

**INFRASTRUCTURE AND ENVIRONMENTAL
MANAGEMENT COMMITTEE**
Council of the County of Maui

M I N U T E S

Council Chamber

September 9, 2014

CONVENE: 1:35 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Elle Cochran, Chair
Councilmember Stacy Crivello, Vice-Chair (in 1:07 p.m., out 3:12 p.m.)
Councilmember Robert Carroll
Councilmember Donald G. Couch, Jr.
Councilmember Don S. Guzman (in 3:50 p.m.)
Councilmember Mike White (out 3:29 p.m.)

EXCUSED: Councilmember G. Riki Hokama

STAFF: Jordan Molina, Legislative Analyst
Raynette Yap, 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.: David Goode, Director, Department of Public Works
Mark Walker, Deputy Director of Finance
Carmelito Vila, Motor Vehicle & Licensing Administrator, Department of Finance, Division of Motor Vehicle & Licensing
Ricky Uedoi, Police Lieutenant, Department of Police
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Shelley Maddigan, President, Kula Community Association
Richard Goodenough, President, Maui Downhill; Maui Bicycle Safaris Ltd.
Dick Mayer, Kula Community Association
Plus (2) others

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PRESS: *Akaku Maui Community Television, Inc.*

CHAIR COCHRAN: ...*(gavel)*... Will the meeting of the Infrastructure and Environmental Management Committee now come to order? I am Councilmember Elle Cochran, the Chair of this Committee. And, Members and the public, before we begin may we please turn off or silence any cell phones or noise-making devices. And currently I have in the Committee Vice-Chair of the Council, Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR COCHRAN: Good afternoon. And Councilmember Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR COCHRAN: Good afternoon. Councilmember White.

COUNCILMEMBER WHITE: Good afternoon, Chair.

CHAIR COCHRAN: Good afternoon. And, let's see, Mr. Guzman will be arriving shortly and Mr. Hokama is excused and Vice-Chair of the Committee will also be attending shortly. From the Administration I have from Public Works, Director Goode.

MR. GOODE: Good afternoon.

CHAIR COCHRAN: Aloha. And from Corporation Counsel, Michael Hopper, aloha. And from Committee Staff, Members, Secretary Rayna Yap and also Legislative Analyst Jordan Molina. Thank you all for being here. And for public testimony we shall be starting that in a few moments. Anyone wanting to testify, please sign up at the table at the...in the front lobby here on the eighth floor. And please speak only to the item that is on the agenda today and pursuant to our Council Rules, you folks will be given three minutes to testify with one minute to conclude. And please state name, organization, any group you may be affiliated or representing. And we also have connections to our District Offices. And, Members, please speak clearly so they can hear us. And now I will check in with those offices. First, Hana District, are you there?

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

CHAIR COCHRAN: Aloha, Ms. Lono, thank you. And on our Lanai Office?

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

CHAIR COCHRAN: Aloha, Denise. And Molokai Office?

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MS. ALCON: Good afternoon, Chair. This is Ella Alcon on Molokai.

CHAIR COCHRAN: Thank you, Ms. Alcon. Thank you, ladies, for being there. And now we shall proceed with testimony here in the Chambers. And it looks like first person to testify is Shelley Maddigan. And today's item is IEM-4.

... BEGIN PUBLIC TESTIMONY ...

MS. MADDIGAN: Good afternoon. Thank you, Lady Chair, and Committee. I am Shelley Maddigan --

UNIDENTIFIED SPEAKER: Bring it up to here.

MS. MADDIGAN: --President of the Kula Community Association and I am here to encourage the passing of this ordinance. Being Kula residents we are heavily impacted by the bicycle industry so we are definitely behind anything that will help create some boundaries and some reason on a very...it seems to be growing tourist attraction. So on behalf of the Kula Community Association we really encourage you to please pass this ordinance. That's it. Thank you.

CHAIR COCHRAN: Thank you, Ms. Maddigan. Members, any need for clarification from our testifier today? Seeing none, thank you. Thank you for your testimony. Next testifier is Richard Goodenough. Please come to the podium, thank you.

MR. GOODENOUGH: Good afternoon. My name is Richard Goodenough. I'm with Maui Downhill. I'm President. And I'm here to offer my 32 years of experience. I'm one of the two that established downhill biking in 1983. And thank you for your invitation, Chair Elle, thank you. And good afternoon, Members. I'd like to just make a presentation of what happened back in 2006. Gotta put my glasses on. Okay, this is a press release that I...that I wrote and it's very short. Maui Downhill voluntarily discontinues tours on Baldwin Avenue. As co-founder of the downhill bike industry in 1983 and president of Maui Downhill, I make the following statement and press release to the citizens of Maui County in the spirit of community need, community safety, community cooperation and aloha. In the interest of public safety, the safety of my customers and Maui Downhill employees, Maui Downhill Bicycle Tours will voluntarily suspend the use of Baldwin Avenue for our bicycle tours effectively...effective in...immediately. I take this positive voluntarily action as Maui...as Maui Downhill's response to a complex...complex community problem involving the mix of bicycle tours and motor vehicle traffic, needed roadway improvements on Baldwin Avenue and my bicycle company's concern for public safety on Baldwin Avenue. This voluntary action is taken while reserving the rights bicycle riders have to use public roads as provided for in State law HRS 291C-145(a)(2). Hopefully in time improvements in Baldwin Avenue will be made in accordance to accommodate

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the bicycles and the motorists in such a way as to prevent conflicts and promote safety for all users. Motor vehicles and bicycles should be able to share and enjoy Baldwin Avenue together in a safety manner. While I cannot speak for the other bicycle companies, I am encouraged them to also volunteer suspension and their use of the Baldwin Avenue and to allow time for road improvements to be made. I want to thank Mayor Arakawa...

CHAIR COCHRAN: One minute to conclude, Mr. Goodenough, one minute.

MR. GOODENOUGH: I want to thank you...thank Mayor Arakawa, his Administration and executive staff for their work on the issue over the years. They encouraged me to come to this decision on this important community problem. Maui Downhill will continue to work with Arakawa's administration, the Council and various community associations and concerned Maui citizens to provide safe bicycle tour operations in Maui County. Thank you for the opportunity.

CHAIR COCHRAN: Thank you. Members, any need for clarification from our testifier? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Madam Chair. And thank you, Mr. Goodenough, for being here. The question I have, you know, I'm reading your testimony and heard what you had to say. And thank you for doing your voluntary measures that you've taken. Have you had a chance to look at the legislation here and if so, do you support what is going on in this legislation?

MR. GOODENOUGH: No, I have not seen it. I've heard about it.

COUNCILMEMBER COUCH: Okay, thank you. Thank you, Chair.

CHAIR COCHRAN: Thank you, Mr. Couch. Members, any further need for clarification from our testifier? Seeing none, thank you, Mr. Goodenough. And, Members, if need be I believe Mr. Goodenough is good enough to wanna stay as a resource person if possible if we do have more questions. And we have another testifier. It would be Mr. Dick Mayer.

MR. MAYER: Good afternoon, Chair, Members. I think you have my testimony in front of you. I'd just like to go over it and make a few points. And I'm reflecting the Kula Community Association board position. Shelley Maddigan, our president, already gave it and I just wasn't sure whether she was coming so I wrote it this way. The proposed ordinance is very well-crafted. It was strongly endorsed by the Kula Community Association board at its meeting on Tuesday, September 2nd. The Board recommends swift action in approving this proposed ordinance which is a major improvement over the existing Maui County Code 5.22. So basically we would very much like to do it. In going through the ordinance I noted a few small things. They...at least they seemed small but I think the small tweaks that you may want to look at...I itemized those. Number 1 on Page 2, Item B.3., after the word "description" it says what people should file, I would add the word "and map". So people should file a description and a map of their routes. Number 2, after all the fines, there's some fines penalties indicated in there at the

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end, it adds the \$100 to \$1,000. I believe you would probably wanna put down there something that would define 100 or 1,000 per day of operating or per week without a permit. And this is very important because you're requiring companies to get insurance. And if they don't have insurance and if they don't have a permit, they should not just be able to keep operating, just say, okay, I'll pay the \$1,000 fine and I'll just keep operating. So the penalty should be severe enough to dissuade people from doing it. And the same thing with Number 3 on Page 5 with regard to the violations. If they are violating the ordinance, they should also have a fine assessed per day rather than just a one-time fine when they may say, oh, the hell with it. I'll just pay the \$1,000 and keep doing what I'm doing. Number 4, at the bottom of the page it says that they have to have something on their vehicles. And I think it should be stated at least something that can be seen by a police car passing by or by motorists of the general public who wanna report a violation. So it should be large enough in print that people can see it. And lastly, I think there's a word missing there, two words missing. Add the words "permit and" in addition to the word "license" on the top of Page 6. Those are just things and if you don't do any of those, the ordinance is excellent as it is but I think these will...these tweaks that I think will make it a little bit stronger and better. Thank you very much.

CHAIR COCHRAN: Thank you, Mr. Mayer, for your testimony. Members, any need for further clarification from our testifier? Seeing none, thank you, Mr. Mayer. We have it in written form --

MR. MAYER: Yes, you do. Thank you very much.

CHAIR COCHRAN: --too so we can refer to it if need be. Thank you. And we'll go to the District Offices. Hana Office, do you have any testifiers?

MS. LONO: The Hana Office has no one waiting to testify, Chair.

CHAIR COCHRAN: Thank you, Ms. Lono. On Lanai, any testifiers?

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

CHAIR COCHRAN: Thank you. And on Molokai, anyone there for testify?

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

CHAIR COCHRAN: Thank you, ladies. And here in the Chambers, anyone else in the gallery who has not testified would like to come up and testify at this time, please come to the podium and you may fill out your forms later. Looks like no one's rushing down here. So, Members, without objections at this point, I shall now close the floor for testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (EC, SC, RC, DC, MW)

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CHAIR COCHRAN: Thank you, Members. So ordered. Ladies, we're now closed for testimony and thank you for being there.

... END OF PUBLIC TESTIMONY ...

ITEM NO. 4: BICYCLE AND BICYCLE TOUR SAFETY ON MAUI ROADS
(CC-13-59)

CHAIR COCHRAN: Okay now, Members, we have one item on our agenda today and it is County Communication 13-59, from Council Chair, referring the matter, Bicycle and Bicycle Tour Safety on Maui Roads. And before I get any further, kala mai, Ms. Crivello. Let me introduce and recognize Vice-Chair of this Committee, Ms. Stacy Crivello.

VICE-CHAIR CRIVELLO: Thank you. My apologies for tardiness.

CHAIR COCHRAN: Thank you. Not a problem. Thank you being here. Okay and correspondence is dated October 28, 2013, from the Director of Public Works, transmitting a proposed bill entitled, A BILL FOR AN ORDINANCE AMENDING CHAPTER 5.22, MAUI COUNTY CODE, RELATING TO BICYCLE TOUR BUSINESS. And the purpose of the proposed bill is to revise the regulations pertaining to bicycle tour businesses by increasing permit requirements, expanding enforcement capabilities, and establishing an appeals process. And today I have here on the floor Director of Public Works, David Goode. Mr. Goode, would you...do you have any opening comments in reference to today's item?

MR. GOODE: Other than just giving some background, I don't have any --

CHAIR COCHRAN: Sure.

MR. GOODE: --opening comments.

CHAIR COCHRAN: Okay.

