

MINUTES

of the

COUNCIL OF THE COUNTY OF MAUI

December 12, 2019

THE SPECIAL MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBER, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON THURSDAY, DECEMBER 12, 2019, BEGINNING AT 1:00 P.M., WITH CHAIR KELLY T. KING PRESIDING.

CHAIR KING: Okay. Good afternoon. It's one o'clock. I'm calling the special meeting of Council, special Council meeting of December 12, 2019, to order. And thank you, Members for, for attending this special meeting so that we could get some time-sensitive items addressed today.

I think we'll go through, Mr. Clerk, do you want to do roll call first and then we'll go through testimonies?

ROLL CALL

PRESENT: COUNCILMEMBERS G. RIKI HOKAMA, ALICE L. LEE, MICHAEL J. MOLINA, SHANE M. SINENCI, YUKI LEI K. SUGIMURA, VICE-CHAIR KEANI N.W. RAWLINS-FERNANDEZ AND CHAIR KELLY T. KING.

EXCUSED: COUNCILMEMBERS NATALIE A. KAMA AND TAMARA A.M. PALTIN.

(Councilmembers Paltin and Kama were not present when the roll call was called; however, they arrived at 1:02 p.m. and 1:03 p.m. respectively.)

COUNTY CLERK JOSIAH K. NISHITA: Madam Chair, there's seven Members present. A quorum is present to conduct the business of the Council.

CHAIR KING: Okay. Thank you, Mr. Clerk. And can we go right into testimony?

COUNTY CLERK: Madam Chair, proceeding with the presentation of testimony on agenda items. We have established limited interactive communication that enables individuals from Hana, Lanai, and Molokai, to provide testimony from our District Offices.

Individuals who wish to offer testimony from Hana, Lanai, and Molokai, should now sign up with District Office staff. Individuals who wish to offer testimony in the chamber, please sign up at the desk located in the eighth-floor lobby just outside the chamber door. Testimony at all locations is limited to the items listed on today's agenda.

When testifying, please state your name and the name of any organization you represent. Please also identify to the Council if you are a paid lobbyist.

Currently, we have five testifiers signed up to testify in the Council chamber.

The first person to testify is Byron Fujieda, testifying on Committee Report 19-151. To be followed by George Grace.

CHAIR KING: Okay. Thank you, Mr. Clerk. And then while he's coming down, please, everyone if you could silence your cellphones and other noisemaking devices.

(Councilmember Paltin arrived to the meeting at 1:02 p.m.)

CHAIR KING: Oh, welcome, Councilmember Paltin. Thank you for being here.

And also, just to let you know, if you haven't testified before, it's a three-minute testimony. The green light goes on when you start. When the yellow light comes on, you have thirty seconds. And then the red light goes on when your time is up.

Okay. Thank you for being here.

PRESENTATION OF WRITTEN OR ORAL TESTIMONY

MR. BYRON FUJIEDA, DEPUTY PROSECUTING ATTORNEY (testifying on Committee Report 19-151):

Thank you. My name is Byron Fujieda. I'm with the Maui County Prosecutors Office and also as a citizen of the County of Maui, testifying in support of the bill allowing the police, the Maui Police Department to tow vehicles in certain situations.

It's a privilege being in front of you to speak about this as I've been working in the operating a vehicle under the influence of intoxicants for many years. And to see this type of movement in a community is very enlightening for me and a privilege as well to stand before you to speak in support of it. I believe that this step forward to address the tragedies that has been affecting our community for so many years is, is such a positive movement forward for us.

(Councilmember Kama arrived to the meeting at 1:03 p.m.)

DEPUTY PROSECUTING ATTORNEY FUJIEDA: I've seen cases come through our office where people who drive while intoxicated after arrest, bail out, and get back into the vehicles and create more dangerous situations for our community. And I believe this bill will address some of the issues that face us today in our community. Allowing to get that dangerous weapon off the roadway will protect the innocent lives, protect from injury as well, for those of us we hold dear to us in our hearts.

Notwithstanding the other provisions where these people operating these vehicles are not allowed to drive anyway, or those vehicles are not supposed to be on the roadway. This will be an effective tool for law enforcement to address these issues, protect our community, and protect the ones we hold dear, so they can come and travel safely upon our roadways. And you know, that's pretty much all I have. Thank you so much.

CHAIR KING: Thank you, Mr. Fujieda. And thank you for your support. It's been really great to work with the Prosecutors Office on these issues.

DEPUTY PROSECUTING ATTORNEY FUJIEDA: Thank you so much, Chair King.

