

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

M I N U T E S

Council Chamber

June 30, 2015

CONVENE: 1:36 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Don S. Guzman, Chair
Councilmember Elle Cochran, Vice-Chair
Councilmember Don Couch
Councilmember Stacy Crivello (arrived at 2:35 p.m.)
Councilmember Michael P. Victorino
Councilmember Mike White (arrived at 2:26 p.m.)

NON-VOTING MEMBERS

Councilmember Gladys C. Baisa (arrived at 1:40 p.m.)
Councilmember Robert Carroll

EXCUSED: Councilmember Riki Hokama

STAFF: Sharon Brooks, Legislative Attorney
Pauline Martins, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via voice conference)

Denise Fernandez, Council Aide, Lanai Council Office (via voice conference)

Dawn Lono, Council Aide, Hana Council Office (via voice conference)

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

OTHERS: Eve Hogan
Annette Niles
Bill Greenleaf
Plus (3) other people

PRESS: *Akaku Maui Community Television, Inc.*

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**EAR-7 ROADSIDE STANDS AND FARMER'S MARKETS IN THE AGRICULTURAL
DISTRICTS (CC 13-85)**

CHAIR GUZMAN: . . . *(gavel)* . . . Good afternoon, my name is Don Guzman, I'm the Chair of the Economic Development, Energy, Agriculture, and Recreation Committee. The time is about 1:40. Before we start the meeting, I'd like to ask anyone to turn off their cell phones or put it in silence mode. I'd like to introduce our Members today. Our Committee Vice-Chair is Elle Cochran.

VICE-CHAIR COCHRAN: Aloha.

CHAIR GUZMAN: Good Afternoon. We have Don Couch.

COUNCILMEMBER COUCH: Aloha, Chair.

CHAIR GUZMAN: We have Mr. Victorino.

COUNCILMEMBER VICTORINO: Chair.

CHAIR GUZMAN: And we also have, as a non-voting Member, Mr. Carroll, Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: Thank you. We also have, from our Planning Department; we have Joe Alueta and Michele McLean.

MS. McLEAN: Good afternoon.

CHAIR GUZMAN: Good afternoon. We have from Corporation Counsel, Deputy Corporation Counsel Michael Hopper.

MR. HOPPER: Afternoon, Chair.

CHAIR GUZMAN: We also have our Legislative Attorney, Sharon Brooks and our Committee Secretary, Pauline Martins. We'll go ahead and check in with our...oh, excuse me, a few announcements. If you would like to testify, please sign up in the lobby. You'll have about two-and-a-half minutes to testify to the limited items on the agenda. Please state your name and/or organization in which you represent. Before we begin, I'll go ahead and check in with our District Offices. Hana Office, are you present?

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

CHAIR GUZMAN: Thank you, Ms. Lono. On Lanai Office are you present?

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MS. FERNANDEZ: Good afternoon, Chair.

CHAIR GUZMAN: Good afternoon, Ms. Fernandez. Also on Molokai Office, are you present?

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

CHAIR GUZMAN: Good afternoon, Ms. Alcon. Thank you very much, and we'll go ahead and start with the Chamber for our first testifier.

MS. BROOKS: The first testifier is Eve Hogan.

. . . BEGIN PUBLIC TESTIMONY . . .

MS. HOGAN: Aloha, I'm Eve Hogan. I'm the owner of the Sacred Garden in Makawao as well as a member of the Ag Working Group, the Maui Coffee Association, and the Maui Flower Growers' Association, but I'm speaking on behalf of myself. I first want to thank everybody who's worked on this bill, 'cause it's been a long and involved process and both of citizens and County representatives so thank everybody. I want to just state that I'm in favor of EAR-7 with a couple of small but very important and impactful changes. Even though the B&B section wasn't part of this bill under permitted uses in Section 19.30A.050 of the Code, I happened to notice a change that I'm hopeful was accidental, that needs to be returned to its original wording. If you would turn to the very bottom of Page 5, under the new numbers 11A, the County Code originally stated that you could have a B&B on Ag land if you produced \$35,000 of gross sales of agricultural products, or, at the top of Page 6, that you complied with 11B or 11C. For some reason unknown, those two "ors" are bracketed which completely changes the meaning of the Code by stating that you have to make \$35,000 in ag sales and meet all of the other criteria. This change was not in alignment with the intent of this bill change. And I request that you strike that change and restore the original reading thus making it that we must comply with 11A or B or C. Also on Page 8, 19.30A.072 E2 under agricultural food establishments, as it currently reads in the proposed bill, "all food must be prepared and served on the premises". This would mean that in order to meet Health Department standards, every farm serving banana bread would have to go, have a commercial kitchen on site which is both cost prohibitive and unreasonable. I suggest that this be changed to something like all foods must be prepared in accordance with the Department of Health, thus we would all be able to rent or go use commercial kitchens offsite to prepare our food so that we could serve it on the premises. Thank you so much for supporting agriculture on Maui and paying attention to these very important changes.

CHAIR GUZMAN: Thank you, Ms. Hogan. Any follow-up questions? Seeing none.

MS. HOGAN: Thank you.

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MS. BROOKS: The next testifier is Annette Niles, followed by Bill Greenleaf.

MS. NILES: Good afternoon, Chair, Council. Like Eve, I'm with the Ag Working Group and I also own my own farm and ranch. My concern, I mean I like EAR-7, it's great. The only thing was my concern was the same thing, was the kitchen because I do added-value products and I talked to the Board of Health and they would like to be informed with this kind of stuff, you know, that because of having to have a kitchen on farm would be really hard on people. They have to get a commercial kitchen instead of doing it on their property and to go and get a permit and build a kitchen; you'd have grease traps that cost you like thousands and thousands of dollars. And people cannot afford that. So they go out and they rent. So that's it. Thank you very much.

CHAIR GUZMAN: Thank you, Ms. Niles. Is there any follow-up questions? Seeing none, thank you.

MS. BROOKS: The next testifier is Bill Greenleaf.

MR. GREENLEAF: Good afternoon, Chair and Councilmembers. My name is Bill Greenleaf and I'm a partner at Greenleaf Family Farms. I'm happy to say Family Farms because our youngest son is moving back to Maui to become a farmer also. I support EAR-7 and I also represent Hawaii Farmers Union the Maui Chapters, and we support EAR-7 with the two concerns that have been mentioned. I'd like to really thank the Council. Agriculture became industrialized in the '50s and as that happened, we lost a lot of our infrastructure. And now as we start to see even medium-sized farms, 25 acres and more starting to redevelop here, this legislation is going to be a, it's paving the road to make people more successful. I believe it will lead to jobs and I believe it will lead to a more successful agriculture sector for Maui. So thank you very much. I strongly support this.

CHAIR GUZMAN: Thank you. Thank you very much, Mr. Greenleaf. Is there any other questions for testifier? Seeing none, thank you very much.

MS. BROOKS: There are no further testifiers in the Chamber.

CHAIR GUZMAN: Okay. Thank you, I'll turn to the District Offices. On Hana, is there anyone wishing to testify?

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

CHAIR GUZMAN: Thank you. In Lanai, is there anyone wishing to testify?

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

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CHAIR GUZMAN: Thank you. On Molokai, is there anyone wishing to testify?

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

CHAIR GUZMAN: Okay. Thank you, ladies. I will cut the transmission at this point.

. . . END OF PUBLIC TESTIMONY . . .