MR. GOODE: I just kinda refresh everybody's memory. I think we met about six months ago just prior to the Budget deliberations. And the bill that our Department sent up for consideration tried to address some of the concerns that have been made over the years and recommendations that came out of the downhill bike tour study which our Department was tasked with doing. The Kula Community Association, you know, has been the primary lead on this at least from the community side. And they had put together a matrix of the various recommendations that came out of the study that seemed to have broad support between the bicycling tour companies, the association and, I guess, government if you will. And so what we did was to take those recommendations that seemed to have broad support and package them in a bill which is the bill

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you have before you. So worked with Mr. Hopper's office to put that bill together and send it up here. Essentially the bill...the exist...it's, let's back up. The existing ordinance, Maui County Code 5.22, requires the bike tour companies to pull a permit if they operate on County roadways. It requires them to have certain levels of insurance and the standard things that a permit would, I guess, state. That permit is administered by the Department of Finance. The Department of Finance is here. I think right now they have two such permits out there. In about 2007 the State passed a law in HRS that said the counties can also regulate such activities on State highways. So one of the key aspects of this bill is that not...we would not regulate just on County highways but also State highways. So if a bike tour company today operates solely on State highways, they don't need a permit from the County. But under this bill they would. So we'd add State highways to our jurisdiction if you will. And it also goes on to require a variety of other things that the tour companies would have to do as it relates to safety and spacing of tours and things like that which are all new items. And so 5.22 is currently administered by the Director of Finance and so that's why it's a little odd that Department of Public Works is here but we were tasked with doing the downhill bike study. And so...and I guess completing that study and offering this bill that's where...that's why I think I'm here. But ultimately the bill specifically calls out the Director of Finance as the implementer of the bill, and also here today is the Police Department who can offer their thoughts on how enforcement may or may not happen with them. So I think it's worth kind of revisiting that, Chair, because it's a little different in the way we normally do things around here. Normally ...(inaudible)... it's an ordinance that we would administer if I brought a bill before the body. In this case, it's the Finance Department who is tasked as the Director in charge of the ordinance. And since...since we met, at least our Department, we haven't done anything on the proposed bill. We haven't responded to any inquiries. And so we're here as resource to however you wanna proceed, Chair.

CHAIR COCHRAN: Thank you. Thank you, Director Goode. And, yes, Members, I'd like to announce that we do have in the audience when we need to bring them down, Lieutenant Uedoi of the Police Department, from Department of Finance, DMVL, Mr. Lito Vila, and also looks like Mark Walker's also here from Finance. So we do have them and when we're ready we can bring them to the floor for further questioning. And thank you, Director Goode. Members, the floor is now open. If you have questions for Director or if you...would you like to bring any of the other resource people in the gallery down for further questions. Oh, Mr. Hopper, and prior let's recognize Mr. Hopper. Yes?

MR. HOPPER: Thank you, Madam Chair. I just wanted to reiterate some of the comments that I had the last time that we went over this. I would note several things. One is that the, as Director Goode said, this now regulates bike...bicycle tours over State highways. I think this is the only ordinance that I've seen kind of like that. So I think the Council could consider that just because the State law allows counties to regulate bike tours over State highways which, of course, the County does not maintain those highways, doesn't mean that it's a mandatory regulation of State highways. That's up to the Council if you want to expand these to include tours over State highways. In addition, this also defines bicycle tours as the renting of bicycles

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to persons for use in conjunction with a bicycle tour that travels over a specified route or routes shall be considered conducting a bicycle tour. So somebody rents a bicycle to somebody else and provides a map for them to take specified routes, that's something they would need a license for. That should be...people should be made aware of that as well. Another issue is that the enforcement of this ordinance was unclear when I read this the first time. The...it's been made a bit clearer by saying that the fines in 5.22.060 shall be made upon conviction. That would have the Police Department enforcing the ordinance as far as if there's a violation of a...doing a tour without a permit. The Director of Finance has the authority to issue and revoke permits. There are fines for both of those. But I'm not certain exactly what the status is as far as enforcement. This would involve enforcement of people conducting tours without...without any permits and would also include renting bikes for the purpose of taking specified...routes as a type of use. And so enforcement should be clarified there as far as how that...how that happens. Again the language was added "upon conviction" after the fine so that would have the Police Department doing the enforcement. But there's not a...the Department of Finance is the only defined director in the ordinance right now. And it doesn't define a specific department that does enforcement and I don't think the Department of Finance does...is out there in the roads doing enforcement at that point. So I think that's something that the ordinance should clarify. And again I think Director Goode was correct. The Department of Public Works is not mentioned in anyplace in the ordinance. They actually don't have any responsibilities directly with the ordinance. So that may be something that the Council would consider in clarifying so that a department knows and, you know, they could comment on the resources they have to do the enforcement and what they would do. But that's something that in looking at this existing ordinance was a bit unclear in looking at it from a basic perspective. That was a question that we had and we tried to clarify that by saying that the fines will be...fines will be issued upon conviction which would require a ticket and a court hearing.

CHAIR COCHRAN: Thank you. Thank you for your comments, Mr. Hopper. Yes, Mr. Couch?

COUNCILMEMBER COUCH: Yeah, that...those were, addressed some of my questions that I have. But the biggest question is, is it required in here to say that the Police can enforce this Code? 'Cause it's my understanding the Police only enforce Traffic Code. And this isn't the Traffic Code. Is there a way we can get this...the Police to be able to enforce certain sections of this?

MR. HOPPER: Well, adding the language "upon conviction" like the, you know, the Parks ordinance did in the past, I think that would have...have given them the authority to enforce. You could be more specific in it and that's not a bad idea to do that. Of course, the Department can comment on whether or not they have the capacity to do the enforcement and what that would involve. And I'm not advocating for any particular...it's not the issue. It's just if there's going to be penalties for operating without a license, one question would be which department enforces that. And if Police can do it, that's one issue. If they cannot, you would need someone else out there who's...would actually be looking to see. And there's really no department that's tasked with that in the current ordinance. And that's a key issue I think.

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COUNCILMEMBER COUCH: Okay, thank you. Thank you, Madam Chair. That's one of the things I would like to do is when we get to that is to check with the Police on that. The other question I had was in Section 3 on Page 1 it talks about a tour means a group organized for the traveling from place to place for enjoyment, pleasure or sightseeing, whether or not a guide is present during the tour. My concern is I know quite a few people that, who've come and testify here on the bikeways and whatnot that they get a group together and they get some bikes and if they were to invite, you know, one of us to go with them and we would have to rent a bike because we don't have a bike, all of a sudden is that an organized tour? Even if we don't rent a bike, is that...is that, I'm sorry, is that a tour whether a guide is present or not during the tour? So do they need licenses? And I guess that would be a question of interpretation from Corporation Counsel. That was one of the concerns I had in here is that what appears to be a fairly loose definition of a tour.

MR. HOPPER: Well, the one question would be who is conducting the tour. The current definition of tour is pretty much the same as you stated except that whether or not a guide is present was added because the State law said that tours can be guided or unguided. So they broadened that. We didn't change the definition of tour so that's already in there now. So actually it's frankly clarifying it to be a bit broader. And there's not necessarily a reason to assume that tour would only mean if a guide is present. Now it's clear that it means whether or not. And it depends on if someone is conducting the tour, because the restriction is it's unlawful for any business or person to conduct a bicycle tour on or over County property or State highways without obtaining a permit. We could maybe look at language saying that there has to be some type of guidance given whether it's before the...whether it's this unguided tour by renting of bicycles. I mean I think that's clearly the intent is that there has to be...if there's not a guided tour, then someone had to have rented you the bike with a map or something for the purpose of taking specified route or routes. I think that's from the State law as well. So maybe you'd like to clarify that if there...you want to state clear the intent is not to have any group but of course we need to...I mean the County if it wants to regulate that activity would want to look for loopholes there. Frankly, it may be difficult to regulate the renting of bicycles for the purpose of taking specified route or routes. But that's with the...that's what the requested legislation was and so that's what it states right now.

COUNCILMEMBER COUCH: Okay. Those are my main questions, Madam Chair.

CHAIR COCHRAN: Okay, and real quickly, Members, I just wanted to state that I do intend to take action on the bill today and hopefully get this passed out. And I know that I think the main...it was stated about enforcement issues in regards to this. And I think that's, right now, at this...at this juncture I think the main, glaring problem for me and something that can be addressed and figured out and, and give good reason to pass this out is to address the people who don't have valid permits. Right now we have unpermitted operations occurring. And I really don't think it's fair to the ones who are permitting and, you know, going through the proper channels and

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paying, you know, their due taxes. I believe it's estimated at 5 out of 8 of the businesses are unpermitted at this current time. So I think...and in regards to that my...I have follow-up questions for Police Department and Corporation Counsel. But for me the way to track it and for way for Police to enforce is just like our safety stickers. It's just like our registration stickers. It's a sticker on your van, your tour van that shows you have a permit from Mr. Vila at DMV. And you're all good to go on the highways and do your tour operations. So that is kind of one issue I think that if we address quite simply we'll be good and the rest keep it. We're not gonna solve all world's problems in one fell swoop here today. But again my intention is to pass something out today, Members. But...and so far we have heard some very favorable comments from the community who is directly affected by this. So I just wanna open with a little bit of my mana`o at this point. But with that, Mr. Carroll, you have some comments?

COUNCILMEMBER CARROLL: Thank you, Chair. I think everybody got the testimony from Mr. Mayer and what. I've been going over his ones with the bill over here and I find all of them acceptable to me especially having words large print over there on that Section E. But all of them I think are appropriate. I think it'll make it a better bill. And I don't know if you would accept a motion to accept these changes or if the Members would like to discuss them, the additions, I should say. But after reviewing them over here I think they are appropriate.

CHAIR COCHRAN: Okay. Thank you, Member Carroll. It's up to the body how you folks wanna work this. I've also glanced through. Thank you, Mr. Mayer, for your input. And they all don't seem so...I mean they're not controversial. I think it lends more clarification to this bill and puts some great...adds, you know, better clarity. So it's up to the body if we...but I'm willing to allow if you wanted to move to insert these.

COUNCILMEMBER CARROLL: If you would allow a motion I would move to accept the changes in the text presented by Mr. Mayer, all five changes. I'll read them off really quickly. Page 2, B3, after the word "description" add the words "and map". Number 2, Page 5, first paragraph, after the dollar fines at the end of the paragraph add the words "per day of operating without a permit". Number 3, Page 5, second paragraph after the dollar fines at the end of the paragraph, add the words "per day operating without a convicted violation". Number 4, Section E at the bottom of the page after the last word, "information", add the words "in large..." "in print large enough to be read from 40 feet". Page 5, line 6, add the words "permit and" before the word "license".

VICE-CHAIR CRIVELLO: I second for discussion.

CHAIR COCHRAN: Thank you. It's been moved by Member Carroll, seconded by Member Crivello and now the floor is open for discussion and comments.

COUNCILMEMBER CARROLL: Thank you, Chair. These over here, they're not any real changes in the text and it's not a substantive change. It's really clarification of what we have over here and

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making it much clearer. I think it's anything we can do to make...to make it clearer and to our intent is advantageous to us and to the operators. Thank you.

CHAIR COCHRAN: Yes, thank you, Member Carroll. And may...perhaps Mr. Hopper, Corporation Counsel, do you need some time to sorta sift through this to see if the words fit appropriately and doesn't, you know, drastically change anything? And to, I guess, double...cross reference that it is nonsubstantive at this point?

MR. HOPPER: Well, Madam Chair, we're gonna have to re-review this when it comes up for first reading and we may have --

CHAIR COCHRAN: Okay.

MR. HOPPER: --changes at that point. It's says...I'm not sure what the per day of operating without a convicted violation means. It's basically for each...I don't why with operating without a convicted violation. I understand the purpose is to say the violations are per day which is how the Code's generally interpret it anyway. So...but that that language is a bit confusing to me, without a convicted violation. It's just a bit odd. So I'll have to work on language there.

