

# PLANNING COMMITTEE

Council of the County of Maui

## MINUTES

September 26, 2013

Council Chamber, 8<sup>th</sup> Floor

**CONVENE:** 9:04 a.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Donald G. Couch, Jr., Chair  
Councilmember Michael P. Victorino, Vice-Chair (out 11:23 a.m.)  
Councilmember Gladys C. Baisa (out 9:32 a.m.; in 10:06 a.m.)  
Councilmember Elle Cochran  
Councilmember Stacy Crivello (out 10:39 a.m.; in 10:41 a.m.)  
Councilmember Don S. Guzman (out 10:38 a.m.; in 10:40 a.m.)  
Councilmember Mike White (out 10:39 a.m.; in 10:49 a.m.)

**STAFF:** Kimberly Willenbrink, Legislative Analyst  
Yvette Bouthillier, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

**ADMIN.:** Michele McLean, Deputy Director, Department of Planning  
Joseph Alueta, Administrative Planning Officer, Department of Planning  
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

Seated in the audience:

William Spence, Director, Department of Planning

**OTHERS:** Paul Laub  
Madge Schaefer  
Dick Mayer  
Joseph Mitchell  
Others (3)

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

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**CHAIR COUCH:** . . .(gavel). . .Will the Planning Committee meeting of September 27, 2013 please come to order. It is now about 9:04. My name is Don Couch and I am the Chair of the Committee. I wanna welcome the Vice-Chair, Mr. Victorino.

**VICE-CHAIR VICTORINO:** Good morning, Mr. Chair.

**CHAIR COUCH:** Good morning. Our Council Chair, Gladys Baisa.

**COUNCILMEMBER BAISA:** Good morning, Chair.

**CHAIR COUCH:** Good morning. And then Councilmember Elle Cochran.

**COUNCILMEMBER COCHRAN:** Aloha. Good morning, Chair.

**CHAIR COUCH:** Good morning. Councilmember Stacy Crivello.

**COUNCILMEMBER CRIVELLO:** Aloha and good morning, Chair.

**CHAIR COUCH:** Good morning. Councilmember Don Guzman.

**COUNCILMEMBER GUZMAN:** Good morning, Chair.

**CHAIR COUCH:** Good morning. And Councilmember Mike White.

**COUNCILMEMBER WHITE:** Good morning, Chair.

**CHAIR COUCH:** Good morning. All right, Members, before we get going, I'm gonna remind everybody in the gallery and on the floor to please turn your cellphones on to vibrate mode. And, just to let you know, while I was watching some of the meetings the other day 'cause I couldn't sleep, and even with those pads, sometimes I could hear on the air the phones buzzing, so just so you know. Kinda weird. Yeah. Yes, Madam Chair?

**COUNCILMEMBER BAISA:** I noticed that if I put it on vibrate that happens. But if I put it on silent, it doesn't even move. You don't see anything.

**CHAIR COUCH:** Okay.

**COUNCILMEMBER BAISA:** Yeah.

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CHAIR COUCH: All right. We have no non-voting members here. And from the Administration we have Michele McLean, Deputy Planning Director. Good morning.

MS. MCLEAN: Good morning.

CHAIR COUCH: Joe Alueta from the Planning Department.

MR. ALUETA: Good morning, Chair.

CHAIR COUCH: Good morning. And Michael Hopper from Deputy Corporation Counsel.

MR. HOPPER: Good morning, Chair.

CHAIR COUCH: Good morning. Legislative Staff is Kim Willenbrink.

MS. WILLENBRINK: Good morning, Chair.

CHAIR COUCH: And Secretary Yvette Bouthillier.

MS. BOUTHILLIER: Good morning.

CHAIR COUCH: Good morning. Members, today we're on item PC-33, which is Home Based Businesses. And last we discussed me kind of doing a redraft. And so we worked on that, my Staff and I worked on that, and we will be getting that to you in just a little bit. But before we go, we're gonna have testimony, public testimony. And let me get this thing fired up. All right. So we have from the Hana Office is Dawn Lono. Good morning, Ms. Lono. Is anybody there waiting to testify?

MS. LONO: Good morning, Chair. I have no one at the Hana Office waiting to testify.

CHAIR COUCH: Thank you. And from the Lanai District Office is Denise Fernandez. Denise.

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai, and there is no one waiting to testify.

CHAIR COUCH: Okay. And from the Molokai District Office is Ella Alcon.

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR COUCH: Okay. Thank you, ladies, and we'll get back to you at the end of public testimony just before we close it to see if anybody shows up, okay? All right. For the

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public, anybody wants to testify, please sign up in the back with the lady in the back, and she will give you the form. And please fill it out and get it out to us. Testimony is limited to this item only on the agenda. Pursuant to the Rules of the Council, each testifier will be allowed three minutes to testify, with one minute to conclude. And we'll be using the lighting system that the green light will go on, and then when it turns yellow that means you have one minute left of your four minutes. And when it goes to red, please wrap up your comments because that's four minutes when it starts flashing red. All right, when you're testifying, please state your name and the name of any organization, if any, you are representing. All right. We're ready to open public testimony.

***...BEGIN PUBLIC TESTIMONY...***

CHAIR COUCH: Do we have...oh, here they are, way over here. We have, Members, we have so far three people signed up to testify. First to sign up is Paul Laub, followed by Madge Schaefer.

MR. LAUB: Aloha, everybody. I'm Paul Laub and I wanted to bring up a few thoughts in regards to this to reduce confusion to aid citizens who are interested in reaching out to home businesses. A small sign that states the name of the business, hours of operation and phone number of the business may be possibly mounted near the front door of the business. And that would make it a clarity for people. Since...second thing is since people have worked out of their garages and carports that have no garage doors, businesses should not be required to be completely closed off unless there's a noise factor. This is very important for air flow and adequate ventilation. And since locals like to visit their businesses and do business in their neighborhoods, no complete restriction of customers should be required. And also, if there were no, if there were no customers nor sales, then there would be no small item repair shops in Lahaina at all. The Planning Department should not specify types of businesses. There are too many to specify and many get left out. For an example, right now, there's no zone in Maui that allows bicycle repair. But it does allow skateboard shops. Legally to have bicycle repair, one has to get a Conditional Use Permit currently. There should be no requirement on whether the home business is conducted in an accessory building or a closet or whatever. I think the homeowner can decide that. And to reduce a needless red tape and cost to the citizen and County, there should be only one type of home-based business which will cover all home-based businesses. It will not need sanction and will be controlled by existing disturbance of the peace laws. No violations equals no fouls. All scenarios will be, could be handled by the existing laws within the County and State judicial system. The Planning Department would not have to enforce, control, regulate new legislation nor hire new personnel, nor increase its budget nor workload as current laws would cover all exigencies. The Planning Committee's proclamation could simply state that home-based

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businesses are to be allowed in all residential zones that are not restricted by CC&Rs or otherwise prohibited. Thank you kindly.

CHAIR COUCH: Thank you, Mr. Laub. Members, any questions of the testifier? Seeing none, thank you. Madge, next testifier is Madge Schaefer, followed by Dick Mayer.

MS. SCHAEFER: Good morning. I thought that Brad Johnson's presentation at the last meeting was really excellent, and I think that Chair is to be commended for getting that guy over here and coming up with what really is a common sense idea. And along those lines, I know that this is going to be modified, but I thought about in the same way that Mr. Johnson was looking at this, and I thought part of the problem...oh, I need to go back. I'm Madge Schaefer, representing Maui Meadows Neighborhood Association. I'm sorry. I thought about part of the problem that maybe could be solved with Maui Meadows is the Rural zone encompasses properties from a half an acre to ten acres. And what is appropriate on ten acres or five acres is not necessarily appropriate on a half an acre. For example, the way the ordinance reads now, you can't have, you can't have kennels for dogs or cats, but you can raise hogs, chickens, you can raise cows on an half an acre, having a cow, a hog farm, chickens, a mini ranch doesn't make logical sense. So maybe the thing to do is as you're looking at this in this various zoning as Agricultural, and Rural is to separate out the smaller Rural from the larger Rural. And I think that would solve a big problem, and it's kind of a common sense way to do it. If you Google, what would we do without Google, if you Google map and look down at Maui Meadows, you will see that although they're all half acre lots, it's very dense because most of the properties have a house and they have an ohana. Now drop in a hog pen and a few cows grazing on the lawn, and you can see it creates a problem. So you can't have a couple of dogs, or you can't board a couple of dogs, but you can have that cow. So I would hope that maybe you would consider looking at separating out the logical from the illogical. And I think RU 0.5 has a different use than are RU 10 acres. The second issue is again that in the most important thing to the Association is that the serenity and the sanctity of a residential area be preserved. And I would hope that whatever new language is drafted that that's the essence, the purpose of this is to allow people to have a occupation, but to not interfere with the sanctity of a neighborhood, the character of a neighborhood. And I guess the third thing is the gentleman brought up the sign issue, and that was very important to our board when we discussed this, was that there not be signage because that brings it too much into the commercial. So those, it's difficult to talk about an ordinance that you've modified that we haven't been able to see yet. But those would be my thoughts. And again, I think this is very forward thinking, a different way to approach an ordinance. And I like it. So thank you. And I know my time is almost up, but I'd like to also say thank you to the Council for adopting the changes to the circuit breaker. There's been a letter to the editor.

CHAIR COUCH: Sorry, Ms. Schaefer. That's not on the agenda.

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MS. SCHAEFER: Okay. I'll just leave it at that. Thank you, and you know what I'm talking about.

CHAIR COUCH: Thank you. Members, any questions of Ms. Schaefer? I have one. You mentioned the sign. I know in the discussion that we have with Mr. Johnson, there's some talk about maybe a small sign on the house or the structure that has the business in it so that, and as the previous testifier mentioned, that, you know, people aren't going around knocking on all these doors trying to find the business or trying to find out when the business hours are open or something like that. Would your association be willing to accept like a two- or three-square foot on, near the entrance to the actual business so that somebody can have an idea that oh, this is the place, but it's not necessarily, certainly wouldn't be on the street or anything like that?

