAIR VICTORINO: Okay, thank you. So, I hope everyone will be here. Again on behalf of myself and the Committee, I’d like to thank the Staff, first of all, Ms. Willenbrink and Ms. Frias. I’d like to thank the Administration for being here, Mr. Eng and Mr. Kushi. I thank all you Members, Voting and Non-Members [sic], for attending today.

The 20...the June 29, 2010 Water Resource Committee meeting now stands adjourned. . . .(gavel)...  

ADJOURN: 10:38 a.m.

APPROVED:

MICHAEL P. VICTORINO, Chair  
Water Resources Committee  

wr:min:100629  

Transcribed by: Chante Diaz
CERTIFICATE

I, Chante Diaz, 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 this 21st day of July 2010, in Wailuku, Hawaii.

CHANTE DIAZ