COUNCILMEMBER CARROLL: Chair?

CHAIR COCHRAN: Okay. Mr. Carroll?

COUNCILMEMBER CARROLL: I'm sorry. I read that wrong. There was a correction on top there and at Number 3, Page 5, second paragraph, should read per day of operating *with* a convicted violation.

CHAIR COCHRAN: With.

COUNCILMEMBER CARROLL: I've a corrected one over here but the other Members do not.

MR. HOPPER: Yeah, I don't know if, I mean I think it just...

CHAIR COCHRAN: Okay, is that lone clarification, Mr. Hopper?

MR. HOPPER: I think it's just per day of violation.

COUNCILMEMBER CARROLL: Yeah, my, my apologies for reading that wrong. And it was distributed to the other Members where it has "without" which is how I read it. But it's supposed to be "*with* a convicted violation".

CHAIR COCHRAN: Okay, thank you. And, sorry, Mr. Hopper, you were saying?

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MR. HOPPER: I don't know why we would reference a convicted violation. I think you could say per day of violation or something. I mean just like the previous sentence. In addition upon conviction of a violation of any rule, ordinance, or statute or condition, the permit holder shall be fined not less than \$100 nor more than \$1,000 per day of violation, or something to that effect. I don't know. I just think that that's simpler.

CHAIR COCHRAN: ..What was that...Mr. Couch? Oh, Mr. White?

COUNCILMEMBER WHITE: Yeah, I think that wording's much, much more clear. I would go along with that.

CHAIR COCHRAN: Okay. Members, you wanna do that by consensus then?

COUNCIL MEMBERS: Consensus.

CHAIR COCHRAN: Okay, consensus. Mr. Hopper, we're gonna take your . . .*(inaudible)*. . .

COUNCILMEMBER COUCH: So just to be clear, Madam Chair, it's per day of operating with violation. Is that...is that the suggestion?

CHAIR COCHRAN: Per day of...Mr. Hopper, can you repeat?

MR. HOPPER: Nor more than \$1,000 per day for the...for each...for a violation, or something to that effect. I'd have to sit down and work out the wording. But it's essentially every day that you violate is considered a new violation and a new fine of \$1,000, up to a \$1,000. So you would essentially...there'd be a citation for the violation and if it continues then you would be liable for each day. Granted though this...if this is gonna be enforced by Police, that should also be a matter that's taken up with Police if that's something that they typically do. I know that Planning Department and Public Works Department issue notices of violation and they're appealed to the BVA. In this case, these would be appealed to Circuit Court. So how those violations are handled, I don't know if they...the Police would need to cite the person and then find them out riding a bicycle illegally and doing the tour another day and issue them. I mean I'm not sure where their evidence would come from. I mean it's like, if they...if they had evidence that you were conducting the tour, I guess that you could...the prosecutors could deal with that. But that's not necessarily my area of expertise outside of the civil violation situation. So you can put "per day" there but again this would all come down to how the enforcement process would work and who would be doing the enforcement.

CHAIR COCHRAN: Right. And I...and I think it goes back to my initial reasoning of passing this out and focusing on valid permits because what is the point? We adjust all the language and all the definitions and whatever in here and yet we only got three people with permits anyways. And

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we got all these operators out there, you know, with impacts to the highways and residents. So I think the starting point for us on this bill, and Members, I wanna hear feedback, is to get that permitting happening first. And thereby, so you got the stickers, now we can have tangible, visual of something that can be enforced, that can be, you know, held to this ordinance, law, whatever policy and stuff. So at this point, it's kinda...it doesn't make sense if we're creating everything and yet we got people continuing their business with no permit anyways. So that's where I'm starting from and hoping that we can at least get past that, pass this out and then really hone in on all the other stuff in the future. So, yes, Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Madam Chair. And I understand where you wanna go with that and that that is a good goal. My only concern would be is the other requirements don't have anything to do with the permit. It's more of rules of operation. And I think that's where some of us in several...and some testifiers from the last meeting--I have the notes from last meeting--had some concerns with some of the information there. So that, that would be a troubling thing unless we go through this and vet that out as well. Or else take it out for now and then put it in for the next iteration. I think those would be our two choices. But I wouldn't be able to support it with the language as it is here without some pretty good discretion in just the other requirements portion, the A, B, C, D and E.

CHAIR COCHRAN: Okay, so but getting back to the motion on the floor in regards to Mr. Mayer's --

COUNCILMEMBER COUCH: Oh, right.

CHAIR COCHRAN: --inputs. Do we...are you addressing that right now, Mr. Couch?

COUNCILMEMBER COUCH: No.

CHAIR COCHRAN: Oh, okay, okay. So we...

COUNCILMEMBER COUCH: Just addressing your comments, yeah.

CHAIR COCHRAN: So let's get back to motion on the floor then. And are we all good to...for me to call for the vote? Mr. White?

COUNCILMEMBER WHITE: I just wanna make sure that Mr. Hopper's comfortable with the language as it's been stated thus far or whether that needs to be restated.

CHAIR COCHRAN: Okay. Mr. Hopper, do you have comments?

MR. HOPPER: Well, we could probably make...if there's a problem with it, we'll have to look at it again and can probably make nonsubstantive amendments to add clarification. I don't see it as a major change to add "per day". Again, if it's Police enforcement I don't how easy it will be to

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CHAIR COCHRAN: We're ready for Lieutenant to come down?

COUNCILMEMBER COUCH: --chat with them about that, yeah?

CHAIR COCHRAN: Mr. Uedoi, if you don't mind? Thank you. Thank you, Lieutenant, for being here. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Lieutenant, for being here. I'm not sure you've...are you able to take a look at this stuff and say, yeah, we can enforce this? We have the capacity, it fits if we put in there "upon conviction" then...then that means that you guys get the authorization to enforce this?

MR. UEDO: Well, for us we'd stick with the enforcement of the traffic laws relating to pedestrian, bicycle and vehicle law violations. The resources to enforce the regulations that sets forth in the ordinance would almost be impossible for us to dedicate enforcement specific to these activities.

COUNCILMEMBER COUCH: I don't necessarily mean dedicate. It...it's right now Traffic Code is in Chapter 12 or something like that. I gotta remember what chapter it is. It's not Chapter 5. Is that right?

MR. UEDO: Ten, I believe, yeah.

COUNCILMEMBER COUCH: Oh, okay. Can you enforce something if we say, you know, upon conviction? Is that now become an impetus for you to be able to enforce out of Chapter 5?

MR. UEDO: We'd have to review what the ordinance says under that chapter.

COUNCILMEMBER COUCH: Okay, and is the Department...would this pass, would the Department, like Ms. Cochran said, it's kinda like a safety sticker as well or an annual sticker that you see it on the...on the bicyclists or the vans and they don't have, they've expired or whatever, you can then pull 'em over kind of thing?

MR. UEDO: If there's something readily, easily identifiable for the Police to see then yeah, it's easier to enforce. But without that, you know, with the changeover in personnel on different shifts and what not, they wouldn't be up to date as far as who's been in violation and how many times and so on and so forth.

COUNCILMEMBER COUCH: Okay. That's it for now, Madam Chair.

CHAIR COCHRAN: Okay, okay, Mr. Couch. Mr. White?

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COUNCILMEMBER WHITE: Thank you, Madam Chair. Just a clarification. Where it says in 5.22.070, Other requirements, B says no bicycle tours shall begin prior to 8:00 a.m. during weekdays. I'm assuming that that means they shall not begin to pass through the upper residential areas on Crater Road prior to that. I don't think it means they can't start from the very top of the mountain or wherever their...wherever their starting point is. I would be wanting to make sure that that's clear that it's...and maybe that gets changed to the same kind of language as C where they may not pass through the areas prior to 8:00 a.m. I think there's a good part of the year when that's not a problem anyway. But the other question is during June, you know, they get down there earlier and I know during the times that there's...when school is out there's not much...there's nowhere near as much traffic Upcountry as there is the rest of the year. Anyway, I'd like to see if we can clarify that if possible.

CHAIR COCHRAN: And, okay, okay, great, Mr. White. So to Mr. Couch's point earlier in regards to this section 5.22.070, Other requirements, and you're saying, Mr. Couch, you're willing to take things out and just leave perhaps E. in there. So I could go with something like that...

COUNCILMEMBER COUCH: Yeah, that's...

CHAIR COCHRAN: And then work on the rest like you stated so...and it goes to Mr. White's point that you wanna adjust B., you know, at the 8:00 a.m. start time or what have you. So if Members are comfortable in leaving the one item and then we revisit the rest just so we have, again, something to pass out today with the additional that Mr. Mayer had given us. But...so that's just an idea I wanted to toss out there.

COUNCILMEMBER COUCH: Yeah, Madam Chair. If that's your goal is to get the fact that they need to be permitted...

CHAIR COCHRAN: Yes.

COUNCILMEMBER COUCH: And then we'll deal with the rules after...

CHAIR COCHRAN: Yes.

COUNCILMEMBER COUCH: Then that's what you would do, is you'd probably get rid of A through D, then E and F would be okay. And if that's your goal, then that's...that's what you need to do and we have to see if the Members wanna do that.

CHAIR COCHRAN: Yeah, yes, okay, thank you, Mr....yes, Mr. Hopper?

MR. HOPPER: Just a point of clarification. I mean the existing law says any business or person who engages in a bicycle tour without first obtaining a permit issued in conformity with this chapter shall be ordered to discontinue the bicycle tour business and fined and then it gives the range. I

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mean it's already illegal to do this without a license. And this section adds some clarity with respect to enforcement. And, again, I would...I would recommend if you determine the department do the enforcement you add further clarity and name that department in the ordinance. But currently it is not lawful to conduct these businesses without a permit. So adopting this law, it may...it defines what a tour is broader and it defines them on State law also but it's currently unlawful to conduct a tour without a permit in the Code. I just wanted to make that...that clear.

CHAIR COCHRAN: Okay. Yes, Mr. White?

COUNCILMEMBER WHITE: If you don't mind, Madam Chair, I'd like to have Mr. Couch state his reasons for taking out the other requirement section, because I believe that provides a good part of the level of comfort that was arrived at through the discussions between the biking industry and the Kula Community Association. Maybe we can have Mr. Goodenough come back down to the podium, if you don't mind, and give us some indication as to whether that removal is appropriate. It just, it doesn't seem appropriate to me at this point. So maybe Mr. Couch can explain . . .*(inaudible)* . . .

CHAIR COCHRAN: Okay, okay, Mr. White. Mr. Couch, if you don't mind?

COUNCILMEMBER COUCH: Yeah, it was just that...to...based on the Chair's comment that you just wanted to get the permitting taken care of, because I do...I, like Mr. White, I have questions on the other requirements and it sounded like the Chair didn't wanna go through all that...that discussion at this time. I would not wanna pass this bill as is unless we fixed 070 or took it out if the concern was just getting the...more authority to enforce the permit portion. So I agree with Mr. White. I think 070 should be in, but it seemed like the Chair didn't want to go through the discussion on that. So if the Chair's willing to go through the discussion, I certainly would like to keep it in and discuss our issues there.

CHAIR COCHRAN: Okay.

COUNCILMEMBER COUCH: But that was...I was just basing that on the comments you made. You just wanted to get it out for the permitting process.

CHAIR COCHRAN: Right. But I mean that's only if it started to get real painful.

COUNCILMEMBER COUCH: Okay.

CHAIR COCHRAN: And it was starting to drag out. I just wanna set the tone and the stage for my intent and not to have a well, we can't come to an agreement and was deferring to start all over again at another meeting. I really wanna hone in and figure out the parts that we can all agree on and, and move it out. But, again, if there's not a huge, you know, area here that we

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all...obviously as I stated too that the community seems quite comfortable with what we have here in front of us. So it doesn't seem like it's too much of a stretch to address a couple things and be done with it and pass it out. So I'm good. I'm open and, Mr. White, did you...you have a comment? But also were you wanting Mr. Goodenough back on to the floor?