MS. SCHAEFER: Well, the signs are allowed for B and Bs. The signs are allowed for TVRs. Yeah, TVRs have a sign, and they have a big sign because it's gotta have the contact number and everything else. So the answer, I think, is no. We would object because then every other house has a sign. And the board felt, I can only represent what the board discussion reflected. And that was no signs.

CHAIR COUCH: Okay. Thank you. Members, any further questions? Seeing none, thank you, Ms. Schaefer. Next testifier is Dick Mayer, followed by Joseph Mitchell.

MR. MAYER: Thank you, Chair Couch. Excuse me. My name is Dick Mayer. I'm speaking on my own behalf. I sent out a letter to you all with some items and I'm hoping that you received it. The Chair mentioned just before the meeting, as the meeting started, that there's a new draft that the Staff has worked on. Unfortunately, I won't be able to see it, and I won't be able nor will any member of the public be able to comment on it. I would ask that you change your procedures, that if a new draft is going to come out on something like this, or an important addition or amendments to a legislation, that you post it at the same time you agendize it. I know oftentimes you're at the last minute. You get it done just before the meeting. But it's really important for the public to know what is really gonna be the subject of your agenda today. You'll probably be working off of that document, not off the previous ordinance. And therefore, any references that I did in my own statement I think it's really important. So I'm asking the Council, not just your Committee, all Council Committees, to just change your procedures. If you're gonna have a new draft, that you are required to be agendized six days before and indicate in your agendized notice that a new draft is available on the website along with the agenda. That'll make it very easy, and that should be fair for all the Committees and will certainly benefit the public. I don't wanna go through all of these items again. It's the same list that I gave you before of changes I think that it's intended to strengthen the bill, not to modify it significantly. For example, when you say hours of business, well many

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businesses nowadays are done on Internet. So I don't think you'd have to restrict the time people are on the Internet. Employee parking should be on the premises itself, and that should be required, 'cause you allow one employee to be there, that person should be parking on the premises. Ohanas aren't mentioned at all, and their relationship to this ordinance needs to be mentioned. Garage sales, the last time I had my list there, there should be some indication of how often they can take place so that that does not become a regular business, because that very often means multiple cars coming and crowding. This would be a good place to put it into your ordinances. With reference to the item that you had mentioned signs, I think it would be very useful to allow signs of a small nature, you know, one, two square feet, something like that, essentially a little bit bigger than this pad. This is roughly, you know, let's say a square foot, about double the size of that, that would be required for one purpose, and that is to give information that the business is there. So it would have on there the number, the street number, 1122 or whatever the number would be, and then it would say, you know, baked goods or some, one or two, just title of what the business. It should not be, and I think the wording in the ordinance should be, it should not be advertising. You're not soliciting business there, but just to give information so people can find it. It would make it very clear what you have and I don't think it would, and also it serves another purpose, and that is it helps emergency vehicles locate houses in the area. That's something that I think every house...I've been to the mainland and streets there the ordinance, city ordinance says every house has to have a number out in front. It makes it much safer for emergency vehicles, people won't go into the wrong house, et cetera, et cetera. And those are really my recommendations. I would hope that you'll be able to use the items I have here even though I have references to your existing ordinance in terms of page and line. I hope that you'll be able to transfer that to any modified form that you have today. And lastly, I just wanna, since this is the Planning Committee, I just wanna say I hope you will work on the implementation Chapter of Maui Island Plan. I know it's not on your agenda. I know I'll be stopped.

CHAIR COUCH: Yeah.

MR. MAYER: I know that. But you have the end of the year to finish it, and I hope you do.

VICE-CHAIR VICTORINO: Point of order.

CHAIR COUCH: Yes, sir.

VICE-CHAIR VICTORINO: And the man is going off on a subject, but I wanna give him a question please.

CHAIR COUCH: Okay.

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VICE-CHAIR VICTORINO: Thank you. Dick.

MR. MAYER: Yes.

VICE-CHAIR VICTORINO: Let me say this, that first of all, you're not the only one that doesn't have it 'cause none of us have it either. So if the Council doesn't get it, and the Committee doesn't get it, then how does the public? It's because of your Sunshine Law, which you guys all fight for every time, it prevents us from doing the public's work with the public. So let me tell you what, you're counterproductive in what we're trying to do here. But I'll just leave that as a statement. My question to you is when you talking numbering houses, which I think is required now anyhow, but a lot of people don't do it, by numbering it, then you think a sign would not be necessary?

MR. MAYER: No. I'm saying that the sign should be required. If you'd specify in the sign it's no more than two square feet, it should have the house number on it and one or two words that indicate the type of business.

VICE-CHAIR VICTORINO: Okay. Thank you. I kind of misunderstood.

MR. MAYER: And I don't think it's a Sunshine Law violation if you put it into your, if you put it on the agenda that is the opposite. That gives, that sheds sunshine, you don't see that, the ordinance before, you can't even do your homework on it. You're gonna see it fresh today and be expected to talk on it, so it's actually increasing the sunshine by posting it.

VICE-CHAIR VICTORINO: I disagree with you, but thank you very much, Mr. Mayer. I appreciate it. Thank you.

CHAIR COUCH: Thank you. Members, any other questions? I have one.

MR. MAYER: Please.

CHAIR COUCH: The sign that you say you would like to see. Would it be acceptable to have hours of operation?

MR. MAYER: I don't, I mean, if you can fit it onto a two-square foot thing, yeah.

CHAIR COUCH: Right.

MR. MAYER: I mean, I think the ordinance specifies what the maximum hours are.

CHAIR COUCH: Correct.



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MR. MAYER: And if you wanna reduce it down, somebody says I'm only open from 12:00 to 2:00, I mean that to me is information. The idea should be information as opposed to advertising.

CHAIR COUCH: Okay. And just to address the comments on the draft ordinance. We've been working on it. We didn't get it in time for posting, or else we would've posted. We did finish it before posting, but we can't give it out early because of the Sunshine Law, which is another story. Okay. Any other questions for Mr. Mayer? Thank you.

MR. MAYER: Thank you.

CHAIR COUCH: Joseph Mitchell, and Joseph Mitchell is the last person to sign up to testify so far. Anybody else, please sign up in the back.

MR. MITCHELL: Morning. My name is Joe Mitchell. I live in Kihei. The reason I'm here today is to relate four quick examples of what I consider good and poor ideas for home-based businesses in my area. The first of these is a lawn-cutting nursery, you know, take care of your plants kind of thing. The man's been in business for many, many years. He does not have a sign, he does not worry about advertising. He does good work, and the people that he cuts the lawn for refer him to other people. The only time you know he's in business in his home is that his garage is up in the morning and when he puts the tractors on the trucks to take them out around the neighborhood. I personally think that's a good idea of a small business. The second example is the same type of thing, but this man has a lot of plantings around his property that he uses when he's planting gardens for his customers. Unless you don't like pretty flowers and all that thing, it's an attractive addition and I personally think that's another good example. The third example is a real estate agent that lives across the street from me. Relative to the sign thing, he had a sign up at one point. He personally took it down as far as I know. Maybe someone told him it looked lousy, and it did. It was like his house was for sale and it wasn't a very attractive sign. Personally, I think the only thing you need to advertise your own business unless you're advertising is a number. I don't care if you have a five-foot number on the side of your house. That's an exaggeration, that's not the truth. But, you know, I have eight-inch sign, eight-inch numbers, on my house. I don't understand why every business, particularly the Denny's and everything else that you go down South Kihei Road or other roads like that don't have it. The last example is a gentleman who, in my opinion, this is all my opinion. It's not been through the inspection process yet with the County, who is operating an automobile business out of his home. Every day, you either see cars in his driveway, you see cars in his garage. You see cars on the street, and across from him he has some arrangement, whether it's been approved by the other owner or not of a vacant house, where typically, this morning, there were seven cars parked on the lawn of the neighbor across the street. So, on any given day, there can be anywhere from seven to fifteen cars, typically at least five, six,

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seven, eight to ten, eleven, twelve, fifteen cars parked there waiting to have some kind of work done on their vehicles. And the cars change all the time, and as far as I know, the house across the street from this gentleman is vacant. And so none of those cars can be attributed to him. For whatever reason, the current statute specifically eliminates automobile services. I don't know what was in the statute at the time that was approved, but it seems to me it's totally out of character for basically any residential community in this city, in this County, and it's certainly out of tune where we are. And lastly, just because the CC&R forbids it, that doesn't mean that we shouldn't force, for example, Wailea, Kaanapali, et cetera to have an automobile service place just because, you know, it's a wonderful addition to the community. The CC&Rs obviously protect those folks from having the problem. That's my comment.

CHAIR COUCH: Thank you, Mr. Mitchell. Members, any questions of the testifier? Seeing none...actually I have one, Mr. Mitchell. Thank you for coming. And appreciate your comments and understand your concern with your neighborhood. And hopefully the Department is working on that. Question I have is in the current, I mean, what the public has right now, it talks about auto repair business limited to two vehicles at a time. And is that something that if, I think your concern is more of that they're just piling cars everywhere. If they would just allow two vehicles at a time on the lot, would that be something that might be a good compromise, or do you think... 'cause I know of several businesses around in Kihei for sure that nobody knows that they're auto repair because they only have one or two cars in the lot.