CHAIR GUZMAN: Members, proceeding with the items on today's agenda, we have one item EAR-7 Roadside Stands and Farmer's Markets in the Agricultural District. The Committee is in receipt of the following, number one, County Communication 13-85 from Councilmember Elle Cochran, transmitting a proposed resolution to refer to the Planning Commissions a proposed bill relating to roadside stands and farmer's markets in the Agricultural District. Number two, correspondence dated December 11, 2014, from the Planning Director, transmitting a recommendations from the Planning Commissions and the proposed bill referred to the Planning Commissions by Resolution 14-40 entitled Referring to the Lanai, Maui, Molokai Planning Commissions a Proposed Bill to Amend Section 19.04.040 and Chapter 19.30A, Maui County Code, Pertaining to Commercial Agricultural Structures in the Agricultural District, adopted on April 4, 2014. Number three, correspondence dated June 22, 2015 from the Department of Corporation Counsel, transmitting a revised proposed bill entitled A Bill for an Ordinance Amending Title 19, Maui County Code, to Allow Commercial Agriculture Structures in the Agricultural District. The purpose of the revised proposed bill is to allow as accessory uses and special uses within the County Agricultural District, commercial agricultural structures for the selling and, the selling of agricultural products, including value-added agricultural products subject to the appropriate restrictions and standards. The Committee may consider whether to recommend passage of the revised proposed bills on first reading, with or without further revisions. The Committee may also consider the filing of County Communications 13-85 and other related actions. Members, this Committee has worked very hard on this ordinance or this proposed bill. This is actually the seventh Committee meeting in this Committee. And it started two years ago, more than two years ago and has gone through vetting of the Ag Working Group for six months, and in addition to that, went to the Planning Commissions for additional input. And thereafter was worked on with my office, as well as the Planning Department, to finally get to the revisions that we have today. As well as going through Corporation Counsel's inputs and signing off as to form and legality. Yesterday I received further comments from the Planning Department which I have incorporated into the marked-up version of the proposed bill approved by Corporation Counsel, which the Staff has handed out to you. I'm not sure if they have. Have they done so? Okay. Can you do that at this point?

COUNCILMEMBER COUCH: We get 'em.

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COUNCILMEMBER VICTORINO: We got it already.

COUNCILMEMBER COUCH: We got 'em.

CHAIR GUZMAN: Okay. You got 'em already, okay. So you'll see that there's a marked-up version as well as a clean version incorporating the markups. So at this time, I would like to call on the Planning Department to give comments on the additional markups.

MS. McLEAN: Thank you, Chair. Did you want general comments or to go through the markup --

CHAIR GUZMAN: Oh yeah, so --

MS. McLEAN: --itself one by one?

CHAIR GUZMAN: --what we can do is, Members, you'll have a clean version that has incorporated the marked version. So, if you can work with both of them. We will...I know. It's very difficult in terms of figuring out what has been changed thus far. And so, why don't we get through...okay. You'll see the marked-up version, which on the right-hand corner it says EAR-7 on it. And it's dated meeting on June 30, 2015. Does everybody have that? Do you have that?

VICE-CHAIR COCHRAN: What? Yes.

CHAIR GUZMAN: Okay. So if we turn to Page 2, you can see that the first suggestion of amendment would be to the definition of agricultural product stand. And the Planning Department has inserted after...I'll read the sentence. Agricultural products stands means a building, structure, or place that is partially enclosed by walls, at least 25 percent open to the outside when in operation. So, they're just adding the words "when in operation". And can you, can the Department explain the intent behind that?

MS. McLEAN: That's so that they can close up when they're not in operation and secure whatever items they might have inside.

CHAIR GUZMAN: Yeah. So very simple explanations. So, and you can see the change that was incorporated in the clean version that has been handed out to you. And that's been already changed. So, going on to the other amendments or other suggested changes would be on Page 2, same page.

COUNCILMEMBER COUCH: Mr. Chair, excuse me.

CHAIR GUZMAN: Yes?

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COUNCILMEMBER COUCH: Are we assuming that we're going to approve this? Or, are you asking whether or not we're going to approve each change or do you want to wait 'til all the end and...

CHAIR GUZMAN: Okay. Okay. We can go through that.

COUNCILMEMBER COUCH: It's up to you. I'm just curious.

CHAIR GUZMAN: Okay. Without objections, would you, without objections do you approve of the change of adding "when in operation"?

COUNCILMEMBER COUCH: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR GUZMAN: Seeing no objections. Okay, carried, so amended. So the number...looking on Page 2 and we're going to look at the definition of farmer's market means either. Now you look at the second paragraph. You can see that they're adding retail in front of sale. So the sentence would read "a building or structure managed by a single producer who leases space or stalls for the display and direct retail sale of the agricultural products." They are also adding the word "retail" in the definition of logo items. So if the Department can explain.

MS. McLEAN: That's just a clarification that it's intended that these are retail transactions rather than wholesale transactions. It...we felt it clarified the intent that these are, you know, direct point of sale establishments and not some larger type of wholesaling operation.

CHAIR GUZMAN: Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Would this prohibit wholesale sales?

MS. McLEAN: In the Ag District, there's already as an accessory use wholesale and distribution as a different type of accessory agriculture use.

COUNCILMEMBER COUCH: Okay.

MS. McLEAN: But the...because of, for example, the size limitations from these structures, it's trying to narrow down what they're intended for.

COUNCILMEMBER COUCH: Okay. And I don't know if this happens but I can see where, you know, someone might have a, their truck full of cabbage heads in, behind this facility and then somebody comes up and says, from Pukalani Superette says, I want to buy wholesale out of that. It just happens to be behind the farmer's market stall or

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store. Would that be allowed? And like I said, I don't know if that happens but I can see that that, something like that could happen.

UNIDENTIFIED SPEAKER: Yeah, absolutely.

MS. McLEAN: This makes more of a distinction for us in terms of enforcement versus, again what's allowed in the Ag District about manufacturing and wholesale and distribution, which are allowed.

COUNCILMEMBER COUCH: Okay.

MS. McLEAN: I don't...to us it just helped to further define what the intent of these structures are is for, you know, one-to-one transaction on the premises rather than wholesaling, that's all.

CHAIR GUZMAN: I guess, the intent and the way I look at it is that this ordinance was initially intended for that one-on-one sale.

COUNCILMEMBER COUCH: Sure.

CHAIR GUZMAN: Yeah. And if they want to do the wholesale, which is already allowed anyway...

COUNCILMEMBER COUCH: They should be able to do it.

CHAIR GUZMAN: They should be able to do it.

COUNCILMEMBER COUCH: Okay. 'Cause I can see, you know, there's one or two in the family that are farming and they're either out farming and their wholesale customer comes up to the --

CHAIR GUZMAN: Right, right.

COUNCILMEMBER COUCH: --farmer's stand and they should be able to make the sale.

CHAIR GUZMAN: I mean it's a policy decision, if you don't feel that that word retail should be...

COUNCILMEMBER COUCH: I'm fine with it, no I understand how it, and trust me --

CHAIR GUZMAN: Okay.

COUNCILMEMBER COUCH: --working with Title 19 I know exactly why they need that. But I just want to see the flip side to make sure that there, it's still safe to do, you know, something like that. Okay?

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CHAIR GUZMAN: Okay. So, Members, without any objections, we will add the...

VICE-CHAIR COCHRAN: Chair?

CHAIR GUZMAN: Yes, Ms. Cochran?

VICE-CHAIR COCHRAN: So I'm looking at the definitions above where you have agricultural product stand and then you have agriculture retail structure. And so that's deciphering, you know, selling agricultural products but not delineating is it retail, is it wholesale, is it...it's just selling agriculture --

CHAIR GUZMAN: Selling...

VICE-CHAIR COCHRAN: --products.

CHAIR GUZMAN: Selling agricultural products.

VICE-CHAIR COCHRAN: And now, this section is breaking it down to saying it's only retail. So I'm, it seems...so there's a retail structure, what that means. And then ag product stand. So, I mean I understand we don't want a big wholesale thing but then again, if people are going to go and bulk this way then...so I don't...

CHAIR GUZMAN: Is it... Department?

VICE-CHAIR COCHRAN: I'm trying to...

MS. McLEAN: The other comment I had is that farmer's markets are where you have several vendors. And so they are intended again to be doing retail sale not wholesale sales. I mean a farmer's market, as you would generally picture it, isn't a large facility where you're doing wholesale transactions. Individual ag producers can do wholesaling on their properties but at a farmer's market, where there's one property owner who leases out stalls or tables or spaces in a tent for people, that's not intended to be a wholesaling operation. That's intended to be a retail operation. So that's why we were wanting to put the clarification for farmer's markets for those to just be those small one-on-one transactions. Those same vendors at a farmer's market can do wholesaling back at their property where they grow or produce their products. The farmer's market is intended to be a smaller one-on-one type transaction. And with the logo items, even more so that's, you know, that's intended to just supplement the agricultural products that are being sold. That's not intended to be a larger operation either.

