

POLICY COMMITTEE

Council of the County of Maui

MINUTES

September 2, 2008

Council Chamber, 8th Floor

CONVENE: 1:37 p.m.

PRESENT: Councilmember Danny A. Mateo, Chair
Councilmember G. Riki Hokama, Vice-Chair
Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member
Councilmember Jo Anne Johnson, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Joseph Pontanilla, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Michael J. Molina, Member

STAFF: Kirstin Hamman, Legislative Attorney
Camille Sakamoto, Committee Secretary

ADMIN.: Lori Tzuhako, Deputy Director, Department of Housing and Human Concerns
(Item No. 48)
Jo-Ann Ridao, Executive Assistant II, Office of the Mayor (Item No. 54)
Tracy Takamine, Chief, Solid Waste Division, Department of Environmental
Management (Item No. 4(8))
Traci Fujita Villarosa, First Deputy Corporation Counsel, Department of the
Corporation Counsel (Item No. 3(5))
Kimberly A. Sloper, Deputy Corporation Counsel, Department of the
Corporation Counsel (Item Nos. 48 and 54)
Cheryl A. Tipton, Deputy Corporation Counsel, Department of the Corporation
Counsel (Item No. 4(8))

Seated in the gallery:

Mahina Martin, Public Information Officer, Office of the Mayor (Item No.)

OTHERS: John Andersen
Melissa Prince
Five (5) additional unidentified attendees

PRESS: *Akaku: Maui Community Television, Inc.*
Ilima Loomis, The Maui News

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CHAIR MATEO: . . .(*gavel*). . . Policy Committee meeting for September 2, 2008 will come to order. For the record, the Members present this afternoon – the Committee Vice-Chair Chairman Hokama, Members Anderson, Baisa, Johnson, Medeiros, Pontanilla and Victorino. Member Molina is excused this afternoon. From the, uh, for the staff of the Policy Committee we have our Secretary, Ms. Sakamoto, and our Analyst, Ms. Hamman. And I'm sorry I cannot see from the back . . . from Corporation Counsel . . .

(UNIDENTIFIED SPEAKER): . . . (*inaudible*) . . .

CHAIR MATEO: Thank you. We have Ms. Traci Villarosa. Thank you very much. Members, as we noticed we have four items on our agenda today. Ms. Sakamoto, is there anyone signed up to testify?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MATEO: Members, there's no one signed up to testify this afternoon. The Chair will leave the testimony segment open for a little while, and we'll just go ahead and proceed with our items on the agenda for today.

ITEM NO. 3(5): HAWAII STATE ASSOCIATION OF COUNTIES (HSAC) (2009 HAWAII LEGISLATIVE PACKAGE) (C.C. No. 07-10)

CHAIR MATEO: The first item on the agenda is Policy Item 3(5), the Hawaii State Association of Counties (HSAC) 2009 Legislative Package. Members, I know you all had the opportunity to go through this particular item and you all read the proposed bills that's before us this afternoon. As you know, the HSAC President is requesting that proposals for the 2009 HSAC Legislative Package be submitted to the Executive Committee by October 1, 2009 [*sic*]. We have three bills that have been transmitted for consideration. And, once again, you're all familiar with these three bills because these three bills were existing in our 2008 Legislative Package as well. So, I'm hoping that we're familiar enough with it so we don't have to go into full discussion.

Members, the first bill was transmitted by Member Pontanilla and it is a bill entitled "A BILL FOR AN ACT RELATING TO HOUSING". And as you recall, the purpose of this proposed State bill is to extend the 45-day window for legislative bodies to approve, approve with modifications or disapprove of an affordable housing project under Section 201H-38, HRS, to 90 days. The second bill was transmitted by myself and it is entitled "A BILL FOR AN ACT RELATING TO TRAFFIC INFRACTIONS". And the purpose of this bill is to require the State to transfer a portion of the fines and forfeitures collected for uncontested traffic infractions to the County in which the violation occurred. And the third bill that we're addressing is entitled . . . this one was submitted to us by our Council Chair, "A BILL FOR AN ACT RELATING TO PROCUREMENT". And the purpose of this proposed State bill is to remove the requirement that local governments comply with rules adopted by the Procurement Policy Board and to place the decision-making power to use cooperative contracts within the discretion of local governments.