MR. MITCHELL: I'd have to see the specific to really make an intelligent comment, but it seems to me that in this man's case, even if he had only two cars, the probability is that he's gonna have his garage door open, he's gonna be working on one vehicle in there. He's got a commercial jack. It's just totally out of character with a residential community to me. Now on the other hand, I think somebody else talked about small engines. If you're working on a small engine thing, and the door is down and all that, that's completely different to me than a vehicle. It's just a personal opinion obviously, but were I able to control it myself, I would say that neither one of them really add and do nothing but detract from a community. One of the things in the statute is we're trying to preserve value of the properties for the people that live there. Do you hear everybody say, you know, I'm so happy. You know, I have an automobile repair shop next to my house. You're not gonna hear that comment very often, whereas if there's a man who's a lawyer, you know, my real estate agent friend. All of my real estate friends work out of their house. Everybody knows it. It doesn't do anything negative to the community. So that type of business to me is ideal. And there are many others, like I just mentioned, the two men who mow lawns, et cetera.. I know, I couldn't tell you right now, but I know that there are other small businesses in my neighborhood and nobody knows they're there.

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CHAIR COUCH: Okay. Thank you. Thank you, Mr. Mitchell.

MR. MITCHELL: Thanks very much.

CHAIR COUCH: Members, any further questions? All right. I think somebody...are there...is anybody else willing, ready to testify, wanting to testify? Seeing none, we're gonna go with the remote offices. Molokai District Office, any testifiers?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR COUCH: Lanai District Office.

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR COUCH: And Hana District Office.

MS. LONO: There's no one waiting to testify in Hana.

CHAIR COUCH: Okay. Members, with that, and thank you ladies, with that we're gonna be closing public testimony.

COUNCIL MEMBERS: No objections.

**...END OF PUBLIC TESTIMONY...**

**ITEM NO. 33: HOME-BASED BUSINESSES (CC 12-74)**

CHAIR COUCH: Okay. All right, Members. As you know, as you've heard from the testifiers out there, we're working on a Home-Based Business bill, County Communication 12-74 in response to Resolution 11-97. The purpose of the bill is to establish standards and restrictions for the regulation of home-based businesses, establish home-based businesses as a permitted use in the Residential, Rural and Agricultural zoning districts, and classify home-based businesses as Commercialized Residential for real property tax purposes. Commercialized Residential, yes. Members, on your desk is a new version of the Home-Based Business bill for consideration today as we're talking about. Based on our last presentation with Mr. Johnson, and at your request, I have made some revisions to this bill. So if you'd like, and we're gonna pass it out to the public as well, if you'd like to take a recess, I anticipate, I'm hoping that we finish this meeting by noon, before noon even though we're scheduled for the whole day. Is a 15-minute recess enough for you guys to take a look at this, or do you want a half hour? Okay. Thirty minutes. Let's do a 30-minute recess. Take a look at it, see, you know, see what questions you'll have, and

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then we'll come back in 30 minutes and resume this meeting. This meeting is in recess.  
... (gavel) ...

RECESS: 9:32 a.m.  
RECONVENE: 10:04 a.m.

CHAIR COUCH: ... (gavel) ... Will the Planning Committee meeting of September 26<sup>th</sup> please come back to order. All right, Members, first an announcement, just so you know the regular Planning Committee meeting, this one was moved because we had every, all our Planning Department was gone for, or was going to be gone for a department, for a conference so we had to move this one to here. The meeting for October 3<sup>rd</sup> is still scheduled, and we have a full agenda. But we were able to get October 2<sup>nd</sup>, the Land Use Committee Chair said that they were giving up that time, so we were able to start the meeting on October 2<sup>nd</sup>, so we will start on October 2<sup>nd</sup> at 1:30, and recess 'til October 3<sup>rd</sup> if necessary. So, just so you know, the Planning Committee meeting will start actually on October 2, and that's for the public as well. It'll be announced too in the, on the website. You've all had a chance to take a look at this, just skim it for right now. Please rest assured we are not gonna take any action today. We had had some requests for some Members to go out to the community with this. So we will schedule some community meetings. But what I'd like to do...today we'll just go through the theory based on what Mr. Johnson discussed with us, and answer any concerns, questions that you may have just at a, you know, 10,000-foot view. Then we'll recess, we will adjourn this meeting and then we'll pick it up again on the October 2<sup>nd</sup> agenda. I believe it's on the October 2<sup>nd</sup> agenda. And we'll pick it up again to where we have some time to discuss it and get it ready for the community. They'll have time to look at it. They'll have a week to look at it, come and testify and get it ready to go out to the community. And then we can wrap it up. So that's the intent of the Chair on how we wanna go about this. If you guys have any suggestions or comments, I'd be happy to hear on how to, how to proceed with this. But, mister...yes, sir.

VICE-CHAIR VICTORINO: May I make a suggestion, and I think some of the Committee members would like this.

CHAIR COUCH: Yes, sir.

VICE-CHAIR VICTORINO: If we go right through this bill, you walk us through, tell us the changes and what the rationale behind them would be. And then at that point in time, or as we go on, if there's specific questions in that area, they can be noted so that October 2<sup>nd</sup> we can, if we need to find an answer for it, or if need to have clarification on that particular item, I think many of us agree, you know, you're taking Mr. Johnson and his, pretty much his program and putting this in here.

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CHAIR COUCH: Kind of melding it in with what we had before.

VICE-CHAIR VICTORINO: And really becoming a new bill 'cause we're not, this is not 2011. Now it's 2013. You know, it kind of changed it. So I would like to recommend that we go, you go, or Department goes area by area, section by section, and that way at least we can get clarification, or if we have specific questions, it will be noted so October 2<sup>nd</sup>, hopefully coming back with answers. This also gives the public time to digest and come back with concerns and other suggestions or ideas that they may have to make changes. In totality, this is movement in the right direction.

CHAIR COUCH: Right.

VICE-CHAIR VICTORINO: But I think a lot more work, and if I remember Mr. Johnson saying, if we get 80 percent, we're good to go to start. You're not gonna get 100 percent. So maybe we have to keep that in mind also, that 100 percent may not be where we end up in the near future. But if 80 percent and move from that point forward, maybe that's what we can achieve. So Chair, if you would, that's my suggestion. I don't know how the others feel about it.

CHAIR COUCH: Thank you, Mr. Victorino. That's kind of been the intent of the Chair, is to go through it, tell you what the rationale was, give you a chance to discuss, give the Department a chance to discuss. And then we will defer this to the next meeting. Ms. Baisa.

COUNCILMEMBER BAISA: Chair, I'm sorry for tuning in late, but as you know, every time there's a recess, I have a jillion things going on. So it's kind of hard. But your intent is not to vote on any of this.

CHAIR COUCH: Correct.

COUNCILMEMBER BAISA: And also this will be posted on the website or has been posted on the website?

CHAIR COUCH: It will be. Staff, they can do that in this meeting at the moment, but it will be posted on the website right after this meeting.

COUNCILMEMBER BAISA: I would also suggest that there be some publicity. And you can work with our communication person to get that out. I think it's very important. You know, when we're putting forth a document that has changed as much as this, it concerns me that perhaps we should really delay until we can post it before we have the meeting.

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CHAIR COUCH: I'm sorry, Madam Chair. I hate to cut you off. I talked about that just before you came in. That's what we're gonna do. We're gonna just, we're just gonna peruse. I'll give you justifications as to what we did, maybe have comments. But we're not gonna do any kind of action, any kind of changes. We're gonna get everybody's concerns, and then give it out to the public so that on October 2<sup>nd</sup>, we're gonna bring it back up again with the ability to...

COUNCILMEMBER BAISA: That's not exactly where I'm going, but that's okay.

CHAIR COUCH: Oh. I'm sorry.

COUNCILMEMBER BAISA: I'm happy with that. Okay. Go ahead.

CHAIR COUCH: Okay. Any other questions before we just kind of dive in? Okay. If you look at page, the first page. As Mr. Victorino talked about, there's a new date in there. It's 2013. That's just housekeeping. We talked about, and we can certainly change this either way, but Mr. Johnson also talked about it's really a home business, not a home-based business, not a home occupation. It's a home business. So we just made those changes throughout the bill, and we can tweak that if everybody likes to see home-based business versus home business. The first big major thing is the definition of nuisance. It's my understanding, because we wanted to have, we have concerns about nuisances and nuisance laws that this is really the first definition that we have in the County Code for nuisance. So I expect lots of comments, lots of concerns and lots of discussion about this. But as Mr. Victorino pointed out, you know, we're looking for 80 percent right now. Then see how it works out and within a year or so we can get to 90 percent. And of course we would love to get to 100 percent at some time, but I challenge anybody to find any ordinance that is 100 percent effective. So that is going to be a discussion, and I know Corp. Counsel has some concerns about that. So we'll get to that. I'm just gonna breeze through this real quick. Just jot your notes down, and then we'll get to the discussion in just a bit. Section D, some non-substantive changes in there. Then you go down to Page 3. And if you look at H, we merged H and J in there, and pulled out, I and some of the others. Basically we pulled out I. We can talk about that. It basically tightens it up and makes things work a little bit better I think.

MS. MCLEAN: Chair.

CHAIR COUCH: Yes.

MS. MCLEAN: Chair, excuse me, if I could make a comment back on Page 2?

CHAIR COUCH: Oh. We were gonna go through real quick, and then come back with the comments.

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MS. MCLEAN: Oh. Sorry. Thanks.

CHAIR COUCH: Yeah, that's okay. And then down below, we added two new, three new sections, based loosely, fairly loosely, on the comments from Mr. Johnson. And those are explained further on down. And on general standards, because we have to do things in Ramseyered format and whatnot, essentially from the yellow to the yellow, yellow "shall" to yellow "conform", essentially gets all deleted. And then we work on redefining. But that page is there. It's very confusing, just wanna make sure you get the brackets. From the yellow "shall" to the yellow "conform" is all deleted. And then we get into what are permitted standards, which is on Page 5. This is basically what are permitted as an, basically has to be an accessory use to a residential area. Okay. Then if there are some things that, that have more impact than is...something that might concern the neighbors, that's listed in 19.67.050. and they have to get a Special Use Permit for that. That allows for the neighbors to be notified that there's gonna be something, that there could potentially be something and allow the neighbors to comment on that. If it's something that everybody says yeah, that's fine. They been doing it for years, great. If it's something that yeah, they been doing it for years and it's been a pain in the neighborhood, then that's also where that gets discussed, right in there.

