

**ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE,
AND RECREATION COMMITTEE**
Council of the County of Maui

MINUTES

Council Chamber

March 21, 2014

RECONVENE: 9:09 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Don S. Guzman, Chair
Councilmember Elle Cochran
Councilmember Stacy Crivello
Councilmember Mike White

NON-VOTING MEMBERS

Councilmember Donald G. Couch, Jr.

EXCUSED: Councilmember Robert Carroll, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Michael P. Victorino

STAFF: Kimberley Willenbrink, Legislative Analyst
Jordan Molina, Legislative Analyst
Erin Fleming, Legislative Attorney
Pauline Martins, Committee Secretary

Tina Thompson, Executive Assistant to Councilmember Crivello (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.: Jeff Ueoka, Deputy Corporation Counsel, Department of the Corporation Counsel
Roxanne Teshima, Special Events & Grants Coordinator, Department of Parks and Recreation

OTHERS: Jeny Bissell
Winifred Basques
Plus (3) other people

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PRESS: *Akaku Maui Community Television, Inc.*

**EAR-36 PROHIBITING TOBACCO USE AND TOBACCO PRODUCTS IN COUNTY
PARKS (CC 14-49)**

CHAIR GUZMAN: ...*(gavel)*... Good morning. May the...today is Friday, March 21, 2014. The EAR Committee, Economic Development, Energy, and Agriculture, and Recreation Committee shall now come to order. I'm Don Guzman and I'm the Chair of the Committee. Before we begin, can I please ask anybody in the gallery to please place your cell phones or your phones on the silence mode. And today I'm going to go ahead and introduce our bare quorum Members which is Member Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR GUZMAN: Good morning. Member Elle Cochran.

COUNCILMEMBER COCHRAN: Good morning, Chair.

CHAIR GUZMAN: And Member Mike White.

COUNCILMEMBER WHITE: Good morning, Chair. But I would like to point out that we are Members of your bare quorum, not bare Members.

CHAIR GUZMAN: Yes, these are bare bare quorum. We only have three Members, voting Members, including myself makes four. Excused is Vice-Chair Robert Carroll as well as Chair of the Council Gladys Baisa and Mike Victorino. Also we have today for the Administration side we have Roxanne Teshima, she is with the Department of Parks and Recreation and she's a Park Specialist and Events & Grants Coordinator. As well as Deputy Corporation Counsel Jeff Ueoka. For our Committee Staff we have Legislative Analyst Jordan Molina as well as Legislative Attorney Erin Fleming, Legislative Analyst Kimberley Willenbrink, and Committee Secretary Pauline Martins. Welcome. Assisting us this afternoon, we're going to go ahead and turn to our District Offices. From Hana Office we have Tina Thompson.

COUNCILMEMBER CRIVELLO: No.

CHAIR GUZMAN: Oh, wait. Sorry. That would be...

COUNCILMEMBER CRIVELLO: She's on Molokai.

CHAIR GUZMAN: Oh, she's on Molokai. Okay. Sorry. On Molokai we have Tina Thompson. Good afternoon, Tina.

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MS. THOMPSON: Good morning, Chair. This is Tina Thompson at the Molokai Office.

CHAIR GUZMAN: And from, we have on Lanai District Office Ms. Fernandez.

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai.

CHAIR GUZMAN: And on, in Hana, Dawn Lono.

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office.

CHAIR GUZMAN: Thank you. So before we start our item on today's agenda, I have a few public announcements. If you'd like to testify, please go to the lobby here and sign in as well as once you've signed in and your name is called, approach the podium, and according to Council Rules you will have three minutes to present your testimony and one minute to conclude. When you testify please state your name and/or your organization in which you represent. Mr. Molina, can you please call the first testifier.

MR. MOLINA: The first person signed up to testify is Jeny Bissen [*sic*].

... BEGIN PUBLIC TESTIMONY ...

MS. BISSELL: Good morning, Council Chair Don Guzman. Good morning to the rest of the Members, and happy Friday. Thank you again for today and having us, and I'm testifying on the EAR-36, prohibiting tobacco use and tobacco products in the County parks. And also good morning to our Lanai, Molokai, and Hana colleagues there. I just want to personally thank you. Oh, for the correction of the minutes it's Jeny Bissell, not Bissen. It's B-I-S-S-E-L-L. Just to make sure that you have that down. I just want to say thank you again for everything that you've done on this effort and all of the other efforts that you've done over the several years in regards to this issue. And yes, we do have a lot of programs, we have really done a lot of effort in terms of education, educating our community in terms of the effects of tobacco and smoking as well as giving them ways and tools to reduce the incidents and also stopping them from smoking. But I think as well all know that in order to really make a great impact for the rest of our citizens as our community, it's through environmental change, environmental policy, and you have the power to do that. So again, thank you so much for everything and for all of your efforts and what you do for our County of Maui. Thank you so much. And at the same time, we also have, we wanted to show you the 14,000 that our community and our kids especially have collected and from all of our beaches throughout Maui County. We just wanted to let you know that the efforts that we've done on behalf of our community. So again, thank you so much for everything and have a wonderful day.

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CHAIR GUZMAN: Thank you. Members, do you have any follow-up questions? Seeing none, thank you very much for your testimony and all the hard work --

MS. BISSELL: You're welcome.

CHAIR GUZMAN: --and in collaboration with the youth.

MS. BISSELL: You're welcome. Thank you.

CHAIR GUZMAN: Can you please proceed with the next testifier.

MR. MOLINA: There is no one else signed up to testify.

CHAIR GUZMAN: Okay, thank you. And we'll go, we'll turn to our District Offices. Ms. Thompson in Molokai, is there anyone wishing to testify?

MS. THOMPSON: There is no one waiting to testify here on Molokai.

CHAIR GUZMAN: Thank you. And, Ms. Fernandez in Lanai, is there anyone wishing to testify?

MS. FERNANDEZ: Yes. We have one person to testify on Lanai and it's Winnie Basques --

CHAIR GUZMAN: Thank...

MS. FERNANDEZ: --on item, testifying on Item EAR-36.

CHAIR GUZMAN: Thank you. Can please state your name for the record.

MS. BASQUES: Good morning. My name is Winifred Basques. I'm living on the island of Lanai. I oppose to the smoking on the County beach area, and other than that, I think, you know, people should realize all these things that goes on in the community. It looks very, very dirty when you come to the beach, Council, the park. Thank you very much.

CHAIR GUZMAN: Thank you. Members, do you have any follow-up questions?

COUNCILMEMBER COCHRAN: Chair?

CHAIR GUZMAN: Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you for being there on Lanai. So our County parks there, is that include Dole Park in the center square? Is that us? No? We're...

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CHAIR GUZMAN: That's private.

COUNCILMEMBER COCHRAN: Hulupoe Bay, is that...

CHAIR GUZMAN: Oh, wait, not the...

COUNCILMEMBER COCHRAN: Sorry, I'm just trying...ma'am, can you tell me where our County park is located on Lanai?

CHAIR GUZMAN: Ms. Vasques [*sic*]?

MS. BASQUES: Yes. No, it's not the one in the park, in the town, it's down at the beach area as well as the Dole Park where there are visitors comes in and there's no more dispensary for the ashtrays and they just put it, they just flick it all over the yard in the park and it looks very, very untidy.

COUNCILMEMBER COCHRAN: Yes, okay. Thank you. Thank you for being there, thank you for your testimony.

CHAIR GUZMAN: Thank you very much. Members, any further questions? Seeing none, thank you very much, Ms. Vasques [*sic*].

MS. BASQUES: You're welcome.

CHAIR GUZMAN: Is there any other testifiers in Hana? I mean in Lanai.

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

CHAIR GUZMAN: Okay, thank you very much. Ms. Lono in Hana, is there anyone wishing to testify?

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

CHAIR GUZMAN: Okay, thank you. Thank you, ladies, for being there and being on standby as well. I will now ask the Members...well, excuse me. Let me ask the gallery if there's anybody wishing to testify. Seeing none, Members, without objection, I would like to close testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR GUZMAN: Thank you.