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Members, those are the three bills that we have, and you'll also notice attached to each one of these bills are the justification sheets for each bill. If the Members would indulge me, I would ask Member Pontanilla if you would like to say a few words regarding the bill that you had submitted for consideration – the Bill for an Act relating to Housing.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. This proposal has been on the State agenda now for five and a half years. And, basically, what the Chairman had read is to increase the 45-day approval limit to 90 days. And the 90 days would give the Council appropriate time to review a project in its entirety because none of us are experts in the field of reviewing projects in particular to ordinances. So, this would lead us enough lead time to do an appropriate review and also would give us appropriate time to schedule this, the review process. I understand that we came very close during the last Legislature review and, hopefully, this time around come next year we'll get full approval from the Legislature on this upcoming proposal. Thank you.

CHAIR MATEO: Okay. Thank you, Mr. Pontanilla. Members, the second bill is a Bill for an Act relating to traffic infractions. And if the Members recall, this was one of the bills that we had a lot of discussion on because the bottom line was we, a lot of our fines are collected and only . . . stays on Oahu essentially. Maui County or any other specific County that goes through their fines nothing is returned to the County. So this bill is really looking at a fair compensation with those non-contested cases that the respective Counties should receive some of the fines and violations that is paid for on Oahu. And, once again, we would like to submit the same bill to the HSAC Executive Committee for inclusion in their 2009 Legislative Package. And I need to be corrected because I indicated early on that we need to get these bills to the HSAC Executive Committee I stated 2009, October 1st, and it is October 1, 2008. So a little premature. And, Members, the third bill is the Bill for an Act relating to procurement. And this bill was submitted by Chairman Hokama. Chairman, if you could provide a real brief comment.

VICE-CHAIR HOKAMA: Thank you, Mr. Chairman. Members, Mr. Chairman, the Bill for an Act relating to procurement continues my quest to allow the County to have additional means of utilizing fellow jurisdictions corporative purchasing agreements to be able to best offer the County of Maui's taxpayers and governmental agencies, Mr. Chairman, the ability to get the most cost effective choice of requirements whether it be in furniture, office supplies, desks, chairs, anything that the County utilizes even from the simplest things to reams of paper that we use quite a bit of on a daily basis. Currently, our national organization enters into public procurement processes, and NACO on behalf of all of its members, which we are one, is allowed to participate as one of the required sources of providing a bid for a particular item or service, Mr. Chairman. Unfortunately, the State of Hawaii chooses to be very paternal about it and has no issues with us in using their corporative purchasing agreement for which they get their fair share of royalties and incentives. I believe the County needs to be able to exercise its additional options and choose the best, again, Members, cost effective option that is the best for our taxpayers. And I would hope that in the lean times that we are entering in and will be going through,

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Mr. Chairman, that the State of Hawaii will have the vision to see the wisdom of our proposal and to advocate and pursue this additional avenue that they themselves can be a beneficiary of. Thank you.

CHAIR MATEO: Thank you, Mr. Hokama. Members, comments on the three legislative bills that, if passed, will be moving it on to the HSAC Executive Committee. Hearing none. Then, Members, the Chair would recommend that all three proposed bills: 1) a Bill for an Act relating to Housing; 2) a Bill for an Act relating to Traffic Infractions; and 3) a Bill for an Act relating to Procurement, and with it is corresponding justification sheets be submitted to the HSAC Executive Committee for consideration as part of the HSAC's 2009 Legislative Package.

COUNCILMEMBER VICTORINO: So move.

COUNCILMEMBER PONTANILLA: Second.

CHAIR MATEO: It's been moved by Member Victorino; second by Mr. Pontanilla. Any additional discussion, Members? Hearing none, we'll . . . excuse me, go ahead?

COUNCILMEMBER BAISA: No.

CHAIR MATEO: Hearing none, we'll call for the question. All those in favor, signify by saying aye? Those opposed?

VOTE: AYES: Councilmembers Anderson, Baisa, Johnson, Medeiros, Pontanilla, Victorino, Vice-Chair Hokama, and Chair Mateo.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Molina.

MOTION CARRIED.

ACTION: Recommending APPROVE all State proposed bills and corresponding justification sheets for inclusion in the 2009 HSAC Legislative Package; and TRANSMITTAL of copy of the committee report to the HSAC Executive Committee.

CHAIR MATEO: Motion is carried. Please note eight ayes, one excused – Member Molina. Members, thank you very much.