MS. WILLENBRINK: Chair.

CHAIR COUCH: Yes.

MS. WILLENBRINK: Just to note also Agricultural districts will now be special use.

CHAIR COUCH: Yeah. All Agricultural districts, because of HRS 205, everything in Agricultural district basically has to be special use. So that's all in there. Then in, you go to Page 6, that's continuation. Just take a look at 19.67.070. That's where we get in a discussion on how to enforce or it redefines or reiterates what nuisances are. Then if you go to Page 7, there have been some questions about this. You know, because there's no accessory uses in residential area, we really can't have, we don't have any accessory uses, so we pulled that back out. And that, the other two sections that we added kind of take the place of this. So, in your studies when you look at that, keep that in mind that the other previous sections take the place of that. Then everything is pretty straightforward until you get to Section 10 or Page 10, sorry, Section 7...19.30A. Those special uses are already in the Code, but because of some changes that we had to make to add O, home businesses, we have to actually list the whole thing, so that's why it's there. That's already existing Code, but the way we've been doing our legislative work is we have to list the whole section to add that home businesses at the bottom. So that's why that's there. And then we just, on Page 12, is the parking. And everything is pretty straightforward again until we get to Page 15 and 16. And this talks about real property

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taxes. And that's gonna be, I understand, a big discussion when we get to that further on down the line. But essentially that's a quick walk through. And now we'll go section by section and have comments from the Department, and then questions from the members, or at least page by page. And the first thing first, on Page 1, is gonna be the nuisance. Department, go for it.

MS. MCLEAN: Thank you, Chair. Mike and I were just gonna jan ken po to see who should go first, to comment about this. This would essentially, would put the Department in the role of being the nuisance police, and that's not something that we should be, should be tasked with doing. There, a conference that I went to last year, or was it earlier this year, a smart grid conference saying that it's very common to turn to a zoning ordinance and try to make it a nuisance abatement ordinance. But that's not the proper place to do that. There should be a nuisance ordinance that's not related just to land use, that if there are nuisances, your use could be completely permitted but you're being a nuisance. That's not a land use enforcement issue. That's a public nuisance issue that, I don't know if it would be the Police Department or someone should enforce, but it's not tied to land use.

CHAIR COUCH: Okay. Mr. Hopper.

MR. HOPPER: I would agree with that. The, typically nuisance would be a private matter between neighbors. They could sue in court, and the basis for the claim could be a nuisance. I wouldn't advise the County getting into this realm. There's a reason why I don't think, generally, this has been a term used in County zoning ordinances, and I think the Deputy Director stated it very correctly as far as a land use issue. Something could be a permitted land use but could be causing a nuisance. But based on this ordinance, there's in fact a section that says the County can enforce nuisance against others. I don't want the County to get potentially drug into those types of cases and said you're not enforcing this. It would be difficult because you may have a list of standards of the permitted use that are all met, but there's a nuisance. And that should really be an issue between the neighbors, and I think the County should be looking at the, you know, enforceable regulations under the ordinance like, I don't know, the size of a sign or the amount of floor space in a permit or something like that. So I think I'd echo that. Did you want to go over each item? I have a list of certain things that I could.

CHAIR COUCH: Well, we're...right now, at this point, we'll just do your concerns and comments on nuisances. Then we'll go, or anything else on Page 1.

MS. MCLEAN: I would like to add it certainly is the Department's responsibility to look at impacts and potential impacts, to look at conformity with the existing neighborhood and its character and so forth. But that's different from nuisance. So there are areas where I think the previous version had language to that effect, which would be appropriate for us to enforce and look at. But nuisance takes it, takes it a step further.



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CHAIR COUCH: Okay. Mr. Victorino.

VICE-CHAIR VICTORINO: Yeah. Thank you and again that starts us off on this track.

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: Mister, Chair Couch and I went through a long list of different issues that I had with this. And nuisance, and what you started off with really is where I wanted to start off with. And I don't wanna get into details, you know, I'm not into details, but if I was to say suggestion from you, who would then become the enforcer? I understand the impact, so when I apply as a business, or I say I'm going to run a business, you guys would then look over what that business and the potential impacts. Am I correct, Michele? I guess I was talking to Michele.

MS. MCLEAN: If it's an outright permitted use, then we wouldn't do an assessment in advance. It would only be if the use were being conducted and we received a complaint, then we would go and look.

VICE-CHAIR VICTORINO: So in other words, we make, as a Council, as a Committee, we make those parameters as I might wanna use. And then with those parameters, the permitted users would get don't worry about it. You go and you get started. Right?

MS. MCLEAN: Correct.

VICE-CHAIR VICTORINO: Okay. So then it's complaint driven then after that. Someone has to complain. Right. So if somebody complains and says there's too much odor or smoke, who then comes out to check? And I don't wanna get too specific, but if you start getting that, who comes out? Who are they gonna call and say oh, there's a terrible odor or there's vibration or whatever.

MS. MCLEAN: That is something that we would go out and determine, if the source of that was the home business.

VICE-CHAIR VICTORINO: Okay.

MS. MCLEAN: Then we could say that the operator was in violation of the home business requirement.

VICE-CHAIR VICTORINO: But if we had a noise ordinance or a nuisance ordinance, and noise became a problem or glare became a problem, or other things. And that's at maybe 6 o'clock at night and you're not there. Then the police would probably be the next step,

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and I know the police are out there listening to this right now and saying oh, thank you very much. More work for us. But all joking aside, unless we have a nuisance enforcement agency or a nuisance enforcement, for lack of better term, cop, there's, until they complain to your Department, some of these like noise, it could be happening and they not gonna wait to call you before you go out and check. That could be days. So what you're suggesting is we should have, quote, a nuisance ordinance that would take precedence over all of this, whether it's permitted use, whatever it may be, a nuisance ordinance that covers all of these variables. Is that what you're suggesting?

MS. MCLEAN: I'm suggesting that, that this bill related to home business focus on potential impacts of the home business that are within the land use enforcement realm.

VICE-CHAIR VICTORINO: Right.

MS. MCLEAN: Because someone could be a full-time resident in their house making tons of noise. And if we get a complaint saying my neighbor's making all this noise, we'll say that's not for us to enforce. But if they call and say my neighbor's running, doing his business and he's making all this noise, then that is something that we can enforce. So in terms of what people consider a nuisance, it's in some aspects we do have an enforcement role, and in others we don't. And we would just have to determine if that detrimental impact is caused by a use that's regulated in the Code. Otherwise we can't do anything about it. In terms of where the Council might want to go with nuisances, I really don't have enough experience to say what a nuisance ordinance might look like. I'm just saying that some of these, I don't know how we would go out and determine vibration.

VICE-CHAIR VICTORINO: Okay. And I thank the Deputy because I think what I was trying to lead to is, Mr. Chair, is maybe a nuisance ordinance, I think that's what I think we need. Once that's in place, then all the rest, and whether it's a home-based business or just somebody just being rude, we have something to move on because right now, this is based on home-based business. So if I'm a rude neighbor, it doesn't affect me. You know what I mean? No offense. So I think I know where I wanna go with this and do a PAF and work on nuisance as another issue. So I don't wanna get the two. But because we're talking nuisance and home-based business, where we're kind of setting that up, but maybe what we really need is a nuisance ordinance and then from there.

CHAIR COUCH: But now my biggest concern is what Corp. Counsel said. Corp Counsel said they're not, they don't think we should get into nuisance at all 'cause that's something between neighbors. That's the way I interpreted. Maybe Mr. Hopper, if you can correct me.

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MR. HOPPER: I think that's generally correct, Mr. Chair. If it's a private landowner having an issue with another private landowner, and there's no County ordinances being implicated in that, it's kind of, it's a bit difficult for the County to have the duty to be involved in those disputes. Probably similar to CC&Rs and things like that. But I would say that it's just a general statement. I don't know how other counties may have approached the nuisance issues, but it could obviously go well beyond any home business use. I mean, there's a lot of different things that could be a nuisance. Maybe the neighbor has a tree and all of their, you know, the leaves or whatever are falling into the other neighbor's yard. Is it the County's duty to enforce that or is it the neighbor with a claim against the other neighbor for damages there that we would normally be focusing on. So just generally getting into that realm, I think, is difficult and the County, you know, I think has a duty to enforce its ordinances as they're set out. But to go beyond that and to say we're going to be potentially enforcing things that have traditionally been between private landowners, it can be a bit difficult. And I think there should be evaluation done of that. But of course that goes beyond the scope of this bill. I think that's perhaps a discussion for another day.

CHAIR COUCH: Thank you, Mr. Hopper. My concern is that, and we'll be doing the research on, you know, what other jurisdictions do for nuisance, because that's been a thorn in my side for as long as I've been sitting here. So we'll work on potentially some sort of nuisance ordinance. I think I have something in the Policy Committee about noise, but we'll, I'll continue to pursue that as well. And if Mr. Victorino is also concerned about it, maybe we'll, we can't do it together, but I don't know how that's gonna work. Mr. Chair...Mr. Vice-Chair.

VICE-CHAIR VICTORINO: Well what I was looking at and to make, to move on, you know, so that others can ask questions. I think what we need is something going under nuisance because you hit the head, you hit the nail right on the head, because I have, in my own personal property, neighbors who have trees that lay over on my property and drop not only leaves, but fruit and everything else. And that's a nuisance. If you've had rotten guavas in your backyard, you know what I mean by a nuisance. There's an odor, and there's...so I think it's time that this County look at stuff like that, because for the longest time we had respect for each other and we could take care of things individually. That's changed. And I think maybe now we need to look at some other things. So I'm gonna work on nuisance, you work on noise. But I think there's a parallel there as far as if we're gonna do this in a home-based business, then let's look at that. Thank you, Chair.