VICE-CHAIR COCHRAN: Okay.

CHAIR GUZMAN: Are you satisfied with that, Ms. Cochran?

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VICE-CHAIR COCHRAN: Yeah I understand the . . . *(inaudible)* . . .

CHAIR GUZMAN: Okay. That, I mean that...adding the retail wording is only being placed in the farmer's market definition; it looks like, when they're using that type of language, retail. And so, I mean I don't really see the distinction but it's something the Department is requesting to have in there. Mr. Couch.

COUNCILMEMBER COUCH: Yeah, thank you. And this is more for legislative intent if somebody needs to go to the minutes that, I think it should be allowable to do some wholesale if...because you have one person running the farm and one person doing the selling and their customer comes up so. I understand what the Department wants and generally, at a farmer's market that's what you want. I just want to, you know, I don't think we need to change the language, but if we can throw legislative intent in there.

CHAIR GUZMAN: Yeah, I see. Would the Department have any objections if we don't use that language, retail? And then that you would know, in the Department, what that means that second?

MS. McLEAN: Well it's, if the Council wants farmer's market to allow wholesale then, and we shouldn't add the word retail. And just leave it as it's drafted.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR GUZMAN: Yes, Mr. Victorino.

COUNCILMEMBER VICTORINO: You know I've been listening very intently. You know, I don't want just what she said to happen. Okay. That's not what the stand is there for. It is really to take care of the mom and pop --

CHAIR GUZMAN: Right.

COUNCILMEMBER VICTORINO: --everyday person, so, I don't know what changes we're looking for but I think the intent has to come, has to be the retail aspect not the wholesale aspect. Okay. And somehow that's gotta be worded in there and/or, like you're saying, Mr. Couch, the intent. But to leave it out or to, you know, change it where now somebody can take advantage and then do wholesaling, now we've not done what the intent of this whole bill was, if I'm correct --

CHAIR GUZMAN: Okay.

COUNCILMEMBER VICTORINO: --in what Ms. Cochran --

CHAIR GUZMAN: Okay.

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COUNCILMEMBER VICTORINO: --it was intending to do, it was retail for the, you know, for people to go there. Not for a big Costco truck --

CHAIR GUZMAN: Yeah right.

COUNCILMEMBER VICTORINO: --to drive up and, you know, I mean --

CHAIR GUZMAN: We don't want Costco.

COUNCILMEMBER VICTORINO: --and no offense to Costco, I just, it came to across my mind. Could be Foodland, could be anybody else --

CHAIR GUZMAN: Right.

COUNCILMEMBER VICTORINO: --but, you know, I understand . . . *(inaudible)* . . .

CHAIR GUZMAN: Yeah. You have a good point there so, without any objections, why don't we, you know, without any objections, we will add the word retail --

COUNCILMEMBER COUCH: No objections.

CHAIR GUZMAN: --in that language, the definition there.

COUNCILMEMBER VICTORINO: No objections, Chair.

CHAIR GUZMAN: Okay. Thank you. Okay. Moving on to the other, moving on to the next proposed amendment is the definition of "other food items" and the Department is requesting an amendment to delete the word "not" and add "neither", and then to delete the word "or" and add the word "nor". So it would read as follows "the other food item means a food item that is neither an agricultural product grown, raised, or caught in the County, nor a value-added product that was produced using agricultural products grown, raised, or caught in Hawaii." Department?

MS. McLEAN: That's just a clearer wording for us. That is what the original definition intended and it could have been misread. So it's just a clarification.

CHAIR GUZMAN: Okay. Members, do you have any objections for that?

COUNCILMEMBERS VOICED NO OBJECTIONS

COUNCILMEMBER VICTORINO: No objections, Chair.

CHAIR GUZMAN: Okay.

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MS. McLEAN: Chair, excuse me. We had asked for one more amendment for the logo item definition, and...

CHAIR GUZMAN: For which? Oh yes, the logo item, sorry.

MS. McLEAN: And that was to delete the word "meant". "Logo item means an item meant for direct sale."

CHAIR GUZMAN: Okay. Why don't we...Members --

COUNCILMEMBER COUCH: No objection.

CHAIR GUZMAN: --if without any objections, can we delete the word "meant" in the definition of logo items? So, it's, we're using two, you see where it's going on? It's, means an item meant for direct, it's just basically grammatical correction.

MS. McLEAN: Thank you, Chair.

CHAIR GUZMAN: Thank you. Without objections --

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: --correct the grammar there. Okay. Moving forward, the next proposed amendment would be on Page 6 of the markup. And this is in regards to one of the testifiers, I believe Ms. Hogan had mentioned that there was an unintended deletion of an "or" so we are going to be putting the "or" back at the top of the page there. You see that? Without any objections...yes, Mr. Couch?

COUNCILMEMBER COUCH: Mr. Chair, it looks like also in your clean version, you also put back the "or" that's in B3.

CHAIR GUZMAN: Yes, that's correct.

COUNCILMEMBER COUCH: You also put that in there.

CHAIR GUZMAN: Good catch.

COUNCILMEMBER COUCH: Okay.

CHAIR GUZMAN: Yeah. That one too, so we're placing back the "ors" that were --

COUNCILMEMBER COUCH: Gotcha.

CHAIR GUZMAN: --inadvertently deleted on the markup version. So in the clean version you'll see the "ors" are back in the document. So without any objections, we will --

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COUNCILMEMBERS: No objections.

CHAIR GUZMAN: --make those amendments. Thank you. Moving forward to Page 7 of the markup version, we have on the bottom of the page there on Commercial Agriculture Structures 19.30A.072. I believe that they are adding in number one, they're adding the words "the commercial agricultural structures" and then deleting A, Section A and incorporating that last sentence into the first sentence. So it will read as follows starting with the top of the title A requirements "A [sic] commercial agricultural structures are subject to the following requirements and restrictions." Number one "commercial agricultural structures may sell agricultural products or value-added products that are not grown, raised, caught or produced on the lot that the commercial agricultural structures are located on, so long as an active agriculture operation is present on the lot where that commercial agricultural structure is located." So, Department.

MS. McLEAN: Thank you, Chair. And I apologize for the noise over here I got a new phone today and I have no idea how to work it so it's making noises and flashing and these guys are laughing at me, so. We felt that that Subsection B didn't add any clarity and made it a little bit more confusing. So, just to compress all of that into one paragraph made it more readable and more enforceable.

CHAIR GUZMAN: Okay. So that's not really a substantive change it's just to clarify. Mr. Couch?

COUNCILMEMBER COUCH: Can I have a short recess? Really short.

CHAIR GUZMAN: Yeah. Recess. . . . (*gavel*) . . .

RECESS: 2:04 p.m.

RECONVENE: 2:07 p.m.

CHAIR GUZMAN: . . . (*gavel*) . . . The EAR Committee shall now reconvene. Yeah, in terms of any grammar thus far, we will treat that as a nonsubstantive change, when we make the final version. So, we'll just go ahead and move on in terms of the adding the language "the commercial agricultural structures" to that Section 19.30A.072. And also deleting Subsection A and then incorporating the last sentence with the first sentence. So is there any objections to that?

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Okay. Thank you.

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COUNCILMEMBER COUCH: That actually kind of carries on, Mr. Chair. She mentioned that they got rid of part B and it looks like they're adding a number three.

CHAIR GUZMAN: Yes.

COUNCILMEMBER COUCH: Yeah.

CHAIR GUZMAN: So we are also, on the next page, Members, on Page 8. The Department is requesting the deletion of B "the lot where the agricultural product or value-added products is grown, raised, caught, or produced" and so the, so, Department, if you can explain why you would like that deleted.

MS. McLEAN: Right. It didn't add any clarity to the section. It basically said that ag products have to be grown on the lot where ag products are grown. And we didn't think we needed to . . .(inaudible). . .