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ITEM NO. 48: DONATION TO DEPARTMENT OF HOUSING AND HUMAN CONCERNS, KAUNOA SENIOR SERVICES (1996 JEEP GRAND CHEROKEE FROM MARK AND ANNA RAMSEY) (C.C. No. 08-108)

CHAIR MATEO: We're going to move on to the second item on our agenda for today, that's Policy No. 48 – Donation to the Department of Housing and Human Concerns, Kaunoa Senior Services, a 1996 Jeep Grand Cherokee from Mark and Anna Ramsey. And, Members, we will note that we have a change from Administration, we have present with us the Deputy Director of the Department of Housing and Human Concerns, Lori Tshako; and we have our Deputy Corporation Counsel, Kimberly Sloper with us this afternoon.

Members, this particular item we're rather familiar with. We met on this item a few months ago, and during that discussion we had specific issues regarding the donation of the Jeep as well as information that was listed on the resolution in terms of the Blue Book value of this particular Jeep. And as you looked and saw in your binders, we do have a communication dated July 28, 2008, from Deputy Director Lori Tshako that responded to the concerns that was addressed by Committee members. The Deputy Director is here today to respond to any additional questions or comments that the Members may have. And at this time, we'll open the floor for questions. Mr. Pontanilla, go ahead.

COUNCILMEMBER PONTANILLA: It's not a question but I just want to thank the Department for providing the vehicle inventory. The inventory list is the first I've seen for any department in Maui County. And as we go through hard times regarding fuel costs, you know, I would like to have the other departments follow the lead of the Housing and Human Services in providing us with their vehicle fleet inventory. Thank you.

CHAIR MATEO: Thank you, Mr. Pontanilla. Members, additional questions for the Department? Mr. Victorino?

COUNCILMEMBER VICTORINO: So the only question I have is, I've seen you folks here on the back page, Exhibit B, you've used the retail price, right? You've used the Blue Book's suggested retail value of the Jeep Cherokee, yeah?

MS. TSUHAKO: That's correct.

COUNCILMEMBER VICTORINO: Okay. I just wanted to verify that that's the way you arrived at it. And thank you, at least now you've shown us and we have a better feel on what the actual value is. Thank you, Lori.

MS. TSUHAKO: Thank you.

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CHAIR MATEO: Thank you, Mr. Victorino. Members, additional questions? Chair . . . seeing that there are no additional questions, the Chair recommends the adoption of the revised resolution entitled "AUTHORIZING ACCEPTANCE OF DONATION OF A 1996 JEEP GRAND CHEROKEE FROM MARK AND ANNA RAMSEY TO THE DEPARTMENT OF HOUSING AND HUMAN CONCERNS, KAUNOA SENIOR SERVICES, COUNTY OF MAUI, PURSUANT TO CHAPTER 3.56, MAUI COUNTY CODE".

COUNCILMEMBER VICTORINO: So moved.

COUNCILMEMBER MEDEIROS: Second.

CHAIR MATEO: Thank you very much. Members, the Chair would also, with no objections, like to include the filing of the communication as well. It's been moved by Mr. Victorino, second by Mr. Medeiros. Any additional discussion? Mr. Hokama, go ahead.

VICE-CHAIR HOKAMA: Chairman, I would be supporting your recommendation with reservations. First, let me just state that while I appreciate the gesture and the donation is appreciated, I think what we need to have this Department and all departments, maybe through the Department of Finance, is to develop standards of what the County will be considering to accept as donations. I just bring into focus with this particular donation we are looking at a 12-year vehicle, a V-8 engine that utilizes more gas than would like to use for this type of programs, and that it may cost us more to maintain and operate this vehicle than to purchase a newer fuel efficient model that has longer longevity for use of the Department. So I would ask that as we move forward, it may be wise for us to have this policy developed by the Administration as well as having to be able to comply with all State Statutes regarding its registration and inventory certification by the department heads. I'm sure that our inventory is accurate and reflects truly what is under the responsibility of the County of Maui. Thank you.

CHAIR MATEO: Thank you, Mr. Hokama. Additional comments, Members? Ms. Johnson?

COUNCILMEMBER JOHNSON: I just wanted to thank the Department for getting this updated vehicle information and the inspection report because as was noted in the inspection report it has 78,000 miles on it, fuel efficiency is 12 miles per gallon. So, knowing that this is a back-up vehicle; however, I think that it wouldn't be the standard thing that hopefully the vehicles that we're purchasing get better mileage. But I think also amending the resolution to reflect more closely what the Kelly Blue Book value is, uh, is certainly something that we support because when people take donations of things I think it should be honest and accurate. Thanks very much.