CHAIR COUCH: Okay. Thank you. Any other comments, questions about nuisance before we move forward? I also wanna recognize that Mr. Spence, the Director of Planning, is here just in case we need to call on him. But I think we are in great hands with the Deputy Director. All right. Good to go on nuisance right now? That is a very sticky issue. The

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next page, Page 2, just a definition issue. Any concerns, comments? Ms....yes, Ms. McLean did have a concern.

MS. MCLEAN: Thank you, Chair. What's being proposed by the bill is to eliminate home occupations as a permitted use, at least in the Residential district and only have home businesses. And because later on in the bill, the tax classification for a home business would be modified, I wanted to offer the suggestion of maybe keeping home occupations as a permitted use, which would remain just taxed at the Residential rate, and also having home businesses, which would be taxed at the Commercial Residential rate. Because a home business, that's just a graphic designer working from his house who never has customers come to the house, who goes out in the field to do all their work. That's a pretty important distinction from someone who has customers come and so forth. So I just wanted to offer the suggestion that perhaps keep those as distinct uses with distinct tax treatment.

CHAIR COUCH: Okay. Thank you. And, Members, we considered that. And we looked at that very carefully, and we can still do that. The issue with that is if we do that, this bill is gonna be about this thick, because we have to go to each and every section and it's a long and involved process. And we can still do that, but we figured that when we get to the taxes, that might, we might be able to fix that situation. So yes, we have considered that. I do have the language for home occupations right here if...that would be removed. If anybody would like to have that, we can certainly pass that out. But I also have a list of the following chapters, if we decide to fold home occupations into home-based businesses, and there's a big list of chapters, which means we have to print every chapter in the bill. So we'd be killing a lot of trees. But we'll talk about it, we'll come back to that when we get to the RPT, 'cause I have some concerns and questions on that as well. Any other comments on that? Mr. White.

COUNCILMEMBER WHITE: For the Deputy Director. What do you see as the threshold between the home occupation and a home business? Is it once somebody comes to visit you, or pick something up, or?

MS. MCLEAN: Looking at the definition.

COUNCILMEMBER WHITE: I don't wanna bug people. I don't wanna sweep people into something that are just minding their own business and not causing anyone any concerns in their neighborhood.

MS. MCLEAN: I scratched out some bullet points previously comparing home occupations to the proposed home business. Home occupation is one resident only. Only 25 percent of the floor area, no groups, no onsite sales, no signs, no extra storage. No clients coming to the house except for one at a time, one at a time instruction. And then some specific

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prohibited uses, treatment of animals, repairs, alterations and so forth. It's also allowed in, I think they're allowed in pretty much the same districts, but it's more that it's one person only, not an employee, no onsite sales and no clients at all coming to the property except for like piano lessons or one-on-one type instruction.

COUNCILMEMBER WHITE: Okay.

CHAIR COUCH: Yeah, and I think Staff is making a copy of what's currently in existence in the ordinance right now. So they'll give you a list. And essentially, you know, I was gonna, we'll talk about it in RPT. I think her concern is because of RPT. Is that right?

MS. MCLEAN: Yes.

CHAIR COUCH All right. We'll get to that when we get to the RPTs.

COUNCILMEMBER WHITE: I think that would be everybody's concern.

CHAIR COUCH: Yeah. I agree. All right. Page 3. Take a look at item H. We kind of merged it to make it cleaner, and deleted Section I. This basically will allow hula classes, ukulele classes and whatnot. So any general concerns in there with the Department or the Corp. Counsel on that one?

MS. MCLEAN: The language seems a little bit awkward, but the gist of it is fine.

CHAIR COUCH: Okay. Corp. Counsel?

MR. HOPPER: I'll be getting to I think in a...there's a broader section that deals with how to list the businesses in each district. So I don't necessarily wanna get into that here. But I think that's something that could apply to this section as well.

CHAIR COUCH: Okay. And then just the bottom of the page is the new sections that were added. So Members, any questions on that section? Okay. Page 4 we essentially deleted this one big section because that was what was in our previous bill. In essence, this says home businesses as defined in Section 19.04 shall conform to the character of the existing neighborhood in which they are situated. For purposes of this chapter, the character of the existing neighborhood shall include, and that starts on Page 5, and it lists. We essentially took what we used in the short term rental home ordinance to help define the character of the neighborhood. And I know Corp. Counsel has talked to us at length at the short term rental home thing about CC&Rs. Yeah, we put it in anyway just to help define character of the neighborhood. But we did include language in that ordinance to say County's not responsible for CC&Rs. They just help to define the neighborhood. So I think I'd like to put that language back in there, saying that we're not gonna do anything

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with CC&Rs. They just help you define the character of the neighborhood. So that was the intent there. So going back to Page 4 and the top of Page 5. Any concerns from Department first. And then, Mr. Hopper, I'm sure you have a few concerns.

MS. MCLEAN: Thank you, Chair. Well, the top of Page 5, C also ties into that nuisance language. But we'd be happy to work with Staff on perhaps alternative language that we feel is more in line with how the Department is comfortable enforcing impacts on neighborhoods. Rather than saying nuisance, or rather than specifying CC&Rs, we can work on, we can work with Staff on that.

CHAIR COUCH: Okay. Thank you. Mr. Hopper.

MR. HOPPER: Once again, I would advise against mentioning CC&Rs here. I did that for the short term rental home bill as well. In that case, the eventual language that was passed did require pursuant to that, those permits, that they'd actually get a letter from the association stating whether or not the use is allowed or not. And that would kind of take the onus off of the Department a bit. In the Department's review of CC&Rs, which it may end up having to do under this section if either there's a complaint or a Special Use Permit, if the only definition you have of character of the neighborhood is CC&Rs, which is a private contract, then it may be difficult for the Planning Department to enforce and to review those CC&Rs. And I would advise not mentioning those in this section, certainly not having it be the only thing that determines the character of the neighborhood. And as I'm sure you've probably heard me say before, those are private agreements. The County has no ability to enforce or to amend or interpret those private agreements. And I would advise staying away from that. Again, I know there was language in the short term rental home bill, but there were some caveats with that language. And, you know, my advice, this is a bit broader because in those permits, those were, had to be issued by the Department. And so the Department was reviewing it in every case. Here, the businesses are just going to start up. And in some cases, they'll need a County Special Use Permit or State permit. But it is different, and then there's a lot more potential limits in those CC&Rs versus short term rental homes. There could be all kinds of different businesses here. So it could potentially be more complicated. So again that's the advice that I would give with respect for CC&Rs. If the neighbors have issues with the CC&Rs, those CC&Rs themselves have enforceability provisions and can only be enforced by the neighbors. So that's my comments at this point.

CHAIR COUCH: Okay. Members, any questions on that? Okay, seeing none, the Chair's gonna take a one minute recess to discuss something with Staff. One minute. One minute.

RECESS: 10:39 a.m.  
RECONVENE: 10:40 a.m.

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CHAIR COUCH: Will the Planning Committee meeting of September 26<sup>th</sup> please come back to order. Sorry, Members. That was a posting deadline issue so I'm sorry. By the way, Staff passed out the current definition of home occupation just for your information when we get into it. We're on Page 5, Chapter 19.67.040 is the home business permitted use standards and restrictions. And again we kind of merged home occupations with this, what we wanted to include in home-based businesses. And threw it in...we wanted to make this the permitted uses, as an accessory to a home-based, a dwelling. You first have to be living at the residence before you can do this home-based business, home business. So that's, if you look at that, that's what this is all about. And keep in mind if you look at F, we added a sign. It says except for one wall sign not to exceed two square feet, there shall be no visible evidence of a home business. We can discuss that when we get further down into it because as you heard from testimony, there's differences in both ways. So there are concerns both ways. So those are some things we wanna discuss when we get into the nitty-gritty. Department, can you talk about any concerns you may have with this.

MS. MCLEAN: Thank you, Chair. Just comparing this language with the language from Page 4 that was deleted. In general, it's consolidated, but there are a couple of items that had been covered by the previous language that we just wanted to put out there. The new section C says home-based business shall not generate traffic in greater volumes than would normally be expected in the neighborhood. I'm assuming that's intended to cover the previous language that related to deliveries and pickups. It might be a good idea to keep that prior language that said deliveries and pickups by package services must be done with residential common carriers, such as USPS, UPS, FedEx. It's just a little bit more specific and that's one of those impact things that specificities always makes it easier for us. It also doesn't provide any restriction on hours, which previously there were quiet hours and onsite sales and service hour limitations, which might also be worth keeping. There was also a restriction that retail sales be limited to products produced by the home business. And another one, that all goods, samples, materials or objects used by the home business shall be hidden from public view and stored within the dwelling unit or within a structure. And again, just back to the impact, impacts that we might enforce, that specificity would be helpful. And I'm glad you mentioned the signs 'cause I think there might still be discussion on whether or not a sign is warranted.

CHAIR COUCH: Yeah. I anticipate a big discussion on that. Not necessarily today, but when we really get into it, especially at the community level.

MR. ALUETA: And Mr. Chair.

CHAIR COUCH: Yes, Mr. Alueta.

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MR. ALUETA: Just to make sure you're aware. In Title 16.13, the sign ordinance, it does allow for, in the Rural district, ten square feet ground sign and as well as a business identification signs for legally permitted uses. So you make this an outright permitted use within those districts, it would fall under the 16.13 as well as in the Residential district, if it's allowed by right, the signage would be regulated by the same standards that's allowed in the Business districts, which would be 24 square feet with no sign permit and would be based upon the size of the, size and setback of the building or business frontage.

CHAIR COUCH: But, just real quickly, this says except for one sign in definite dimensions, there shall be no visible...oh. Okay. We should say there shall be no signs.

MR. ALUETA: I'm saying you need to somehow rectify the conflict between Title 16 and your proposal.

CHAIR COUCH: Okay. So we would have to say something like there shall be no signs, or there shall be signs only such size.

MR. ALUETA: Or somewhere add a section to the bill or a section to 16 that says except for home-based businesses. Make an exception in 16.