COUNCILMEMBER WHITE: Well, we'll see where the discussion --

CHAIR COCHRAN: Okay.

COUNCILMEMBER WHITE: --needs to go. I --

CHAIR COCHRAN: Okay.

COUNCILMEMBER WHITE: I'd...it's my understanding that the bike companies, Mr. Goodenough and another representative here from Bike it Maui, are comfortable with these other requirements. And I, you know, it puts the...it puts the onus on the bike companies and I think that's something the community is interested in doing. So I would prefer that we go through these other requirements at this time since we have the resources here. And if we come to a stumbling block, then maybe we can drop one of them or add something. But I...at least the only change that I'm interested in is I think a fairly...fairly easy one. So...

CHAIR COCHRAN: Okay. Yeah, I'm open for that. So shall we go item by item then? Is that what we wanna do right now? Okay.

COUNCILMEMBER WHITE: Sure, and maybe ...*(clears throat)*... excuse me, Chair. Maybe it would be good to have Mr. Goodenough come down --

CHAIR COCHRAN: All right.

COUNCILMEMBER WHITE: --to provide context.

CHAIR COCHRAN: If...Mr. Goodenough, would you come down to the podium to assist us? Thank you. And thank you, Mr. Goodenough, for hanging out with us. Are you clear on what section we're on and discussing right now? You have a copy?

MR. GOODENOUGH: The document that I have with me is --

CHAIR COCHRAN: Page 5.

MR. GOODENOUGH: --regarding ordinance 2426. Chapter 5.22.

CHAIR COCHRAN: Yes, yeah. There would be copies out on the front desk so --

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MR. GOODENOUGH: It's dated 1995, or no?

CHAIR COCHRAN: No.

COUNCILMEMBER WHITE: Maybe Staff can give him a current...

CHAIR COCHRAN: Is there a copy at the front table for him? Sorry. Yes?

MR. MOLINA: Chair, maybe a brief recess.

CHAIR COCHRAN: Members, we'll be in a really brief recess. . . .(gavel). . .

RECESS: 2:26 p.m.

RECONVENE: 2:33 p.m.

CHAIR COCHRAN: . . .(gavel). . . Will the Infrastructure and Environmental Management Committee please reconvene. And, Members, we left off with Mr. Goodenough came down to the podium to help assist us in wording of this. And Mr. Goodenough, you got your copy and had been able to go through that?

MR. GOODENOUGH: Yes, I have.

CHAIR COCHRAN: Okay. And we're on this Page 5, Section 5.22.070, Other requirements. And there's Items A. through F. there. So, Members, do you have questions or shall we just go item by item? Is that what you would like to do? Yes, Mr. White?

COUNCILMEMBER WHITE: Yeah, I think it would be helpful just to have the Members get comfortable with each item. I don't have a problem with Item A. Any...I don't know if any other Members do.

CHAIR COCHRAN: Okay. Mr. Couch, I believe you...

COUNCILMEMBER COUCH: Thank you, Madam Chair, and I did and it's because of a testimony from previous...our previous meeting. But at looking at the...A., it just talks about when the tour begins. If there's compression at the...somewhere down the...down the road, that doesn't...this doesn't affect that so I'm fine with A. now.

CHAIR COCHRAN: Okay, all right. Members, any further...

MR. GOODENOUGH: I have a comment about that.

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CHAIR COCHRAN: Perhaps Mr. Goodenough...yes?

MR. GOODENOUGH: The ten-minute departures on Number A. here. That can work as far as the start but when you stop or looking at the landscape or taking pictures, there will be...the lines are going to get closer sometimes. Now there are eight companies and they're not all eight up there at the same time. But that could look good on the beginning but maybe in the middle or when you have two or three that are, oh, a football distance, you know, what is that, 300 yards or something? Anyway, if they're that far apart and then the community is thinking, well, we've got one after the other after the other. That's what we're trying not to have, you know. It sounds good but it may not work.

CHAIR COCHRAN: Okay, so Mr. Goodenough, the ending of the sentence where it says "from the same area before beginning a bicycle tour", so whether you're starting, you know, up at the Park entrance or you're starting...so I guess it doesn't really say the actual starting point. But that's where I believe everyone starts. And then from there that's where the spacing begins.

MR. GOODENOUGH: That's right.

CHAIR COCHRAN: Right?

MR. GOODENOUGH: Ten minutes apart. And when down let's say half a mile or two miles down, they've stopped for pictures and they finish those pictures and a bike trip goes through them and then they follow. They should also space themselves. But will they do it? And it's not gonna...it's not really in here. So it's not manini that we're doing it. We're trying to figure out how we could make it work.

CHAIR COCHRAN: Right. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Madam Chair. And that's the concern I'd had before. But...so you're saying, Mr. Goodenough, that you would prefer to have the ten-minute spacing all the way down the hill? Is that what you're trying to say?

MR. GOODENOUGH: Well, I don't think ten minutes is...I think that's too much really if you're talking about all the way down the hill.

COUNCILMEMBER COUCH: Right, right. But the way this reads is only at the start is where's the ten-minute gap. After that it doesn't matter. If they compress, they compress. But I'm not sure what the community and I guess I don't know if there's a representative from the working group...what the desire was of the group when they put that ten-minute gap in there. Was it all the way down? Was it just at the beginning? So right now as it sits, I'm fine with it at just the beginning. But I don't know that --

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CHAIR COCHRAN: Right

COUNCILMEMBER COUCH: --the community or the operator or...

MR. GOODENOUGH: I'll make a comment about that? The ten minutes that space you, you can't control it really. I mean as soon as they're out of the way and down the hill and you've waited five minutes, there could be another group that was up above you that was following the ten-minute rule and now they're just coming on upon where the people are just wanting to get back on to the road. And this group doesn't pull in there and they go by. Now he has to wait another ten minutes if you make it you have to have a ten-minutes all the way down the road.

CHAIR COCHRAN: Right.

MR. GOODENOUGH: When we were biking in Haleakala Park, they had us at a five-minute difference. And it worked out better in the Park because they didn't have that many places to stop and, you know, take pictures and stuff. We pretty much went through the Park and kept going when we did our pictures outside of the Park. So those are things to consider is all I'm saying.

CHAIR COCHRAN: Thank you. Mr. Couch?

COUNCILMEMBER COUCH: Yeah, I think after discussing with someone who was in the meeting, that the ten-minute start time, but only at the start time, that's sufficient for the community at this time.

CHAIR COCHRAN: Okay.

COUNCILMEMBER COUCH: So if they compress, that's not a problem.

CHAIR COCHRAN: Right, okay. Yeah, I understand that. And, you know, really, Mr. Goodenough and Members, it's the...each individual tour operator and your guides who can adjust and readjust as they progress down the mountainside, too. And so if everyone has the proper training explanation why, you know, the space is there and you wanna be cognizant of each other and things of that nature, then it should flow. But, again, yes, we're not holding everyone's hands as they're progressing down the hill. And so just hopefully everyone gets trained and has the right mindset going as they're, you know...

MR. GOODENOUGH: You need to know, too, that the bicycle companies don't talk on the same wavelength. So we don't talk and hear what they say and we're saying. So we can't call them and say, hey, we're getting a little too close to you or whatever. We can't do that.

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CHAIR COCHRAN: Right, yeah.

MR. GOODENOUGH: But we do it visually, you know.

CHAIR COCHRAN: Yeah.

MR. GOODENOUGH: And it's common sense if you're getting close to somebody, slow everybody down so there's a bigger gap, you know.

CHAIR COCHRAN: Yes, okay. So Members, are we good with what's there currently? Again, it's one of those things where we can always revisit and readjust. But I think currently we all can live with this so we wanna do it by consensus.

COUNCIL MEMBERS: Consensus.

CHAIR COCHRAN: Okay, all right. Moving on to Item B., B as in boy. No bicycle tours shall begin prior to 8:00 a.m. during weekdays.

COUNCILMEMBER COUCH: I think Mr. White...

CHAIR COCHRAN: Mr. White?

COUNCILMEMBER WHITE: Thank you, Madam Chair. I'd like to move that B be amended to read, "no bicycle tours shall pass through the upper Kula residential areas prior to 8:00 a.m. during weekdays."

COUNCILMEMBER COUCH: Second...oh, sorry.

COUNCILMEMBER WHITE: And if you...and if we need to put a specific spot on there, it would be the first lot which is 17929 Haleakala Highway.

COUNCILMEMBER COUCH: Second, Madam Chair.

CHAIR COCHRAN: Okay. So it's been moved by Mr. White and seconded by Mr. Couch. Members, we're open for discussion on this. And I think it's a good addition 'cause it clarifies what that means exactly and that there's a point of...point of no returns at a certain time of day. And, yes, Mr. Goodenough, you have comments? Is that what you wanted, Mr. Couch?

MR. GOODENOUGH: Well, regarding the 8:00 a.m., weekdays, the number of miles or where it starts and where it ends needs to be put into the bill.

CHAIR COCHRAN: Okay. Mr. Couch? I'm sorry.

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MR. GOODENOUGH: I think that is Highway 377 coming off of 378.

COUNCILMEMBER WHITE: Well, my intent was the top of the residences.

CHAIR COCHRAN: Right.

COUNCILMEMBER WHITE: At that line of eucalyptus trees, below that they can't go before 8:00 a.m.

CHAIR COCHRAN: Okay.

COUNCILMEMBER WHITE: And it's not a...it's not a distance, it's a point that they can't cross before then. So...

CHAIR COCHRAN: Okay, yeah, I understand that. Mr. Couch?

COUNCILMEMBER COUCH: Yeah, I just wanna make sure that Mr. Goodenough is aware of that that essentially before 8 o'clock, you can't come down after this portion...piece of the road. There's a mile marker or he gave an actual address of the first house. So is that sufficient enough notice for you guys so you can backtrack how long it's gonna take or you can take a little longer at some of your scenic lookouts so that you don't pass that house before 8 o'clock?

MR. GOODENOUGH: When we come upon the first house on the way down and all the way down to that intersection where there's a stop sign at 377 and 378, that distance, there's no passing at all...there...you know, it's a regular-sized lane. But we have no place to get over and so we do not allow traffic...

COUNCILMEMBER COUCH: That doesn't talk about passing. It just says you can't come below the first house --

MR. GOODENOUGH: Okay, I know it's about time of day --

COUNCILMEMBER COUCH: --before 8 o'clock.

MR. GOODENOUGH: --is what you're talking about.

COUNCILMEMBER COUCH: Yeah.

CHAIR COCHRAN: Right.

MR. GOODENOUGH: Okay.

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COUNCILMEMBER COUCH: And it's the first one 'cause no one's gonna go past you. Whoever is the first past that house can't be...after...I mean it has to be after 8 o'clock.

MR. GOODENOUGH: Yeah, I understand what they would like to have because they have to get their children to school and other things that are going on back to their businesses. So I have no...no.

COUNCILMEMBER COUCH: Okay. Thank you.

CHAIR COCHRAN: Okay, Members, any further discussion or any of our resource Departments? Okay, seeing none then, I shall...oh, I guess by consensus? Or...

COUNCILMEMBER COUCH: For that one, yeah.

CHAIR COCHRAN: Oh, made a motion, okay.

COUNCILMEMBER COUCH: For that _____.

CHAIR COCHRAN: All those in favor, say, "aye".

COUNCILMEMBER COUCH: There's no...oh, yeah, he did make one.

