

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM B.1
JUNE 14, 2022**

Ms. McLean: Thank you, Chair. We have three public hearing items today. The first is a bill referred to you from me. And this is a proposal to amend Maui County Code, Chapter 19.04 to authorize commercial filming and photography activity in all zoning districts with a film permit, and create a new chapter in Title 5 of the County Code to create a new permit process for commercial filming and photography. Jacky Takakura, our Administrative Planning Officer, will give a brief presentation.

B. PUBLIC HEARINGS

1. **MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, referring to the Maui Planning Commission a proposed bill to amend Maui County Code Chapter 19.04 to authorize commercial filming and photography activity in all zoning districts with a film permit, and create a new chapter in Title 5 to create a new permit process for commercial filming and photography. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/133292/Draft-bill-for-ordinance-for-commercial-filming-and-photography-activities>

We do have Donne Dawson from the State Film Permit Office or the State Film Office, excuse me, on the call. I know her time is limited, so if the commission would indulge us, I'd like to ask Donne if you're on the call. Do you need to offer your testimony right now or can you wait until after the presentation?

Ms. Donne Dawson: I can wait until after the presentation.

Ms. McLean: Okay, great. It'll be pretty, pretty brief.

Ms. Dawson: Yeah

Ms. McLean: And then we'll get right into testimony after that. Thank you so much. So, we'll turn it over to you, Jacky.

Ms. Jacky Takakura: Good morning, everyone. Can you hear me, Chair and members of the Commission? So, this is my first time to do a presentation in person and remotely so, if you can bear with me for just a moment. Just the way the screens work, I have to minimize this one, then open up my PowerPoint. So, then I'm going to be looking back and forth at this screen and that screen, so just a moment, please.

Okay, so can everyone see this blue and white, okay.

Ms. McLean: Yes, we can. Thanks Jacky.

Ms. Takakura: Okay, and can hear me. Okay, so as the Director had mentioned, this is a bill for ordinance to authorize commercial filming and photography in all zoning districts with a film permit. And the goal of this proposed bill is to create a permitting process or commercial filming and photography on private property.

So, right now, commercial filming and photography is only allowed where commercial and business uses are allowed and not in other zoning districts like residential or agriculture. By having a permitting process, the impacts on the neighbors and on the environment can be mitigated. I jumped a screen.

So, right now as I mentioned, it's only allowed in zoning districts that include business or commercial use or on state property with a State Film Permit or county property with a County Film Permit, so that leaves out private properties. So, the goal of this bill would be to allow a permitting process so that filming could occur on those types of parcels but with certain procedures to minimize impacts and I'll go through those briefly.

Okay, so here's the definition and this is based on feedback from the Maui Film Office and the State Film Office. It's filming and photography for commercial purposes and involves an active crew of three or more people and the use of filming equipment and it's got a list of different types of equipment. And Mahalo to the Maui and State Film Offices for their contributions on this.

This is just a summary of the limitations and the criteria of the film permit. As I mentioned, state properties would still be getting their permits from the State Film Office. County properties would be getting their permits from the County Film Office, but private properties would require a film permit from the county also, and that's the new thing here.

There would be written notice to properties within 500 feet, and that would be required 14 days prior to the start of the filming. And there can't be annoyances or inconveniences to neighbors like traffic or lighting or noise, and parking would have to be on site.

The hours of operations would be proposed for private outdoor. It would be 8:00 a.m. to 9:00 p.m. and private indoor 7:00 a.m. to midnight. And then for county properties it would be determined by the Film Office. Then filming at night would have to comply with state rules for lighting, and that would be to protect endangered or threatened species.

And then the bill also proposes procedures for complaints and enforcement of violations. And as mentioned, some of it is proposed for Title 19, which is the Zoning Code. but the bulk of it is in Title 5, which is the part of the Maui County Code that is for business licenses and regulations. And that makes sense because this is regulations for commercial film and photography. The permit would be issued by the Maui County Film Office, and enforcement would be by the Department of Planning's Zoning Division. So, we would be working together with the Film Office.

So that's it in a nutshell. The commission can recommend approval, they can recommend approval with amendments, recommend denial or defer action if the commission would like to gather more information. So, this is the first of the three public commission public hearings. Tomorrow is Lanai and next week as Molokai, and then we will take this to the County Council.

So, I'm going to stop sharing and, but I can come back to any screen as needed. Let's figure out how to stop sharing.

Ms. La Costa: I'm sorry, Jacky. When you first started, they didn't ask you to introduce yourself or promise to tell the truth. Thank you.

Ms. Takakura: Thank you, Chair. My name is Jacky Takakura. I'm with the Zoning Division. I'm the Administrative Planning Officer, and I tell the truth. I told the truth, and I always do.

Ms. La Costa: Mahalo. Appreciate.

Mr. Hopper: Chair? Chair?

Ms. La Costa: Commissioners, have we any clarifying questions for Ms. Takakura. Oh, Mr. Hopper.

Mr. Hopper: Oh, just for these first two items, they're ordinances so you don't have to worry about swearing people in or cross examination questions for the first two items. You still need to take testimony though.

Ms. La Costa: Thank you for your counsel, appreciate. But she tells the truth anyway so that's good. Commissioners, have you any clarifying questions for Ms. Takakura. Commissioner Thompson.

Mr. Thompson: Hi, Jacky. So, right now are there any permits for people? 'Cause I know like in Kaanapali they filed Love Island or something, they have...do they have to get permits?

Ms. Takakura: So, the recent TV shows or shows that we've been seeing, like White Lotus and some of those, they're on properties that are allow filming commercial like hotel, you know, those kind of things can happen in those zoning districts.

Ms. La Costa: Commissioner Freitas.

Mr. Freitas: Thank you Chair. Ms. Takakura, I want to go back to the definition for—

Ms. La Costa: Excuse me, Commissioner Freitas, could you please turn up your volume. Mahalo.

Mr. Freitas: Oh, boy, here we go again. Testing, testing, is that better.

Ms. La Costa: Perfect. Yeah.

Mr. Freitas: Okay, sorry. Ms. Takakura, I want to go to the definition and get some clarification. It's a long sentence that states, for commercial purposes with an active crew of three or more, and then it says, if there is filming equipment such as cameras. Now, I'm trying to understand this so that we can...and to find out if the intent was for smaller, simple filming in someone's backyard doesn't need to go through the permitting. Let's say someone wants to do a filming for,

let's say, for a campaign ad. Is that considered commercial? So, I'm going down this definition. What is commercial in this sense? Would a campaign ad be a commercial purpose?

Ms. Takakura: Thank you, Commissioner Freitas. We don't consider campaigns for commercial purposes. That's similar to the sign code, which it's only for commercial signs. This would be similar where it's only for commercial filming.

Mr. Freitas: Okay, can you define commercial filming? Is that for profit? What if I did a documentary in someone's yard that had two cameras and two people speaking and they're doing a documentary? Is that commercial?

Ms. McLean: Commissioner Freitas, this is Director McLean. I'll jump in here. Commercial involves the exchange of money or compensation consideration. So, if it was a non-profit doing its own filming and there was no exchange of money for the people involved, then we wouldn't consider it to be commercial. Any activities—

Mr. Freitas: Well, a lot of times –

Ms. McLean: --so, the examples that you're giving we would go back to the definition every single time. Is it commercial? Are there three or more people on the crew, and are they using this kind of equipment. So, if it's money exchanging hands but there are only two people, then it wouldn't meet the definition. If there's no money exchanging hands and it's three people, then it wouldn't meet the definition. So, we would go back to the definition every time, and the purpose was for these small kinds of things that aren't going to impact neighbors, you know, we don't need to be regulating those, but the larger productions, we do.