CHAIR COUCH: In 16?

MR. ALUETA: Correct.

CHAIR COUCH: Okay. All right. Mr. Hopper, any comments on that?

MR. HOPPER: Well, that's correct. You'd certainly would want to be consistent there. The other comment is just generally with 19.67.040 and 050, it looks like the intent is to have all of the listed, basically have all the businesses in 19.67.040 as uses that are allowed without any further permitting, and that they would be essentially listed as accessory uses or would be accessory uses in the districts without a permit. And then in 19.67.050, the Planning Commission would need to approve a County Special Use Permit for the uses. So I think perhaps a brief introductory sentence at the beginning of each section specifying that would be helpful, because it's not really specified exactly what's required for each section, their standards, but that should be specified in both sections. And in addition, each section where these are allowed should be amended to list, for example, under that section's accessory uses, home business is permitted under 19.67.040. And in the special use sections of each noting district, basically stating home businesses subject to 19.67.050 shall be permitted. That's, those are structural things. They're very important, maybe easy to overlook, but those need to be added to the bill to make it work essentially. In addition, yeah, I would agree with the traffic language, that it's a bit



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difficult to think that there would not be any traffic in greater volume than normally expected in the neighborhood if you have a business, but that could be difficult to enforce. So I would also agree with the Department on that issue. And that's all I would have on 040. I would have other comments on 050 as we go down.

CHAIR COUCH: Yeah, when we get to that.

MR. HOPPER: But yeah, generally listing what the, what's required for each type of permit and where they're allowed is fundamental and should be added at this point.

CHAIR COUCH: Run that last statement by me again.

MR. HOPPER: Basically what I said before. If you have a list of uses that are permitted without a permit, they should be listed in the appropriate sections and specified here in 040 that this is allowed in the district specified as an accessory use.

CHAIR COUCH: Gotcha.

MR. HOPPER: And then 050, this is allowed in the district specified with a County Special Use Permit. Something like that.

CHAIR COUCH: Okay, the sentence, yeah.

MR. HOPPER: Given by the appropriate Planning Commission. Something like that.

CHAIR COUCH: Okay. Members, any questions? Mr. Victorino.

VICE-CHAIR VICTORINO: Thank you, and again I thank you very much for the traffic one because I cannot imagine how you can enforce that one. And that one, even when he said it that day here, Mr. Johnson, I shook my head because I don't know how you can sit there and enforce it. Now you really need a nuisance cop to sit on the street to count the cars, what's normal and what's not normal, so you know, or what's been increased by the business. The other one was I, baseyards. And it says basically baseyards mean a portion of the property that has home business where materials, vehicles not in use, not in service or equipment is stored. And if I heard the testifier correct, this guy has his, this landscaper and that is what it would probably be, a landscaper has his equipment all stored in the garage, and then in the morning, opens the garage, pulls things out. And I think that would fall under the baseyard definition. So, you know, again maybe more work needs to be done with these. You know, I'm concerned with that. And let's say one employee shows up in the morning and picks up the mower and puts it in his truck and goes off. That would be considered a baseyard. So --

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CHAIR COUCH: Yeah, we threw in the best we could find for a definition for baseyard and intended on a pretty good discussion on that, too, because you're right. Is that a baseyard? What is a baseyard? What is in a baseyard?

VICE-CHAIR VICTORINO: You got ten trucks lined up and ready to go every morning. That may be a baseyard. Yeah, I won't disagree with that.

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: So just those concerns, and I'm glad that we will address that at a later date.

CHAIR COUCH: Members, any other comments on that? Mr. Guzman.

COUNCILMEMBER GUZMAN: Yeah. Thank you, Chair. Just in addressing enforcement issues on nuisance and traffic, which are basically, I believe, would be the number one issue that the neighbors would have, like noise complaints, traffic complaints. So if we are going to be deleting those sections, how do we find teeth in this ordinance to accommodate...

CHAIR COUCH: Well, we haven't said we're gonna delete those sections yet.

COUNCILMEMBER GUZMAN: Right, right. I see the dilemma here. Also on I in addressing Mr. Victorino's point on the baseyards, do you mean the language here that's placed here is baseyards means a portion of a property that has a home business where...is that the portion of the property where the home business is, or is that another area of the property? Like the front house is where the home business is, and are you limiting it to that area only or, 'cause the language is kind of confusing to me.

CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: You see that?

CHAIR COUCH: Yeah.

COUNCILMEMBER GUZMAN: Portion of the property where the home business is. So you're restricting, you're narrowing it just to that area, and you're not including the other areas of the property, wherein the home-based owner could store their materials.

CHAIR COUCH: Right.

COUNCILMEMBER GUZMAN: You see what I'm saying?

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CHAIR COUCH: Yeah. Understood.

COUNCILMEMBER GUZMAN: Okay. All right.

CHAIR COUCH: We can tweak that. Like I said, I'm guessing we're gonna have a nice discussion on how to define baseyards, and we're gonna look up all over, see how people...because the issue has been, I know in some of the Rural districts people are parking their contactors' bulldozers and whatnot in there. And even essentially one of the testifiers says this guy is doing an auto repair business, but is it a baseyard when he starts storing cars that are in different states of repair? Or there's several tree companies that have these big chipper trucks that are parked out on County property or private property in a residential area. So yes, there are some discussions that we need to deal with on baseyards as well. Okay. Anybody else on 040? Okay, we'll go to 19.67.050, which is basically the special uses. If this is going to be a home-based business that may have some impact, we'll allow for the Planning Commission to take a look at it and see if it really is something that can be done in a residential area. If the neighbors are all okay with that business that has these things in here, then we should be okay with it as well. If the neighbors aren't okay, then I think that's not something that is appropriate in a district. That's the intent of that section, plus anything in Ag, because of HRS 205, anything in Ag has to be a special use that is a home base, would be considered a home-based business. Department, you're first.

MS. MCLEAN: Thanks, Chair. The language is, I understand the intent of the language. It's a little bit confusing, but again we can work with Staff on some of it. And actually, Mike and I were talking about it a little bit, so I'm gonna just bounce to him if I could so that we don't say the same thing.

CHAIR COUCH: Sure.

MR. HOPPER: Thank you, Mr. Chair. I think Section A may be okay. If you're in the County, or in the State Ag district, you would need a State Special Use Permit for home-based business use. Subsection B references requiring a State Special Use Permit under 19.510.070. That section actually deals with County Special Use Permits and I think it should be clear that outside of the Ag districts, these special uses would, you'd be required to get a Special Use Permit from the Planning Commission to do these uses in any district. Basically, if you're okay with 040, if your business meets all of those requirements, you can simply do the use. If you, if you don't meet those requirements, and you're covered under 050, you can get a County Special Use Permit. And each district should have its ordinance amended to specify that a home-based business under 19.67.050 is a special use provided the Planning Commission approves that permit. And so I think maybe B needs to be changed to state, to take away the State Special Use

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Permit, simply say a Special Use Permit under 19.510.070 is required as allowed, you know, in each district, or something like that. And then amend each district's Special Use Permit provisions to state that this type of business is allowed as a Special Use Permit. I would also note that this still does have limitations on it, so if there would be a business that could not meet these requirements, I believe, and the Department can correct me if I'm wrong, they would need to have a Conditional Use Permit. It would be as if, in each district you have a list of special uses. It would be as if someone tried to do a use in that district that was neither a permitted accessory or a special use, and so therefore they would need a Conditional Use Permit.

CHAIR COUCH: Or not have it allowed, right?

MR. HOPPER: Yes. It would need to be listed as a special use under the district that the Planning Commission could allow, otherwise, or there could be broader language that says, could say the Commission could allow uses of a similar effect, something along those lines. But I think that would kind of be inconsistent with specifying standards in 050. This seems to be saying in 050, this is what you have as far as your home businesses in these districts as special uses. Anything beyond that you need to get a Conditional Permit from the Council or get a Change in Zoning.

CHAIR COUCH: Yeah, that's the intent, is that it limits home-based businesses to potentially a little bit more impact, but again need to get discussion with the neighbors. But we don't want full-on businesses. We would rather have, if you want to do a full-on business and wanna go through the whole Conditional Use Permit process, that's the whole intent here, because that already exists if you wanna do something really bizarre. And you gotta have strict public input, I mean all the way up to Council. I mean that's the way it exists now. So I mean that's the intent.

MR. HOPPER: And so the Commission would still be limited as to what it could allow through the Special Use Permits. So, for example, if it says no more than 40 percent of the floor area of a dwelling unit on a lot shall be used by the home business. If they wanted to use more than that, they would need a Conditional Permit. So as just an example. But I think that's the idea. We can clarify that a bit more, but that does appear to be what the intent was.

CHAIR COUCH: Okay. Mr. Alueta.

MR. ALUETA: I, just a couple of things, I think. Either that or relocate their business if they're gonna...

CHAIR COUCH: Exactly. That's my point, is trying, if it gets to that point, we gotta make it onerous enough for them to just locate their business in a commercial district.

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MR. ALUETA: I just had a question on E, home businesses may use 100 percent of any accessories building on the lot. So does that mean that, so I can have, if I'm restricted to 40 percent of my 750 square foot house, but I can put up a 5,000 square foot Butler building in the back?

CHAIR COUCH: Those are good questions.

MR. ALUETA: And so, I mean, you're, 'cause you're now saying you can have an accessory building to, an accessory building to a home.

CHAIR COUCH: It would have to be with a special permit, Special Use Permit. So you have to go through the whole process of getting a building permit and that whole idea to get your whatever size, and I would hope and if we need to restrict the size of the accessory building, I'm fine with that as well.

MR. ALUETA: Yeah. I'm just making sure that's how it's gonna play out.

CHAIR COUCH: Yup. Okay. Members, Chair Baisa.