CHAIR GUZMAN: Yeah. So, without any objections, Members, can we delete --

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: --B, Section B? Okay. Seeing no objections, so carried. So just going back to that first portion, does everybody understand that you can have a commercial agricultural structure on the land, I mean on the agricultural property and operate it, as long as that property is in production with agriculture. So that's what that first portion means. Okay. Moving forward to the next amendment and it looks as though number two on Page 8. And it appears that the Department is requesting the deletion of "proof of implemented" so it's just reworking that whole sentence. So it would be, it would read as follows number two "a farm plan"...oh my God. Okay. "A farm plan showing an active agricultural operation shall be provided to the Department of Planning and its implementation shall be required before a commercial agricultural structure commences operation." Is that correct, Department?

MS. McLEAN: Yes, that's absolutely correct.

CHAIR GUZMAN: Okay, and...

MS. McLEAN: The concern was that the way it was worded that proof of an implemented farm plan; we don't receive proof of an implemented farm plan. We go out and look for ourselves to see that a farm plan has been implemented. So, we just wanted to phrase that procedurally how we actually do it. So if an operation already has a farm plan that's implemented, we just go and check, and say yes you're implemented. If it's a new operation then they can submit the farm plan, we can go verify and confirm. So, this isn't for, operations that have existing approved farm plans that are implemented they won't have to do a new one. Maybe they need to tweak it if they've made changes

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to it but it's not asking for two farm plans or anything like that, just a single farm plan that's implemented.

CHAIR GUZMAN: Yeah. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. In your marked up version, you say "and it's implementation shall be required."

MS McLEAN: Verified.

COUNCILMEMBER COUCH: Oh, it is verified.

CHAIR GUZMAN: Oh verified, sorry.

COUNCILMEMBER COUCH: Okay. He did say...

CHAIR GUZMAN: It looks like required.

COUNCILMEMBER COUCH: It does look like required here but it is...

CHAIR GUZMAN: But in the clean version it's verified, sorry.

COUNCILMEMBER COUCH: And the other one is, back to the one we had before. You have a number three here "within agriculture retail structure other feed items, food items and logo items shall occupy more than, no more than 49 percent of the total floor area" but it never, I don't see where it made it into the...

CHAIR GUZMAN: Oh that, that's actually, if you...Mr. Couch, if you follow the line here. I guess it was drawn.

COUNCILMEMBER COUCH: Oh drawn way down there.

CHAIR GUZMAN: Yeah.

COUNCILMEMBER COUCH: Oh gotcha. Okay.

CHAIR GUZMAN: So that's what's difficult about the markups.

COUNCILMEMBER VICTORINO: Yeah, Chair. That was one of the points I was going to make. This has been very difficult following all your lines. You got squiggly lines all over the place.

COUNCILMEMBER COUCH: Sorry.

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CHAIR GUZMAN: Mr. Victorino, I must apologize but it was the Department's fault for giving me these revisions...

MS. McLEAN: We're the ones who should apologize for the late comments.

CHAIR GUZMAN: Yeah, so...

COUNCILMEMBER VICTORINO: Well, it's difficult to follow but I...

CHAIR GUZMAN: Right, right, I understand, and I'll try to lead you through it all the way through. I'm just, 'cause the clean version doesn't have all the markups --

COUNCILMEMBER VICTORINO: Right.

CHAIR GUZMAN: --but I want to show you what has changed --

COUNCILMEMBER VICTORINO: Yeah.

CHAIR GUZMAN: --since the last revision. And so...

COUNCILMEMBER VICTORINO: And will this be the last revision?

CHAIR GUZMAN: Yes. Yes, because it's gone through Corporation Counsel, it's...and it was the last...

COUNCILMEMBER VICTORINO: Even with the squiggly lines, Corporation Counsel's okay with this?

CHAIR GUZMAN: Yes. It's...Mr. Hopper?

COUNCILMEMBER VICTORINO: I mean no, seriously? I mean we're joking but there is that point.

MR. HOPPER: I mean, Mr. Chair, we're going to, after this is done, have to take this to our office, go through our review process and make sure everything's clean. So I think that it's an acceptable way to do it, I mean obviously you may want a typed out red lined, but we understand that, you know, things work in committees, sometimes there's changes that happen last minute. And so they're going to need to be, they're going to need to go through our process for approval before we can get a revised approved bill. So for now, we're okay. I think we've got your Council Service's Staff to help with this as well as the, our office and can get you a bill that we can approve.

COUNCILMEMBER VICTORINO: Thank you for that clarification, Mr. Chair.

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CHAIR GUZMAN: Just further, Mr. Victorino, the markup version that we're working off of was actually signed by Corporation Counsel. It just, Department brought in these revisions yesterday afternoon.

COUNCILMEMBER VICTORINO: But he, but if I understand what he just said, that he'd like to go back --

CHAIR GUZMAN: Yes.

COUNCILMEMBER VICTORINO: --and get everything finalized and legalized and then bring it back to us --

CHAIR GUZMAN: Right.

COUNCILMEMBER VICTORINO: --for our final approval.

CHAIR GUZMAN: Right, and we're going through the changes. Yes.

COUNCILMEMBER VICTORINO: So, if...yeah, whatever changes we do today.

CHAIR GUZMAN: Yes, correct.

COUNCILMEMBER VICTORINO: Okay. Yeah, just wanted it clarified. I'm sorry.

MR. HOPPER: And often we can do that prior to first reading if need be. If there's an issue that we spot, you know, we would try to address it here, but the bulk of the bill has been approved already. It's these, the sort of red lined ink changes that we, that are new to us that our office hasn't seen yet. And so I haven't gone over all of these yet but there does not seem to be a huge amount such that it would be not possible to pass this out today. I think that's the Committee's will. If we do see a problem, that could perhaps be fixed at first reading we could look at that or if, you know, hopefully nonsubstantive changes would be all that would be required prior to our re-approval with these changes.

COUNCILMEMBER VICTORINO: I'm clear now. Thank you, Mr. Chair.

CHAIR GUZMAN: Thank you. Thank you, Mr. Victorino. And, just to clarify, as we've spoken about in the previous meetings, the reason why there's a farm plan implementation requirement or verification of the property is that the bill is really intended for those who are really doing agriculture. Not those who are have agricultural lands and then putting on these structures just to sell and make money. It's really intended for those persons that are really actively engaged in agriculture. So, therefore, the farm plan requirement. And those who are already doing agriculture already have a farm plan. So, moving forward, without any objections, for the amendments in Section 2, would those be adopted?

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COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Okay. Thank you. And then moving on to Section D of Page 8...sorry?

COUNCILMEMBER COUCH: C2?

CHAIR GUZMAN: No, it would be...yeah you're right. Wait. No it would be Section D Agricultural Retail Structures. Is that correct?

MS. McLEAN: Chair, I think it's C2.

CHAIR GUZMAN: C...oh C2. Oh, yeah right correct. So C2 would be "all farmers markets shall operate only during daylight hours." And the Department is requesting a deletion of the wording "and shall not operate on parcels less than five acres." So, Department?

MS McLEAN: Thank you, Chair. The existing language in the Ag District is for farmer's markets that "farmer's markets shall not operate on parcels less than ten acres." So the original proposal was to reduce that down to five acres. But then, when we were looking at farmer's markets plus these other types of commercial ag structures, we felt that there wasn't really a reason for farmer's markets to be restricted to only larger parcels when the retail ag structures and the ag food establishments could be conducted on parcels of any size. So if there was to be a maximum size, or excuse me, a minimum size then that should apply to all of the structures, but if the purpose is to allow these different ag operators all this flexibility and these different options then, we didn't feel that there should be a size restriction.

CHAIR GUZMAN: Okay. Do the Members understand that? So, like currently as it reads in the current language in our ordinance it's five acres, I mean sorry ten acres. And then this bill reduced it to five acres and now the Department is saying, you know what, let the smallest acreage be allowed to have farmer's markets. So that's what the deletion is on the five acres. So without any objections, can we --

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: --delete that language? Okay. Thank you.

MS McLEAN: And as Joe keeps pointing out, they have to have an active agricultural operation going on so --

CHAIR GUZMAN: Yeah.

MS McLEAN: --that's still required. Even if it's a two acre lot --

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CHAIR GUZMAN: Right.

MS McLEAN: --you have to have that active commercial ag.