Mr. Freitas: Okay. It would be nice if that is said in here in the definition because that...what you just said is a lot clearer than this, because this, this makes any small project...I've done little documentaries and I had to pay the film guy, but we're not making money off the film, it's just you know, a edited film that we're sharing with no money from the film coming to it, but I had to pay the film guy. So, can you explain the money exchange part.

Ms. McLean: The money would be paying the film crew not whether or not you're making money off of the finished product.

Mr. Freitas: Well, I think this has to be redefined then because there's smaller ones that don't affect the community that would have...would fall into a problem with this definition. And then where it keeps saying, and, and, and, so anything on there, you're screwed. If you have more than three cameras and even if it's a small thing 'cause some you have side, forward, whatever and maybe a drone or whatever, that's three cameras, now you gotta get a permit even though it's kind of a backyard—

Ms. McLean: There's not a, there's not a restriction on the number of cameras, just on the number of crew.

Mr. Freitas: Oh, I'm sorry, three or more people, okay, okay. All right.

Ms. McLean: But we can get into that, if you don't mind, get into that further when the commission gets into discussion.

Mr. Freitas: Okay, all right. Thank you.

Ms. McLean: After testimony.

Ms. La Costa: Does that answer your question, Commissioner Freitas.

Ms. McLean: For now.

Mr. Freitas: For now.

Ms. La Costa: Commissioner Lindsey, did you have a question. Thank you, I'm sorry. Commissioner Lindsey, did you have a question?

Ms. Lindsey: I'm gonna wait until after Commissioner Freitas speaks again the next time.

Ms. La Costa: Thank you. Okay, Carolyn do we have anyone signed up for public testimony?

Ms. McLean: Not for this item.

Ms. La Costa: Not for this one, okay.

Ms. McLean: So, Chair, we do have Donne Dawson from the State Film Office who was going to offer some comments on the bill.

Ms. La Costa: Go ahead, Ms. Dawson.

Ms. Dawson: Aloha mai kakou, mahalo to the Chair and to the Commissioners for giving me this opportunity. To the Planning Director, it's great to see you. I wanted to just encourage all of you to, to look upon this as an opportunity for Maui County to really provide or kind of up the opportunity for the film industry to have a greater economic impact for your county in providing opportunities for productions to film in these places, but in the...while ensuring that the productions are going to be held to a certain standard and are going to not abuse the privilege for being allowed to film in our neighborhoods, in our community.

So, this is not unlike the Memorandums of Agreement that the State Film Office has had in place for 30 some years that regulate filming activity and provide the guidelines, guide posts for that activity for all productions that are coming into our communities and it's critically important for all the reasons that are articulated in this measure that, that there is a regulation and that they do have to go through a film permitting process either at the state level or at the county level and that they are following all the rules.

I would be happy to answer any specific questions that you have about what this might entail, but I just wanted to keep it short and brief to say that I think that this measure provides the proper level of regulation and oversight to ensure that these productions are doing right by, by the neighbors and they're doing the proper outreach and they are following the terms and conditions of their film permits and they're leaving these places better than they find them. And I really don't think it matters in terms of size, you know, as the Planning Director, you know, we're not wanting to regulate the little guys, we're wanting to regulate those that have the greatest level of impact. So, I'm available to answer any questions before I have to jump off, but I just wanted to offer my full support for this measure because I think it's going to be good for your community and of course, for your property owners. Mahalo.

Ms. La Costa: Thank you, Ms. Dawson. Commissioners, have you any clarifying questions for Mr. Dawson? Commissioner Lindsey.

Ms. Lindsey: My concern lies with the exposure of our special private places, then monetizing those for commercial uses, whether it be large productions or smaller influencers. Maui's special places are being lost because of both of those. So, do you have any insight there?

Ms. Dawson: Yes, and that is an excellent concern that I think we all have to keep top of mind. For any production that is coming in here, regardless of who they are. And you know, we're living in an age now social media influencers are a big problem. And you know, we have examples of other islands where, you know, social media influencers were coming in here and, and like on Maui, they, you know, we're trying to soak up all these special places and expose them to the world and that is a really critical concern. Any time a film production comes in here before they are given a permit, before they are even given access to scout a place, we are looking at whether or not that place is a sensitive site, sensitive culturally, sensitive, environmentally, sensitive because a certain community is oversaturated with film production and the neighbors are just like, no, we need a break or it's too much.

So, the only way that we can prohibit this kind of activity and regulate it, as we're talking about, is to impose this kind of a measure and to force the hand of the productions to go through the Film Offices. Because we are the...we're the first line of defense. We are the gatekeepers and we have a line to all of those community organizations, cultural organizations, environmental organizations to say, and even our state and county agencies to say, no, filming cannot happen here. So, just because you are pushing a measure like this through, this is not an open invitation. It is not saying that, you know, all bets are off and you can do whatever you want, wherever you want. That is absolutely not the case, and this is just another tool in the toolbox to regulate this activity. And it's really critical and critically important because exactly as you've said, our sacred spaces, our special places are, are being gobbled up by, by the outside world and we have to kind of up our game in terms of protection. But the only way we protect is really through regulation, and we've been asked for filming in places as far flung as Kahoolawe, as an example, and places where there are known burial sites, where there are known archaeological features or there are threatened or endangered species, and we've had to say no. And so, I wanted to reassure you that those, those elements are in place with our, especially at the state level, with our decades old film permitting process and I have a close relationship, my office has a close relationship with all of the county film commissioners and Film Offices to help them with the, the background and

the experience we have over the years to develop those same kinds of restrictions, regulations, considerations in their own jurisdictions.

Ms. Lindsey: Thank you.

Ms. La Costa: Commissioner Thayer.

Ms. Thayer: Thank you. I have a follow up question. I'm curious what other counties have done in terms of ordinances like this?

Ms. Dawson: Kauai has very strict ordinances, as does Oahu, City County of Honolulu, I, I think that Hawaii Island, under its new administration, is developing stricter guidelines. We did have an example on Hawaii Island of they have a new film commissioner in place who's, who's starting the 16th of this month. We did have an issue with Love Island, was filming there and they were filming on private property and there really was not any restriction on their filming. And it created a considerable issue with the neighbors and there were issues with threatened and endangered species of seabirds in the neighborhood because they were essentially given permission to film, as I understood it, from 6:00 in the morning to two o'clock in the morning. And it was absolute...this is along the Hamakua Coast. It was absolutely detrimental to the environment and to the community members who are...were concerned about what, what that night filming was, was doing to those species. So, I think Hawaii County is going to be adopting similar regulation and restrictive measures. So, this is, this in that regard, you folks are right in line with, with what's happening across the islands.

Ms. Thayer: Thank you, can you...sorry—

Ms. La Costa: Go ahead.

Ms. Thayer: --Can you tell us a little bit of what Kauai has done?