CHAIR COCHRAN: I think, yeah, Mr. White added his language. And you seconded it.

COUNCILMEMBER COUCH: Yep.

CHAIR COCHRAN: And now I'm calling for the vote. So all those in favor, say "aye".

COUNCIL MEMBERS: Aye.

CHAIR COCHRAN: Any opposed? Okay, motion passes with five ayes and two excused.

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VOTE: **AYES:** **Chair Cochran, Vice-Chair Crivello,
Councilmembers Carroll, Couch and White.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmembers Guzman and Hokama.**

MOTION CARRIED.

ACTION: APPROVE.

CHAIR COCHRAN: Thank you, Members and Mr. Goodenough, for comments. Now on to Item C.

MR. GOODENOUGH: May I make one more statement?

CHAIR COCHRAN: On?

MR. GOODENOUGH: Regarding D. as in David.

COUNCILMEMBER COUCH: We're not there yet.

CHAIR COCHRAN: Oh, yeah, we're working our way there, sir.

MR. GOODENOUGH: Okay.

CHAIR COCHRAN: We're on C. and then we'll go to D.

MR. GOODENOUGH: Okay.

CHAIR COCHRAN: So we're on Item C. right now. Bicycle tours may not pass through any areas in Makawao or Paia towns that are zoned Business Country Town. And that's our Item C. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Madam Chair. And I like this. The concern would be are there places that...is there signs? Are there places in Makawao or Paia that aren't BCT? And I know they are. So my concern is, are the operators gonna know that? Are the Police gonna know that, whoever needs to enforce that? So is there some sort of marking? Maybe we need to put a sign up saying no bicycle tours here. And...yeah, I know. That's the problem, is where is

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that and not so much for the eight downhill tours, it's the other ones that send people up to the top...they'll take people up to the top of the hill and let 'em go and say, okay, you're on your own. That, too, is a bicycle tour as defined now. Those guys aren't gonna know. The businesses are going to be fine but the unguided ones are the ones that gonna be the issue. So I don't know...I understand what they want and I like it and we can keep it in there and then maybe work on it later. But that needs to be pointed out to the non-tours as well --

CHAIR COCHRAN: Right.

COUNCILMEMBER COUCH: --or the non-guided tours.

CHAIR COCHRAN: Right. I hear you, Mr. Couch. Yes, Mr. White?

COUNCILMEMBER WHITE: Mr. Couch brings up an interesting point because an unguided couple that's, you know, is on a tour of their own isn't gonna get picked up. So does that mean that they walk their bikes through town? 'Cause they're not gonna get picked up by a van. The guided tours load up before they get to Makawao and then get back on the bikes after Makawao and then they pick up before they get to Paia. So that's...that's pretty...this applies very easily to them. I'm not sure how it applies to the guys that come down on their own.

CHAIR COCHRAN: Right. So, Members, you wanna leave it in and work on it or just delete it?

COUNCILMEMBER COUCH: If it's...Madam Chair?

CHAIR COCHRAN: Yeah.

COUNCILMEMBER COUCH: I'm fine with leaving it in but it's gonna be the issue of enforcement.

CHAIR COCHRAN: Right.

COUNCILMEMBER COUCH: And then we're working on it later is determining if there's some issues. It's one of those things that we pass occasionally saying it allows for enforcement if there's an issue. If there isn't an issue and nobody complains, then...so I'm fine with leaving it in there, but ultimately we're gonna have to work on tweaking that a lot, making it tighter.

CHAIR COCHRAN: Yes. Having specifics sections that it covers and what have you, yeah. Mr. White, you had further comments?

COUNCILMEMBER WHITE: No.

CHAIR COCHRAN: Oh, okay.

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COUNCILMEMBER WHITE: I'm fine leaving it in.

CHAIR COCHRAN: Okay. All right, are we okay then at this point with this? So just consensus to leave it...leave it?

COUNCIL MEMBERS: Consensus.

CHAIR COCHRAN: Okay, very good. Thank you. Now on to Item D. Before conducting a bicycle tour, the permit holder shall provide safety training and equipment to all riders, including, but not limited to, a video safety briefing, and tour leaders shall be required to use a speedometer. Mr. Couch?

COUNCILMEMBER COUCH: Thank you. And this testimony...this was from testimony from last time. They're required to use a speedometer to do what? To speed up? To slow down? I don't know what that means. I mean it would be great to have. I mean they should have one anyway but why?

CHAIR COCHRAN: Yeah. That...yeah, good question, Mr. Couch. That was gonna be my question to Director Goode. Mr. Goode, you awake in the gallery? Do you have...would you like to come down and join us, please?

COUNCILMEMBER WHITE: Madam Chair, as he's coming down...

CHAIR COCHRAN: Yes.

COUNCILMEMBER WHITE: I believe Mr. Goodenough had a...had a --

CHAIR COCHRAN: Yeah.

COUNCILMEMBER WHITE: --concern on this. I don't know it may have been...

CHAIR COCHRAN: And then Mr. Goodenough had comments.

COUNCILMEMBER WHITE: It may have been the speedometer.

CHAIR COCHRAN: But we have Mr. Goode here.

MR. GOODE: Hi, Chair. Sorry, I was doing something else.

CHAIR COCHRAN: Thank you, Director.

MR. GOODE: What was the question?

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CHAIR COCHRAN: Oh, no problem. So this is the question in regards to...you have the bill in front of you? Under the Other requirements on Page 5, Item D as in David. And it's in regards to the word "speedometer". A tour leader shall be required to use a speedometer. And my question, also Mr. Couch's, what was going to be achieved by requiring tour leaders to use a speedometer? And it was, I guess, suggested by your Department about this language?

MR. GOODE: Madam Chair, I think I need to look back to the study that this may have been one of the suggestions that came out of the study or perhaps one of the suggestions that...oh, here it is. 6.2.2.8 on Page 628 of the study says requires speedometers on a cruise leader's bicycle. The speedometer be part of a program to limit bicycle speed to a pace that is manageable for safe control of bicycles particularly when negotiating turns. So it came right out of the study.

CHAIR COCHRAN: Okay. And Mr. Goodenough, you mentioned you had comments in regards to this Item D.?

MR. GOODENOUGH: Yes, I do. The first one that I see I have comments about safety training. That's not really described and we...we give safety briefings that take about 15 or 20 minutes in my company now. Everyone that's biking has a copy of what we're briefing on both sides. We ask for questions if they have them. And we make sure that they are aware of, you know, the environment and what we're going through and so forth. So the word "training"... 'cause we're not gonna train anybody how to ride a bicycle. We don't allow them to get on the bicycle unless they're a competent bike rider. And we do make a test to see if they can ride a bike safely. It's just a little short one and if they are in a real wobble, they don't get to start at all. If they have a problem in the first mile and a half that we see that they think that they're not doing well, we'll then stop the group and talk to the person and have them get in the van. So we're looking at it from all angles ourselves. We don't wanna have people getting hurt. But I don't know if "safety training" is the right word.

CHAIR COCHRAN: Okay.

MR. GOODENOUGH: Then the second one that I see was regarding a video. A video to be shown to 12 people either has to be in a vehicle with one of those dropdowns or it's back at your business offices where they have that. And giving the safety briefing or video and then taking a one-hour ride up the side of a mountain and then start to go, I think is too much of a gap in their brain. That they did it, heard about it a year...I mean an hour ago or so. And I think that video is not necessary. It can be used. I'm not saying it's not something that could be an add-on but I don't think it should be mandatory. In all the years that we've done...we've never used a video. We...I know one company does and I'm not sure if any others do. I'm not saying that's bad but to do it at the place of getting the equipment and doing the safety briefing and so forth, it's very, very good because it's right then and they listen to it, verbally.

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CHAIR COCHRAN: Okay, thank you.

MR. GOODENOUGH: One more, the last is the speedometer. All the bicycle guides are pros. They know what the speed is without _____ a speedometer. They know what 20 miles is, they know what 15 is. And they control the speed of the group and they slow the group down for the turns. So having a speedometer for a pro is not necessary. And we certainly wouldn't want our customers to have speedometers because they'll start looking down at 'em while the bicycles going that way or that way.

CHAIR COCHRAN: Okay. Thank you. My follow-up question is the video safety briefing. I know you said not all do it but the...so is that...these are...is it recommendations or is it required? Or is it just up to each individual company, I guess, to decide --

MR. GOODENOUGH: Yeah, they do...

CHAIR COCHRAN: --on how to go about doing their briefing or, you know, if you don't want to call it safety training, but to keep their clients safe?

MR. GOODENOUGH: I think there's only one company doing that. I can't say that for sure but it says including but not limited to.

CHAIR COCHRAN: Right.

MR. GOODENOUGH: And by that, it means that you have to have a video. Am I wrong there or right? Including but not limited to a video. I think if you just call it the safety briefing...well, we did that above that. Safety training would be safety...safety briefing.

CHAIR COCHRAN: I'll ask our attorney, Corporation Counsel, how he deciphers that portion. Mr. Hopper?

MR. HOPPER: It would require a video. That was part of the recommendations so that's how it's phrased.

CHAIR COCHRAN: Okay. Mr. Couch or Mr. White?

COUNCILMEMBER COUCH: Just reading, as Mr. Goode pointed out, reading from the recommendations of the group, it does say the safety video is an effective means of communicating important information on bicycling safely and the State's rules for legal and responsible bicycle operation. And it also requires...wants to require a speedometer as well for the lead bicyclist. So if we're going with the study's recommendations, those were in there and that's what they say, you know. It doesn't mention anything about whose...is it the same safety video so you have some conformity or, you know, you would need...depends on what bikes they

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have I would imagine. I think there's two types of brakes systems and so maybe the safety video couldn't be standard because of the braking systems. So while the study recommends the safety video, it doesn't specify what kind. But it was...I guess this was recommended by the folks that were in the industry and the community so I'm fine with leaving it in. It does, as far as the speedometer is concerned, potentially we might be able to add some of the language from the...from the study, for instance, the speedometer should be used in conjunction with rules about safe speeds for each segment of the route. Now I'm assuming during that meeting was Mr. Goodenough's concern was brought up by somebody saying, well, if you got the lead bicyclist looking down all the time to try and check his speed, he's missing...he's supposed to be watching his...usually...the way I see him they're looking back all the way which is surprising. So, you know, I'm assuming most of this stuff was vetted out in this study. So I'm willing to go with what the recommendation of the study says, personally, so thank you.

CHAIR COCHRAN: Okay, Mr. White?

COUNCILMEMBER WHITE: Thank you, Madam Chair. I think the speedometers are probably a useful tool to have. The videos I'm not so sure of because if you...I agree with Mr. Goodenough. If you watch the video at the...at the base where, you know, the visibility is gonna be much better than if you're...the people that are in the back of the van trying to see and hear a safety video while you're driving up, the times I've been on this tour the safety briefing is given at the top of the, you know, at the top of the ride. And I think that's an appropriate place to give it because you see exactly what you're gonna have to deal with. You see the steep descent that you're gonna be making. And so I understand the desire for some conformity but at the same time, I'm not sure that it should be a video that is the, you know, is the factor that should be focused on. But I don't know how to make a list of all the things that you need to go over during the safety briefing. But I'm sure that they can probably provide us with one.

CHAIR COCHRAN: Yeah, so I must have done the one tour that actually does the, a briefing 'cause I watched a video and it was sunrise so it's early morning and you're having your coffee and continental breakfast and you're watching your video. And then you get, yeah, get in the van and you head on up in the dark and all that. So it worked, you know, and then of course you get additional comments at the top. And this was back when we were going through the Park itself. So I've experienced both, no video, yes with the video. Both ways worked but again I think it...I would like to see standardization and just so everyone is on the same page and everyone is following whether it's this ten-minute thing or the spacing or the pulling over or whatever the case may be that everybody is doing the job sorta equally. But I understand, Mr. Goodenough, everyone's in competition, you don't quite sit and, you know, around the campfire holding hands every day and discussing stuff like this. So, yeah, it's kind of a different approach I guess. So, Members, I've...like I said, I've done both and I appreciated the video though so...yes, Mr. Goodenough?