CHAIR GUZMAN: Yeah, that's part of the definitions as well. So moving on to Section D, right after the number two on Page 8, D2, we are adding a number three. And number three would read as follows "within an agricultural retail structure, other food items and logo items, shall occupy no more than 49 percent of the total floor area." Now this is just moving that language from Page 9 and that was, that language on, is on Page 9, let's see, letter I. So we're deleting that language and moving that language to Section D and numbering it three. And that's specifically for structure or clarity, I believe. Department?

MS McLEAN: Yes, because on Page 9, the items listed on Page 9 apply to all commercial ag structures, and because that one was specific only to ag retail structures, we thought it was more appropriate for it to be just under the ag retail structure standards.

CHAIR GUZMAN: Okay. So without any objections, Members, would you --

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: --that we will move that language into Section D and 3, amending it to D3. Along with that, we had discussions with the Department about the 49 percent of the total floor area. What that means is the other foods or the logo items, when it's being displayed or sold, can only be 49 percent of the total floor area. So the 49 percent is something that can be changed by this Committee. It could be 25 percent, 30 percent; it's just something that is there to be vetted through. So if the Department has any comments on the 49 percent.

MS McLEAN: Yes, thank you. We do feel that 49 percent might be a little on the high side. Even though, that means that it's a minority of the floor area that's not being used for other agricultural products, 49 percent still seems pretty generous. I mean we batted around 33 percent, we batted around 25 percent, we talked with the Chair about it a little bit today and just thought that, well this is really a big policy call for the Council to make as to how much area should be used for logo items and other things like that.

CHAIR GUZMAN: Yeah, Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I'm willing to go to 25 percent because...but let me ask how this would be interpreted. If you have a 1,000...well 500 square feet of floor space or 300, what's the, I forget what the minimum is, 500 square feet of floor space, and so if we say 25 percent which is going to be 125 square feet of floor space, but then they can have shelves and go up, right?

MS McLEAN: Correct.

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COUNCILMEMBER COUCH: Okay.

MS McLEAN: Yeah.

COUNCILMEMBER COUCH: So that, the shelves don't count towards space. It's floor area ratio, it's not like floor to area ratio, right?

MS McLEAN: Right.

COUNCILMEMBER COUCH: Okay.

MS McLEAN: Just for the simplicity of enforcement.

COUNCILMEMBER COUCH: Then therefore, I think 25 percent is fine, 'cause you're supposed to be selling your products at this, and...

CHAIR GUZMAN: Not Q and A, or was it, QVC.

COUNCILMEMBER COUCH: Yeah.

MS McLEAN: It's cubic area.

COUNCILMEMBER COUCH: Right. Okay. Okay.

CHAIR GUZMAN: Members, I guess Mr. Couch is proposing 25 percent floor space for other items and logo items. Is there any objections to that?

COUNCILMEMBER VICTORINO: Higher.

UNIDENTIFIED SPEAKER: Chair?

COUNCILMEMBER VICTORINO: You know, Mr. Chair, I'd like to call on some of those resource --

VICE-CHAIR COCHRAN: Yeah.

COUNCILMEMBER VICTORINO: --people we have back there.

CHAIR GUZMAN: Okay. Okay. Why don't...

COUNCILMEMBER VICTORINO: 'Cause, you know, we're trying to make a decision and I see different signals so, I'd like to hear what they have to say, if you don't mind, Mr. Chair.

CHAIR GUZMAN: Is...Annette, did you want? Or Eve? Either one of you?

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VICE-CHAIR COCHRAN: Eve, yeah.

MS. HOGAN: So I have a...

COUNCILMEMBER VICTORINO: No come to the mic please.

COUNCILMEMBER COUCH: Identify yourself.

MS. HOGAN: I'm Eve Hogan and I run the Sacred Garden, and I just, my experience is is that the majority of the income, even when you're doing a fulltime agricultural business, comes from value-added products. And I'm open seven days a week, eight hours a day, and I sell plants in my nursery all day long. But the thing that allows me to hire employees and pay taxes and insurance, are the value-added products. So I just encourage you to consider this carefully.

COUNCILMEMBER VICTORINO: What...Mr. Chair?

CHAIR GUZMAN: Yes, Mr. Victorino?

COUNCILMEMBER VICTORINO: May I ask a question?

CHAIR GUZMAN: Yes.

COUNCILMEMBER VICTORINO: Ms. Hogan, do you have a percentage you would like to suggest?

MS. HOGAN: Well I like the 49 percent, I do. I don't have a problem with the 49 percent so, you know, I think 25 percent is low. I mean my, you know, selection of t-shirts alone could take up a big section of, you know, I mean, just things like that take up space, you know. So I'm not, you know, I'm all for having ag in the ag space but I think that you gotta consider how we pay for our ability to have these retail structures.

COUNCILMEMBER VICTORINO: Would you consider instead of 25 and 49, what if we went 40 percent?

MS. HOGAN: I would be happy with anything above 25 percent.

COUNCILMEMBER VICTORINO: Yeah. You know, trying to...and I'm looking for a happy medium.

CHAIR GUZMAN: Right, right, right.

MS. HOGAN: Right.

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COUNCILMEMBER VICTORINO: Yeah.

MS. HOGAN: Yeah.

COUNCILMEMBER VICTORINO: You know, I'm not trying to...but, you know --

MS. HOGAN: Right.

COUNCILMEMBER VICTORINO: --I'm listening to this and I' saying if we can get a happy medium 35, 40, you know, something of that nature, would you be comfortable with it?

MS. HOGAN: Yeah. I mean let me just paint a picture because not all agricultural retail spaces are fruits and vegetables, which tourists can buy. Sometimes they're actual plants and I have a plant nursery. And all of my visitors who come cannot buy any of my plants, or not all of them, the locals do. The locals do, but the tourists cannot, because they can't take 'em with them. And so the only way, and I don't want to charge them an entrance fee because I'm providing a service, and I'm trying to have the spirit of Aloha. So, consequently the only way that I can finance having employees in there and all the other amazing expenses that come along with this, is to sell value-added products. And so if I had to reduce that to, you know, this amazingly small space, it would be amazingly hard to stay financed.

COUNCILMEMBER VICTORINO: So, Mr. Chair...okay, go ahead.

MS. McLEAN: Just to clarify, the percentage that we're talking about is for, not for agricultural items --

MS. HOGAN: Right.

MS. McLEAN: --or for value-added items.

MS. HOGAN: Right, okay. Well, I'm using the wrong term then.

MS. McLEAN: So this would...

MS. HOGAN: I mean logo items and non-food or whatever you guys have.

MS. McLEAN: Okay. And other food. Okay, just, I --

MS. HOGAN: Still...

MS. McLEAN: --just wanted to make sure we're talking about we're --

MS. HOGAN: Yeah.

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MS. McLEAN: --talking about the right . . . *(inaudible)* . . .

MS. HOGAN: Thank you, I'm using the wrong term but my point is still the same. Those other products really help keep us in business.

COUNCILMEMBER VICTORINO: Mr. Chair, one more question for, this time I'll address it to the Department. If we went 40 percent would you be okay with that? Because I'm just trying to find a medium that not leaving them holding, what I call, a real stick in the mud, I mean we want to make this as workable as possible. And again, Mr. Chair, maybe in couple, two, three years we gonna sit down and review it.

CHAIR GUZMAN: Right. Definitely.

COUNCILMEMBER VICTORINO: You know, I hope that's part of this whole thing is, this whole plan is, to take a review after three years or something. Like I've always suggested and I will be making that amendment proposal later that, I'd like to see this reviewed because I don't like getting going and leaving something go and then we find there's a problem five years later and it's sometimes insurmountable to make those changes. But 40 percent would be my suggestion and I'll wait to see what my other Members have to say.

CHAIR GUZMAN: Let me ask the Department, is 40 percent adequate for you guys?

MS. McLEAN: Again, this is a policy call for the Council to make.

CHAIR GUZMAN: Okay.

MS. McLEAN: We wanted to raise the question that we felt that 49 percent, while still a minority, still seemed high, but it's purely a policy call. And if there's a percentage that's great, that's something we can enforce, it's clear. The operators know that it's a clear number. So that's a policy call, we defer to the Council on that.

COUNCILMEMBER VICTORINO: So, Mr. Chair?

CHAIR GUZMAN: We're clearly talking about other food items.