Ms. Dawson: I can't specifically...so, so, let me just say that the artificial coastal light law, as an example, is a state law, but it is up to the counties to enforce. And so, it's kind of like a collaborative thing that we have to work together with the counties. And depending on the county that you're dealing with and the particular restrictions of that county, some will be stronger enforcement than others. Kauai is known to have some of the strongest environmental protection elements involved in their, in their county, more so than, than other islands. And they've kind of...and during the pandemic, they were the last to really kind of step in and reopen for filming within their county. So, they're very, I don't want to say gun-shy, but they're just very wary and wanting to be protective of, of their community and protective of their, of their environment. And so, I can't be specific, but I can just tell you that their, their err on the side of enforcement, more so than maybe the other counties do.

Ms. Thayer: Thank you.

Ms. La Costa: Commissioners, other questions? Commissioner Lindsey.

Ms. Lindsey: I, I think that influencers kind of are flying under the radar here because they are oftentimes solo, but their exposure, their film is maybe a million people watch it or something. What kind of precautions has anybody done across anywhere to limit that?

Ms. Dawson: That's a really good question. I will say this, yes, it is much easier to regulate them when they're coming in a larger group of them as a, as opposed to flying solo. On Kauai as an example, they have a very active, strong Visitors Bureau. Sue Kanoho heads the Visitors Bureau on Kauai, and she got wind of social media influencers that I think were approaching the Visitors Bureau to, you know, kind of get them to, you know, roll out the red carpet and say, hey, we want to, we want to, you know, come here and, and cover, you know, Kauai, the Island of Kauai, and we want to do all this good for Kauai and, and open it up to tourism as you guys are coming out of the pandemic. And she worked with the mayor, with the with the Film Office to essentially shut them down. And it, and it didn't, it wasn't super popular in terms of the decision because they had already booked hotel rooms, and this is, you know, coming out of the pandemic, and you know, Kauai needed the business, but they had to do the kind of cost-benefit analysis to say this is not a good thing and this is not going to end well for the County of Kauai, so we need to shut it down.

So, I would say first, having strong relationship and I believe Maui County does, strong relationship between your Film Office and your, your Visitors Bureau and the, the...even the tourism organizations to essentially be talking to one another so that when you get wind of, of, and a lot of times it's going to be a social media influencer that has flown in under the radar and they're out kind of, you know, doing their thing and, and being able to kind of put a stop to that. If you have a measure like this that is adopted and is in place and is, is, is law, essentially, you have a tool just like you have a tool within your Film Office to shut down illegal filming. And that, that really is kind of like, the like. I said, we're the gatekeepers, but having that kind of relationship with agencies and organizations in your community so that, you know, the Film Office can be getting phone calls saying, we've got, you know, we've got some, you know, rogue social media influencers that are down in, Ahihi Kinau, just you know, shooting, whatever, and we're concerned about it. So...or even complaints from the public. Anyway, that's, that's what I would offer is, as you know, it's all about talking to one another and being able to shut them down.

Ms. Lindsey: So, there's no specific verbiage that was added. It was just kind of a relationship between the Visitors Bureau and the powers that be.

Ms. Dawson: Yes, you may...and I will say it's, it's, it's kind of, it's a little bit difficult if you were, if you were thinking of maybe adding another definition or something into this measure to thwart that. It's, it's a bit, it's a bit difficult because you could be impacting a lot of the wedding photographers or portrait photographers or, you know, kind of the one, one person film, you know, still, photographers that are out that make their livelihood, you know, and they're residents of Maui County and they're...they make their livelihood from taking, you know, beautiful photos on certain beaches or, or whatnot. But they still have to play by the same rules if they're filming on public property, even if it's a one-person operation, they have to have a film permit. If a social media influencer is...unless they're flying rogue, if they're coming in here and they're filming on state, county or federal property, they have to have permission. They have to have, they have to have a film permit. And if they're filming on private property without permission, they're trespassing.

So, I think that the way it is defined in the measure is, is, is good as a starting point. I think everybody else needs to know and it needs to be communicated, whether on a website, whether on a, you know, press release, that you're going to be putting out that if you're filming on public property, public property, no matter the size or impact of your shoot, you have to have a legal film permit to do so.

Ms. Lindsey: Thank you.

Ms. Dawson: Mm-Hmm.

Ms. Lindsey: That helps

Ms. La Costa: Commissioners, other questions for Ms. Dawson? Commissioner Freitas.

Mr. Freitas: Thank you, Chair. Ms. Dawson, are you speaking on behalf of the State Film Office and the Maui County Film Office?

Ms. Dawson: I am speaking on behalf of the state. I work very closely, I wouldn't presume to speak on behalf of the Maui County Film Office, but I work very closely with Tracy Bennett and, and he, he gleans a lot of...he gets a lot of assistance from me in terms of just how to handle a situation.

Mr. Freitas: Okay, let me ask you a few questions then, let me ask you a few questions, thanks. I know that you mentioned that if someone comes in and there's possibly cultural significance that may be compromised or exposed that we don't want, you folks say, no stop.

Ms. Dawson: Yeah.

Mr. Freitas: Now you have that on state level. So, you have a cultural advisor or two that you go to is that correct or do you decide yourself.

Ms. Dawson: No, we have cultural advisors, depending on what it is. Some things are very clearcut noes like burial sites, for instance.

Mr. Freitas: Okay.

Ms. Dawson: But I just want to say that film permitting is predicated on jurisdiction, so by and large, any kind of cultural or environmental issues are going to be at the state or federal level. They're not going to be necessarily at the county level unless it's, you know, like an archeological feature that's part of a county park or a county whatever. So, it's, it's, it's predicated on jurisdiction.

Mr. Freitas: Okay. One more question. I don't see anything in here that addresses drone usage. So, is that in another document, maybe the state level or higher? What's the deal with drone?

Ms. Dawson: Yes. And thank you for asking that question because at the beginning of this, I thought, I need to bring up drones. Drone usage is...falls under the jurisdiction of the federal

aviation. The airspace is FAA, but we do have regulations on drone use within the county, excuse me, within the state agencies, for instance, and it differs between divisions. For instance, DLNR, State Parks, allows it. Division of Boating allows it. But Land Management does not allow it. So, in that case, the, the drone user would have to, obviously, they have to follow all the FAA guidelines and regulations, but they would have to take off and land from private property and have the permission of the private property owner. It's a good point to mention if a drone was to be requested to be used over a neighborhood somewhere where filming is going to be allowed, they have to secure permission from the FAA and permission from, from the state, and the private property owner to take off and fly that drone. And there are restrictions in terms of flying over populated areas, et cetera, et cetera. So, there are restrictions in place for drone use. If you want to restrict drone use completely over any of these, say, residential neighborhood areas that may be approved for filming regardless of the zoning, you may want to articulate that in the measure.

Mr. Freitas: Okay, and my last question for now, who actually goes and asks for the permit? Is it the land...when it's a, when it's a private property? Is it the landowner or the people doing the film or it doesn't matter.

Ms. Dawson: It's the production. And the reason I say that...the reason that is that way is that it is the production that has to provide the requisite insurance. Every film permit requires, I believe it's \$2 million in general liability insurance and a million dollars in automobile insurance, and they have to name, whether it's a state or a depending on whether it's a state or a county permit, they have to name the state all, of its agencies, employees, contractors, et cetera, as additional insured on that film permit. And it is the permit applicant that is the policy holder for the insurance, and that's where the distinction is. So, it is not the property owner. The property owner may have their own level of insurance for approving filming on their private property.

Mr. Freitas: Excellent. Thank you for your answers. That's all for me, Chair. Mahalo.