MS. TSUHAKO: Thank you.

CHAIR MATEO: Thank you, Ms. Johnson. Additional . . . Mr. Pontanilla, go ahead.

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COUNCILMEMBER PONTANILLA: Thank you. And maybe a question for the Department. In regards to this donation, this would be part of your fleet. When time to be replaced . . . what I'm trying to say is that because this is an acceptance of a donation, does it become part of your fleet so that when it becomes time to replace a unit, like this unit here, how do we handle replacing a unit that is donated to the County?

CHAIR MATEO: Deputy?

MS. TSUHAKO: Mr. Pontanilla, I don't know the answer to that question. My understanding is that the vehicle that is proposed for acceptance as a donation today is going to be used only in the event that one of the fleet vehicle is down. I don't think that necessarily the Department would ask when this vehicle goes down for a replacement for as a back-up vehicle. By then, we should have a more long-range plan for our vehicle replacements. I don't anticipate the Department making a request for this . . . replacement of this vehicle.

COUNCILMEMBER PONTANILLA: Thank you. And maybe just for your information, if you could check with whomever do the fleet purchasing for Maui County to investigate. I know we've accepted other vehicles as donation so I don't know if you do have something in place in regards to vehicles that were donated and now needs to be replaced or be junked.

MS. TSUHAKO: Okay. Thank you very much; I will.

COUNCILMEMBER PONTANILLA: Thank you.

CHAIR MATEO: Thank you, Mr. Pontanilla. Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair, and I have one quick question. Lori, do you guys have a what you call a regular rotation of vehicles as far as this one has aged enough, time to get a new one? Is there something cause I thought Parks said they had something and certain other divisions, like Highways has like a time frame or mileage as their benchmark? Do you guys anything cause I noticed you folks have '97, '92, '93 . . .

MS. TSUHAKO: And I'm going to be asking for those to be replaced when we need them.

COUNCILMEMBER VICTORINO: Oh, okay. I shouldn't have asked that question then.

MS. TSUHAKO: So, thank you for your support. I appreciate that. I don't know what the written policy is of the Department in terms of if the cars are replaced at ten year intervals or at mileage intervals. But I can certainly find that out and also we'll check with the purchaser of the fleet vehicles to check and see if there is a policy on replacing those replacement vehicles.

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COUNCILMEMBER VICTORINO: And one more question, and only because I'd like to know. You know under the section assigned and I'm not always familiar with the sections, what is AT?

MS. TSUHAKEO: "AT" stands for Assisted Transportation.

COUNCILMEMBER VICTORINO: Thank you. I just needed to know that. Thank you very much. Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Victorino. Okay. Members, Chair will call for the question. All those in favor, signify by saying aye? Those opposed?

VOTE: AYES: Councilmembers Anderson, Baisa, Johnson, Medeiros, Pontanilla, Victorino, Vice-Chair Hokama, and Chair Mateo.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Molina.

MOTION CARRIED.

ACTION: Recommending ADOPTION of revised resolution and FILING of communication.

CHAIR MATEO: Motion is carried. Eight ayes, one excused – Member Molina.

ITEM NO. 54: ADOPTION OF ADMINISTRATIVE RULES FOR THE
RESIDENTIAL WORKFORCE HOUSING POLICY (C.C. No. 08-183)

CHAIR MATEO: Members, we're going to move on to the third item on our agenda this afternoon – Policy Item No. 54, Adoption of Administrative Rules for the Residential Workforce Housing Policy. Members, Ordinance No. 3418 was enacted on December 5, 2006 and established Chapter 2.96, Maui County Code, relating to the Residential Workforce Housing Policy. Section 2.96.120 of the Maui County Code required the Department of Housing and Human Concerns to adopt Administrative Rules to implement the chapter within 180 days after the effective date of the ordinance. The Administrative Rules should have been adopted by June 3, 2007. We're more than a year overdue at this point. If you will . . . you saw in your binders we did receive a communication from the Housing Commissioner dated August 28, 2008, and she did

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provide additional information in providing her information on the reason for the delay in the Administrative Rules to be completed. And she also indicated towards the end of Page 2 that the final draft was submitted on Tuesday, August 19, 2008, to the Office of the Corporation Counsel for review as to form and legality, and it is anticipated that those Rules would go to public hearing in October of 2008. So, Members, we have the opportunity of having Ms. Ridao with us this afternoon. And the Chair would offer her the opportunity to expand on her communication to this Body and to provide additional information.