COUNCILMEMBER VICTORINO: Right.

CHAIR GUZMAN: These are hot dogs and logo items.

COUNCILMEMBER VICTORINO: Right.

CHAIR GUZMAN: Those are the only two items we're talking about here.

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COUNCILMEMBER VICTORINO: Right.

CHAIR GUZMAN: So and, so when we're talking about 49 percent and the bill is really intended for agriculture products and value-added products --

COUNCILMEMBER VICTORINO: Right.

CHAIR GUZMAN: --I guess I have to raise that question, is it too high for 49 percent? Because that's what we have now.

COUNCILMEMBER VICTORINO: . . . *(inaudible)* . . .

CHAIR GUZMAN: Or is it something that we can...yeah.

COUNCILMEMBER VICTORINO: Mr. Chair, I agree with you and I think but, you know, Eve brought up some good points about plants and some other issues that may not be considered ag, in the context, although we're trying to make it, you know, ag. So I think, and it's up to you and the rest of the Committee Members, but I think 40 percent is a good starting point. And then staying with that for now and then...

CHAIR GUZMAN: Okay, okay. Is, Mr. Couch, is 40 percent okay with you? Ms. Cochran?

VICE-CHAIR COCHRAN: Yeah, Chair, thank you, and yeah, I thank Mr. Victorino for bringing up that figure. I thought Mr. Couch's number was too low, and so I'm happy, I mean I'm okay with 49 also, but I understand we don't want the bulk, it's not bulk, but it's close to becoming over half. And in non, you know, produced whatever, agricultural products. But I heard Ms. Hogan and the others so I'm, yeah, supportive of the 40.

CHAIR GUZMAN: Okay. Forty percent.

COUNCILMEMBER COCHRAN: Sure.

CHAIR GUZMAN: Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much. As a non-voting Member, I'd like to weigh in because I will vote eventually. I initially, of course like you, you know, I was thinking about ag and how that needs to be the majority but, you know, this is reality. And reality is that small businesses are having a hell of a time. And when I listen to them, they are dealing with it, they are dealing with expenses, they are dealing with marketing, they are dealing with everything. And our rule is not to cause more trouble.

CHAIR GUZMAN: Right.

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COUNCILMEMBER BAISA: Our rule is to enable, empower, and help economic development, and save ag. Remember, that's our bottom line, is to save and support ag. And so I'm comfortable, if they're okay with the 40 percent I can live with it.

CHAIR GUZMAN: Okay. That sounds good, so, without objections, we will amend it to 40 percent.

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Okay. Thank you, Members. Moving on to the next section here, it would be under E, the agricultural food establishments on Page 8 of the markup. The Department is requesting to delete on E2 the wording "and served on the premises" as well as deleting "the Planning Director shall have the discretion to allow an exemption to this subsection." And adding the words...deleting those, that language and adding the words, starting with the last word of "prepared in accordance with the State Department of Health rules and regulations" to read as follows, E2, "All food must be prepared in accordance with the State Department of Health rules and regulations." Department?

MS. McLEAN: Thank you, Chair. With the original language of all food must be prepared and served on the premises, we could imagine situations where some food might be prepared offsite or some things might just be prepped offsite and then brought and finished. And served on the premises suggests dining on the premises which is the next amendment or it's not just something that's packaged to be taken away. And we felt that those things were unnecessarily restrictive. As long as food is prepared in accordance with State Department of Health requirements, it can be prepared offsite or onsite, and it doesn't have to be served onsite, it can be packaged and sold but not served. Served onsite suggests consumption onsite and we didn't know that that needed to be a requirement.

CHAIR GUZMAN: Okay. So, Members, if there's any objections, we will...Mr. Couch?

COUNCILMEMBER COUCH: I don't have objections to this except for the fact that I just want to make sure that it's not so wide open that, and I can envision, I think there might be instances that have, people bring in tons of caterers and whatnot and have this big huge party. But I'm not sure if that's okay or not, or how you want to...if this opens that door for that.

CHAIR GUZMAN: Department?

MS. McLEAN: Looking back at the definition of ag food establishment, prepares and serves food at retail using ag products grown, raised, or caught, in the County and value-added products that were produced using ag products grown in Hawaii. So if it's a big catered event that's all Maui and Hawaii ag products --

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COUNCILMEMBER COUCH: Okay.

MS. McLEAN: --that's a good thing for Hawaii --

COUNCILMEMBER COUCH: That's true.

MS. McLEAN: --agriculture.

COUNCILMEMBER COUCH: That's very true. Okay.

MS. McLEAN: Also the restriction on ag food establishments, they're limited to a 1,000 square feet in total floor area.

COUNCILMEMBER COUCH: Ah, okay.

MS. McLEAN: And that includes seating and dining area under the definition of total floor area. So, it wouldn't be, it could only be a 1,000 square feet.

COUNCILMEMBER COUCH: Okay.

CHAIR GUZMAN: Anything more than a 1,000 square feet --

COUNCILMEMBER COUCH: Yeah.

CHAIR GUZMAN: --they need a special use permit.

COUNCILMEMBER COUCH: Sure. So I'm, then I'm fine with that. And I think I brought this up before in the last meeting, what about things that you, when you do the cooking, for instance cinnamon, I don't think we grow cinnamon here on the, in the State. Or things that you use some of the spices or whatever, can that be, I mean it wouldn't be banned by this would it?

MS. McLEAN: I think that that would fold into value-added product.

COUNCILMEMBER COUCH: Okay. I just wanted to make sure.

MS. McLEAN: So if you have Maui Coffee with cinnamon, then --

COUNCILMEMBER COUCH: Correct.

MS. McLEAN: --that would be fine.

COUNCILMEMBER COUCH: Alright I just wanted to make sure that that's allowable.

MS. McLEAN: Yeah. We're not going to have our inspectors going out there doing --

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COUNCILMEMBER COUCH: Understood.

MS. McLEAN: --chemical sampling of where things came from.

COUNCILMEMBER COUCH: Okay. Thank you.

CHAIR GUZMAN: Okay. But, you know, you get the gist of it, yeah? So okay, and then the Department is also requesting the deletion of number three, which is E3 "The agricultural food establishment must have a dining area that is used primarily for the consumption of food and activities that are incidental to the consumption of food." Department?

MS. McLEAN: Thank you, Chair. Yes again, we felt that takeout would be acceptable, that food establishments may have a dining area if they choose to but they don't have to. You can do takeout or eating on the premises.

CHAIR GUZMAN: Okay. So, Members, any objections to that deletion?

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Seeing none, okay. Thank you. We'll move forward. I'd like to recognize our Committee Member, Stacey Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair.

CHAIR GUZMAN: Thank you. And also our Council Chair, Mike White.

COUNCILMEMBER WHITE: Thank you, Chair. I've been following on Akaku and --

CHAIR GUZMAN: Okay.

COUNCILMEMBER WHITE: --it's been a very good discussion.

CHAIR GUZMAN: Okay. Thank you. So moving on, Members, we're on number 9 and we're looking at the verification. So this section deals with the registration of these agricultural structures and so when they register with the Department, there are certain items that they're, the Department is requiring them to have. And this is one of my own amendments for number three, that's the verification that the producer is the owner, lessee, or licensee of the lot, on which the proposed commercial agricultural structure is located. If the producer is the lessee or licensee, the authorization of the owner shall also be provided. A lessee or licensee must have a lease with a minimum duration of, it says five years but I'm requesting one year for the portion of the lot that the structure is on or will be located on. And the reason I'm asking for this amendment, Members, is that in speaking with a lot of the agriculture

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farmers that are renting, leasing their lands, a lot of them are saying that sometimes they're just not being able to get a five-year lease. And a lot of times, it's just the one-year lease. So I'm requesting it to be converted to a one-year lease instead of a five year lease. No objections?

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR GUZMAN: Mr. Victorino.