Ms. La Costa: Thank you, Commissioner Freitas. Commissioners any other questions? Okay, I have one for you, please, Mr. Dawson. You have done an excellent job for the state and thank you so much for all the work you've done all these years and bringing the revenue that you have for from the film industry. What kinds of issues have you encountered either on Oahu or any of the other islands that have not been addressed in this bill? I know that you helped craft it. So, what kinds of things are we perhaps not addressing? Drones was one of my concerns, but also the social influencers, you know, how do you stop people from taking out their phone and doing a Tik Tok?

Ms. Dawson: Yeah, there's not...that's a tough one. It's very difficult to do. You know, people have, people have their, you know, their personal, you know, freedom of expression. And it's a tough one to regulate the individuals, and that's why I say, you know, and there, and I want to just kind of allay everyone's fears, too, to know that by and large, film productions, large and small behave themselves. You don't see people coming in here wanting to just wreak havoc. That is not, I mean, it's probably less than three percent of those that would do that kind of, take that kind of approach because ultimately, they want to be invited back, they want to be welcomed back. And so by and large, they're going to follow the rules, they're going to, they're going to come and seek the proper permits, et cetera. The individuals, it's a tough one. I would say that the biggest

concern and I would just use the Maui as an example, and we had some issues with Temptation Island early on in I think it was the third season that Tracy and I had to deal with them. And a lot of it has to do with education and communication, and by education, I mean, educating these producers that they are in a very, very different place than what they may normally be used to in filming and they need to conduct themselves accordingly.

We are in the process of creating what we're calling a Hawaiian Handbook which is a, it's a producers guide to environmental and cultural sensitivities that exist across the pai aina of Hawaii. And I, it's similar to what they have in New Zealand because a lot of times people come into Hawaii and they don't know what they don't know and they don't know the right questions to ask. That is why it's so important for them to consult with the Film Offices so that they can navigate some of these sensitivities. And I think you're going to find that most people want to play by the rules and do the right thing. So, I, I don't have a really good answer for you for the, the little guys that may be, you know, just wanting to do their own thing and not really caring.

But I will say this the film industry is, is a highly regulated industry, and it is a whole lot easier to control film productions that are going through our process than it is to control random tourists who are coming in here and doing whatever, wherever and pulling out their phones in places where they shouldn't be filming or just being abusive to, to, to the land and to the community. So, that's why the more tools we can give the film industry to regulate this activity, the better off we're going to be. And then we just have to deal with kind of the, the, the bad actors, no pun intended on an individual basis.

Ms. La Costa: Do any of the other counties have any restrictions on either drones or social media?

Ms. Dawson: I do not...City and County of Honolulu does not allow drones in any...over any city properties or taking off from any city properties. There have been situations that have been very carefully planned, like, say, that, you know, drone footage of the Honolulu Marathon or something like that where they just make sure that the drone is taking off and landing from either state property or private property, and that they...or are making sure they're following all of the, the FAA's drone guidelines for not filming over concentrated groups of people, et cetera. So, they probably have the strictest drone regulation of any county. And like I said, the, the state DLNR has, depending on the division, has differing opinions. But drone activity is very, very regulated. For instance, if someone is applying for drone use and a State Film Permit, they have to fill out a drone permit, which is separate, and it takes at least 14 days to process that permit and get the proper permissions for it. And whereas a state permit takes on average, anywhere from two to five days, business days, but we require that they give us at least five business days' notice for a State Film Permit, and I believe it's the same for Maui County.

Ms. La Costa: I thank you so much for your informative discussion. We have one member of the public who would like to testify. Mr. Tom Croly.

Ms. Dawson: Can I jump off?

Ms. La Costa: Yes.

Ms. Dawson: I'm gonna jump off. Thank you so much everyone, aloha.

Ms. McLean: Thank you so much, Donne.

Ms. La Costa: Okay, thank you, appreciate very much. Mr. Croly, if you are with us, will you please unmute yourself, video and/or audio.

Mr. Tom Croly: Aloha Commission. Tom Croly with questions on my own behalf as opposed to testimony because there was two, two instances where maybe this could have affected me. One was, one of the large productions that happened here actually scouted my property to be used for a scene in their, in their movie and they chose...they did not choose my property so it never happened. But I didn't know as a property owner are they allowed to do this or not? So that's, that's kind of a question for the Planning Department as to an individual property if, if a big production comes to them and says, we'd like to use your property for this. What are the obligations of that individual property owner. It sounded like in the discussion that you just had that the, the production staff would apply for this permit. But, but from a land use purpose, am I allowed to use my property in this, in this use provided they do the necessary work up front?

The other was someone who came to me and said, Tom, am I allowed to rent my property to this film folks who are going to do, I think it was that Paradise Island one or whatever. And I had advised the guy this would be a very bad idea because the guy eventually wanted to get a short-term rental permit, which he did not have at the time. And I told him that I did not think that this would be a good idea. But it brings up the question, can any landowner rent their land to someone for this purpose for less than 180 days or is that a violation of, of our zoning laws, I don't know.

So, I'm just trying to understand this, this, this bill a little bit better. It appears that the, that the Film Office will handle the administration of this, but from the reason it's before the planning commission right now is how it affects our land use laws. And those are two big questions, an individual like a shoot that might just be one day on their property are they allowed to do that by, by zoning?

And then there is one thing in here that says two complaints submitted to the Maui Film Office from owners or residents of different properties within 500 feet shall result in suspension. So, again, if there's noise happening on a given night, is there a possibility that, that it's going to be shut down on that given night? How quickly would the Film Office respond to complaints by neighbors? I know that from the Planning Department standpoint, they wouldn't really be able to respond very quickly to something like this. So, there's a number of questions that, that, that I bring up here, and I ask the, the commission to just think about that and maybe have some discussion about that in their comments. Thank you, Chair.

Ms. La Costa: Thank you, Mr. Croly. Commissioners, have you any questions for Mr. Croly? I have a question for you, please, Tom. When you talk about rent land, are you...you said someone asked you about a rental of personal property or you're talking about someone using the land, not using a home and occupying it, just showing up on the land and paying for the use of the land?

Mr. Croly: Well, that might be one question, but the one that was, the one that they asked me about was a large Launiupoko property and one of those, those filming things like Paradise Island, where the people would be staying there, wanted to use that property for, for this use. And I don't even know if...whether they got a film permit or not, that's one thing, but whether the zoning, the Agricultural zoning would allow that property to be used in the way that they were proposing, and how the Planning Department might review such an application or whether the Planning Department would even review such an application. That's one of the questions that came up.

My advice to that particular fellow was, I know that you're going to create an impact to your neighbors that they're not going to be happy about. And, and I told him, do not, do not rent to these folks, and they didn't. But, but that was my, my point was somebody wants to rent your home, maybe it's a quarter-acre home, maybe it's a five-acre home and do some type of film production, how, how...what's the impact on zoning laws in that regard?

Ms. La Costa: Thankfully, we have the master of zoning laws sitting with us, so I will have Director McLean answer your questions.

Mr. Croly: Thank you. Chair.

Ms. La Costa: She didn't know I was going to ask that.