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MR. GOODENOUGH: Giving a safety briefing with this group right in front of you and going over all of these...going over all of the rules...we have like 28 rules, the information is given to them and any questions about each one. When you look at a video, a video keeps moving. You can't ask questions. So if you're mandatorily saying we have to have a video, I'm telling you that it's not gonna be as...it shouldn't have to...that we shouldn't have to have that. The videos in vans are small, little, teeny screens. There's four rows of people. When you get on an airplane and you're looking at their safety briefing, how many people are really doing all of the stuff they should be listening to. And I don't think it's appropriate to have to have a video. That's my opinion.

CHAIR COCHRAN: Okay, all right. Well, Members, you know, this again wanna focus that I do wanna pass something out. So if this portion about mandatory video wants to be...you folks wanna take it out and then revisit this later? I mean we can do that at this point. So, yes, Mr. White?

COUNCILMEMBER WHITE: Madam Chair, I'm happy to make a motion.

CHAIR COCHRAN: Okay.

COUNCILMEMBER WHITE: That incorporates some of that if you don't mind.

CHAIR COCHRAN: Sure, go ahead, Mr. White.

MR. GOODENOUGH: I have a question before he makes that if I can. The speedometer? I didn't mean the speedometer would be with the cruise leader only and he's looking down. I said we wouldn't give them to the customers.

CHAIR COCHRAN: Yeah, no, no, no.

MR. GOODENOUGH: Those are the people that are gonna wander off looking at how fast they're going.

CHAIR COCHRAN: Okay, Mr. White?

COUNCILMEMBER WHITE: Madam Chair, I move to amend Section D. to read as follows, before conducting a bicycle tour, the permit holder shall provide a safety briefing and safety equipment to all riders, period. Tour leaders shall be required to use a speedometer.

COUNCILMEMBER COUCH: Second.

CHAIR COCHRAN: Thank you. It's been moved by Mr. White and seconded by Mr. Couch. We are now open for discussion. No further need for any discussion? Mr. Couch?

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COUNCILMEMBER COUCH: Thank you, Madam Chair. And since there was some concern from testifiers, I would like to amend Mr. White's motion to add the following language after the word "speedometer", "to be used in conjunction with rules about safe speeds for each segment of the route". Just so it's more clear. I would like to add...amend...add that language.

COUNCILMEMBER WHITE: I'm...the maker of the motion is fine with that.

COUNCILMEMBER COUCH: Okay.

CHAIR COCHRAN: Okay, friendly amendment then?

COUNCILMEMBER COUCH: Friendly. Oh good, thank you.

CHAIR COCHRAN: Okay.

COUNCILMEMBER WHITE: And, Madam Chair, if you don't mind, I think the thing that we need to remember is that these companies have liability insurance and they have to work with their insurance companies to provide the best safety and the most effective safety briefing that they can come up with to protect their customers, to protect their leaders and to protect themselves. So I think it's better for us to leave the decision up to them to decide which is the most effective method of providing of safety briefing to the customers. So that's, that's why I'm comfortable making this motion.

CHAIR COCHRAN: Okay, thank you, Mr. White. And, Members, any further discussion?

MR. MOLINA: Madam Chair?

CHAIR COCHRAN: Yes.

MR. MOLINA: Can I just get a clarification?

CHAIR COCHRAN: Sure.

MR. MOLINA: On the amendment to the amendment? I have noted, to be used in conjunction with rules about safe speeds, and if there was any other...

COUNCILMEMBER COUCH: For each segment of the route.

MR. MOLINA: Okay, for each segment of the route.

COUNCILMEMBER COUCH: Right.

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MR. MOLINA: Thank you.

COUNCILMEMBER COUCH: Thank you.

MR. GOODENOUGH: Could I ask...what...could you define that? Each...each part of the route?

COUNCILMEMBER COUCH: That was...

CHAIR COCHRAN: That's in the study, yeah?

COUNCILMEMBER COUCH: That was in the study and it's more clarity as opposed to just have a speedometer. People were concerned as to why this tour leader needs a speedometer. So that just clarifies why.

CHAIR COCHRAN: Okay. Yes, Mr. White?

COUNCILMEMBER WHITE: I'll just make the comment that based on some of the comments that I've heard, it's the people who are passing by in automobiles that really ought to be looking at their speedometers, not...not the bicycles.

CHAIR COCHRAN: Right, Mr. White.

MR. GOODENOUGH: You know the...the insurances that we have and sometimes when we have to go to court to protect ourselves, what you're saying about this, they may say well, you didn't stop each segment, whatever that segment means, and warn me. Warn me there gonna be another turn or there's gonna be a hill coming up. It's kind of the way I'm understanding it. I'm...maybe I'm not getting it right but we would have difficulty with all these companies doing the same thing, what segments we're in. The rules that we give them in safety briefing cover the whole nine yards, all the way to putting the bike on the trailer.

CHAIR COCHRAN: Okay. Yeah, I mean when I did it, it's kinda common sense like you said. You visibly see a hill coming, you see a turn. It's not like you need to go what segment am I in now. I mean that...and you just naturally slow down or coast with it or whatever. I mean it's just a, I don't know, natural, common sense thing. But I don't...Members, further comments to the amendment and the amendment to the amendment at this point? So vote on the amendment? All those in favor, say, "aye".

COUNCIL MEMBERS: Aye.

CHAIR COCHRAN: Okay, any opposed? Amendment to the amendment carries.

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COUNCILMEMBER COUCH: We have to get him on TV. He hasn't been on enough.

CHAIR COCHRAN: The man behind the scenes at DMV. Mr. White?

COUNCILMEMBER WHITE: Madam Chair, as he's coming up, I guess the question comes to my mind, I can understand the name of the company and the telephone number being visible from 40 feet, but if it's...if we're needing the permit number and the expiration date of that permit, I don't really see a need for that to be read at 40 feet. That could be on the bumper or some...something else, because the only person's gonna care about that is the Police when they catch up with the...with the van, if they do.

CHAIR COCHRAN: Right. I guess the way our stickers are now, like our safety and registration type, they're not bold letters like our name plates or anything. They're...but anyways, Mr....yes, Mr. Lito Vila. Thank you for joining us.

MR. VILA: Yeah, good afternoon, Madam Chair. Lito Vila, the DMV Administrator. My input for consideration to the body would be to probably not...it's not necessary to identify the vehicle. Each vehicle is already required to have a license plate that is visible from 50...at least 50 feet by law. So anyone wanting to report that to the Police or the enforcement body, they would be able to report that vehicle or that group using the vehicle identifiers. So that may be...however, if the body...the Members wanna add that requirement, I would recommend adding a clarification that to add "the permit holder shall add" and specify the size of the lettering.

CHAIR COCHRAN: Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Vila. That's...that clarifies some things a little bit and I understand Mr. White's concerns. I know...I know...I think we had the PUC usually has some sort of sticker too but it's small as well. It can't be read within 40 feet. I'm just looking for something, you know, the Police officers said that...the lieutenant said that he needed to have...they need to be able to see what the expiration date is and...in order to help enforce that provision. So I'm just wondering what we really need to deal with there.

MR. VILA: If it's felt that it's...the identifier is needed, then I would specify it and it should be affixed by the operator and we specify the height of the lettering or the numbering to be affixed. For your information, once we issue a bicycle tour business permit number, that number will stay with that permit holder for the duration of that permit. So it does not change from year to year. And if that's gonna be a requirement, you should also add on there that it's the permit holder's responsibility to ensure that it remains visible. In essence if it peels off, they have to fix it.

CHAIR COCHRAN: Mr. White?

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COUNCILMEMBER WHITE: Thank you, Madam Chair. These vehicles already have a PUC license number on their vehicles and a PUC, I believe a PUC sticker, with the date of expiration and they expire once a year. I'm not sure why we need additional permit numbers and additional expiration dates. The main thing that somebody who's wanting to report a misdeed needs is the name of the company and the telephone number. And beyond that I think it's somewhat not necessary. I think, you know, I think that everything else that we're moving towards is very helpful, but I'm not sure that this particular requirement of the permit number is really that necessary.

CHAIR COCHRAN: Right. But...so, Mr. Vila, the...so PUC, safety, registration, they all point to certain, you know...each individual...your safety check is valid and Police can check to see if it's expired or not. So I think this sticker we're talking about is for the permit that we're all wanting everybody to get on board with and that permit sticker, not PUC, not safety, not registration, but permit, it states it's valid and here's the expiration date. And now officers can see if it's on the road or not with something that's valid or not. Is that safe to say that that's kind of the purpose of this sticker that we're talking about right now?

MR. VILA: You need to clarify that. We issue a business license...a permit which is a half sheet that is laminated and embossed by our office and it's...one is issued to each permit holder. If you're requiring stickers on the vehicle, that's not provided or that is not addressed. The PUC, if they...I think that's regulated by the PUC and once they're...the company's issued a PUC license, they are required to affix that PUC sticker on the vehicle.

CHAIR COCHRAN: Okay, so then who...you have a budget that creates these stickers?

MR. VILA: No, the business license permit, that is currently costed in with the permit, the application and permit, which is currently at \$100 per permit holder. However, there are no provisos for providing any decals. That's why I was recommending that if that is gonna be the...if it's gonna be required for my Department to issue that sticker, I will have to cost that in place if that's the requirement and that's the wish of the Council. However, it can...there's also situations where it can be...the type of lettering may be specified, the height that could be there, and where it's affixed. That could also be specified within the ordinance.

CHAIR COCHRAN: Okay. Mr. Couch?

COUNCILMEMBER COUCH: Madam Chair, it...it seems that, you know, that the...on further discussion and further review that the print large enough to be read from 40 feet might be a little bit redundant. I mean if they have all that information on their truck anyway, I don't know.

CHAIR COCHRAN: Okay, so you wanted to delete or leave it as is?

COUNCILMEMBER COUCH: It's up to the...it's up to the Committee?

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COUNCILMEMBER WHITE: You wanna make a motion?

COUNCILMEMBER COUCH: I...I don't know. I think the imprint large enough to be read from 40 feet might be causing this issue and if we don't have that in there, then everything would be fine. So I guess I move to remove the...the phrase, "imprint large enough to be read from 40 feet".

COUNCILMEMBER WHITE: Second.

CHAIR COCHRAN: Okay, and if...any further discussion? Or Members, at this point I'd like to hear from who would be the enforcer, from Lieutenant Uedoi, if he doesn't mind commenting on this in regards to I guess the signage and what would help your enforcement here.

MR. UEDO: Anytime we do enforcement, something visible would make it easier, but not necessarily this is something that we can undertake, you know, as I previously stated, that the resources we don't have to go out and do the enforcement.

CHAIR COCHRAN: Yeah, okay. But I mean as for...'cause we're saying visible from 40 feet. Is that kinda what's determined for our safety stickers and our registration stickers? Is that...

MR. UEDO: I'm not exactly sure as far as how many feet that the visibility needs to be.

CHAIR COCHRAN: Okay.

MR. UEDO: Lito would probably know best about that.

CHAIR COCHRAN: Okay. Is there...thank you, Mr. Vila. Thank you, Mr. Uedoi.

MR. GOODENOUGH: Madam Chair?