MS. RIDAO: I don't . . . um . . . thank you, Mr. Chair. I don't really have any additional information for you this afternoon except that the Rules are with Corp. Counsel and we're hoping that a months time for Kim to look at them. A month will be enough for her to get back to us. And if that happens, then we will do the public announcements for the public hearing and hopefully go out to public hearing in October.

CHAIR MATEO: Okay, thank you. Members, questions for Ms. Ridao? Ms. Anderson?

COUNCILMEMBER ANDERSON: I'm just wondering if she could describe the public hearing process so people are aware of what . . . (*inaudible*) . . .

MS. RIDAO: My understanding is that once the draft has been approved as to form and legality, we would publish a notice to the public in *The Maui News* for a 30-day period. And I'm not sure if it goes out once a week for four weeks, but whatever that requirement is we will do. We'll notify the public by publishing in *The Maui News*. My plan is also to notify the key nonprofit organizations as well as you can see the members of the Administrative Rules Committee of that public hearing so that we'll get the best response and feedback from the public as we can.

CHAIR MATEO: Ms. Sloper, would you like to provide any additional information?

MS. SLOPER: I believe Ms. Ridao covered the basis as far as what is involved in the public hearing. The notice would go out in the newspaper and give the public an opportunity to comment on the draft rules. They'll be notified in the paper as well that copies of the proposed rules will be available for their review prior to the hearings. And that they can either appear at the hearings or offer written testimony as well.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. So, really what I'm more interested in is, I know there will be a notification in the paper but are you going to have these rules, um, a hearing for these rules on Molokai and Lanai as well as Maui or just one hearing on Maui? And is it just one hearing or will there be maybe two or three hearings? And where will they be? Where are they going to take place and who's going to, will it be your office who will, you know, manage the public hearing and take the public testimony? Is there any need for this to go to the Planning Commission?

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MS. RIDAO: Gosh, I can't answer the question about the Planning Commission. But my envision of doing this would be to have a hearing on each island so that each island has the opportunity to comment. And I appreciate your comment about more than one hearing because Maui is a big island so we may want to talk about two or three hearings in different districts so that people can comment. But that is the direction that I would like to go, and so that we can get the best feedback possible.

COUNCILMEMBER ANDERSON: Okay. Thank you, Mr. Chairman.

CHAIR MATEO: Thank you. Ms. Johnson?

COUNCILMEMBER JOHNSON: Yes, Jo-Ann, and I'm just looking at the participants that helped assist with the drafting of these rules, and because many of the people that came forward, I think Mr. Franco and also people from Habitat for Humanity and other entities, I realize you can't have everybody on this particular panel, but is the reason that it was largely developers and developer's representatives is that because they would be the logical people that would be partnering with the County in the implementation of a Workforce Housing Policy? Is that the basic reasoning?

MS. RIDAO: I think that was one of the reasons. The other reason was, if you'll notice, the developers that are on this committee were going through a Workforce Housing Agreement at the time and so we felt that it would be real good, to get feedback from people who are actually experiencing what was going on.

COUNCILMEMBER JOHNSON: Yeah, and cause I know that even though we have no control over these Admin. Rules I think that because of, you know, continual criticism that we've received about other situations where you have a certain representation whether it's the General Plan or the Community Plan or participants in boards and commissions, you know, we always have to let people know that the individuals that contributed to the drafting or to what the final product is are not swaying what the public would want to see in Administrative Rules to basically sway in their favor, if you understand what I'm saying.

MS. RIDAO: I understand what you're saying. I think if you look at the committee, we had some very strong people from the nonprofit community. John Andersen, who is here today as the Chair, had very important input from his point of view. We had Lokahi Pacific on the panel. We also had Gayle Revels and the reason we asked for Gayle, unfortunately she couldn't attend as much as we would like to, was that she sat here through the whole process of that law and she could explain to us what she felt the intent of the Council was. So that was very important for us to understand. And so I, personally, felt that we had a real good representation from both sides of the table. We were very fortunate to have Kim Sloper with us for several of the meetings. So we had really good discussions and I would say that the nonprofit entities were well represented.

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COUNCILMEMBER JOHNSON: Okay. I just want to make sure that if the average citizen looks at this and once again go, oh, yeah, you know, same players in, you know, the usual comments that are not always positive but negative and suspicious about having self-serving interests and so I just want to assure people that you've done everything possible and, of course, the public will have an opportunity to comment also if there are things that they don't find best served the interest of the people, which is principally why we drafted the legislation in the first place.