Ms. McLean: I think that we were remiss in introducing this item with not giving some of the background. The idea for this started several years ago, when there was an MTV, MTV production in Haiku, and you probably read about it in the paper. They had helicopters, they had all kinds of things, they were building big structures, and the neighbors were very upset. We got complaints about it. We cited the production. So, then we got into a little bit of head-to-head with the Film Office because the Film Office was involved, even though right now there's not a permit process for filming on private property. Production companies always contact the Film Office anyway, and the Film Office assists them. And it's just been this, I don't even want to say gray area, just an area that we've never paid attention to before, where these activities have gone on without regard for the zoning. So, when they're in hotels, where commercial activity is allowed, it's not an issue, but more and more we're seeing these on private property and we don't have a permit process for it. Well, the permit process would be a conditional permit that takes months, if not longer, to do it. And the Film Office tells us, hey, these production companies call us and say, we want to start filming there next week or next month, like their turnaround is super-fast.

And so, we were back and forth with the Film Office on, well, how do we allow this, but regulate it at the same time? So, we introduced a bill several years ago that would just outright allow it in any zoning district subject to a handful of conditions that went through the commissions and to the Council and the Council said, we want to see a permit and we're like, well, we're not going to start regulating filming. You know, the Planning Department is not going to regulate filming, we regulate land. So, we went back to the drawing board with the film permit to craft this bill.

So, the Launiupoko activities, Mr. Croly is correct it wouldn't have been allowed. The people who approached him to do it on his property wouldn't have been allowed. The property owners don't necessarily need to know that. If they do, that's fine, if they don't, it's not a problem because the

production company knows to contact the local Film Office, and so, through that, they would say, oh, you can do it, but you need to do this permit first is what we're proposing.

So, the whole idea, and this ties back to Commissioner Freitas' original questions is to regulate those larger productions that can have impacts. We're not saying the bill's perfect. You know, that's why we go through this process to tweak it and refine it, but not let smaller productions, documentaries, et cetera and certainly, you know, home movies and things like that to leave them out of this regulation.

We didn't address drones, and I agree that needs to be addressed. We didn't address social media influencers. I don't know how to address that one, but we can talk about it.

So, in terms of Mr. Croly's about shutting down a production, the...so again, what we've defined here is that there's a contact person who is accountable 24-7 to the neighbors. They would complain to that person and to the Film Office, and it would be the Film Office's responsibility to suspend production until those complaints can be resolved. It wouldn't be us. The only time we would get involved is if conditions are being violated or a permit wasn't obtained at all, and the Film Office would let us know that, and then we could enforce because they don't have an enforcement mechanism. So, the way the bill is, is designed is to sort of tie the two together, define...to define the land use and connect it to the permit. So, they take care of the permitting, and as long as everything goes smoothly, we don't need to be involved. But if there are problems, then they let us know and we can...(inaudible)...

Ms. La Costa: Mr. Croly, does that answer your question or do those remarks answer your questions?

Mr. Croly: Sure. Again, I'm not here to ask questions, but, but just to raise the concerns for the for the commission to make their own comments on it. But the...I, I guess I'm glad to know that I did the right thing advising the guy in Launiupoko that he shouldn't do this. I still kind of left me questioning whether the legitimate filming of whatever the White Lotus one that came and scouted my place, whether it would have been okay for them to use my permitted bed and breakfast for this use. I'm not, I'm not 100 percent sure from a zoning standpoint whether that was okay or not, but...and how someone would know that like, like whether if they approached me because they found my property as a, as a vacation rental and said, okay, we want to rent your place for a day or two days or however long to shoot this scene, if, if it was a nonvacation rental property, would they be, be allowed to do that from a zoning perspective?

Mr. Hopper: Chair?

Ms. La Costa: Yes, sir, Mr. Hopper. Just a clarification on process. Generally, testifiers get three minutes. Obviously, you can have follow-up questions. If testifiers have questions, they can certainly state them during the questioning. But at that point, it's up to the commissioners if they want to ask those questions, generally during deliberation rather than as part of the public testimony. You can imagine if, if that happened repeatedly, the testimony portion could, could, could really have issues. So, just in, in the future, you know, certainly if you've got commissioner, if there's questions testifiers raised, you want to ask, I think you could ask them during

departmental comments generally and, and, you know, go through the three minutes of testimony. If you have follow-up questions for the testifier, that's fine. But as far as asking those questions to the Department, generally that's done during the after-testimony portion of the meeting just as a clarification.

Ms. La Costa: Thank you, Mr. Hooper. Appreciate that. ...(inaudible)...

Ms. McLean: ...(inaudible)...If you want me to answer, you ask the question.

Ms. La Costa: I would actually like to have the Director answer Mr. Croly's question. Thank you.

Ms. McLean: In the situation you described, the...that filming activity at your bed and breakfast would need a film permit. It doesn't matter that it's a permitted bed and breakfast or short-term rental home. The bed and breakfast and short-term rental home permits allow the short-term occupancy of the structure. They don't allow commercial filming.

Ms. La Costa: Thank you, Director. And I appreciate Mr. Hopper, your comments. It certainly has helped clarification for me. Do we have anyone else who is interested in testifying on this item? I don't see anyone signed up in the chat room. Going once, going twice, public testimony is now closed. Director.

Ms. McLean: Chair at this time, it would be...now would be the time for more commission discussion, although we, we did have some really good discussion with State Film Commissioner Donne Dawson. I've made a couple of notes to clarify that production companies would be the applicant, to add another condition about requiring insurance, and then with Commissioner Freitas' question about the definition, I think the definition could be more clear by breaking it up into pieces. So, it could read, commercial filming and photography means all of the following: a. filming in photography for commercial properties where the crew is paid; b. involves an active crew of three or more people; and c. the use of filming equipment such as cameras, et cetera. Any filming or photography that do not meet all of these criteria are not considered commercial filming or photography. So, I think that might clarify it. But if you want to change any of those terms, certainly you can. But to separate it out that it needs to be commercial, you need to have three or more people, and you need to be using that equipment, and if you don't meet all three of those, then it's not considered commercial filming and doesn't require the permit.

Ms. La Costa: Is there anything in there about compensation?

Ms. McLean: Yeah, that commercial purpose, commercial purposes where the crew was paid?

Ms. La Costa: Okay.

Ms. McLean: So, we can refine that a little bit more as we get into discussion, but I think that might. I'm trying to address Commissioner Freitas' concerns with how the definition is applied.

Ms. La Costa: Thank you, Director. Commissioners? Mr. Freitas.

Mr. Freitas: Thank you, Chair. That sounds great, Director. Exactly what I was trying to get at. Is there any...I know you said, you know, you don't want the Planning Department to get involved with approving a lot of these, but I think the aerial part is an important part that if they feel they got it without saying something about the drone or a helicopter should be added somewhere where it may say either no aerial video or filming and/or if they do, they got to, they got to get a permit. I don't know how to add it in there. Otherwise, people are going to look at it, oh, I meet everything. They don't say anything about the aerial, so I'm going to do it. So, just to be safe, is it okay to add a line in there, any aerial video will need approval, something simple like that?

Ms. McLean: Well, again, these are your recommendations to the County Council and you could recommend that drones be prohibited. And if you wanted to do that, then that's the recommendation we would put forward. Or we could say that the three cameras or, excuse me, not three cameras, when we refer to cameras that that would include drones, and that any drone use must comply with all applicable requirements and restrictions.