CHAIR KING: Alright. Mr. Molina, you have a question?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good afternoon, Mr. Fujieda. Thank you for your comments. The bill as currently it, as you see it, do you believe it's a strong enough deterrent? Because, the way the bill as I see it, it's like it's adding further punishment after the crime, like, the person who got in the car drunk and then something happens. But I guess my, the way I see it, how do we just make it tough enough where that guy who decides or the lady who decides to drink and get in the car, cause it sounds like, okay, this is, it's after the fact, you know. You caught the guy and you're just adding, you know, further punishment. So, do you see it as maybe we need to strengthen it in certain areas and make it more of--

CHAIR KING: If you could, Mr. Fujieda, if you could be brief because we will be, you'll be around when we address this issue?

DEPUTY PROSECUTING ATTORNEY FUJIEDA: Yes. To answer your question, I believe it is a deterrent for one, for people to realize that if they do drive while intoxicated, they may get their vehicle towed. As in regards to additional punishment, one can look at it that way, but I don't really look at it as a punishment; I look at it as in a broader picture of protecting the citizenry of, of our County and not allowing this dangerous weapon or that person to get back into the vehicle to perhaps cause more tragedy within our community.

COUNCILMEMBER MOLINA: Okay. Thank you. I'll have more questions once we get to the subject matter.

CHAIR KING: Okay. And we have our Prosecuting Attorney in, in the room too. So, we can ask him--

COUNCILMEMBER MOLINA: Resource.

CHAIR KING: --to be a resource.

DEPUTY PROSECUTING ATTORNEY FUJIEDA: And, and, and to answer your question, I believe that, you know, for additional punishment, I don't know how much the Council can do beyond this as we do have Hawaii Revised Statutes that do address certain factual situations as well.

COUNCILMEMBER MOLINA: Okay. Thank you.

DEPUTY PROSECUTING ATTORNEY FUJIEDA: Thank you.

COUNCILMEMBER MOLINA: Thank you, Madam Chair.

CHAIR KING: Thank you, Mr. Molina. Okay. Thank you for that testimony for . . . questions.

DEPUTY PROSECUTING ATTORNEY FUJIEDA: Thank you.

CHAIR KING: And also, I'd like to welcome pro, Councilmember Pro Tem Tasha Kama. Thank you for joining us.

COUNCILMEMBER KAMA: Good afternoon, Chair.

CHAIR KING: Good afternoon.

Mr. Clerk.

COUNTY CLERK: Next testifier is George Grace, testifying on Committee Report 19-151.
To be followed by Andrea Maniago.

MR. GEORGE GRACE (testifying on Committee Report 19-151):

Aloha.

CHAIR KING: Aloha.

MR. GRACE: My name is George Grace. I come from Oahu, Kapolei. My family and I own a company called Pinky Tows Hawaii. And I saw this thing on the news about what you guys were trying to do and I want to say that it's unbelievable; my own county cannot even support something like this, where we from. They can learn a lot from you guys today.

I'm here to support it from, from a residential side as a taxpayer, also as a business with open liability. What I mean by that is, in our county, when they tow somebody's car for DUI, it's called a traffic hazard. We don't know it's a DUI. So, when the people come to pick up the car, they reek of alcohol, they can barely walk, slurred speech, we got to release the car to them. We've witnessed people bail cars out from our tow yard very, very intoxicated.

So, we took our problem back to the City and asked them for help with this, because if this guy kills somebody, it comes back to me. We released the car to him. In our contracts, we cannot sue the City for something like this. So, we went back to the City and the City says, go back to your contractor. Our contractor don't want to even talk about it. So, it kind of holds us responsible.

And you try deny somebody drunk their car. You only escalate to another problem. So, we had to come up with our solution and call the Police Department and let them decide if this guy should have his car or not. You know, our County couldn't protect us. Please protect the tow company and the people of Maui. You don't want them picking up their car impaired and, and, and hurt somebody else.

We thought about things like maybe we got to hold the car for 24 hours. But the guy could go home and drink for 24 hours and come back, and he's still drunk. We don't know. We're not trained to know if somebody is slightly impaired. We can only see the obvious.

But if you're going to put something, some kind of language in there to protect the tow company, you got to protect the City too. So, you know, we came up with some ideas of maybe when they release one car for DUI, one officer got to come and release the car with us, so that they can say this guy is still drunk. Because the City, the mistakes that the City make, we all pay for um and that's not good either. Saving a life is, is great. I mean, you guys are doing wonderful things. I'm honored to come here today and testify on this. I wish my county could do things like this. Thank you for letting me speak.