... END OF PUBLIC TESTIMONY ...

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CHAIR GUZMAN: Members, we have one item on, remaining on our agenda today, that's EAR-36, Prohibiting Tobacco Use and Tobacco Products in County Parks. Members, in your binders you'll find a correspondence dated March 3, 2014, from the Department of Corporation Counsel, transmitting a revised proposed bill entitled A Bill for an Ordinance Amending Chapter 13.04, of the Maui County Code, Prohibiting Tobacco Use and Tobacco Products in the County Parks. The proposed bill prohibits the use of tobacco, tobacco products, and electronic smoking devices in Maui County parks and facilities. The Committee is in receipt of over 147 testimonies submittals which includes two petitions by the Pacific Whale Foundation and Surfrider Foundation. All but two testimonies were in support of the bill. Members, I was the introducer the bill as you know, and one of the reasons or several reasons for my introduction of the bill was first of all, the environment issues that were being addressed in the bill in terms of the tobacco, the cigarette butts being left on the beaches. And secondly was the health issues in which we are all faced with within our County. And thirdly was, this was a movement generated by our youth, specifically our high school students, and this was a way for me to work with them in introducing a bill and empowering them to learn how the process works. So I, it was fortunate enough that it did come to this Committee and it is this body's responsibility to vet through this ordinance. And so as we have here I would like to go ahead and start...as the Chair, I'm going to do a little bit different format, and first of all I'd like to maybe address the Members and see where they're coming in terms of what issues they may have presented so far so that I may collate the issues. So, Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. Before we start, I can't find the March 3rd, I've been looking at the January one.

COUNCILMEMBER COCHRAN: Yeah, sorry, Chair. Is it request for legal services date February 28th? 'Cause it's stamped March 3rd but it --

CHAIR GUZMAN: Oh, stamped.

COUNCILMEMBER COCHRAN: --technically say on the sheet, so that's why I was flipping through everything, too.

CHAIR GUZMAN: Okay. I think that...

COUNCILMEMBER COCHRAN: Is that what you're looking at?

CHAIR GUZMAN: I believe it would be January 31, 2014 --

COUNCILMEMBER COCHRAN: Okay.

CHAIR GUZMAN: --is the date on the correspondence.

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COUNCILMEMBER COCHRAN: January 31st. And that's also stamped January 31st?

MR. MOLINA: Yeah, Chair, that was the initial transmittal and then we received the revised bill from Corporation Counsel dated February 28th, received by the Committee on March 3rd. So sorry for the confusion.

COUNCILMEMBER COCHRAN: And that would be what we're working off of today?

COUNCILMEMBER WHITE: I don't, I paged through and I can't find it, so maybe...

CHAIR GUZMAN: It may not...

COUNCILMEMBER WHITE: It might be here but.

CHAIR GUZMAN: Is it in the binders? Can you, can Staff check to see if they have it in the binder.

COUNCILMEMBER COCHRAN: Yeah, Chair, I have it. The top page says request for legal services, date February 28th, but it has the...oh, okay. At the very bottom I guess is where March 3rd is post --

CHAIR GUZMAN: Yeah. That's the date we --

COUNCILMEMBER COCHRAN: --is stamped.

CHAIR GUZMAN: --received it back from Corporation Counsel.

COUNCILMEMBER WHITE: I was looking at the right thing after all.

COUNCILMEMBER COCHRAN: Okay.

CHAIR GUZMAN: Yeah. Is March 3rd.

COUNCILMEMBER COCHRAN: And then second page would actually be the ordinance.

CHAIR GUZMAN: Okay. Yeah, Members, are we all on the same page now?

COUNCILMEMBER CRIVELLO: Yeah.

COUNCILMEMBER COCHRAN: Yes.

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CHAIR GUZMAN: Okay, very good. So I will go ahead and, to start off with the discussion I want, I would like to first of all introduce our representative from the Parks Department and that is Roxanne Teshima. Good morning.

MS. TESHIMA: Good morning.

CHAIR GUZMAN: And if you have any opening comments in regards to the ordinance before us.

MS. TESHIMA: Okay. Good morning. Thank you for allowing us to comment on this. The Department will support your proposed policy changes; however, we have a concern with the smoking ban as it relates to our capacity to enforce the prohibition at our parks. We would like you to consider the impact on our Department's current and future operations which includes manpower, equipment, and funding. We would like you to also consider including the following language similar to Oahu: with the exception of the municipal golf course, and within any region of a park where a designated smoking area exists.

CHAIR GUZMAN: Okay. Members, do you have any questions for the Department? Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you. And thank you, Ms. Teshima, for being here. So you're like, so for our County park and have a designated area within the park or out the boundary lines for the smoking?

MS. TESHIMA: Within the park.

COUNCILMEMBER COCHRAN: Within the park.

MS. TESHIMA: And when I did speak to a gentleman in Honolulu, City and County's Parks Department, he said they have two grievances currently regarding employee smoking, you know. Because their baseyards are located within the park and so there needs to be a designated area for them to smoke as part of the contract, and so we're concerned about that. And we don't want to go through any unnecessary grievances. We want to have the ability to have, to, you know, designate areas for smoking as needed.

COUNCILMEMBER COCHRAN: Okay.

CHAIR GUZMAN: I understand. What I believe the Department is requesting is having smoking zones like a little, you know how they have in airports, and airports are now smoke free and they have that little room for smokers. And you walk in there and it's like you can't even see, you know, your hand in front of you, but I guess that would be like their request to have a, kind of a zoned area. Is that my understanding?

MS. TESHIMA: Correct, yes.

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CHAIR GUZMAN: Okay. It sounds like that. Ms. Cochran.

COUNCILMEMBER COCHRAN: And so the zone is it an enclosed area or is it still open air like roped off? Or is this something that we would have to work the details out later?

MS. TESHIMA: Yeah, it's something that we would need to work on further as far as the details, but in concept we would need the ability to do that regarding...I don't know if there's...especially to do with our work areas and our, taking care of our employees who smoke.

COUNCILMEMBER COCHRAN: Okay. And sorry, one sec, Ms. Crivello.

COUNCILMEMBER CRIVELLO: No, I'll wait...*(inaudible)*...

COUNCILMEMBER COCHRAN: And then the, your next comment in regards to golf courses, you want them exempted --

MS. TESHIMA: Yes.

COUNCILMEMBER COCHRAN: --out of this, so allow smoking --

MS. TESHIMA: Correct.

COUNCILMEMBER COCHRAN: --upon golf courses? County?

MS. TESHIMA: Yes.

COUNCILMEMBER COCHRAN: Okay. And currently Oahu has that?

MS. TESHIMA: Has that also. .

COUNCILMEMBER COCHRAN: Okay. And, yeah, my question was going to be in regards to golf courses are considered County parks. And what other kind of...not strange but different? I mean we just, you know, baseball fields, soccer fields, we know those are parks, but are there other...I guess we have dog parks which I guess would fall into play here. But I just was wondering if there's any other kind of park.

MS. TESHIMA: Well another thing is we, our park boundaries are from the high-water mark at beach parks on, inland and the State owns the rest. So if, it should be in conjunction with the State of Hawaii, right, if they're banning also the beach areas.

COUNCILMEMBER COCHRAN: Right.

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MS. TESHIMA: They, there's always some loopholes. They might be smoking in the beach area, you know, versus inland, you know. So we have problems like that associated with drinking also where the parking lots they cannot drink but on the sides they can. So, you know, there's always a way, but hopefully it's, the law is tight enough that we can enforce it also.

COUNCILMEMBER COCHRAN: Right. And, Chair, that's why one of my clarifying inquiries was going to be we are, this clearly states County parks and not beaches.

CHAIR GUZMAN: Right.

COUNCILMEMBER COCHRAN: 'Cause we're, you know, the, yeah, we're only up to the high-water mark and below that as Ms. Teshima just mentioned is State, so a lot of testifiers are saying, you know, yes we...I understand but they're including beaches and I'm thinking they're assuming that it's going to be our County parks who are going, who's going to be the enforcement of that which technically jurisdictional-wise it's not.