Mr. Freitas: Director, I would rather it be allowed, but be specific. You know, if you have a small half-acre lot and you're trying to do a drone over that, your neighbors are gonna...property is gonna be filmed. But if you have a five-acre lot, you might be able to do a drone and only catch your property. So, it's kind of something where you got to know what the property landscape and, and if it is private enough that they can, they can operate this drone in that private property's domain, I guess.

Ms. McLean: Okay. So, what we can do is in the definition where refers to cameras we can say, including drones, we can see that drone usage must comply with all applicable requirements, and then one of the permit conditions can be that they have to provide proof of their drone permits. And I'm not familiar with what those are, but we'll make, but we can make that a permit requirement.

Mr. Freitas: Sounds good. Thank you.

Ms. La Costa: If I might Director, in the portion where it talks about applicable laws perhaps put state, federal and county because FAA is federal.

Ms. McLean: Okay.

Ms. La Costa: Okay, thank you. Commissioner Hipolito.

Mr. Hipolito: Thank you, Chair. I support Commissioner Freitas, and I like how he defined the word, aerals. And about, mentioned about helicopters and drones. I feel in supporting Commissioner Freitas that maybe the words, aerals and not just specific to drones, but to include any aerals.

Ms. McLean: Okay.

Ms. La Costa: Thank you, Commissioner Hipolito.

Mr. Hopper: Chair?

Ms. La Costa: Yes sir.

Mr. Hopper: We may be getting into FAA jurisdiction in that case, in which case the county's preempted from any regulation. If you're dealing with just a drone on the private property, maybe that's something we can deal with. But if you're talking about, you know, photography from a, from a helicopter or airplane, we may be getting into issues that, that could be preempted. So, I'd maybe have a little concern about saying, all aerals without, you know, further looking into what FAA regulations may, may apply. If that's a problem you're having with helicopter and airplane photography, then we could regulate that, I suppose. But if drones is the principal one, I'd recommend maybe looking at that. We may even have some FAA issues with that as well as far as preemption, because there might be already FAA rules there. But I think having that in there, as far as considering that a form of photography, because I could see that being launched from that, you know, someone's property and things like that, that's I think, probably closer to the realm of our regulation. But to say all aerals, I'm not comfortable right now that that wouldn't be potentially preempted by federal law.

Ms. La Costa: So, even if the verbiage in there is about taking into consideration all federal, state and county laws, when you're discussing the aerals, do you think that that will---

Mr. Hopper: You'd still have to consider that, but I'm saying that if the county is going to say, you need a permit to do this activity, we may not be able to say that if it's within the federal government's jurisdiction. There's something called preemption that would generally say, no, federal law applies in that, in that case for, for things like that. That's a little different than saying you have to also follow those laws. It might be an area the county might not be able to regulate. Again, I didn't plan on this film bill becoming something about, you know, airplane or helicopter photography issues, so, that's not something that I think we have looked at before this. But I know that's a potential issue because we've dealt with it, for example, for lighting ordinances and, and other zoning ordinances and things like that.

Ms. La Costa: Commissioner Freitas.

Mr. Freitas: Thank you, Chair. So, Mr. Hopper, I think if we go back to the beginning of this agendized item it was mentioned the reason we're doing it was because of filming that had a helicopter. So, I think this is a very important part of us addressing this. Now also, I'd like to say that 10, 15 years ago, nobody knew what a drone was, and I think that when we create something like this, we need to use verbiage that anything falls within that 10, 15, 20 years from now will be covered. So, by saying, aerial, I agree with Mr. Hipolito, let's use terms that as technology changes that it still will apply to another gadget that may come up in the next ten years. Now we can say, hey, maybe anything over a thousand feet is FAA then we say what the ceiling height for a drone should be. That's my thoughts. Thank you.

Ms. La Costa: Thank you, Commissioner Freitas. Commissioner Lindsey.

Ms. Lindsey: I think in addition to that aeriels and like helicopter photography, a lot of our special places are accessible by or visible through aerial photography, so I think addressing it here would be beneficial for us also.

Ms. La Costa: Thank you. So, are we going to forward this with our recommendations and it will come back to us after it's been honed by other islands or how, how is this process because we haven't addressed this before? Thank you.

Ms. McLean: Yeah, the process works is we go to all three planning commissions and get your recommendations and put them all together as best we can and create a revised bill that incorporates all your comments. And Mr. Hopper will have to sign that bill. Then if there is anything, let's say we put something, you know, out of bounds in the bill, then Corp. Counsel would pull that out, and in our transmittal to the Council, we would say, you know, the Maui Planning Commission wanted to address helicopter filming, but it was not included in the bill because that's out of our jurisdiction or something like that so that they would have the full picture. Plus, they also get the minutes to the meeting.

Ms. La Costa: Okay.

Ms. McLean: So, they can review all the, all the details of the discussion.

Mr. Thompson: Chair, can we put it in that just has that with the exception of where it's in conflict with the federal law? So, we make our own rules and says, except for when this is a contrary to FAA rules. One line.

Ms. La Costa: Thank you. Excellent point.

Ms. McLean: We can give that a try. We can work with Mr. Hopper on language when we're finalizing the, the bill to send to the Council.

Ms. La Costa: Thank you, Director. So, at this juncture, I believe that by consensus, we will pass this along to the other planning commission versus an actual motion?

Ms. McLean: Oh, Commissioner Lindsey has her hand. I'm not sure if, if the commission is finished with questions.

Ms. La Costa: I'm sorry I didn't see you, Commissioner Lindsey. Thank you, Director. Go ahead, please.

Ms. Lindsey: I think influencers also need to be addressed somehow. I'm not sure how that will, how we can do that. I'm wondering if we can somehow limit it so that Maui County residents can do it. I don't know. It does need to be addressed.

Ms. La Costa: Commissioner Thayer.

Ms. Thayer: Thank you. I would agree with that. 'Cause, so, just looking at the definition of it being three or more people on a film crew like a lot of, I think, influencers work on their own or as teams of two. And so, they would just automatically not be subject to this rule. And I know we're trying to strike a balance between just small, tiny productions and like giant productions, but they're all filming and, yeah, and I guess that's a question to all of us to how to figure this out, but to address that because it is, I think, a growing issue that is really hard to get a hold on. And this seems like we have a way to do it here, but it's just figuring out where that balancing point is. And I guess another thing like and, is that, influencer, a commercial enterprise, which they are in...by virtue of what they are, they are commercial like...

Ms. McLean: I know they, they don't get...nobody pays them to do their video of them at Twin Falls. Nobody pays to buy the video. They just post it. But then they get, you know, advertisement. They get whatever. So, in an indirect way, it is. I don't...I'm...it's a challenge to figure out how to cover that with this bill. If...so, back to what Donne Dawson was saying, are the, the areas that you're concerned about, is it mostly county or state or federal land or is it private property? Because if it's county, state or federal land, it kind of falls...not, I shouldn't say outside this, but that's something we could pursue separately with the County Film Office and the State Film Office. If it's private property, we should get into it in this bill. So, I'm not sure what areas you're most concerned about if it's private land or if it's public land, 'cause that might be a way to distinguish.

Ms. La Costa: Commissioner Lindsey.

Ms. Lindsey: I would say both examples of private property who where have been special places in the past is Twin Falls, Venus Pond is another one that was...lots of people have gone there because of tips from people, and there are many other places. I'm wondering if you could do it by either number of followers or views or people who are not residents of Maui County. Anyone who is not a resident of Maui County needs to get a permit for like if they're an in...if they're making any money on social media like something like that. Because I feel that the people of Maui County have a like an inner relationship with our place that they want to keep it how it is and not, you know, share it too much with the world. I don't know if I'm getting too, too in my head about this, but...