COUNCILMEMBER VICTORINO: And I understand what you're saying and I like the idea but, and I'm going to put it in this way, I'd like to see language more fitted to whatever the lease on the property is. Now the reason for my, and you can snip the words but if somebody has five year, they get five years. If they got a one year, they got a one year. They got a 20 year, they got, you know, they can get 20. You make it one year in my mind, and correct me if I'm wrong, Michelle, it kind of limits to one year. Now I'd rather have it where to whatever the lease that is available, because there are some that go month-to-month, they don't even get one year. I know some A&B land now, that they rent from the Alexander and Baldwin, its month-to-month, Mr. Alexander will tell you that, it's month-to-month. So how do we address that? So I got the legal brain right --

CHAIR GUZMAN: Okay. Okay.

COUNCILMEMBER VICTORINO: --in front of me and I see his eye's popped up, so he has some ideas.

CHAIR GUZMAN: Mr. Hopper, do you have any --

COUNCILMEMBER VICTORINO: I sorry, Mr. Hopper, to put you on the spot.

CHAIR GUZMAN: --comments on this?

MR. HOPPER: Not in particular, Mr. Chair. I mean if the requirement for the Department is to verify, I mean a minimum time, that's a policy issue for the, I mean, for the Council. I mean if you do not want to require a long-term commitment that's more than a month-to-month lease but that shows a duration of at least one year in a lease, that's up to the Council, what you want to see. I mean, if you want to see that before allowing this type of use, then that's up to the Council. Originally it was five years, one year is being proposed and so I think that is at the discretion of the body, and I suppose it will be based on the desire to see that if the person's only there for a temporary period of time, that it be for a certain base minimum time before they would be allowed to do this type of use.

COUNCILMEMBER VICTORINO: What I'm asking...and excuse me, Mr. Chair, what I'm asking you and the Department is what kind of language could we put in for which

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would be applicable to the lease that person has? Whether, it's a month-to-month, year --

CHAIR GUZMAN: Yeah.

COUNCILMEMBER VICTORINO: --five years, you understand --

CHAIR GUZMAN: Right, right, I do.

COUNCILMEMBER VICTORINO: --what I'm trying to get to right, Mr. Chair?

CHAIR GUZMAN: And that would be easily resolved, if you wanted that type of language.

COUNCILMEMBER VICTORINO: Yeah.

CHAIR GUZMAN: It would be like must have a lease for the portion of the lot that which the structure is or will be located on. Just a straight lease, I mean, and I can tell you where the five years came from, it was initially vetted through the Ag Working Group. I think Mr. Balthazar was saying that this was there to prevent carpetbaggers coming in and renting the land, just for a short period of time, and then making their money and taking off. And so the five-year lease thing came up, and that's where it came. And then as time progressed I hear more, hey I only have a one-year lease. And so now we're at this stage, where you're saying well why don't we just say a lease? So...

COUNCILMEMBER VICTORINO: A verifiable lease.

CHAIR GUZMAN: A verifiable lease. Right.

COUNCILMEMBER VICTORINO: Yeah, something that can be verified. And by the Department and so whatever that says, that's the lease that that would...because again like I said, I know of some people that have multiple lots and some of them are month-to-month.

CHAIR GUZMAN: Right. Right.

COUNCILMEMBER VICTORINO: They're not even one year. And so I would hate to preclude them from...saying you gotta be one year and they have --

CHAIR GUZMAN: Right. Right.

COUNCILMEMBER VICTORINO: --a month-to-month yeah? So --

CHAIR GUZMAN: So...

COUNCILMEMBER VICTORINO: --a verifiable lease, I guess is what I'm trying to look...

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CHAIR GUZMAN: No, I'm willing to make it more general. And so I would ask the Members do they have any objections if we just delete the one year or the five-year lease language and just put "a lessee or licensee must have a lease with, must have a verifiable lease for the portion of the lot that the structure is, or will be located on." No objections?

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Okay. And so that will go ahead and be amended. Staff. Okay. Thank you. Moving forward on Page 9, we have deleted number, the letter I and we have moved that to Section D3, as mentioned earlier. So that language is still theirs, this is just clarification in moving that section to a different section. So is there no objections to that?

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Okay. Thank you. Thank you, Members. So moving on to the parking requirements that are standard in the County, and all that we're doing on Page 10 is adding commercial agricultural structures within the parking ordinances. And we're adding some language to clarify farmer's market parking. And that is the proposed amendment here that the Department is requesting. So what we have here and I'll read it in its entirety as amended. One, okay so commercial agricultural structures as defined in Section 19.30A.072 of this title. One parking space for every 200 square feet of floor area of building or, for farmer's market, one parking space for every 200 square feet of the retail floor space; provided that, the minimum shall be two parking spaces; further provided that for agricultural food establishments--that's another structure--the parking requirements for those food establishments shall be like the restaurants, bar, nightclubs, and amusement facilities. You know the same type of parking requirements. So, Department?

COUNCILMEMBER VICTORINO: Chair? Before you go on, can I have a recess? A quick recess?

CHAIR GUZMAN: Oh yeah. Yeah, go ahead.

COUNCILMEMBER VICTORINO: Please. A quick recess.

CHAIR GUZMAN: Okay. Recess. . . . *(gavel)* . . .

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RECESS: 2:44 p.m.

RECONVENE: 2:45 p.m.

CHAIR GUZMAN: ... *(gavel)* ... The EAR Committee shall now reconvene. Members...thank you, Mr. Victorino, I have forgotten to close public testimony, Members. Without objections, I would like to close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR GUZMAN: Thank you. Okay moving on to the parking provisions, Department?

MS. McLEAN: Yes, thank you, Chair. We asked for the clarification because there might be instances where a farmer's market isn't actually in a building. It might be under a tent or it might just be tables. And so, we wanted to clarify that the same ratio would apply to farmer's markets, just specifying that it's the retail area of the farmer's market. If it's, you know, if it's not in a building.

COUNCILMEMBER VICTORINO: No objections.

CHAIR GUZMAN: Okay. Seeing no objections, we will put forward that amendment, and I believe that's it for all the, oh no sorry, I apologize, Page 14. We have on Page 14, oh, the parking reduction or waiver. So I believe that they are deleting number four, and incorporating that language in B, letter B. So it shall read as follows "the" ...B, letter B, "The Planning Director or, in the case of the island of Lanai and the Lanai Planning Commission, may waive or defer up to 50 percent of the required parking for commercial agricultural structures, as defined in Section 19.30A.072 of this title." And that's just grammar, it looks like. Is that correct, Department?

MS. McLEAN: Yes, Chair. Thank you. The previous draft would have allowed up to a 30 percent waiver or deferral for commercial ag structures, except for ag product stand and then a 50 percent waiver or deferral for ag product stand, and we felt that it should just be consistent with the same percentage for all of the commercial ag structures. So rather than the 30 percent being under the main, being under that first section, just put them all into B, with the same percentage reduction.

CHAIR GUZMAN: Okay. Is there any objections, Members?

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR GUZMAN: Okay. Seeing no objections, the amendment shall be incorporated. The...yeah just getting back to Elle, Ms. Cochran's question from previous meeting on the paving, yeah just to clarify, the, these agricultural structures and being exempt from having to pave, yeah? So they can park in dirt roads and stuff. Yeah. Okay.

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That's what Section 19.36A.080...so I believe, Members, that's it for all the revisions from the Department that was submitted yesterday. We can go through the clean version, which has all of the revisions incorporated in. At this point, does any of the Members have questions about the clean version that has all the amendments incorporated?

VICE-CHAIR COCHRAN: Chair?

CHAIR GUZMAN: Yes, Ms. Cochran?

VICE-CHAIR COCHRAN: For, well just going back to what we just discussed in regards to the Lanai Planning Commission, does that have any bearing on the island of Molokai too? Do they have a...do they apply here? Or is it...

MS. McLEAN: In the Parking Ordinance in Chapter 19.36A and on Page 14 of the bill we're working on today, it already has that provision for the Lanai Planning Commission. So that's existing in the law right now that the Planning Director or on Lanai it would have to be the Planning Commission, will waive the deferral for a couple of types of uses only. And so we're proposing to add the commercial ag structures as another type of use that's eligible for that waiver and we were just following along with that same exception for Lanai. So it's just mirroring what's already in the Code.

VICE-CHAIR COCHRAN: Right, but...

MS. McLEAN: But there is no existing provision for Molokai.

VICE-CHAIR COCHRAN: Okay. No, I was just curious why it's stating Lanai specifically and how that came about and just wondered if it had to do with, I don't know, another remote area of this County type thing so.