CHAIR GUZMAN: Right.

COUNCILMEMBER COCHRAN: So okay. Thank you.

CHAIR GUZMAN: Well I mean just as stated we're, our jurisdiction goes to the high-water mark, so if somebody wants to go smoke a cigarette then they can stand in the water area and smoke their cigarette. As the waves come in, you know, the high-water mark area, but we have jurisdiction before the high-water mark, so we can only go as far as we can.

COUNCILMEMBER COCHRAN: Right.

CHAIR GUZMAN: You know that's our jurisdiction, so that's up to the State if they want to regulate and I do believe they do have a State bill that may be in committee at this point.

COUNCILMEMBER COCHRAN: Okay, thank you.

CHAIR GUZMAN: But thank you.

COUNCILMEMBER COCHRAN: That's all. Thank you for this opportunity, Chair.

CHAIR GUZMAN: Any...yes, Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair. Ms. Teshima, can you explain why the municipal golf courses are being recommended to be exempt from any of our other recreational facilities or park?

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MS. TESHIMA: Well it was a direction under our Department heads that they recommended that similar to Oahu's, so that's, sorry, that's all I have.

COUNCILMEMBER CRIVELLO: Oh, okay. So it's a directive that's coming from...okay. So no complete rationale as to why it's okay for us to have the no-smoking ban in other facilities, County facilities but no, it, and but it's okay to smoke on the golf courses, is that my understanding why? Is, are golfers all smokers or non-smokers or? I don't know.

MS. TESHIMA: Well, we would support your legislation of course, and we just wanted you folks to consider that because that's what Oahu is doing and it works for them. So but if you want to change it, you're, of course you're the body to do it. Thank you.

COUNCILMEMBER CRIVELLO: Chair?

CHAIR GUZMAN: Yes, Ms. Crivello.

COUNCILMEMBER CRIVELLO: Also when you talk about designated smoking area for employees, are you saying it's specifically for employees or the facility users as well?

MS. TESHIMA: I would think that as we assess the parks when this law is enacted if it's enacted that we would consider other areas also which the community may desire to have that, depending on what the community wants.

COUNCILMEMBER CRIVELLO: Okay, thank you.

CHAIR GUZMAN: Interesting. These are, you are raising some very interesting issues. Let's get a comment from Corporation Counsel in regards to Oahu's bill in which we can compare, have some type of comparison to, specifically in regards to the Waiehu Golf Course or golf courses exemptions.

MR. UEOKA: Thank you, Chair. Looking at it, the Hawaii, I mean Hawaii...Honolulu, City and County of Honolulu in their revised ordinances, it's set up a little differently. Theirs is more of a, how we have it in Title 8 which is just a general smoking prohibition as opposed to just within Title 13 which is specific to parks. So within theirs, there's all public parks, recreation areas and facilities under the maintenance of the Department of Parks and Recreation and the Department of Enterprise Services, except for open-air areas of a municipal golf course and such areas within each of the following sites as a Department of Parks and Recreation or the Department of Enterprise Services may designate by appropriate signs as areas within which smoking is permissible. And those sites are listed as the Honolulu Zoo, Hanauma Bay Nature Preserve, Koko Crater Botanical Garden, and Waikiki Shell. So as far as why golf courses are allowed I'm

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not sure. It's, maybe, I guess maybe it was the will of the body. I don't know exactly the reasoning, Chair. Thank you.

CHAIR GUZMAN: Okay. Thank you. Do we have, it's nice to have two attorneys in the room. So I would like to call on our Staff attorney to see if they've done any research on this matter. Erin Fleming, do you have any comments in regards to the comparison of Oahu's bill to ours in regards to exceptions to golf courses?

MS. FLEMING: Staff has nothing further to add to the comparison to the Oahu bill, but in researching this issues we did look at other municipalities that did exempt golf courses. And some of the reasons were that golf courses are regularly groomed and maintained, and there's often not children present at golf courses. And you have less exposure to secondhand smoke out in open areas where people are spread apart. That's all that Staff would add.

CHAIR GUZMAN: How many municipalities did you research or at least come up with that, those type of policies to exempt golf courses?

MS. FLEMING: There are several big ones, and I know L.A. County, Albuquerque, New Mexico, all across the country depending on the area, they'll exempt certain areas, so it'll be either casinos or riverboats or they will have these designated areas where it is allowed in open-air areas.

CHAIR GUZMAN: Okay. Thank you very much for that information. Mr. White. Oh, wait, did you...okay. I guess Corporation Counsel would like to say a comment.

MR. UEOKA: I guess since we're discussing other municipal...or Hawaii County has a prohibition also on smoking. It's also not included in their section on parks, it's just a general overall, their smoking prohibitions. And theirs one says shall be prohibited at all County parks and recreational facilities listed in Section 15-68.1, and if you go through there, I believe their golf course is listed. If you look at Kauai County, theirs is a little different. Again it's also within a smoking prohibition section of their, I think they're a code also, their Kauai County Code. All areas within recreational areas or facilities under the maintenance of Department of Public Works, Division of Parks and Recreation, except areas within, except such areas within each area or facility as the Department may with the approval of the Fire Chief as to facilities, designate by appropriate signs as areas within which smoking is permitted. County parks shall not constitute recreation areas or facilities within the meaning of this subsection. And I don't, I can't say 100 percent, I'm not sure if their golf course is considered a county park but I would assume so. Again I'm not, I couldn't find it in their code from my review.

CHAIR GUZMAN: So in, so it's my understanding that Kauai's code does not ban smoking in their parks?

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MR. UEOKA: That's what it looks like. I'd have to see what's defined as their county parks, but I would assume their recreation areas or facilities would probably be more their community centers, et cetera. But we'd need to do more research on that to find their distinction. I couldn't find it in my review.

CHAIR GUZMAN: Thank you. Yeah, Members, this is, I guess the golf course issue has been debated throughout the entire mainland and specifically also in Oahu, so it's with due diligence that we do bring this issue up before this body to consider it. Because it is one of the issues that is attached to these type of bans on the parks, on our municipality parks. Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And I think, well I haven't concierge'd in several years but at the time I think we had 15 golf courses and we have 1 County golf course.

CHAIR GUZMAN: Yes.

COUNCILMEMBER COCHRAN: So people can go to 14 other golf courses and smoke their hearts out if they want, but if they come to our municipal golf course then it's a no-no. I mean that's kind of how I look at that, Chair. Thank you.

CHAIR GUZMAN: Thank you. Ms. Crivello, do you have an opinion on it?

COUNCILMEMBER CRIVELLO: Well I have couple concerns with the bill. I, you know, if we're going to designate no smoking and, you know, like zone free smoking areas whether it's the parks or the actual facilities themselves then we should be straight across the board, you know, and meet it that way. I can understand in regards to designated areas for employees to avoid the grievance process, I can understand that, 'cause anytime you grieve it's additional monies that we pay out. So I, you know, I think we need to do more due diligence on this, and the other consideration aside from the Parks' request for exemption is for us to even relook at the electronic smoking devices even if we're not there yet.

CHAIR GUZMAN: Okay. Wow. This is...okay.

COUNCILMEMBER WHITE: You can come back to me since I had the floor --

CHAIR GUZMAN: Yeah, Mr. White.

COUNCILMEMBER WHITE: --earlier. Chair, I, my sense is similar to the other Members that if we're going to do this for all parks then we should do the same thing for the golf course. I agree with setting up designated smoking areas, but on the beach parks they should be as far away from the sand as possible. On the golf course they could be wherever the restrooms are located or in an area near the restrooms. I also have the concern that Ms. Crivello has regarding the electronic smoking device. Well actually I'm not sure my concern is the same as hers. It seems

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as though, I mean I understand that, you know, from a distance it's going to be hard to determine whether it's a electronic device or a cigarette. So I guess I'm okay if we have a designated smoking area, the electronic cigarettes can be smoked there too, so I'm okay with leaving them in if we're having designated areas. But 'cause I think allowing people to get off of cigarettes and other tobacco products is a good thing. But one of the questions that I had for Roxanne was I understand the delineation of the high-water mark, but do we, do our Parks employees, our Parks maintenance people clean the beach makai of the high-water mark or do they stop at the high-water mark?