MS. RIDAO: Right. And I appreciate your comments. Thank you.

COUNCILMEMBER JOHNSON: Thank you.

CHAIR MATEO: Thank you. Members, additional comments? Seeing none. Members, at this point, with no objections, because this body we have not actually seen what's been submitted to Corporation Counsel, because it's going to be forwarded for public review, public participation and the Chair would, with no objections, like to defer this item.

COUNCILMEMBERS BAISA AND VICTORINO: No objections.

CHAIR MATEO: Thank you. Mr. Hokama.

VICE-CHAIR HOKAMA: Chairman, I'm happy to support your deferment of this item. I would just hope that the rules, if any, helps to implement a legislative policy and that in no way will the rules try and circumvent the intent of the legislation. I think we need to be clear that also in the legislation . . . *(change tape to side 1B)* . . . Mr. Chairman, has already put on a clock that would require Council to re-review the policy and make appropriate adjustments that would be required for it to be even more effective and meaningful to our communities. And I'm hoping that the rules does not, in itself, become an impediment in us moving our Housing Policy forward, Chairman. Thank you.

CHAIR MATEO: Thank you, Mr. Hokama. Point well taken. Members, we're going to go ahead and defer this particular item. As a reminder, Members, we still have no one who has made any approach to the podium area for testimony, so without any objections, the Chair would like to close public testimony at this time.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: MJM)

ACTION: DEFER pending further discussion.

CHAIR MATEO: Thank you. Testimony, public testimony is now closed.

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ITEM NO. 4(8): INDEMNIFICATION AUTHORIZATION (DOLORES ABREU V. HERBERT KINORES, JR., CIVIL NO. 07-1-0216(1)) (C.C. No. 07-9)

CHAIR MATEO: Members, we're going to move on to our last item for the day - Policy 4(8), indemnification authorization (Dolores Abreu v. Herbert Kinores, Jr., (Civil No. 07-1-0216(1))). Members, you can follow along with me on the agenda. On August 13th from the Department of the Corporation Counsel, correspondence requesting consideration of a proposed resolution to indemnify Herbert Kinores. In addition to that proposed resolution is a copy of the complaint. And the complaint alleges that on December 20, 2006, Dolores Abreu suffered injuries when her vehicle collided with a garbage truck operated by Herbert Kinores, Jr. And the purpose of the proposed resolution is to indemnify Herbert Kinores, Jr., a County employee in this case. And Members, from the Department of Corporation Counsel this afternoon we have Deputy Corporation Counsel Cheryl Tipton with us this afternoon. The Chair will ask Ms. Tipton to provide additional comment and then we will open the floor up to questions. And also, Members, approaching the front, we also have Tracy Takamine from Solid Waste Division. He's the Division Chief, Department of Environmental Management. Ms. Tipton?

MS. TIPTON: Thank you, Chair, Mr. Chair, and Members of the Committee. I would like to remind you that this is a pending case and I don't believe an executive session will be necessary. However, if there are any questions that go to the defense of the matter or strategy related to the defense, it will need to be discussed in an executive session.

Briefly, around 5:45 a.m. on December 20, 2006, the Plaintiff, Dolores Abreu, was driving south on Kula Highway heading to work. Herbert Kinores, Jr. was operating a large light colored garbage truck owned by the County within Keone Place at the intersection of Keone Place and Kula Highway. Keone Place is just a little bit south of Omaopio Road. Plaintiff claims that a portion of the garbage truck was protruding onto the highway. Plaintiff Abreu broad-sided the garbage truck. Ms. Abreu alleges she was injured as a result of the accident on June 15th. And on June 15, 2008, she filed a lawsuit against the County and named Mr. Kinores as an individual defendant. Corporation Counsel requests and recommends that the County indemnify Mr. Kinores in this matter.

CHAIR MATEO: Thank you, Ms. Tipton. Mr. Takamine, would you like to provide a comment?

MR. TAKAMINE: No additional comments at this time.

CHAIR MATEO: Okay, thank you. Members, the floor is open for questions for Corporation Counsel or the Department? Ms. Johnson?

COUNCILMEMBER JOHNSON: Yeah, this would just be general information. But whereabouts exactly is Keone Place?