COUNCILMEMBER BAISA: I just wanna put a scenario out for us to think about as we talk about this granting of exceptions. You know, let me give an example. Old neighborhoods, neighbors living together for 40 years, no problems, everybody gets along, all the neighbors put up with each other. Some, you know, everybody at some point has to deal with some nuisance from their neighbor. And I don't know how you wanna define that. But, you know, their children having a party in the garage until two o'clock in the morning, or the neighbors that leave for work really early and, you know, they move the garage doors, and they warm up their cars, you know, do all kinds of stuff. But everybody lives with each other and says well, this is life in the neighborhood. I put up with your noise, you put up with mine, and we all live in happiness. Okay. Our neighbors decide to move to Hale Makua, not Hale Makua, Hale Mahaolu, and so they decide to give or to allow their children to move in the family home that's been there for a long time. Well, new kids move into the family home and they decide they're gonna do some home business. This young person is gonna do something that is really annoying to the folks around them. Now we're saying okay, you can do that as long as the neighbors don't complain. The dynamics in that neighborhood can become a nightmare, because none of the neighbors want to go to the Planning Commission or wherever it is that they're supposed to complain to sign forms that say we protest, or to fill out a petition or whatever. The reason being that in local neighborhoods, it's difficult for this to happen. It may be okay in a neighborhood where people are not close and where people come and go, and where people are used to people who complain. And we know we have different kinds of neighborhoods on Maui, some places where people complain a lot and we have

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other places where people endure. So if we were to put some teeth in these regulations and say this kind of thing is not going to be allowed, you take away that onus on neighborhoods to become very contentious, in fact even unsafe because you pit neighbor against neighbor. That's just something I wanna raise because we don't talk about it, but it is very common in local neighborhoods. And a neighborhood can be totally destroyed, one that was very peaceful, by somebody wanting to do something and nobody wanting to speak up because everybody has to live there. So I think it's something for us to think about as we talk about special use exceptions. Enough said.

CHAIR COUCH: Okay. Oh, yeah. That is a very important item to consider and we would request that everybody kind of take a, that in the back of their mind and keep that alive as to how we can deal with that.

COUNCILMEMBER BAISA: You know, I hear it said over and over again, well if the neighbors complain, sometimes people will not complain only for the sake of having peace and not being harassed in their homes.

CHAIR COUCH: Okay. Members, any other comments? Okay. Yes, Mr. Guzman.

COUNCILMEMBER GUZMAN: I'm sorry, Chair. I was just trying to look through the ordinance. When we had the special guest come in, I forgot the name.

CHAIR COUCH: Mr. Johnson.

COUNCILMEMBER GUZMAN: Mr. Johnson, and he was presenting a different ordinance, and he basically indicated three impact stages.

CHAIR COUCH: Correct.

COUNCILMEMBER GUZMAN: And I'm trying to find it in the ordinance itself.

CHAIR COUCH: Well, we kind of merged into the way we do it here. I mean we thought about just doing those stages, but we have permitted use, accessory use and special use. That's kind of our tier one, tier two, tier three. So we did that, although we combined permitted use and accessory use because in, certainly it's mainly in residential areas, there are no accessory uses. So we're making it, saying it has to be accessory to your main use as a residence. So in essence, it's all accessory use, okay. And we figured tier one and tier two in his example were non-permitted...I mean you don't need a permit for it. It was just an outright permitted use. Tier three was enough impact to make it a, you need a Special Use Permit. That's how we, we kind of tried to fit it in with our stuff, the way we do it and all of our zoning ordinances. So that's how it came out these two sections.

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COUNCILMEMBER GUZMAN: Yeah. The only reason why I brought that up was I just following up on Chair Baisa's inquiry. And it appeared as though yeah, there may have been, you know, the tier system that was presented to us that basically showed impacts and how to prevent those from affecting the neighbors, so I was trying to...but, you know, I see how you've incorporated, so we'll probably have to keep searching and trying to modify.

CHAIR COUCH: Yeah, there's gonna be some tweaking, especially when we bring it out to the communities. I mean, as Ms. Baisa says, you have communities that will say nothing, and you have other communities that will say everything at the drop of a hat, so, and everything in between. And we have to figure out how to do that and then who is gonna have to enforce that, et cetera. Okay. On to Page 6, which is a continuation of page, of the Section 050, and we discussed that already in 050. Any other questions on that section before we go into 060, 070 and the rest? Okay. 070, again basically we say home-based businesses proven to cause a nuisance as defined in section 19.04 of this title shall be subject to enforcement, i.e. offensive noise, vibration, smoke, odors, and we had that discussion on nuisance. That was just there, how we can enforce it. If the Department has any additions to, I mean we already discussed how we gonna, what we have to do with nuisance, and how we wanna approach that. But for enforcement on home-based businesses or home businesses, do you have any suggestions on how you guys might wanna be able enforce on this? Because we found in the short term rental ordinance that if it's not specified in there, it's really hard for you guys to enforce. So what can we add in there to make it specific? So say you guys, somebody is violating the home business or the zoning ordinance, and here are the items that we can list as ways to enforce. Ms. McLean.

MS. MCLEAN: I can't offer any language now. It does tie into the prior discussion on nuisance and impacts. But we will get some feedback from our enforcement guys to see if there's anything they can see.

CHAIR COUCH: Okay. If there's anything that we can add in there. And Mr. Hopper, do you have any comments on that?

MR. HOPPER: Well, Mr. Chair, it's a bit different that short term rental homes because in those cases they all needed permits. So if they were operating without one, then that was a violation. But in this case, aside from the special permits, which are only required for certain businesses that may be difficult to see if they exceed certain standards, the uses are allowed without permits. So finding the business and seeing that it's operating wouldn't, I mean, that wouldn't necessarily be illegal like a short term rental home use would be. So the same language wouldn't necessarily be helpful that we had from the short term rental home ordinance here, because, you know, you don't need a permit in a

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lot of cases to do most of these businesses. So I'm not sure if that approach would work. There may be other things, but I can't think of anything.

CHAIR COUCH: Right. I'm sorry. That's what I meant is that it's not necessarily the exact language as in the short term rental home stuff. Is there any language that we can think of? And I guess the Department is gonna work with their zoning guys and to see what they can come up so that they have, they can point to and say this where you're in violation. This is what gives us the right to enforce. Members, after hearing that. Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. You know, when you're dealing with nuisance in general, it's applied as a public law. So when you're trying to prove a nuisance, you have to prove, one of the elements is that it affects the entire public, not neighbor to neighbor. But does it reasonably affect the entire public, the general public? If we can narrow this definition, nuisance, and call it home business nuisance, home business nuisance, and then in part of the definition of it make it an element of the property owner having a home business on it. That will narrow it to only apply to home businesses. And so when you go to that Section B on Page 6, home businesses proven to cause a nuisance, the enforcement portion of it, we can just change that to home business nuisance as the, that's what we're gonna call it. You need to narrow the definition and only apply it to properties that have home businesses to it. So that's the trigger.

CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: All other neighbors who don't have home businesses, that definition of home business nuisance would not apply. So you're really focusing more on those properties that have the home business and are they causing unreasonable noise instead of applying a public standard to it.

CHAIR COUCH: Okay. I like that suggestion. No, no. I like that suggestion. I'd like to hear what Corp. Counsel has to say about that.

MR. HOPPER: Thank you, Mr. Chair. I mean in general, I think it's better than having the County enforce nuisances everywhere. But I kind of thought that was the scope of this bill at this point anyway because it's only a home-based business bill. I guess there's other sections of the Code that mention nuisance in Title 19, and we define nuisance that that would apply to those sections as well. So that's a good, good point taken there. But it would still be on the Department if it can, if it believes it can adequately enforce that to determine whether this is too much dust, too much noise, et cetera, things like that. I think that could be difficult and if the Department, you know, I can see potentially the Department being drug into, you know, civil claims between owners. Again, limiting it to home-based businesses is probably better than having it for every single possible



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homeowner, but you're still talking about the County getting involved in that situation and would want to know if enforcement officers feel that they would be capable of enforcing something like that. And if challenges like that have happened in other jurisdictions, how they would enforce things like that. 'Cause that would make zoning enforcement now responsible for things like noise, vibration, smoke, odors, dust, heat, glare, electrical disturbances, et cetera, and how the Department would go about enforcing that. So that would still, in general, be my concern. Obviously, narrowing it to home-based business would be better than having it throughout the entire Code for all homeowners, I would say.

CHAIR COUCH: Okay. Mr. Guzman.

COUNCILMEMBER GUZMAN: Chair, thank you. Maybe one more element could be triggered by this home business nuisance, if we call it that. Maybe the enforcement could be 51 percent of the neighboring area. If they believe that that property is causing unreasonable noise, then it does trigger that home business nuisance. You know, it's almost like using the reverse, the contra on the TVRs. So you using that as a standard to enforce it. Okay. So 51 percent of your neighbors all believe that it is unreasonable noise, then it is, it triggers the violation. It could go that way.

CHAIR COUCH: Yeah.

COUNCILMEMBER GUZMAN: I'm just trying to think outside the box here.

CHAIR COUCH: Yeah, and I understand that. And that is potentially a reasonable way to go. You still have Ms. Baisa's concern, Chair Baisa's concern about the people who aren't gonna say anything. So these are all, I don't take the easy ones on very much. We do the hard ones. Mr. Victorino.

VICE-CHAIR VICTORINO: And to tack onto what Mr. Guzman's saying, and Chair Baisa, again remember he says these rules, Mr. Johnson said that many times it has to go by neighborhood. Each neighborhood has differences, so it really depends if you're talking Makawao or Wailea, Makena, Kapalua. I mean, you know, you start picking neighborhoods, very different. Waihee may be different than Kahului, you know, and everyone will be different. So I guess in essence we're gonna put the best package together and listen...

CHAIR COUCH: Or at least 80 percent.