CHAIR COCHRAN: Yeah, one...one second, Mr. Goodenough. Mr. Vila, is there like a standardized, I don't know, distance that a sticker needs to be visible from in your Department?

MR. VILA: Not on the...the safety inspection stickers are the size and the reflectivity of the stickers are governed by the State Admin. Rules. What's in law is the visibility of the license plates. It's...the law states that it must be visible within 50 feet. So if you're gonna make it visible within 40 feet it should be a little bit smaller than the fonts of the license plate numbers. Now you're gonna be putting that and you're gonna be operating in the early morning hours or, you know, where are you gonna be affixing that stickers on the side or on the rear? So as far as visibility it may not be necessary. The key component in identifying a vehicle I believe is already there. You have the license plate number front and back and that is the owner's

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responsibility to make sure they are clean. If not, they can be citable. That is another clue for enforcement to say, hey, that, that plate is no longer visible and it can be enforced within the current laws.

CHAIR COCHRAN: Okay. Yeah, Mr. White?

COUNCILMEMBER WHITE: Thank you. With what Mr. Vila just stated, I think it's appropriate just to remove the visible from 40 foot item --

CHAIR COCHRAN: Remove it?

COUNCILMEMBER WHITE: --that Mr. Couch has mentioned, because if you're gonna...if wanna you call and report a violation, what you're gonna want is the name of the van, the name of the company on the van and the license plate number or the time. And the company's gonna know pretty much which van it might be if it's one of theirs. So I think it's...I think it's appropriate. I don't see a need to have the permit number on the side of the van or on the back of the van in letters even close to the size of a license plate. So I think it's overkill. I think these vans can be identified very easily. Then the permit number can be on something like a small sticker or it can be available in the van in a laminated sheet as Mr. Vila stated earlier. That's my comments.

CHAIR COCHRAN: Okay, thank you. Yeah, I think Mr. Goodenough, you had something?

MR. GOODENOUGH: Yes, I wanted to remind you that there's a trailer behind the vans and the trailer is blocking the license plate until you get almost next to it, you know, looking on if you're passing it or something. And within the Police Department and they're looking over what's happening, they won't know it until they stop. And also the DMV gentleman knows that the permit needs to be in the vehicle. So when the Police stop the vehicle for whatever cause, they'll show them their permit or loss of it. And putting it on a sticker on the back of the vehicle, five or six of the...of the companies are using trailers and one or two of 'em are without trailers at this point as far as the...where the stickers would be. They'd be covered up if the trailer's hiding it until you stop.

CHAIR COCHRAN: Okay, but they can then be put onto the trailer.

MR. GOODENOUGH: Once they're stopped, they can show them the permit. If the community was wanting to know if we had a permit, and they could see it or not see it, I don't know if that's it. Or if it's for the enforcement.

CHAIR COCHRAN: Either, but it's mainly for enforcement.

MR. GOODENOUGH: Well, the permit it has to be...

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CHAIR COCHRAN: So there needs...that's why I was asking and that's what it's about, trying to get these unpermitted companies permitted --

MR. GOODENOUGH: Right.

CHAIR COCHRAN: --and then we the County enforcing that they have valid permits. There's gotta be some tags, some way, on the trailer, vehicle, whatever the case may be, whatever's most visible to our enforcement to see it and to clearly define, it's expired or not. I mean that's how our safeties work and that's how our registrations work. So I don't see any difference in how we're gonna figure out if a bike company is permitted or not and if it's, you know, current and up to date or not. And it's simply a sticker, just like we do now in other ways. And put it on the trailer. You know, I just got my trailer safety'd and the sticker's right there, you know. So I put something in the back of my trailer, now I'm gonna block the back of my car. But my trailer's licensed and its blinkers and everything are going nice. So I understand but it matters. Yeah, it matters where you put it, Mr. Vila, I know. So...but that's...I think, Mr. White, you know, you're saying redundant but I think we currently do not have any type identification whether these companies are permitted or not. And that's one of my intents here today is to get some type of identification so our enforcement can follow through. And that's one step and then all this other stuff, you know, we'll be working on falling into place. So, yes, Mr. White?

COUNCILMEMBER WHITE: I understand where you're coming from but...but that can be a sticker that's on the back bumper of the vehicle, it could be anywhere. I agree they --

CHAIR COCHRAN: Right.

COUNCILMEMBER WHITE: --need to have the permit number so we know that...any enforcement person can easily see it and recognize it. But I'm just not...I'm just interested in removing the size.

CHAIR COCHRAN: Right, yeah. No, I understand, Mr. White. And, yeah, me too. I was never intending to have a big, you know, billboard and the whole graphic thing on the side of a van or a trailer. It's just to a little sticker form. So, Members...Mr. Couch? Well, I guess we collectively put that in with the move of Mr. Mayer's recommendations. Or Mr. Carroll and then you seconded it so we're...are we looking to remove then?

COUNCILMEMBER COUCH: Yeah, yeah that was my motion, to remove it.

CHAIR COCHRAN: Okay.

COUNCILMEMBER COUCH: But before we go, one more thing is you mentioned something about stickers on...on the trailer. E talks about vehicles providing transportation of riders, so it's definitely the van that it's talking about here so...

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CHAIR COCHRAN: Maybe and equipment?

COUNCILMEMBER COUCH: I'm thinking --

CHAIR COCHRAN: Transportation of...

COUNCILMEMBER COUCH: I'm thinking the reason this was in here was to...so the vans are clearly identified. And now the --

CHAIR COCHRAN: Okay, which is under . . .*(inaudible)*. . .

COUNCILMEMBER COUCH: --enforcement officers are going to...if somebody makes a complaint, then they're gonna pull somebody over for that based on that complaint or whatever they observe. And then they can check on the permit or you're asking...or you...your intent in this one is to have the permit number. And it doesn't say anything about the expiration date on here. So I don't know what the intent is for this language.

CHAIR COCHRAN: Yeah, it looks like here...well, I'm trying...my intent is to get some type of verbiage where it's that enforcement can see whether a vehicle, trailer is permitted and it's valid.

COUNCILMEMBER COUCH: Okay.

CHAIR COCHRAN: This looks like it's about signage on the...the company name, you know.

COUNCILMEMBER COUCH: Correct.

CHAIR COCHRAN: Somebody's like cutting off people on the highway and they were like, hey, it's so and so --

COUNCILMEMBER COUCH: Right.

CHAIR COCHRAN: --bike company. I just saw 'em drive by at 100 miles an hour and, you know, you need to cite them.

COUNCILMEMBER COUCH: So maybe after we finish this, removing the 40-foot thing then we can talk about what needs to be on the vehicle and what vehicle it needs to be on.

CHAIR COCHRAN: Yeah. I mean that would work. Okay, so do we have a motion on the floor? We just...yeah.

COUNCILMEMBER COUCH: Yeah, we do.

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CHAIR COCHRAN: Okay, Members...

COUNCILMEMBER COUCH: That's to remove the imprint large enough to be read by...from 40 feet away I believe.

CHAIR COCHRAN: Okay, to be deleted.

COUNCILMEMBER COUCH: Yeah.

CHAIR COCHRAN: And you've moved it and Mr. White, you seconded it?

COUNCILMEMBER COUCH: Yeah.

CHAIR COCHRAN: Okay, and we discussed so now, any...all those in favor of the motion?

COUNCIL MEMBERS: Aye.

CHAIR COCHRAN: Any...any opposed? Okay, motion passes with four ayes and three excused.

VOTE: AYES: Chair Cochran, Councilmembers Carroll, Couch and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Crivello, Guzman and Hokama.

MOTION CARRIED.

ACTION: APPROVE.

CHAIR COCHRAN: So I guess we're back to the original language, right?

COUNCILMEMBER COUCH: Just for the record...

CHAIR COCHRAN: Yeah.

COUNCILMEMBER COUCH: Can you name the excused, please?

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CHAIR COCHRAN: Oh, Ms. Crivello, Mr. Guzman, and Mr. Hokama. Okay, so now we're back to the original language for E, correct? Okay, and so I don't know. Mr. Hopper, do you hear what we're trying to get at here?

MR. HOPPER: Yeah, it's hard to do orally. I would wanna --

CHAIR COCHRAN: Okay.

MR. HOPPER: --see it written down and deal with it at that point.

CHAIR COCHRAN: All right, well, Members, it's 3:30 and I know time flies when you're having fun but it is past our mid-afternoon break. So do you folks wanna take like a ten-minute or so and then...sorry?

COUNCILMEMBER CARROLL: Break.

CHAIR COCHRAN: Break, okay. So we'll just do a ten-minute break and in the meantime we can look at this language and then come back and we should be pretty, yeah, quick about this. So, Members, we'll be back at 20 till 4:00. We're in recess. . . .(gavel). . .

RECESS: 3:29 p.m.

RECONVENE: 3:50 p.m.

CHAIR COCHRAN: . . .(gavel). . . Will the Infrastructure and Environmental Management Committee please come back to order? Members, we are back and we left off with...on Page 5 for our newly-arrived Member, Mr. Guzman, hello.

COUNCILMEMBER GUZMAN: Good afternoon, Chair.

CHAIR COCHRAN: Thanks for joining us. And we're on Page 5, 5.22.070, Other requirements, Item E. And we were...we took out the 40-foot distance thing and now we're back to the original and I'm all good with this. But I'm really wanting to get some type of language in regards to...I'm looking at...let me read it out for you, if you don't mind, Members. Vehicles providing transportation of riders shall be identified with the business name, County bicycle tour business permit number, permit expiration date is what I wanna insert and see inserted and telephone contact information, because that's kinda the gist of my intent to begin with from the start of our day, was to get some type of acknowledgment, you know, some type of sticker, sign, something to identify that this particular company has a permit and here is the expiration date. Thereby Police enforcement can have something tangible to look at and see are you in compliance or not and thereby determine if they need a citation or not. So that is why I think it's

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important to have sticker form, placard form, whatever the case may be, just some type of ID in regards to what that permit expiration date is. Mr. White?

COUNCILMEMBER WHITE: Thank you. Madam Chair, my understanding is this does require that. Are you suggesting, as you inferred earlier, that we may want to change it to read, "vehicles providing transportation of riders and equipment"?

CHAIR COCHRAN: Well, 'cause I...I mentioned that I believe because of Mr. Goodenough saying that the trailer that carries the equipment, the bicycles, would be blocking such --

COUNCILMEMBER WHITE: Right.

CHAIR COCHRAN: --sticker anyways. So to put it upon whether it's the van that's the most visible, the rear part of that or the rear part of a trailer I think is important too, yes.

COUNCILMEMBER WHITE: Yeah, I'm comfortable either way because I think once there's an enforcement action, they're gonna be pulled over and whoever is pulling them over can read the identification markings wherever they are. But if it would make you more comfortable to add "equipment" into that, I'd be happy making the motion.

CHAIR COCHRAN: Okay. Mr...let's hear from Mr. Couch.

COUNCILMEMBER COUCH: Thank you, thank you, Madam Chair. This doesn't say in the rear as well. It just says it must be on there. And I'm guessing that is so it can be identified. And if they're gonna pull over the vehicle then they can read the side of the vehicle at that time. If your intent is that that the Police see that, oh, I see the permit number and the expiration date and the expiration date is past, first of all, I would ask if that is probable cause to pull a vehicle over because I've seen it where they don't pull vehicles over for registration that is expired, only if they pull over the vehicle for another reason. But I don't know if that's just my observation or if that is in fact --

CHAIR COCHRAN: A law.

COUNCILMEMBER COUCH: --an issue with the law. So would...I guess either the Lieutenant or Mr. Hopper, is that enough reason to pull a vehicle over if the expiration date of the permit is not...has passed?