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MS. TIPTON: I just went there yesterday to find it myself. If you're going south toward the post office on Kula Highway, just beyond the Omaopio Road, you know, Omaopio crosses Kula Highway, it's probably my guess is 300 feet or so beyond that. It's a very small road on the downhill side of Kula Highway.

COUNCILMEMBER JOHNSON: And that subdivision where garbage is collected along Kula Highway that's an Ag subdivision or . . .

MS. TIPTON: I don't know. I believe it would be but I know Mr. Takamine explained that all of the residents on that one little street bring their refuse up to Kula Highway for collection.

COUNCILMEMBER JOHNSON: Okay. So it's a collection point then where it's not individual homes are being . . .

MS. TIPTON: Yes.

COUNCILMEMBER JOHNSON: Okay. Because I was going to say this is really strange to have, I guess, garbage collection now in Ag Districts. So, anyway, thank you.

CHAIR MATEO: Thank you, Ms. Johnson. Members, additional questions for Corporation Counsel or Mr. Takamine? Mr. Hokama?

VICE-CHAIR HOKAMA: Just quickly, is the Committee correct in its assumption that the Plaintiff hit the County truck and the County employee? Who hit who in this alleged accident?

MS. TIPTON: The Plaintiff struck the County truck.

VICE-CHAIR HOKAMA: Okay. And I'm assuming that everything is part of the normal routing that the County does on its scheduled days pickup within it's scheduled time of normal pickups, Mr. Takamine?

MR. TAKAMINE: That's correct.

VICE-CHAIR HOKAMA: It's not a new, you know, variation of a schedule or different timing or different type of equipment or different procedures in place

MR. TAKAMINE: No. That's their normal scheduled pick up. On Kula Highway, they have numerous stops that they stop along the highway, and depending on the area they might be parked on Kula Highway itself while they're picking up trash.

VICE-CHAIR HOKAMA: And just for the Committee's understanding, Mr. Takamine, this is a three-man crew type of operation or is this just an individual employee with the equipment?

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MR. TAKAMINE: This is manual pick up with a driver and two refuse collectors on the rear.

VICE-CHAIR HOKAMA: And we are aware that it's just an individual . . . you know, Mr. Kinores is the only one named individually so can you tell us in this open session because he was the driver and, therefore, the other two employees are not part of this consideration at all?

MS. TIPTON: I believe that's correct. I think, and also that the others were not even in the truck at the time. They were collecting the refuse.

VICE-CHAIR HOKAMA: Can you answer whether they assist in traffic control?

MR. TAKAMINE: Normally they don't. The normal procedure is when they're moving with the vehicle they get off the vehicle and as the driver maneuvers the truck they're pulling out the cans and so basically there's no individual that just does traffic control. They may do it if they see traffic coming up but normally they're moving pretty fast just grabbing the carts.

VICE-CHAIR HOKAMA: We understand that. Can we make that correct assumption – our truck was stationary but was it in the moving . . . Can you answer that, Councilor?

MS. TIPTON: I can answer that. From all evidence that we have so far, it was stationary.

VICE-CHAIR HOKAMA: Thank you very much. Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Hokama. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. . Council Chair Hokama asked many of the questions I wanted to ask but am I assuming correctly that the starting time for the refuse crews are at 5:30?

MR. TAKAMINE: It's a, at that time it was 5:30. It's correct.

COUNCILMEMBER MEDEIROS: So at 5:30 in Kula it's fairly dark, is that correct? Because the sun comes up from Hana side and Haleakala blocks it off until late morning. So is it collected in the dark?

MR. TAKAMINE: I don't know about that particular time but, yes, if it's during the winter season they sometimes will be picking up trash in the dark.

COUNCILMEMBER MEDEIROS: Okay, so this was what month of the year?

MS. TIPTON: December 2006.

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COUNCILMEMBER MEDEIROS: Okay, so we're talking winter time then so it was dark. So this was a truck out of the Makawao baseyard?

MR. TAKAMINE: That's correct.

COUNCILMEMBER MEDEIROS: So 5:30 they start and 5:45 they're already picking up in Kula?

MR. TAKAMINE: I don't know what time. I forgot what time the accident . . .

COUNCILMEMBER MEDEIROS: I think somebody mentioned 5:45.

MS. TIPTON: 5:45, about 5:45 to 6:00.

MR. TAKAMINE: That's correct.

COUNCILMEMBER MEDEIROS: Do you know if the warning lights on the truck were on, the beacon light in the back and the hazard lights of the truck?

MS. TIPTON: We know that the beacon light was on and the headlights were on.