MS. TESHIMA: Our Parks employees, they, we don't, we only clean from the high-water mark inland on our park boundaries.

COUNCILMEMBER WHITE: And that's, you know, that's a challenge that I think we need to face at some point. I understand the legal line there, I don't understand that we only clean our side because the State is not going to come and clean their side. So for our visitors and our residents, I think our employees should take it upon themselves to go a little further and clean up the beaches. I think that's what's done in most of the resorts. My property line, the hotel stops at the high-water mark but we take responsibility for cleaning everything because it's our guests and the residents that come and use the beach in front of our property. So I don't know whether that is something that Parks Department can do on their own, or whether we need to go and get an executive order to transfer those sections of beaches to at least our responsibility for maintaining or I don't know what is necessary. But it seems to me that as a County we should be cleaning up that area for our residents.

MS. TESHIMA: Can I say something to that?

COUNCILMEMBER WHITE: I think that's it.

MS. TESHIMA: Can I say...

CHAIR GUZMAN: Those are really...oh, I'm sorry. Did you want to say a comment?

MS. TESHIMA: Yeah. Can I address that?

CHAIR GUZMAN: Yes.

MS. TESHIMA: You know in regards to the beach area that is adjacent to our parks, if there's a safety issue we definitely will take care of that safety issue.

COUNCILMEMBER WHITE: No, I understand that.

MS. TESHIMA: And yeah, we would address that with the State --

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COUNCILMEMBER WHITE: But we're not...

MS. TESHIMA: --and take care of it.

COUNCILMEMBER WHITE: We're not going to take care of a cleanliness issue? I mean I understand the limitations of the Department but at the same time just as a resident I don't understand why we stop. It's like I'm going to clean my half of the hallway but my brother has to clean his half of the hallway. No make sense.

CHAIR GUZMAN: And...

COUNCILMEMBER WHITE: I mean I know and Mr. Corp. Counsel is saying hey, that's how it works.

CHAIR GUZMAN: And, Mr. White, it deals with liability. You know I'm sure there's been some type of agreement made between the County and the State in regards to safety. Our Ocean Safety Division, they go into the ocean but we pay their salaries out of the County budget.

COUNCILMEMBER WHITE: Right.

CHAIR GUZMAN: And so there's some type of agreement or understanding between the State or County, I don't know. I really don't know. But in far, in terms of what you're saying is maybe that is an issue that this Committee can bring up and tackle on at another meeting or I can put it on the agenda if you transmit that letter. We can look into it, why is there that, you know, clearly why are we not sharing the maintenance or the cleaning of the beaches. That could be, you know, a question posed to the State, you know, or...

COUNCILMEMBER WHITE: And it goes way beyond that too because the State is responsible for the near-shore waters for everything except Ocean Safety issues, and yet a lot of us would like to have the County have greater control over our near-shore waters so we, you know, we can determine what happens basically on our island. So anyway, just a thought, Chair.

CHAIR GUZMAN: Okay, thank you. Thank you for that, those comments. I believe, yeah, that, that's a whole issue in itself, you know, that we're going to have to deal with and address later on. But if you don't mind you can transmit a letter to, with the subject matter --

COUNCILMEMBER WHITE: Sure.

CHAIR GUZMAN: --so that we can address that in the Committee. Getting back to the first issue which was the Waiehu, the golf course exemptions. I just wanted to lay on the record that according to the research that we've done in our Staff regarding policies throughout the other counties on the mainland, we have several I guess policies that dictate in support of exempting

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golf courses. And I want to just read those in the record so that you're aware of these policy arguments in support of exempting golf courses. Number one was the municipal golf courses were unintentionally included in some of the bills, and this bill is, could be aimed at protecting our beaches and coastlines. The bill is intended to address concerns over tobacco litter and secondhand smoke, those issues aren't as pressing as an municipal golf course as compared to other Parks and Recreation facilities. Groups and individuals on the golf course are often spread out over large areas limiting exposure to secondhand smoke. Groups playing in close proximity are choosing to engage with one another, and children and youth face less exposure to secondhand smoke at golf courses due to spacing that occurs while playing on the course. Golf courses receive regular maintenance and grooming which serves to mitigate litter concerns. We have heard testimony regarding litter and the environmental efforts of tobacco products at beaches, but little has been said regarding litter environmental efforts at the golf courses. So not that I'm supporting this exemption, I'm just stating what we've received in terms of the research in support of exempting the golf courses. So in no way I am taking a position on this, but just to put it on the record these are the concerns of those that are playing on the golf course and would like to smoke. But that being said, I'm going to go to the next issue or unless you want to further discuss this? Any...

COUNCILMEMBER COCHRAN: About golf courses?

CHAIR GUZMAN: Yeah, the golf courses. Is there any further discussion --

COUNCILMEMBER COCHRAN: No.

CHAIR GUZMAN: --regarding the golf courses --

COUNCILMEMBER COCHRAN: No.

CHAIR GUZMAN: --exemption? How's the take here?

COUNCILMEMBER COCHRAN: Yeah, I don't want it.

CHAIR GUZMAN: Sounds like it's not, you don't want the exemption.

COUNCILMEMBER COCHRAN: Right.

CHAIR GUZMAN: It sounds like it.

COUNCILMEMBER WHITE: No, I'm...

CHAIR GUZMAN: Mr. White.

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COUNCILMEMBER WHITE: Well although I think all the parks should be treated the same, I think the points that you've made do make it less of a concern for the golf courses, so, you know, I'm not feeling I gotta take a hard stand on it. So I'm open to going either way.

CHAIR GUZMAN: Ms. Cochran.

COUNCILMEMBER COCHRAN: Sorry. So, Chair, people know how I feel about this golf course anyway to begin with, but because we have to deal with it and we have County employees that are affiliated with this course and other parks, and then Ms. Teshima mentioned about grievances which have to do with employees of ours or potential grievances. And I guess the compromise could possibly be that designated zone area, whatever, for smokers, but I understand golf, you got 18 holes you gotta travel to. You're not going to run back to your little zone and smoke it, go back to your...so, you know, I mean great, fine, they have a place to go, but I mean personally yeah, I want to treat all equal. But I, but, you know, I understand, so we need a little bit more discussion I think to determine how that would work. A golf course is quite different from a beach park, picnic, barbequing and stuff, you know, so it's a little different. And so but personally I would much rather just see a ban straight across the board. Thank you, Chair.

CHAIR GUZMAN: Ms. Crivello, are you, have any comments?

COUNCILMEMBER CRIVELLO: You know I'm not a golfer so I really...I can understand the openness and, you know, I don't think there's so much smoking going on and what have you. I'm like my colleague here I wish we'd just be, you know, equitable right across the board. But is that a request from the Parks people?

CHAIR GUZMAN: Yes.

COUNCILMEMBER CRIVELLO: I think we should look into it and take that into consideration. And as far as the designated areas, I can understand that. You know but and then of course, you know, like we have six other, you know, codes that we have listed and how we going really enforce all these who's smoking where and what have you. So I think there needs to be more due diligence in the work to fully come up with what we want to have in this bill as far as what may be exempted and what to really ban, and I think we go back to the main objective as to why the movement is before us to ban the use of smoking and tobacco. I think it's just a matter of coming back in focus why our young people are asking us to take this into consideration.