CHAIR KING: Thank you, Mr. Grace. We're honored to have you here too. Thank you for that information.

MR. GRACE: Thanks.

CHAIR KING: We'll follow up with that when we get to the item, as far as the issues of the pick-up time. So, thanks for giving us--

MR. GRACE: Thank you.

CHAIR KING: --that to think about as well. Any questions for our testifier? If not, okay, thank you so much for coming over from Oahu.

Mr. Clerk.

COUNTY CLERK: Next testifier is Andrea Maniago, testifying on Committee Report 19-151. To be followed by Mark Simonds.

MS. ANDREA MANIAGO (testifying on Committee Report 19-151):

My name is Andrea Maniago. I've spoken at the last meeting, but I just wanted to say again how much I am in support of this bill. This bill is in place not to punish anyone that is following the laws of our roadways. I believe it's a bill that will make a difference.

Today, I read the Maui News article. It stated that we have already had 15 DUI traffic deaths, which is about the same as last year. Reading that made me so angry. When is enough going to be enough? When does that, when does our community say enough? That number 15 speaks volumes to me. What do you think will happen in 2020? Honestly, I think if there is no action taken, then that number 15 will stay the same in 2020, if not, more.

Fifteen deaths is not just a number to me. In 2009, my son Kyle was number 10. People seen it just as a number. I seen it as the worst day I will ever experience. Please pass this bill. Let's make a difference. Let's be the difference. Let this be enough. Thank you.

CHAIR KING: Mahalo, Ms. Maniago. Any questions? Can you answer one question?

Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: So, I'm, I'm not sure if you said so, but you represent MADD?

MS. MANIAGO: MADD. Yes, I'm a volunteer for MADD, yes.

COUNCILMEMBER SUGIMURA: Okay, I think that's important, because you've been doing this for 10 years?

MS. MANIAGO: Ten years, yes.

COUNCILMEMBER SUGIMURA: You said at previous meetings? Thank you.

MS. MANIAGO: Yes. Thank you.

COUNCILMEMBER SUGIMURA: Thanks for being here.

MS. MANIAGO: Thank you.

COUNCILMEMBER SUGIMURA: Thanks for that question. Good clarification.

Mr. Clerk.

COUNTY CLERK: Next testifier is Mark Simonds, testifying on Committee Report 19-151. To be followed by Claire Kamalu Carroll.

MR. MARK RYAN SIMONDS, DEPUTY PROSECUTING ATTORNEY (testifying on Committee Report 19-151):

Hi. Good afternoon, everyone. And again, as Byron Fujieda stated, my colleague, it's a pleasure to be here to testify and a great honor. I am a colleague of Mr. Fujieda. I'm a Deputy Prosecuting Attorney. It's a position I've held a little over 28 years. And in

my experience, I've prosecuted serious felony impaired driving cases, tried approximately six to verdict. My current responsibilities include Lahaina District Court.

Read the article this morning in the Maui News. I fully support this bill. I wanted to bring up one scenario that I'd like to speak to. And as a Deputy Prosecutor assigned to prosecute cases in Lahaina, which is a resort area, which includes a lot of OUI type scenarios, there's a common situation where you have a car full of impaired or drunk individuals, including the driver. If the driver is stopped, pulled over and there's enough evidence or probable cause to arrest a driver for DUI, the police are left with a situation where you have a vehicle on the side of the road and you had several adult individuals who are also impaired, and what do you do? They haven't committed any crime.

I say give the police the tool, give them the discretion to seize the car and impound it and have it towed and basically save a life from a potentially tragic situation where you have another individual stepping up after the police leave to drive that car impaired and possibly hurt or kill someone. I just want to say I appreciate the families that are here.

You know, I've handled these cases where there were multiple deaths. I had a case in about 2013, it was the crash Upcountry. Five young people lost their lives. I'm not saying this bill would, would address that specific situation, but I say give the police every tool that they can use to avoid potentially tragic situations. Thank you very much.

CHAIR KING: Thank you, Mr. Simonds. And just to clarify, because you used the term OUI; that's operating under the influence?

DEPUTY PROSECUTING ATTORNEY SIMONDS: Our current law defines impaired driving; the title of the offense is called operating under the influence of an intoxicant.

CHAIR KING: Okay.

DEPUTY PROSECUTING ATTORNEY SIMONDS: And for short, we refer to it as OUI.

CHAIR KING: Okay. And was that an attempt to clarify that you don't have to actually be driving, you just have to be behind the wheel with the key turned?