COUNCILMEMBER MEDEIROS: What about the hazard flashers?

MR. TAKAMINE: That I couldn't tell you off hand. And there's also normally, they have two spotlights on the back.

COUNCILMEMBER MEDEIROS: Right. So this vehicle that hit the County truck was approaching the front direction of the truck or the rear direction?

MS. TIPTON: Front.

COUNCILMEMBER MEDEIROS: Front direction. Okay.

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MS. TIPTON: Excuse me, just a minute.

(MS. TIPTON AND MR. TAKAMINE CONFERRING WITH EACH OTHER)

MR. TAKAMINE: They were both traveling south but when the vehicle hit the truck it hit the front end of the truck which was sticking out on Kula Highway.

COUNCILMEMBER MEDEIROS: Okay, so the truck, the refuse truck was kind of backed in to the area . . .

MR. TAKAMINE: That's right. It was at an angle.

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COUNCILMEMBER MEDEIROS: So the front was protruding out --

MR. TAKAMINE: Yes.

COUNCILMEMBER MEDEIROS: --into the highway.

MR. TAKAMINE: Left front.

COUNCILMEMBER MEDEIROS: Okay. So that vehicle hit the front of the County truck.

MR. TAKAMINE: Left-front side.

COUNCILMEMBER MEDEIROS: Okay. So the other two crewmen were picking up the cans or emptying it into the truck?

MS. TIPTON: That's correct.

COUNCILMEMBER MEDEIROS: Can you tell me how far into the traveled lane the truck was protruding?

MS. TIPTON: We don't have that information at this time.

COUNCILMEMBER MEDEIROS: Did a police report, was that done?

MS. TIPTON: Yes, there was.

COUNCILMEMBER MEDEIROS: And was there a sketch on the police report?

MS. TIPTON: There is.

COUNCILMEMBER MEDEIROS: And it should show distances and measurements?

MS. TIPTON: I'll double check but I don't recall seeing the actual distances.

COUNCILMEMBER MEDEIROS: Okay. And you said Keone Road, is that correct?

MS. TIPTON: Keone Place.

COUNCILMEMBER MEDEIROS: Keone Place. And can you tell me the width of the pavement on that road being that it was narrow?

MS. TIPTON: I don't have that information at this time. It's a very, visually it's a narrow area.

COUNCILMEMBER MEDEIROS: So being that it's a narrow area and our truck was backed into the pick up location it may have been protruding fairly far out?

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MS. TIPTON: We don't have information and I don't want to commit ourselves at this time. I think those are questions that might need to be asked in executive session.

COUNCILMEMBER MEDEIROS: Okay. Thank you. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. Where the County truck was parked, was it around a curve or line of sight was clear for the driver?

MS. TIPTON: When you come up Kula Highway toward Omaopio Road it crests at Omaopio. But from there on it's a clear view.

COUNCILMEMBER PONTANILLA: Okay, thank you.

CHAIR MATEO: Thank you. Members, additional questions for Corporation Counsel? Seeing none. Members, Corporation Counsel indicated her feeling that there will be no need for executive session for the proposed indemnification. If there are Members who wish to go into executive session, please make yourself known at this time. Thank you. Members, the Chair would recommend adoption of the proposed resolution entitled "INDEMNIFYING HERBERT KINORES, JR., IN DOLORES ABREU V. HERBERT KINORES, JR., ET AL., CIVIL NO. 07-1-0216(1)".

COUNCILMEMBER PONTANILLA: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR MATEO: It's been moved by Mr. Pontanilla, second by Mr. Victorino. Additional discussion, Members? Hearing none. We'll call for the question. All those in favor signify by saying aye? Those opposed?

VOTE: AYES: Councilmembers Anderson, Baisa, Johnson, Medeiros, Pontanilla, Victorino, Vice-Chair Hokama, and Chair Mateo.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Molina.

MOTION CARRIED.

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ACTION: Recommending ADOPTION of resolution.

CHAIR MATEO: Thank you, Members. Motion is carried. Eight ayes and one excused – Member Molina. At this point, Members, we have gone through our agenda for the day. Thank you all very much. Are there any additional announcements at this time? Seeing none? Thank you all very much. The meeting of the Policy Committee for September 2, 2008 is adjourned. . . .(gavel). . .

ADJOURN: 2:21 p.m.

APPROVED:



DANNY A. MATEO, Chair
Policy Committee

pol:min:080902

Transcribed by: Jo-Ann Sato