CHAIR GUZMAN: Okay. I mean I just wanted to place on the record the discussion of the exemptions of the golf courses, because if we do not discuss it then we would be outside of the norm of the other jurisdictions talking about it and discussing it. So we would never have that I guess accusation or allegations towards not discussing the issue, so that's why it's brought forth. On the, in regards to...I guess one analysis would be that if we're talking about secondhand smoke affecting others, on a golf...and I play golf, you know, and I'm sure Mr. White plays golf as well

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is that when you choose to play golf, you're, you choose the group that you play with, either a foursome, a twosome. So those people that you play with you're in agreement that, you know, hey, I know you smoke, I know you smoked here, there, it's an agreement. It's a choice as to who you're going to play with. Now when you get on the course, you've got to go hole by hole, and to finish a hole, to complete a hole, it takes about 15-20 minutes when you finally get to the green. And in that time, the group behind you is about 20-30 minutes behind or 15 minutes behind, so it, there's this spacing of open space that you're really, you know, narrowed or consolidated within just your group. So that being said, that's just kind of the rationale behind some of these arguments or some of the phone calls that we hear from our constituents and the concerns from the Parks Department. At this time, I, it sounds as though I could go ahead, since we've discussed it, we can go ahead and try to amend the ordinance and if it dies, it dies, the amendment, but at least it's on the record we've discussed it. You know so we could call a vote on it on that. But I'll move forward to the next issue which would be designating zoned areas it sounds like, and that could be a compromise to those people on the, that work in the parks as well as the employees that work in the golf courses. Let me ask the Department how they envision that to work in open space? I mean we're going to need some kind of specifics. Do you have any idea in how that would work having zoned areas for smoking?

MS. TESHIMA: I would envision it having proper signage and letting everybody know where the areas are designated, and preferably near the baseyards or restrooms would, you know, that would seem logical.

CHAIR GUZMAN: Okay. So can I ask the Members if they have an opinion as the zoned area, zoned areas, if they would be in opposition or would support such a change in the ordinance, and maybe we can start with Ms. Crivello.

COUNCILMEMBER CRIVELLO: I think we can take that into consideration, because it's, you know, I think the result of the grievances with the other counties will kind of give us some direction as to the outcome. I think we have to realize every time there's a grievance, it does cost us some dollars so you want to avoid that. You know and I don't know how you can word it that that's a possibility to have designated areas. I think especially with the facility areas and the beach parks...well I guess if you have it for one, you'll have to have it for all. Yeah.

CHAIR GUZMAN: Yeah, that's correct. Ms. Cochran.

COUNCILMEMBER COCHRAN: So just to get clarification on these grievances. This is grievances to unions? This is like a union issue?

MS. TESHIMA: From what I understand, yes, against the City and County.

COUNCILMEMBER COCHRAN: Okay.

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CHAIR GUZMAN: Oh, well, can you repeat that? What was that?

MS. TESHIMA: Their law doesn't have designated smoking areas so therefore they have, currently they have two outstanding grievances from I guess the union saying that they need, the workers would like to smoke, you know, in their working areas. So I don't know if, I don't think it was taken to, was completed yet, you know, the process, but they currently, from what I understand, they have two outstanding grievances.

CHAIR GUZMAN: So it sounds as though if we were to amend the ordinance to allow these type of zoned smoke zones, we would have to give the discretion to the Parks Director in where these zoned areas would be, because we have no listing or we don't have that specific information as to where these specific zoned areas would be located. So we would just at this point possibly leave it in the discretion of the Parks Director in creating these zoned areas and limit the size of the zoned area to I don't know, square footage or something, I don't know, or to only the restroom areas in, on the golf course, I don't know. It seems as though the best way to handle this is probably if you are in favor of the zoned areas is to just put into the ordinance leave it at the discretion of the Director, the Parks Director in finding out where these zoned areas could be placed.

COUNCILMEMBER COCHRAN: Right. And so I guess it was briefly mentioned that, I guess this whole subject came up because of grievances per se --

CHAIR GUZMAN: Yeah.

COUNCILMEMBER COCHRAN: --from employees, you know, in regards to union rights and whatever. So now the public though, the general public comes into play. They see oh well the County workers get their little zone over here smoking, so I think we did touch on it, we're now going to allow the public, the general use I guess of these zoned areas. But it basically got brought up strictly in reference to grievances per employees.

CHAIR GUZMAN: Employees, yeah.

COUNCILMEMBER COCHRAN: So I think if that never occurred I don't even think we'd be talking about this, you know, so it'd be prohibition is prohibition. And, you know, so I, kind of throws a little monkey wrench into the whole dialogue here of this particular bill, but I mean you're an attorney so --

CHAIR GUZMAN: Yeah. Well it raises...

COUNCILMEMBER COCHRAN: --you know that --

CHAIR GUZMAN: It raises --

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COUNCILMEMBER COCHRAN: --we don't want to go there.

CHAIR GUZMAN: --some issues, yeah, it does, and number one would be what is our union agreements say within it in terms of is prohibiting, is it a right or a condition that was contracted in and mutually stipulated that we would allow our employees that are union members the ability to smoke during their break. I'm not sure what the union agreements entail. I honestly didn't know that this issue was going to come up until just this very moment, so I don't have those agreements, I haven't, we haven't researched it to whether it is buffered in there to allow them to smoke. So maybe I can turn to Corporation Counsel if he has any information on that.

MR. UEOKA: No, Chair, I'm not familiar with the union contracts. Thank you.

CHAIR GUZMAN: Okay. So at this time we don't have that information in terms of whether that is a stipulated agreement between the, a condition between the County and the unions, but we can if, you know, like I said, we can put in that type of language in here to allow that flexibility for the Director of Parks and Recreation to have that, you know, authority to designate certain areas as a I guess employee smoking area. I don't know. If I was an employee smoking I wouldn't want to be in that area, you know, just because it's, you know, you'll be in a little bubble. Just like when you're at the airport in that little room and it's like glass and people walk by you and it's all foggy in there and it's like...but yeah, it's up to this body if you would, I'm trying to get a consensus to see if that's where we're, where you want to go. And if that's what you feel that we should go then we could probably draft some language to include that into the ordinance.

COUNCILMEMBER COCHRAN: Well I rather not, but I mean again, you know, if we need to deal with grievances then of course I want to avoid those situations, and if this is a way to do it then I mean we're kind of don't sort of have an option. You know but the option would be to place it in the best possible, you know, scenario for others and the secondhand smoke issue and the littering issue and, you know, the environmental effects stuff. But personally, you know, I would like to know firsthand is it a true right. I mean I recall Marriot adding up the minutes and hours per year that a company loses because of a particular employee who smokes, you know, who leaves the job and goes and...but anyways, that's another subject matter. So, you know, Chair, I don't know where these grievances are, at what stage, and if there's going to be an outcome soon to find out what the, you know, what the determination is on them. So it could be a compromise I suppose, but like I said, I don't like to be put in situations where we have to deal with grievances. And jumping to another subject matter but which we spoke about and it's the e-cigarettes. Personally I understand the, you know, this, the title has tobacco, the word tobacco. Tobacco, a leafy product thing, and e-cigs is a liquid, I know has nicotine in it or whatever. So I don't see how it relates to tobacco per se for me. So I don't think it belongs in this particular bill at this point. I think we need to focus on the tobacco because that's what's in the heading and stick to that for now. Not to say we could address it later in the future down the road but at this

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particular juncture I would much rather focus on the tobacco because that's exactly what's in our heading. Thank you, Chair.

CHAIR GUZMAN: Okay, thank you. It's...so yeah, the third issue would be dealing with the e-cigarette definition in the ordinance as well as the inclusion of the e-cigarettes as a ban. We can talk about that right now if you'd like to move on to that issue. So in regards to the e-cigarettes, it sounds as though that the definition is being I guess worked on at the State level, and so in terms of the testimony given on the floor, it sounds like the FDA on the Federal level have not really defined it as a, I guess a cigarette itself. So it's not in that category and it's not in the, what would you call that, that it's a supplement to help people get off of cigarettes or it's not in that category either so it's kind of undefined. And so at this point since it hasn't been defined by the State Leg, I'm a little bit hesitant to, at least in the rationale, at least in my rationale to put a definition of e-cigarettes in the ordinance now while the State Leg is debating or discussing legislation in defining it as is. So I don't know how the Members feel about this but it's up to the body. I'm okay either way in terms of passing this out with the e-cigarette definitions in there, but just to know that if the State Leg comes out with their definition, we will have to come back and amend this ordinance to comply with their definition. Yes, Ms. Crivello.