Ms. McLean: If I could ask Mr. Hopper for some feedback on those suggestions. I don't know if at some point we're crossing a First Amendment line. I don't know about narrowing it to, to residents. I totally understand the sentiment. I just know there are limitations to what we're able to do.

Mr. Hopper: I think I'd advise on focusing on the land use aspect of it. I mean, this isn't...it's going to you as planning commission to deal with the land use issue. So, I think that, that issues like how many people are physically on site, the impacts as far as traffic and noise while filming are the key issues there. Again, if it's federal or state property, generally it's up to the governing, you know, whoever has the authority governing that area to determine what activities can, can happen there. If it's federal or state, that may be a little bit limited within our jurisdiction. If it's county, well, it's less of a land use issue and more of what does the County Film Office want to allow on county property, if anything. If it's private property, then I think this is where this type of

land use would, would, I think, be appropriate. But I don't think that land use would, would focus on how many followers someone has or things like that on social media. I think they would deal with the impacts to the land as far as how many people are there, the things that it sounds like spurred this, which would be the extra traffic, having a large crew, things like that, that would similarly be a problem for, you know, other types of land uses that you may have there for, for large, you know, sort of commercial gatherings and things like that. Because again, this is a, the County of Maui has limited authority to enact laws. One of the areas where it has pretty broad authority to enact laws is in zoning and land use. And so, to the extent this has land use impacts, I would focus on private property and focus on the impacts to the property. I don't, I don't think a resident only distinction there would, would be justifiable. It would be an impact, I think, based, based issue would be where I would advise focusing on.

Ms. La Costa: Thank you, Mr. Hopper. I...another a comment that I was looking at was the enforcement. You slap someone's hand and say, sorry, you can't have a permit. But I think that if a monetary fine were attached to it, I think people would pay more attention to if you hit people's pocketbooks, they often go, oh, they don't want to spend that money on a fine. So, that is a comment that I have for the Director, and as far as enforcement. Commissioner Greig.

Mr. Greig: Kind of following the same question. What are the repercussions if someone violates this or anything that is put in place?

Ms. McLean: Well, there's the initial suspension of the permit if there are complaints. Then in the enforcement section, it says that any violation of a permit condition or operating without a permit could be enforced by the Planning Department. And so, our typical enforcement is to issue a Notice of Warning, which identifies the alleged violation and gives them a specific amount of time to stop. If it's a use, then we typically ask them to stop immediately, and then if we find they don't stop, then we follow up with a Notice of Violation that imposes an initial fine and daily fines until the violation is cured. And that's what we did with the MTV production in Haiku. They continued on, and that was for them the cost of doing business. But we cited them every day as they continued to film.

Mr. Greig: That citation, was it a flat rate or is it based on a percentage for each day? I mean, I know you saying every day there's a, you know, the fine continues, but if it exceeds a certain period of time, does that increase, you know, could it increase by a percentage?

Ms. McLean: The County Charter imposes limits on what the fines can be. That was amended a few years ago to increase the fines for illegal vacation rentals. I believe the Charter Commission is putting forward an amendment to remove the limit and to allow fines to be limited by ordinance instead of by the Charter. But for now, we're limited the maximum of \$1,000 initial fine and \$1,000 a day for zoning violations. Is that correct, Jacky? Can you confirm those amounts?

Ms. Takakura: Yes, that is correct.

Ms. McLean: Okay.

Mr. Greig: All right. And I guess the reason why I asked if it's basically later on down the line if it to be based on a percentage on top of the daily fine because a thousand dollars a day, is sometimes a drop in a bucket depending on, you know, what they're filming and stuff, and the repercussions and the annoyance of the noise, you know, noise decibel of a helicopter flying around—

Ms. McLean: Right.

Mr. Greig: --and just the neighborhoods itself, and the repercussions, you know. Is there anything—

Ms. McLean: So, if the Charter amendment passes and that, that ceiling gets removed, then fines can be established by ordinance and different fines could be established for different kinds of violations or the Department could just have greater discretion on how much to cite. But for now, we're limited to a thousand initial, and a thousand daily for zoning violation.

Mr. Greig: And just one more crazy question, is there any funding for...any type of financial compensation for the neighbors within that 500-foot radius for the inconvenience of that? Just the question.

Ms. McLean: That would be up to the film production company. I know that with the Haiku situation, they gave, what I understand were extremely generous gift baskets to all of the property owners. I know the owner of the property was well compensated, but I don't know if there was cash compensation to the neighbors. I just don't know.

Mr. Greig: Okay, thank you.

Ms. La Costa: Thank you. Commissioner Thayer.

Ms. Thayer: Thank you. I have a question on the enforcement section since you brought it up. It says, the County Film Office shall retain records of any permit violations and no property owner who has been found to be in violation of permit requirements may obtain a film permit. But I thought we established that it's the production crew and not the property owner that's supposed to get the permit. So, that should be the film or photographer crew and not the property owner.

Ms. McLean: The...so, this ties the two together. The...we should reword that to make it specific to the property rather than the property owner, because when we conduct enforcement, it's against the property owner. So, if a property owner says, okay, MTV, you can come and film here, they got a film permit, but then they violate or let's say they don't get a film permit. We cite the owner. So, then it's up to the owner and their relationship with the production company. But that needs to be reworded so that the, the property would not be able to be permitted for film use in the future, rather than the, than the owner obtaining a permit.

Ms. Thayer: Okay, but it's still the production company that's the permit holder.

Ms. McLean: Correct.

Ms. Thayer: Okay. I guess I have another question.

Ms. La Costa: Go ahead.

Ms. Thayer: On the new section, 19.04.026, Item D, that the activity must not involve any change in use unless such change is lawful or permitted. So, that change in use can be anything from like, like what Mr. Croly brought up about renting out a house to a crew or renting out a property to a crew could be a change in use or building whatever structures could be a change in use. So, like the whole gamut would be subject to this item.

Ms. McLean: Correct.

Ms. Thayer: Okay. So, if they were like filming on a shoreline property and they needed to erect whatever structures for it, they would have to go through SMA?

Ms. McLean: Correct.

Ms. Thayer: Okay.

Ms. McLean: Yeah, that was...those are some of the complaints that we've heard in past cases that they're building all sorts of stuff without building permits, yeah.

Ms. Thayer: Okay. And then, sorry, can you clarify the situation if, you know, someone's got a property that they don't utilize, that they would rent out to a film crew, would they need to go for any permits or like land use permits for that? I guess it depends on the zoning district?

Ms. McLean: For the film crew to stay there?

Ms. Thayer: Yeah, yeah.

Ms. McLean: Actually, that's addressed in the next bill that you have before you.

Ms. Thayer: Yeah, yeah, I know, I was thinking about this looking back and forth like, there's a lot that could be tied together here.

Ms. McLean: Yeah.

Ms. Thayer: Yes. So, I guess that's up to us if we put that language to address that in one or the other of these ordinances.

Ms. McLean: Right, right.

Ms. Thayer: Okay, like, for example, we could put language in our second one, just like there is exception for a medical health care personnel. There could be provision for film crew.

Ms. La Costa: Film crew.