CHAIR GUZMAN: Well that, the Parking Ordinance is, we haven't really changed except for added the agricultural structures within the Parking Ordinance, which is required anyway, 'cause we'd have to go back and amend the parking anyway. So we just did it all in one swoop, in this ordinance. So, Members, is there any other questions? Mr. Carroll?

COUNCILMEMBER CARROLL: Thank you, Chair. I would just like to remind the Chair and the Committee that Hana has gone on record, and it is part of the record, that they were opposed to the bill for our area. We feel that it would be counterproductive and that, well as you know, their recommendation was they were hoping that we could be excluded from this bill.

CHAIR GUZMAN: I do realize that they, in their commission reports they mentioned that they were worried about size and we did put in to address the size restriction, which would be 300 square feet for an agricultural road stand, 1,000 square feet is the limit

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for all the other structures. If anything more than 1,000 square feet then they need a Special Use Permit. And aside from that, these structures are required, excuse me, excluding the roadside stands, which are 300 square feet and less, the other ones, the retail, the food establishment, they all have to have an active operational agriculture on that land as well as a farm plan to legitimize that these people who are building these agricultural structures are really legitimate farmers and they're actually producing produce on their land. So I understand and I've addressed those issues in here, and I'm not sure if they still feel the same but if you are advocating to exclude Lanai, I mean sorry, Hana, from this bill, I am, I can ask the Members how they feel about it.

COUNCILMEMBER CARROLL: The last word I had was that it was still their desire.

CHAIR GUZMAN: Okay. So, Members, is, should...how do you feel, Mr. Victorino, are you okay with excluding Hana in this bill?

COUNCILMEMBER VICTORINO: Well, you know, we have in the past, excluded in other areas, Lanai, Molokai, and Hana, because they have a very different ambience and lifestyle, so I have no problem. If that's what the wishes of the community is, I think we should, in my mind, grant their request, their wishes. You know, because they have a real different take on everything and they live in a, and I mean they don't live different than us, they just live in a different environment that they want things a certain way that doesn't always match up with what Maui is doing, and I think they have the right to speak their mind. So if Hana is saying they'd rather be, they would like to be exempted, I don't have a problem with that.

CHAIR GUZMAN: Okay. Mr. Hopper, is it anywhere in the ordinance where we can add in an exemption to Hana?

MR. HOPPER: Mr. Chair, we'd have to look at that. I mean this is the first I've heard of something like this so I'm not really prepared to make a recommendation without looking at the whole bill. So I suppose it's possible if it's been done in the past. Not necessarily a recommended best practices with respect to legislation, but has been done before, so I suppose it's possible. But I don't have a suggested language off-the-cuff right now in order to do that.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR GUZMAN: Mr. Victorino?

COUNCILMEMBER VICTORINO: One thing I would like to ask Mr. Carroll is if the community would come up with something, because I think it's not fair to just let them go unregulated.

CHAIR GUZMAN: Right.

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COUNCILMEMBER VICTORINO: I don't think they want that either. So I think, I would like to request Hana, and if any of other districts like Lanai and Molokai would like to be exempt that they come up with a set of regulations that we would understand and have some enforcement behind of it. Because again, unregulated is not what I want to allow. So, but again, I want to give them the flexibility. So that would be my only request is that these communities, if they so choose to opt out, that they come back to us, like they have in other areas, with what they would like to see done.

CHAIR GUZMAN: Right. Okay. I see where this is going. At this point, Mr. Carroll, based off of the Commission's recommendations, which I did work very, very adamantly and efficiently with the Department to address their concerns and changed the ordinance to address those size restrictions and adding in more restrictions that would satisfy all of the Commissions. I don't have enough from the constituents to basically ban them from, a blanket, not being able to avail of all of these different type of four different structures that will be allowed on ag lands. And, you know, granted that they're only allowed two of them on one TMK, it's still this production of being able to be in active agriculture and having a diverse income. You know, I think that's part of it, and when they do come, if we get enough support, we can always come and amend it to try to exclude them at that point.

COUNCILMEMBER CARROLL: Thank you, Chair. And I'll take back what we have today, in front of us, I'll take it back tonight, and I'll make sure to get it to them and get a timely response of, their response to what we have before us today.

CHAIR GUZMAN: Okay. Thank you.

COUNCILMEMBER CARROLL: Thank you.

CHAIR GUZMAN: So, Mr. Couch...I mean, Mr. White?

COUNCILMEMBER WHITE: Thank you, and I appreciate Member Carroll's willingness to take it back to his community because I think, what I would be concerned about is that we have a lot of roadside stands already operating along Hana Highway and I think there should be some --

CHAIR GUZMAN: Regulations.

COUNCILMEMBER WHITE: --some regulation. At the same time to eliminate them, they also put some people in a position where they are not able to avail themselves of this because they don't want to be doing something outside the limits of the law. So I think, you know, I understand his desire but I think it really, it does require a little more discussion and I think it would be good for him to take this back to his community and see if this is something they can live with, because I think we do have

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a responsibility to provide a structure for the Department if we're going to expect them to take on the responsibilities of enforcement.

CHAIR GUZMAN: Right.

COUNCILMEMBER WHITE: Thank you.

CHAIR GUZMAN: And, you know, the requirement in this ordinance is that, even if you're a 300 square foot roadside stand, you still gotta register and it's just about being able to find out, you know, how many do we have out there in Hana? You know so everybody doesn't like regulations and things like that but I think they serve a purpose.

COUNCILMEMBER WHITE: Well especially when you're dealing with health issues --

CHAIR GUZMAN: Right.

COUNCILMEMBER WHITE: --and traffic issues and so forth.

CHAIR GUZMAN: So, Members, I'd like to see if I can pass this out today and work on it. And I think the next time, it'll eventually go to the full Council, I think in a month. But at that point, we would have enough time to get some input from Mr. Carroll's District. But at this time I'd like to entertain a motion to recommend passage of the revised proposed bill entitled A Bill for an Ordinance Amending Title 19, Maui County Code, to Allow Commercial Agricultural Structures in the Agricultural District, incorporating and further, the further revisions made by the Committee and filing the County Communication 13-85 and any nonsubstantive changes.

VICE-CHAIR COCHRAN: Chair, so moved.

CHAIR GUZMAN: Moved by Ms. Cochran.

COUNCILMEMBER VICTORINO: Second.

CHAIR GUZMAN: Seconded by Mr. Victorino. Any further discussion? Seeing none, all in favor, say "aye".

COUNCILMEMBERS VOICED AYE.

CHAIR GUZMAN: All those opposed say "no"? Let's see, one...six, is that right? Six. Six "ayes", no "noes", one excused. Motion passes.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Hokama.

MOTION CARRIED.

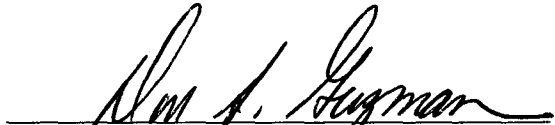
**ACTION: ADOPTION OF REVISED RESOLUTION AND FILING OF
COMMUNICATION.**

CHAIR GUZMAN: Thank you very much, Members. It's been a long long journey, but thank you very, very much. And thank you, Department, for the many, many hours spent and many, many days and months on this bill. One thing, Mr. Chair White, I do not want Planning as a Committee. No, I really do respect Mr. Couch and what he does in the Planning Committee, but it is difficult work, it very much is so, and I appreciate your work. Thank you very much, Staff. And the Ag Working Group, thank you for the vetting, and we've got that bill through. Okay. Thank you. We shall adjourn the EAR Committee meeting. Thank you. . . . *(gavel)* . . .

ACTION: DEFER.

ADJOURN: 2:59 p.m.

APPROVED BY:



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

ear:min:150630:tc

Transcribed by: Tiare del Castillo

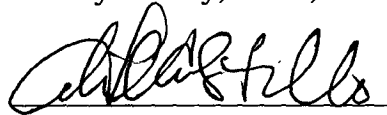
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CERTIFICATE

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

DATED the 22nd day of July, 2015, in Pukalani, Hawaii



Tiare del Castillo