COUNCILMEMBER CRIVELLO: I would prefer at this time not to include it in this bill. You know how do you define it being tobacco? And I guess scientifically the people who believe that it should be included have their rationale, but I don't think we're there yet with the e-cigarettes. You know people have actually quit smoking tobacco as well as the e-cigarettes, you know, but the efforts came from the, well I should say the e-cigarettes help to wean themselves off on the tobacco and eventually quit the e-cigarettes altogether too. So I would recommend that we remove the electronic smoking devices at this time.

CHAIR GUZMAN: Is that a motion?

COUNCILMEMBER COCHRAN: I agree.

CHAIR GUZMAN: Is that a motion to delete?

COUNCILMEMBER CRIVELLO: If it needs be for addressing this bill at the moment. I mean...

CHAIR GUZMAN: Okay. Okay, why don't we start with that one first. Any further comments on the e-cigarettes before I entertain this motion?

COUNCILMEMBER COCHRAN: I don't know, Mr. Ueoka is...

CHAIR GUZMAN: Mr. Ueoka.

COUNCILMEMBER COCHRAN: Does he have something to say?

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CHAIR GUZMAN: A recess. I guess we're going to --

COUNCILMEMBER COCHRAN: Oh, a recess.

CHAIR GUZMAN: --take a quick recess --

COUNCILMEMBER COCHRAN: Okay.

CHAIR GUZMAN: --to --

COUNCILMEMBER COCHRAN: All righty.

CHAIR GUZMAN: --confer. Thank you. Two minutes, three minutes. . . .(gavel). . .

RECESS: 10:06 a.m.

RECONVENE: 10:33 a.m.

CHAIR GUZMAN: . . .(gavel). . . The EAR Committee shall now reconvene. After a full discussion with our Staff and as well as our Corporation Counsel in terms of trying to draft out language that is, would be in accordance with our discussions that we've had on the floor, we've come up with several amendments that I would present on the floor for the vote. And it is up to this body whether they would like to see this amended within the ordinance itself. The three issues that we were discussing was number one...it's not in order but I'm going to put it in order. It would be deleting the e-cigarettes from the ordinance. Number two would be having the golf course be an exception, and having zoned smoke areas designated by the Director of Parks and Recreation. So those were the three issues that we were discussing on the floor. I will first go with a, I will entertain a motion for discussion. Entertain a motion to delete in Section 2 the definition of electronic smoking devices.

COUNCILMEMBER WHITE: So moved.

CHAIR GUZMAN: And also the deletion...oh, just that phrase, sorry. Just that definition to exclude and to delete that electronic smoking definition, device, in Section 2. Moved by Mr. White.

COUNCILMEMBER CRIVELLO: Second.

CHAIR GUZMAN: Seconded by Ms. Crivello. Discussion? Open to discussion. Ms. Cochran.

COUNCILMEMBER COCHRAN: Yeah. No, I mean I agree. I'm in very much support of the motion. And...

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COUNCILMEMBER CRIVELLO: I support the motion, too.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR GUZMAN: Okay.

COUNCILMEMBER COCHRAN: So we're only looking at Section 2 in regards to that verbiage, electronic smoking device?

CHAIR GUZMAN: Smoking devices, yeah.

COUNCILMEMBER COCHRAN: 'Cause it's also mentioned in Section 3, No 7, so we will then go there later then? Is that...

CHAIR GUZMAN: Section 3.

COUNCILMEMBER COCHRAN: Three, No. 7.

CHAIR GUZMAN: No. 7.

COUNCILMEMBER CRIVELLO: Under A.

CHAIR GUZMAN: Oh, yes, that would...

COUNCILMEMBER COCHRAN: Under A --

CHAIR GUZMAN: That...

COUNCILMEMBER COCHRAN: --A, No. 7.

CHAIR GUZMAN: Yeah, that would also be...

COUNCILMEMBER COCHRAN: So that would go --

CHAIR GUZMAN: Thank you. Thank you for --

COUNCILMEMBER COCHRAN: --hand in hand.

CHAIR GUZMAN: --that catch. So it would be also deleting that language of electronic smoking devices in Section 3.

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Is there a motion on the floor...I will entertain a motion to amend the ordinance to add in Section B as read.

COUNCILMEMBER WHITE: So moved.

COUNCILMEMBER CRIVELLO: Second.

CHAIR GUZMAN: Moved by Mr. White.

COUNCILMEMBER CRIVELLO: Second.

CHAIR GUZMAN: Seconded by Ms. Crivello. Open for discussion. Members, as we discussed earlier we were talking about the exempting the golf courses and municipalities in the, within the municipality, and we were also talking about the zoned areas. And I think the issue with the zoned areas is that in Honolulu you have employees that have filed several grievances in terms of their ability to smoke during their breaks. And so we can either defer this matter and try to rework the language, or we can see how the grievances turn out in Honolulu, or we can pass this out and basically allow the Director of Parks and Recreation to have the authority to or flexibility to designate areas if needed. You know if it's such an issue in Oahu that it becomes a Constitutional issue or what it may be or whatever it may be and we're forced to create designated areas, we can, it would be up to the Parks Director to do so in his authority. If he abuses it and he basically goes oh, the entire park is smoke, is, you know, I'm allowing the entire park to be smoke, a smoking area then that's an abuse and we will bring that back to the Council and definitely I'll restrain that and amend it and strip that type of authority from him. But we're, in my best effort to analyze the situation, it's allowing us to be flexible enough to deal with any type of grievances that we may have in the future, and that would be, the onus would be on the Director of Parks and Recreation to react or be proactive in dealing with those grievances. And so that's where I stand in terms of my discussion of this issue of allowing...

COUNCILMEMBER CRIVELLO: Can you reread the --

CHAIR GUZMAN: Yes.

COUNCILMEMBER CRIVELLO: --amendment? Can you reread, restate it.

CHAIR GUZMAN: Oh, yeah. So let me read it. It would be creating a new section that would follow, it would be in Section 3 on Page 2 and it would follow A, where you see the capital letter A, so it would be created after sub, No. 7, A-7. So it would follow A-7 and it would be creating a B...oh yeah, we'll take a quick recess. This is form only. But the language, I'm going to read the language out in, for the Members so that they understand what the language is before we take a break or recess to work out the form. It would be "Smoking and the use of tobacco products shall be prohibited at all Parks and Recreation facilities except at open areas of a municipal golf

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course and at such areas as the Director may designate by appropriate signs as areas within which smoking is permissible.” So we can, it’s still open for discussion.

COUNCILMEMBER COCHRAN: Wait, sorry. Okay, so that’s already been moved and seconded, correct?

CHAIR GUZMAN: Yes.

COUNCILMEMBER COCHRAN: Okay. So I thought it’d be in two separate sections. Exempting golf, period, and then the designated areas. So now this is being combined, so is it my understanding that only at golf courses, our one and only golf course will have this designated smoking area determined by Director?

CHAIR GUZMAN: Okay.

COUNCILMEMBER COCHRAN: Or is this going to apply to all County parks? Okay, well then big huge no for me.

CHAIR GUZMAN: Okay.

COUNCILMEMBER COCHRAN: I mean if you split it out, you know, I’d rather...whichever way.

CHAIR GUZMAN: Yeah, yeah. I mean, you know, we’ll take a vote on this and if it fails then I will take each one separately. Like if it sounds as, I’m getting the impression that the golf course is not going to happen, but I’m in the middle of the procedure right now and to call the vote. If it fails, I will bring back the golf course separately and/or the park zoned designated smoking areas separately, and it sounds as though your justification is the golf course. You will oppose this because of the golf course, so in my mind I’m just going to bring up the zoned area if this does not pass. Does that make sense?

COUNCILMEMBER COCHRAN: Yeah, it makes sense. But --

CHAIR GUZMAN: Okay.

COUNCILMEMBER COCHRAN: --I think we needed a recess or Corporation Counsel was calling for a recess?

CHAIR GUZMAN: Yeah...*(inaudible)*...

COUNCILMEMBER COCHRAN: But that was just my clarification prior to us heading into recess so.

CHAIR GUZMAN: Okay. We’ll just...

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COUNCILMEMBER COCHRAN: Is that correct? Is that what we want to do?