Ms. McLean: There could be. I mean, there is...don't want to get ahead of ourselves, but there is also, and this has always been in the Code, employees who receive their room and board as part of their compensation while they're working.

Ms. Thayer: Okay.

Ms. McLean: So, if the production company pays for their lodging as part of their compensation for their work, then they would be covered.

Ms. Thayer: Okay, okay.

Ms. McLean: Which is just a distinction from your typical visitor.

Ms. Thayer: Yeah, okay. Thank you.

Ms. La Costa: Thank you, Commissioner Thayer.

Mr. Thompson: Would that be a non-short-term property?

Ms. McLean: Yes.

Ms. La Costa: I am so lucky to be surrounded by such intelligent commissioners. Thank you for your great questions.

Ms. Thayer: I do have another question.

Ms. La Costa: Go ahead Commissioner Thayer.

Ms. Thayer: About...so, the permit itself, like the Film Office would set like what questions the permit application asks, who it is reviewed by, what is the review criteria?

Ms. McLean: Well, the bill already lists—

Ms. Thayer: The conditions?

Ms. McLean: --a handful of conditions. We discussed adding a condition that they have insurance. In your packet is the Film Permit Handbook from the county that also lists 11 conditions. So, those would also apply and their code of conduct. But if there's anything that you don't feel is covered in these, then then it can be added to the bill as another condition.

Ms. Thayer: Okay. I have a question, sorry. On the written notice, providing the written notice shall be provided in writing no less than 14 days prior to the initiation of the activity. So, does that mean it like has to be mailed at 14 days or like the neighbors should receive that notice within 14

days? Because like, I'm just thinking if it's mailed at the 14-day point, then they might not get it until like a week before, which leaves very little time to do anything.

Ms. McLean: You can make a clarification.

Ms. Thayer: Okay, okay.

Ms. La Costa: Go ahead if you'd like to.

Ms. Thayer: Yeah, like I would say, to me, 30 days is probably better 'cause like I say, like two weeks if it's, you know, a working person that receives this thing, that two weeks might not be sufficient time to wrap your head around the situation and figure out what you want to do about it. That I feel like a month would be more reasonable to give neighbors notice.

Ms. McLean: I know that the Film Permit Office is concerned or the Film Office is concerned with like their tight timelines.

Ms. Thayer: Yeah.

Ms. McLean: But these are your recommendations to the Council, so if that's what you want to recommend, then we will forward your recommendation.

Ms. Thayer: Okay. Put that out for discussion.

Ms. La Costa: Sure. And that's what we're here for is to help craft this bill to make it how we want it currently. And again, my comment on the enforcement I would like to add a minimum of \$1,000 for a fine for properties that are in violation.

Ms. McLean: Okay.

Ms. La Costa: Thank you.

Mr. Hopper: Chair?

Ms. La Costa: Yes sir, Mr. Hopper.

Mr. Hopper: I don't...we've had issues. Maybe it's not as big of a deal with the thousand dollars, but a mandatory minimum fine if the, if the ordinance specifies or the Code specifies a range establishing a mandatory minimum in all cases could potentially be problematic if the fine range is up to a thousand dollars. That's sort of taking any sort of discretion away from the enforcement authority to establish a range based on the severity of the violation. So, I don't know if I'd necessarily recommend that. I guess you could recommend that 'cause you can recommend anything you like, but normally that's going to be up to the, up to the Director in a given case to look at the nature of the violation and see if it would justify the maximum fine possible. I suppose you could make it as your recommendation but that does potentially create issues as far as making the maximum be that in every single case. I just needed to advise on that.

Ms. La Costa: I actually wanted to have that specific amount so that people knew that that is actually what they'd be looking at instead of using discretion and I certainly trust Director McLean, but if people know that it's gonna hit them in the wallet, and a thousand dollars a day is nothing for film crews, so I wanted to put that in black and white so they would know what they're looking at if anyone violates it. So, that's my recommendation, and again, it's a recommendation and the Council can do with it, whatever they want, so...Commissioners, anything else? Because we have had this bill marked up, edited, changed, at this point, let's do by consensus to move forward the recommendations that we have all made. We're going to have the Director go through each of them. Thank you.

Ms. McLean: Thank you, Chair. On the first page, the definition of commercial filming and photography would be edited to read, commercial filming and photography means all of the following: a. filming in photography for commercial purposes where the crew is paid; b. activity that involves an active crew of three or more people; and c. involves the use of filming equipment such as cameras, including drones or aerals, sound and...sound and lighting equipment, electrical power generators, et cetera. Any filming and photography that do not meet all three of these criteria are not considered commercial filming or photography. Any aerial or drone usage must comply with all applicable federal, state and county requirements and restrictions as allowed by law.

Then, on Page 2, under purpose and intent, the purpose and intent of this chapter is to allow permits to be issued to production companies for commercial filming and photography.

Then on Page 3, under the conditions: a. change 14 days to 30 days; add another condition of proof of applicable approvals for any drone usage. We'll need to come up with better wording for that. And then adding another condition requiring insurance. I believe the state film commissioner recommended \$2 million. And lastly, under enforcement, on Page 4, that no property rather than property owner who has been found to be in violation ...(inaudible)...obtain a film permit and establishing a minimum fine of \$1,000 daily and initial for violations.

Ms. La Costa: Thank you, Director. So, one last pass, anyone have any other changes to this before we move on it? Mr. Hopper, do we need a motion here or is consensus adequate?

Mr. Hopper: If there's actually unanimous consent, you could say, if there's no objection, we'll have those forwarded, as are our comments and recommendations on the on the proposed legislation. You could do that. Normally we have a motion and vote, but if everyone's in agreement, I suppose you could do it by unanimous consent.

Ms. La Costa: Well, then we'll do a motion and vote to keep it clean. May I have a motion please from commissioners? Commissioner Thompson.

Mr. Thompson: I'd like to propose a motion to forward our comments to the County Council as, as written.

Ms. La Costa: And may I have second please? Thank you, Commissioner Hipolito. It's been moved and seconded to forward the comments as stated to the County Council. Any further discussion, Mr. Thompson? No? Mr. Hipolito? Any further discussion?

Mr. Hipolito: No discussion.

Ms. La Costa: Thank you, then we'll do a roll call vote.

Ms. McLean: Commissioner Freitas.

Mr. Freitas: Aye

Ms. McLean: Commissioner Thompson.

Mr. Thompson: Aye.

Ms. McLean: Commissioner Hipolito.

Mr. Hipolito: Aye.

Ms. McLean: Commissioner Lindsey.

Ms. Lindsey: Aye.

Ms. McLean: Commissioner Thayer.

Ms. Thayer: Aye.

Ms. McLean: Commissioner Greig.

Mr. Greig: Aye.

Ms. McLean: And Chair La Costa.

Ms. La Costa: Aye.

Ms. McLean: Did I miss anybody?

Ms. La Costa: No.

Ms. McLean: Chair, that's eight ayes, no noes. Commissioner, Vice-Chair Pali excused. Seven ayes, excuse me.

Ms. La Costa: Thank you, Director.

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It was moved by Mr. Thompson, seconded by Mr. Hipolito, then

VOTED: To Forward to the County Council the Commission’s Comments and Recommendations on the Proposed Bill, as Discussed by the Commission.

**(Assenting – K. Freitas, D. Thompson, M. Hipolito, A. Lindsey,
K. Thayer, W. Greig, P D. La Costa)**

(Excused – K. Pali)

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II