CHAIR COCHRAN: Thank you, Mr. Couch. And I also think Mr. Vila had his hand up for a comment. Is that right? Sorry, Mr. Vila, yes? Okay.

MR. VILA: Yes, thank you, Madam Chair. Just to add, I know it's not in the proposed but I'm just looking at Section 5.22.050. The permit holder is required per this section of the ordinance to

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have the permit while conducting a tour activity. So should that operation be stopped by enforcement they may be asked, where's your permit? And there is a citation amount...violation is...of that section shall be fined not less than 10, no more than 50. So based on as I'm reading that, I believe they are required to carry a permit while they're operating. The situation, though, is more this wouldn't pertain to the unguided tours because then the operator is not there.

COUNCILMEMBER COUCH: Right, I understand that portion, but the issue is that the van that drives by that has a permit number that the expiration date has lapsed, can the Police pull over the van just based on that? I think that's the question.

CHAIR COCHRAN: Yes, Mr....

MR. UEDO: Police can pull over vehicles that their motor vehicle registration and/or safety check is expired. And that alone can...is reasonable suspicion for the Police to initiate a traffic stop.

COUNCILMEMBER COUCH: Okay. But if we add this language, would that then become an also...also a reasonable suspicion for people to...for the officer to pull over the van?

MR. UEDO: We'd have to look into that. I don't think so. I don't think it would be applicable. The HRS allows for the motor vehicle registration and for the vehicle safety check. I'm not sure if it distinguishes for permits for business as a reason to stop a vehicle.

COUNCILMEMBER COUCH: And I'm guessing that that's the case, Madam Chair. The issue with having a permit number and expiration would probably be a situation for somebody to call and say, hey, such and such van was on the road and its business license is expired so Department of Finance, I wanna make that complaint. Or I guess if the Police pull them over for another reason, then they can check to see. So have...requiring it on the back of the trailer or the back of the vehicle may not be...I mean it would be fine but it may not be the sole reason. You know, you could have 'em on the side of the vehicle so that if anybody's seeing them as they pass, it might be a better place to put it is on the side of the vehicle. That's if the intent is to say, hey, you know, these guys are expired so more people can see it going in either direction or if there's an issue. At this point it doesn't specify that it needs to be in the back and it only specifies it needs to be on the van. So...and I'm fine with it as it is there other than adding the expiration date.

CHAIR COCHRAN: Right. Well, now that Lieutenant said that it's not probable cause, it doesn't really matter where it is. I mean it doesn't need in the back now because...like the safety and registrations are.

COUNCILMEMBER COUCH: Right.

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CHAIR COCHRAN: So I guess...I think that was why we were trying to get...I was trying to get the sticker situation going so enforcement can occur but now he's saying it's not allowed...they're not...it's not their...gonna be under their jurisdiction and purview to do so. Is that correct, Mr. Hopper, in regards to the HRS?

MR. HOPPER: Well, Madam Chair, I mean the enforcement whether or not to pull over is one thing. There's a lot of variety of ways to enforce here. It's by civil fine. So I mean if we're going to look at actually pulling people over in that situations, that would require some more research. I mean this is...these are civil fines which could be involved for people conducting tours by giving out maps in a store. You know, people that are otherwise found to be doing it and not necessarily pulling people over. I'm not particularly familiar with the HRS and whether or not you'd be able to start to pull people over or initiate a traffic stop. You are talking about civil...you're talking about fines that would require, you know, convictions. So it'd be civil fines similar to what I think the Parks Department had in the past. But again, this is probably part of the general enforcement scheme that needs to be looked at. And again I think Police has raised some concerns with that to say the least. So it's...it's an important part of the ordinance. There's a lot of different ways this could be enforced and not just by traffic stop. There could be, as I think Member Couch specified, information given to the Finance Department particularly if you're talking about a license that's expired that someone's continuing to operate and that they should have enforcement action by the Finance Department initiated. But this is a key component of this bill and I'm not exactly certain how it's going to work, because it's not something right now that as I understand it is being particularly actively enforced with people conducting tours.

CHAIR COCHRAN: Right. Thank you, Mr. Hopper, and that's why we're here today to try and figure that out to make sure that it can get enforced and how do we go about getting that enforced. So I think there's one, the point that Mr. Couch brought up, that a passerby can do a complaint-driven query to DMV and say, hey, so and so company I saw their tag in the window and it's expired. You know, you better get on it. Or there's a sticker on the rear and Police or whoever is driving, is in back and goes, oh, looks like it's expired. But can't I guess pull 'em over now but maybe call Lito and say, I just saw this van. So I don't know. I'm just...that's the point of why we're here. To try and figure out a way to get compliant people...noncompliant compliant. And so let me just run it by Police Department one last time to get clarification that even if a tour...when a van, whatever trailer, is operating without a permit number displayed or if there's some clear permit that's expired somehow or whatever, that you cannot stop the vehicle or issue a citation to them?

MR. UEDO: You're talking about just the permit for the business?

CHAIR COCHRAN: Yes, the permit for this...yeah, this bike tour company's permit that they pay to Mr. Vila at DMV.

MR. UEDO: No, that's all civil. So we wouldn't be able...

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CHAIR COCHRAN: Okay, so the answer is clearly no.

MR. UEDO: Yes, no.

CHAIR COCHRAN: Okay.

COUNCILMEMBER GUZMAN: Unless...Chair?

CHAIR COCHRAN: Oh, go ahead, Mr. Guzman.

COUNCILMEMBER GUZMAN: Yeah, I think you would have to find the nexus in the traffic section of the Code. If you can...I know that the State statute has like...I'll give you an example, speeding. There's State speeding statutes, you know, 55 mile per hour, blah, blah, blah. Now you're got a...you have a traffic code in the County Code that says we're going to enforce a certain mileage so the officers on the road can enforce either the Hawaii State Statute or if it's a County road, enforce the County Code. So I would recommend finding a, I don't know, a nexus with the traffic section of the Code where you can say, okay, if it's...if the car is...or if the vehicle is on County road, then it's subject to having XYZ attached as part of their vehicle. You know, as part of the vehicle registration or if it's being permitted to do a certain activity, then you can cite it as a traffic citation under that County Code. And so that's where you need to find the nexus to... I mean you'd have to look into the traffic section of the Code to find that. Am I correct in some sense?

MR. UEDO: If we pull over a vehicle for a traffic violation under the...whether it's the County ordinance or the...a State law, yeah, we can ask for different things. We can ask if it's a business, same thing like a taxi cab. If they have...we check if they have a taxi permit and if they have everything that indicates that they're operating a taxi, whether it's their meters running, passengers in the car, whatever, stuffs like that. But we won't necessarily just pull somebody over just to check somebody's taxi permit without having some reasonable suspicion to stop the vehicle for some other traffic violation.

COUNCILMEMBER GUZMAN: Right, right. And if you...if we put it in the County Traffic Code as the not having the emblem or the permit being visible or conspicuously visible as a violation of traffic under the Code, not Hawaii State law, under the Code then they could have reasonable suspicion to pull 'em over. And then if probable cause arises, then they can, you know, fine them or make an arrest or, you know, whatever the case may be. But you're gonna have to research, you know, where you're gonna find that nexus inside the Traffic Code of the Maui County Code. I mean traffic section of the Maui County Code to find that nexus or that ability to do that.

CHAIR COCHRAN: Trigger.

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COUNCILMEMBER GUZMAN: Yeah, the trigger.

CHAIR COCHRAN: And then, of course, the difference of some such violation or whatever occurring on a County versus a State road? How...what, what is that going to be? Is that...

COUNCILMEMBER GUZMAN: I would suggest that...I mean if there's any section of that tour area that is gonna go through the County...on a County road then the officers could enforce that County Code. But if it's a State, it would be very difficult for them to enforce that County Code on a State highway. Unless Mr. Hopper has something else...

CHAIR COCHRAN: And Mr. Hopper would like to chime in.

MR. HOPPER: Madam Chair, this is a bigger issue that I would request if the time is right to go to executive session a bit to discuss. But the State law has been amended giving the County the express authority to regulate bicycle tours over both State and County highways. Now the issue with regulating over State highways I had some brief points that I'd like to make in executive session on that issue. And if the time's right, I could request that from the body. If we're discussing this other issue now we can continue with that. But I mean there is an express State law that says counties can regulate bicycle tours. But I think the Police Department is raising issues with...is...I mean there's a variety of ways to regulate it. It's licensing and then the enforcement of actually seeing people do it and how they would enforce by pulling people over, then you are melding into the traffic violation type of issue versus a business license type issue. And dealing with that enforcement issue's going to be important and looking at that will be, but as far as regulating over State highways, it's something that the State has given the counties the authority to do but I had some comments on that that I think would be appropriately addressed in executive session.

CHAIR COCHRAN: Thank you, Mr. Hopper. Members, after hearing Mr. Hopper's comments, my initial intent...the beginning of the meeting, I don't think it's gonna work out today. So at this juncture I would call for probably deferral of the matter because we are kinda getting down in time frame to, you know, set up Chambers and what have you. So I think it's probably just safe at this point that I defer probably to another couple meetings from now to bring it back when I...my schedule will permit. But in the meantime we can discuss, you know, a little bit more, but my intention is not to go into executive session today and hash it out. I will in a few couple meetings from now as I stated. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Madam Chair. If you're going to defer, might I ask that we get a rewrite of E how you wanna...wanna look at it or...and any other section that you're concerned about and plus all of the changes we've made?

CHAIR COCHRAN: Yeah.

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COUNCILMEMBER COUCH: So we can get it...

CHAIR COCHRAN: Clean it up.

COUNCILMEMBER COUCH: So we have a cleaner version and we know what we have worked on and then also what you intend to...would you like to make a change so we can --

CHAIR COCHRAN: Yeah.

COUNCILMEMBER COUCH: --move forward on that a little bit quicker.

CHAIR COCHRAN: Yes.

COUNCILMEMBER COUCH: Thank you.

CHAIR COCHRAN: Yeah, not a problem. I'd like to see that myself.

COUNCILMEMBER COUCH: Thank you.

CHAIR COCHRAN: Okay, okay. Well, Members, any further discussion? Otherwise, without objections, I shall defer the item.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (EC, RC, DC, DG, MW)

ACTION: DEFER pending further discussion.

CHAIR COCHRAN: Okay, thank you, and thank you, Departments and everyone, for being here. I think we're getting closer. Mr. Goode, I think we're on the verge of, yes, making this happen. And thank you, Mr. Goodenough, for being here, and your time and efforts also. Members, without further items on our agenda, this meeting is adjourned. . . .(gavel). . .

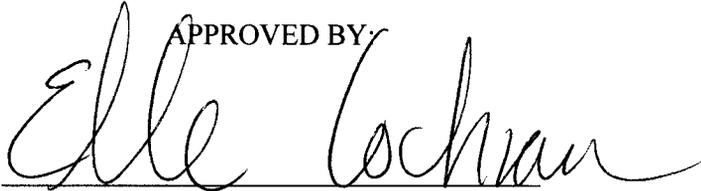
ADJOURN: 4:11 p.m.

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APPROVED BY:

A handwritten signature in cursive script that reads "Elle Cochran". The signature is written in black ink and is positioned above a horizontal line.

ELLE COCHRAN, Chair
Infrastructure and Environmental
Management Committee

iem:min:140909:rk

Transcribed by: Reinette Kutz

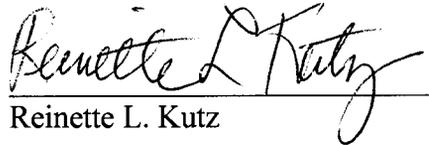
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CERTIFICATE

I, Reinette Kutz, 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 30th day of September 2014, in Wailuku, Hawaii.


Reinette L. Kutz