CHAIR GUZMAN: Did you want to take a recess?

MR. UEOKA: Just one second.

CHAIR GUZMAN: Okay, one second. Don't leave your seat.

COUNCILMEMBER COCHRAN: One second? You better restate that.

CHAIR GUZMAN: One minute. Thank you. . . .(gavel). . .

RECESS: 10:43 a.m.

RECONVENE: 10:48 a.m.

CHAIR GUZMAN: . . .(gavel). . . Okay, the EAR Committee shall now be reconvened. I believe that we've worked out the kinks on this motion. So if I can request the maker of the motion to withdraw the motion.

COUNCILMEMBER WHITE: Yeah, I'll be happy to withdraw.

CHAIR GUZMAN: Thank you.

COUNCILMEMBER CRIVELLO: Same here.

CHAIR GUZMAN: Seconded? Thank you. I'm going to entertain a motion at this time and basically I'm going to bifurcate the two issues, I'm going to separate the municipality golf course and the designated smoking areas authorized by the Director. So I just want to put this on record. So I will entertain a motion to add in section, a new Section B as read as follows: "Smoking and the use of tobacco products shall be prohibited at all Parks and Recreation facilities except at open areas of a municipal golf course."

COUNCILMEMBER CRIVELLO: So move.

CHAIR GUZMAN: Moved by Councilmember Crivello.

COUNCILMEMBER WHITE: I guess I can second that. I'm...

CHAIR GUZMAN: Seconded by mister...

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COUNCILMEMBER WHITE: For discussion.

CHAIR GUZMAN: For discussion. Seconded by Mr. White for discussion. Open for discussion.

COUNCILMEMBER CRIVELLO: And I guess the...Chair? The addition of exempting the municipal golf course, like I said earlier I'm not a golfer so I'm going to respect your explanation as to the rationale as to why we would exempt the golf course with the understanding that it really does not have any effect on others except those in the group. And on that basis and also on behalf of the Parks Department as for their consideration as to why they would like to exempt that. You're a golfer so and your daughter is a golfer and so I'm going to respect your explanations as to in agreement of making the exemption for the golf course.

CHAIR GUZMAN: Well thank you very much for throwing me under the bus on that one.

COUNCILMEMBER CRIVELLO: I not throwing you under the bus.

CHAIR GUZMAN: But I would just like, let me explain one thing to the public. Yeah, I am a golfer. My daughter is a golfer. When I play with my daughter I am, I have very strict rules in terms of I don't want any player smoking with us in terms of the group. I don't allow alcohol when I play with my daughter, that's why most of my friends don't like to play with me anymore. But this was proposed, this exception was requested by the Parks and Recreation Department, and so as Chair, I must at least entertain this issue. And so it is really up to the body whether this will pass through or not. I have my own opinions of it, but I want to put it to the vote. This has been discussed in other jurisdictions, particularly with the golf courses tied in with the ban on tobacco and alcohol bans that are out there, so we must have this discussion, this cannot be swept under the table. And for the record we need to have this discussion so that's why it's before this body.

COUNCILMEMBER CRIVELLO: Thank you, Chair. And it was not my intent to --

CHAIR GUZMAN: I know, I'm just kidding with you.

COUNCILMEMBER CRIVELLO: --throw you under the bus.

CHAIR GUZMAN: I'm really...

COUNCILMEMBER CRIVELLO: I just have a better understanding as to why the exemption is requested from the Parks with your understanding of the golfing situation 'cause I'm not a golfer.

CHAIR GUZMAN: Right. No, I'm just kidding with you. I'm really am joking with you, but I'm serious about what my explanation is. Just so that everybody's understood about it. Any further discussion on this matter? Yes, Ms. Crivello...I mean Ms. Cochran. You guys sit too close together.

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COUNCILMEMBER COCHRAN: Thank you, Chair. And I think she threw you under the golf cart. But anyways, so...just kidding. You know I beg to differ in regards to choosing who you get to play with. I mean I don't know about our municipal but as I recall booking tee times, you know, if you're a twosome, you will be added to a totally, you know, other twosome or whatever to make up for that foursome, and you clearly do not know who these people are. It could be total strangers, and perhaps at that point you can say no, they're smokers, I don't want to be with that twosome and whatever, now your tee time changes. But so I, that's not completely 100 percent true. Also one of the reasoning I think I heard was because golf courses are maintained and manicured. I would hope that all parks are. And I think I saw a huge jump in parents bringing kids onto the course after Tiger Woods and all this stuff. So, you know, personally I still feel that I am not in favor of exempting golf courses or, you know, our municipal that we have charge and discretion over. So that's my take and that's my reasoning. So personally --

CHAIR GUZMAN: Thank you.

COUNCILMEMBER COCHRAN: --golf shouldn't be part of County but anyways.

CHAIR GUZMAN: Thank you, Ms....I can appreciate that response. Thank you, Ms. Cochran. Mr. White, do you have any further discussion?

COUNCILMEMBER WHITE: No.

CHAIR GUZMAN: Okay, thank you. Yeah, I, again, let me state that the, when I put forth the, I guess the policy arguments in favor of the golf course, those were collected by our Staff and those were presented to the other municipalities in their discussion. And so for me to include those was proper and so that we can have that discussion between pros and cons, and so that's why those points were put out there. So in any event, I will call for the vote. All those in favor, say "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR GUZMAN: All those opposed, say "no"?

COUNCILMEMBER COCHRAN: No.

CHAIR GUZMAN: We have two "ayes", two "noes", motion fails. So we will go on the next...and three "excused", excuse me, for the record. Motion fails.

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VOTE: AYES: Councilmembers Crivello and White.

NOES: Chair Guzman and Councilmember Cochran.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Carroll, Councilmembers Baisa and Victorino.

MOTION FAILED.

CHAIR GUZMAN: Going to the next issue and that would be the ability of the Director of Parks and Recreation to designate smoking zoned areas. So that would be amending the ordinance to add a new Section B to read as follows: "Smoking and the use of tobacco products shall be prohibited at all Parks and Recreation facilities except at an open areas as the Director may designate by appropriate signs as areas within which smoking is permissible."

COUNCILMEMBER WHITE: So moved.

CHAIR GUZMAN: Moved by Mr. White.

COUNCILMEMBER CRIVELLO: Second.

CHAIR GUZMAN: Seconded by Ms. Crivello. Open to discussion. Mr. White.

COUNCILMEMBER WHITE: Chair, I support that motion but I believe that it should be given with, you know, the ability to designate should be given with some direction, and whether that's an area size of say 300 or 400 square feet or how we designate it. Because I think you brought up the point that it could be designated that the whole park is available, and to preclude that...I'm not suggesting that that would happen but I think it's, if we're going to make this change to allow it, it should be allowed in a very small area within the park. And I would suggest that in all beach parks that it be as far away from the sand as possible. And to the earlier question of whether we should be responsible for cleaning it up or not if it's on the beach, HRS 46-12, the title is Cleaning Shores and Beaches of Seaweed, Limu, and Debris. The various counties shall be responsible for removing and clearing all seaweed, limu, and debris which are likely to create an unsanitary condition or to otherwise become a public nuisance from the shores and beaches situated within the respective counties. And then the case note states county has sole responsibility for shores and beaches likely to be used with some frequency by members of the public. So I think that gives the Parks Department or the County overall, not necessarily the Parks Department but I think that gives us the responsibility to clean the beaches that are

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adjacent to our property and take the same level of responsibility that private property owners take. And I clarified with the folks that are supporting this measure that the majority of the cigarette butts that were collected came from beaches adjacent to public parks. So I'd just like to add that into the record because I think we need to take a little more responsibility than we have in the past. So with that I support this motion but I would like it to be further amended to limit the space and give some direction to the Department.

CHAIR GUZMAN: Okay. I understand your position, and yeah, basically we do not want to give the full-on authority to the Director. And we want to know what areas he's going to be designating. So I would be suggesting that we do amend it to at least go through this body for the approval of those designated areas, because if he's going to designate a certain area for smoking, maybe we can either approve that designation or deny that designation. That could be another I guess safety net to make sure that there's not an abuse of power, which I doubt there would be, but for the safety sake of monitoring or at least getting public input, it would be then presented in a public hearing as to which area would be designated for smoking for the employees, you know, things like that.