VICE-CHAIR VICTORINO: Yeah, 80 percent. Yeah, we're sticking with the 80 percent. But all joking aside, I think, you know, we gotta listen to what the neighborhoods say at that point in time, because then we may have to, and again he said you don't wanna have 25

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different codes for 25 different neighborhoods. I agree with you, Mr. Alueta, 'cause I just see your gray hairs showing up real quick. Beyond that, I believe each neighborhood would have some uniqueness, so we wanna address that also as we move on in this process, Mr. Chair. So thank you, Chair.

CHAIR COUCH: Members, any other comments? We're almost done. The rest, well, I'll save that comment for later. Section 7 real quickly, Page 7. Sorry. Again that was stuff that was already in there and we yanked out. Any comments, Michele?

MS. MCLEAN: Yeah, as we did talk about earlier today, we'd like to keep both home occupations and home businesses. And also keeping them as accessory uses, if the zoning district already has listed accessory uses. And on the same section as Mike already mentioned, or on this same page, we should also add a section to the bill to list home businesses as a special use in the Rural district if it exceeds the standards of the permitted use.

CHAIR COUCH: Right. Right.

MS. MCLEAN: So the main thing is for the original idea for home businesses to be accessory in the Rural district. We would like to keep that.

CHAIR COUCH: Okay. We'll figure how to do that. It seems like this bill is gonna get pretty big anyway, 'cause if we even add the word home business as an accessory use in each one, we have to list the whole --

MS. MCLEAN: ...*(Inaudible)*...

CHAIR COUCH: --I know--

MS. MCLEAN Do it right.

CHAIR COUCH: --which is fine. We'll deal with that. We'll have to list the whole section, unless we can work with Corp. Counsel to work around that, killing all those trees. That's all I'm asking.

MR. HOPPER: Mr. Chair, you need, I think when you make a change that affects various districts, you have to list, I'm not sure exactly how much of the district you can get away with listing, you know, sections you're not making changes to. That's in the legislative drafting manual. But I do think you would need to, in each section, specify where the list is allowed.

CHAIR COUCH: Okay.

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MR. HOPPER: Typically we've done that. I know that the drafts we looked at from Mr. Johnson had basically said this type of permit is allowed in all of these districts, rather than going into each district and doing a separate amendment they did it that way. But I've never seen that. Every time that we've revised an ordinance, you amend the district, too, so that when you go to the Residential district, you can see a full list of what you can do and if it's not there, it's considered not allowed, rather than having to seek out the home business section to find out what's, that that's, oh, that's an additional allowed use. So that's the challenge.

CHAIR COUCH: All right. Moving along. Page 8 is, there's just small housekeeping changes. We get down to Page 10, 9 is the same way, Page 10. And this is an example. This basically, Page 10 and 11 is the language that is existing in the Code, and we're just adding O, home businesses. So, as a special use in Agricultural. So if we were to say that in all the districts, we would have to list, that's what we were talking about. We'd have to make this list for everything. But we can do that. I mean, if we have to do that, we have to do that. And maybe we'll have everybody bring their pads and we can do it off their pads, so we don't have to print reams of paper. But I don't think that's going to happen. Going to Page 12, this is about the parking. Comments, Department? Yes, Mr. Hopper.

MR. HOPPER: Yes, just for the Ag district, I would also specify in the list that the home business with a State Special Use Permit, just to reiterate that. I know there was an old section that said that, but if you were in the State Ag district, you would need to have a State Special Use Permit before doing any home-based business unless it was somehow an agricultural tourism activity allowed by ordinance which I don't think ...*(inaudible)*...

CHAIR COUCH: But I think that's at the beginning. It says that has the sentence the following uses and structures shall be permitted in the, if a Special Use Permit pursuant to section whatever and a State Special Use Permit. So that's...that defines it there and it just adds one more thing, home business. Is that right?

MR. HOPPER: The potential challenge was I guess it's not in this case with the home businesses because there's ordinances that allow, ordinances may allow certain home businesses as Ag tourism activities potentially. And if you do say something is allowed, required a State Special Use Permit, there were certain things, I think with short term rental homes for example, that if, there was a really kind of strange State law that allowed overnight accommodations and if it was accessory to essentially a commercial Ag operation. So we had to kind of craft strange language in that section so that you didn't require a State Special Use Permit if it wasn't required by State law. But generally otherwise, you would have to allow it. And to be very specific, so to prevent people from

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coming in and saying we don't need to have a Special Use Permit and arguing with the Department.

CHAIR COUCH: So similar to Section N then.

MR. HOPPER: Perhaps. We need to get something like that. I know Deputy Director has mentioned concerns with this, so I think we need to hash something out. But it's difficult because you need State Special Use Permits in some cases. You don't in others. If in the future, maybe we just say you need the permits and if the Council has Agricultural tourism ordinances adopted later on, it allows them without a Special Use Permit, we could amend the section then. But it was just a bit difficult to draft things when in some cases the type of use would require a State permit, and in some limited cases it wouldn't. That's why we have these longer sections potentially. But in any case, I think you're, you may be correct that listing home businesses here as a special use section because it already says you need the State permit may be adequate. So we can look at that. It needs to be very clear you need a State permit here and it's not required by this law. It's required by HRS 205. It's a separate law.

CHAIR COUCH: Right. Okay. Twelve. Parking. Page 12 is the parking. Any concerns with that, Department or Corp. Counsel, or Members? My one concern would be if you get a Special Use Permit that says, I think part of the requirements under the Special Use Permit was allowing two employees. So you would need parking for the employees and then parking for the customers. So we may wanna put something in there regarding a Special Use Permit parking as well. Any concerns with that with the Department, Joe?

MR. ALUETA: I think typically if they're gonna get a Special Use Permit, how much stalls they're gonna require, how much stalls they need or if the Commission may require additional stalls beyond the Code. I think we...

CHAIR COUCH: We do allow that? I mean, because it says here maximum of two, period. But if the Special Use Permit can override that, I'm fine with that.

MR. ALUETA: Yeah. Maximum of two is basically you're saying for the ones that are permitted, and then if they require a Special Use Permit, they're gonna have to meet with the Commission.

CHAIR COUCH: Okay. If you guys are fine with that, I'm good. Okay. Then we go all the way to Page 15, and this is the other somewhat interesting discussion we're gonna have, and that's the real property tax. Actually it's Page 16 that talks about. A parcel that has been granted a Bed and Breakfast Permit, a Transient Vacation Permit, a Conditional Permit to operate a transient vacation rental or is a home business, pursuant to Title 19 of this Code shall be classified Commercialized Residential without regard to its highest and

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best use. My concern on this, and I think Mr. White brought it up at the beginning of the discussion, is that are we sweeping everybody in there? I would like to see something in, Members, if you're okay with that, that says or is a special use home business or something that says if you're gonna get a Special Use Permit, then this is where you're categorized [*sic*]. But if it's a home occupation or permitted use, we're not, there's no way we're gonna be able to go out and tell, see if this is a business because the whole idea was if it's not affecting the neighborhood, if you drive by and you can't tell it's a business, then it's fine. There's no way for the Department to even tell. So how are we gonna say that that's a Commercialized Residential? I would say if there's a Special Use Permit, then they go Commercialized Residential. Any comments, Department?

MS. MCLEAN: Thank you, Chair. I'd wanna look again at the differences between a home occupation and a home business. But that's a good approach what you're suggesting, that the tax classification only apply to those that needed some type of discretionary permit. Then it would just, that's gonna be a really substantive part of this bill, and so we'll really wanna look carefully at the distinction between what is allowed outright and what does require that discretionary permit, not only for the permitting requirement, but also for the tax implications.

CHAIR COUCH: Okay. In essence, anything required under 19.67.050, Page 5, would be --

MS. MCLEAN: Would trigger it.

CHAIR COUCH: --would trigger it. That's, I guess, what I would recommend as the change. But Mr. Hopper, your comments on that.

MR. HOPPER: Have to look at that.

MS. MCLEAN: We just need to have a different perspective or a different scrutiny of what is now being suggested to be permitted outright.

CHAIR COUCH: Gotcha. Okay. Mr. White, did you wanna? Okay. Members, any other comments on that? Okay. Then that I believe is the end of our, this is a brief overview, even though it took a little while. Members, the next step is going to be take a look at it, we're gonna get more comments and suggestions from the Department. If they get it by October 2, great. We'll continue on with that. If not, we can continue to another meeting so that if you have any questions or comments that you can put it in there, and of course we're gonna get more information from the public based on this draft. I would like to see if the Department can, if you can by October 2, great. If not, don't worry about it. We have some time. But if we can it's on the agenda for October 2. But we can certainly defer that. Other than that, any comments from the Members before we go into, before we adjourn. Okay. I wanna thank you very much. I wanna thank Staff very much. It

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was a complete, you know, overhaul of the existing bill, so I realize it is gonna take some time. I do wanna ask Member Crivello, for on the record, Molokai Planning Commission asked to be exempt from this, as well as Lanai.

COUNCILMEMBER CRIVELLO: Well, exempt until they address their community plan according to the motion that they put forth.

CHAIR COUCH: Okay. So in our going out to the communities, do you think it, we would still need to come to Molokai so that...

COUNCILMEMBER CRIVELLO: I would hope so--

CHAIR COUCH: Okay.

COUNCILMEMBER CRIVELLO: --and perhaps because Lanai is just about wrapping up their community plan, my understanding. So I would think we would need to understand what they are proposing. And as for Molokai, perhaps during the process, that can be the time to do the presentation so that they can do something comparative.

CHAIR COUCH: Okay. All right. Thank you.

**ACTION: DEFER pending further discussion.**

CHAIR COUCH: Thank you, Members. Without any further comments, this meeting is adjourned ...*(gavel)*...

**ADJOURN:** 11:29 a.m.

APPROVED:

  
DONALD G. COUCH, JR., Chair  
Planning Committee

pc:min:130926: ak

Transcribed by: Amanda Kaili

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**CERTIFICATE**

I, Amanda Kaili, 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 17<sup>th</sup> day of October 2013, in Kahului, Hawaii.



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Amanda Kaili