COUNCILMEMBER WHITE: You know I'm not terribly concerned with it coming back to Council, I think it's something we can trust the Director with as long as we limit the size of it and maybe state that it should be well away from beaches on the beach parks. But, you know, I'm going to hear from the others.

CHAIR GUZMAN: Okay. Is there any other further discussion? Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And so I just want to...I think this came about in regards to the I guess grievances filed on the island of Oahu?

CHAIR GUZMAN: Yes.

COUNCILMEMBER COCHRAN: Primarily is that kind of why this is being discussed right now?

CHAIR GUZMAN: Well let's refer back to Parks. I know that you brought up the issue or the Parks Department did, and it was new to me to hear about your request to have these zoned areas. But can you give us a little bit more background?

MS. TESHIMA: Yeah. When we reviewed the State, Oahu's law, it was just enacted January 1, 2014, so this is really new to them too, for all parks. So they're taking the lead and they're already having problems with this with the employees' contract, and I think it's important to look at that aspect when you're making the law, how it relates to the existing union contracts that we have.

CHAIR GUZMAN: Yeah.

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COUNCILMEMBER COCHRAN: Okay, and a...

CHAIR GUZMAN: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you. And a follow-up. And so currently Oahu banned tobacco smoking in parks but with no designated areas?

MS. TESHIMA: Correct.

COUNCILMEMBER COCHRAN: Right? Correct? So thereby there's grievances. Okay. And then as far as I'm told and can see, Hawaii County--maybe Corporation Counsel can correct me--that they have smoke-free parks and beaches for the past six years, not a single grievance has been filed there in Hawaii County. Thereby I'm just curious why that was never brought up on this Oahu incident and grievances that have occurred. Six years it has rolled out on Hawaii County. It doesn't...Mr. Ueoka can confirm that. Is there a date on your bill or code there?

CHAIR GUZMAN: Mr. Ueoka.

MR. UEOKA: Thank you, Chair. I don't know when theirs was rolled out and I really don't know if any grievances were filed. I can't say for certain. Sorry. Thank you.

COUNCILMEMBER COCHRAN: Okay. Well I've gotten some research and that is the conclusion that I've found. And so and also the, you know, and again, I think you mentioned it in your opening comments as to these amendments that it can come back to Council. So personally I'm more apt to see if we do get grievances because Hawaii County six years later has not. Oahu, two, okay. And it can come back to us for further amendments and to address such situations which we do all the time in PIA. And, you know, and lastly I think or most importantly I think overall I don't want to lose sight of what the intent and point of this whole legislation is about, it's about education and wanting to educate our young adults and adults alike about the hazards of smoking, period, you know. And now we're saying well, let's make it okay in this little area, but yet we're still going to have the children and families who are trying to raise, you know, upstanding citizens about this is not a good thing to do, this is a bad habit. And, you know, and so for me it defeats the entire purpose of the education of why the intent of this whole bill is about. So I as you can probably gather am not supportive of this. And if so be it that we need to address grievances that may or may not come about then we can always come back and revisit. But for now personally I just, the e-cig part was my big thing, we deleted it, I supported it. Anything else I'm not in favor. I would just rather pass it out as is, and I know that's been the intent prior to budget and here we are.

CHAIR GUZMAN: Yes.

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COUNCILMEMBER COCHRAN: So, Chair, that is how I'd like to see it go. And as for enforcement, it's like the alcohol, police does it. You know in NA a drug is a drug is a drug is a drug, that's nicotine, that's alcohol, that's, so here we are this is tobacco product which is a nicotine product and so police definitely can be a part of and thereby we don't need to hire more Park people and what have you. So that's my rant and justification for not being supportive of this. Thank you, Chair.

CHAIR GUZMAN: Okay, thank you. Mr. White.

COUNCILMEMBER WHITE: I find Ms. Cochran's comments very compelling, and if it is true that the Big Island has had six years of experience without a grievance, I'm...and for all the other arguments she brought up, I withdraw my motion.

CHAIR GUZMAN: Motion withdrawn.

COUNCILMEMBER CRIVELLO: Same here.

CHAIR GUZMAN: Motion withdrawn, seconded withdrawn. And I'm glad we're having this discussion because it needs to be on the record. It's something that, it was brought up by the Parks and Recreation Department and so we needed to vet it out, and I'm also in agreement with Ms. Cochran. But as Chair, I have to present these issues. In regards to the, this issue at hand, I am totally in support of passing this out, and I'll let you know that I will recommend the passage of this ordinance to go to the next level to full Council. That is my recommendation. Other than that, we've vetted out the issues. I think we've done a good job with it, and we've placed it on the record in terms of our vote. So at this time, Members, I would like to call the question.

COUNCILMEMBER COCHRAN: Chair, real quick before you do. And just, I just want to thank you and, you know, restating the fact that Department had recommendations, we all do, you do, and the public. And that you, that's what the process is about, it's about involvement, participation --

CHAIR GUZMAN: Yes.

COUNCILMEMBER COCHRAN: --and letting, you know, everyone speak their piece, and then we decide and gather and get, you know, make the best educated decisions possible. So thank you for that.

CHAIR GUZMAN: Thank you. And I...yes, Mr. White.

COUNCILMEMBER WHITE: You mentioned calling for the question but there is no motion on the ...*(inaudible)*...

CHAIR GUZMAN: Yeah, I was going to entertain a motion.

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COUNCILMEMBER WHITE: But we are anxiously awaiting your recommendation.

CHAIR GUZMAN: Yes, yes.

COUNCILMEMBER COCHRAN: Recommendation?

CHAIR GUZMAN: I will entertain a motion to...wait, let me get this proper language in here. I will entertain a motion to recommend the passage of the revised proposed bill entitled A Bill for an Ordinance Amending Chapter 13.04, Maui County Code, Prohibiting...whoops, I'm getting a note. Oh, as amended.

COUNCILMEMBER WHITE: No, you mentioned it.

CHAIR GUZMAN: Thank you. Members, I will entertain a motion to recommend the passage of the amended proposed bill entitled A Bill for an Ordinance Amending Chapter 13.04, Maui County Code, Prohibiting Tobacco Use and Tobacco Products in County Parks on first reading; and the filing of County Communication 14-49.

COUNCILMEMBER WHITE: So moved.

CHAIR GUZMAN: Moved by --

COUNCILMEMBER CRIVELLO: Second.

CHAIR GUZMAN: --Mr. White, seconded by Ms. Crivello. Open to discussion. Seeing none, all those in favor, say "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR GUZMAN: Aye. All those opposed, say "no"? We have four "ayes", no "noes", and three "excused". Motion carries.

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**VOTE: AYES: Chair Guzman, Councilmembers Cochran, Crivello,
and White.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

**EXC.: Vice-Chair Carroll, Councilmembers Baisa and
Victorino.**

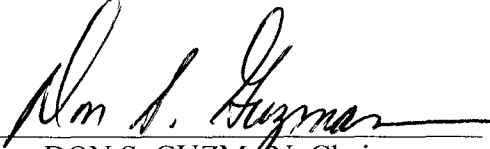
MOTION CARRIED.

**ACTION: FIRST READING OF REVISED BILL AND FILING OF
COMMUNICATION.**

CHAIR GUZMAN: The ordinance passes to the Council for first reading. Thank you, ladies and gentlemen and the Members, for this very open discussion. Thank you. And also for the Parks Department, too, in being here today and presenting their issues as well. Thank you. And for our Staff, good job. And we shall now adjourn. . . .(gavel). . .

ADJOURN: 11:08 a.m.

APPROVED BY:



DON S. GUZMAN, Chair
Economic Development, Energy, Agriculture,
and Recreation Committee

ear:min:140321:ds

Transcribed by: Daniel Schoenbeck

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CERTIFICATE

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

DATED the 27th day of March, 2014, in Kula, Hawaii



Daniel Schoenbeck