DEPUTY PROSECUTING ATTORNEY SIMONDS: If there is sufficient evidence to establish that the person was driving the vehicle. We have prosecuted people that are in the, in that situation, where they're behind the wheel with the key in the ignition.

CHAIR KING: Okay.

DEPUTY PROSECUTING ATTORNEY SIMONDS: I have one currently pending. And I won't get into the details of that--

CHAIR KING: Okay.

DEPUTY PROSECUTING ATTORNEY SIMONDS: --because it's a pending case, but.

CHAIR KING: Thank you.

DEPUTY PROSECUTING ATTORNEY SIMONDS: Thank you.

CHAIR KING: Thank you for, thank you for your support on this.

DEPUTY PROSECUTING ATTORNEY SIMONDS: Okay. Thank you very much.

CHAIR KING: Okay. Mr. Clerk.

COUNTY CLERK: Next testifier is Claire Kamalu Carroll, testifying on Committee Report 19-151. To be followed by Mayor Michael Victorino.

MS. CLAIRE KAMALU CARROLL (testifying on Committee Report 19-151):

Aloha and good afternoon. My name is Claire Kamalu Carroll and I'm from Hana. I totally support this bill getting passed of 19-151. We've had enough. Our community has had enough. Our children are speaking up. They actually started a program called "Project Ho'omana". And this month, we have been attacking the underage drinking.

But what this bill does is keep the drunk drivers from getting back into that car, or their friends who are impaired, getting back in that car. We should all be in support of this bill because lives have been lost. We lose family members, friends, neighbors. But I ask this Council today, please pass this bill and we really appreciate everything you do. Mahalo.

CHAIR KING: Mahalo, Ms. Carroll. I don't see any questions. Thank you for being here.

Mr. Clerk.

COUNTY CLERK: Next testifier is Mayor Michael Victorino, testifying on Committee Report 19-151. To be followed by Don S. Guzman.

MAYOR MICHAEL VICTORINO (testifying on Committee Report 19-151):

Good afternoon, everyone, Madam Chair.

CHAIR KING: Good afternoon.

MAYOR VICTORINO: Thank you and, for allowing me these few minutes to speak on behalf of the, of the people of Maui County. I'm truly supportive of this bill and I want to thank all of you for taking this up because I think it's long overdue. I'd like to see more stiffer penalties in other areas.

And I want to thank you, Madam Chair and HSAC for putting the bill through the State Legislature that we do see from .08 to .05 the intoxicated levels, you know, the blood count. So, I think that is very important.

I think this is a step we can take to prevent impaired drivers from getting back on the roadway immediately or shortly thereafter.

You know, I'll say this, I've had personal experience back in 1989. A drunk driver slammed into me and my children, and I was laid up for six months. Until today, I still suffer from back problems because of that accident. It is what it is. I don't complain about it. I don't make much of it, but the driver walked away scott-free, scott-free. And I've always had that in the back of my mind, there's got to be other ways of doing it.

So, the deaths on the highways, for all the family members that have lost families on our highways; my condolences. And you know that I've always stood by you. And I think it's time that the Council, you know, get action. And I will sign this bill as soon as it's completed. I will sign it immediately. This is one of those that I concur with you 100 percent. Not always sorry guys, you know.

CHAIR KING: It's okay.

MAYOR VICTORINO: We all don't agree, but we all agree on this one. This is one that I think if anybody doesn't like it or doesn't agree with it, I don't want to say anything more. So, finally, I'll say that, thank you again for taking this up. You have my full support. And I know the police and others are 100 percent behind of it. And whatever action you need to protect the tow companies and all that, please feel free to add that in and I'll be more than happy to work with that and help that make it so that it comes to fruition immediately. Mahalo, Madam Chair.

CHAIR KING: Mahalo.

MAYOR VICTORINO: And mahalo to Council and you guys all have a good holiday season.

CHAIR KING: Mahalo nui. Thank you so much for coming down--

MAYOR VICTORINO: My pleasure.

CHAIR KING: --and giving your support. We appreciate that. Any questions for our Honorable Mayor? No. Okay.

MAYOR VICTORINO: Aloha.

CHAIR KING: I'll let you get back to your busy day and thank you again.

MAYOR VICTORINO: Yes. Thank you, Madam Chair.

CHAIR KING: Mr. Clerk.

COUNTY CLERK: Next testifier is Don S. Guzman, testifying on Committee Report 19-151. Mr. Guzman is the last individual signed up to testify in the Council chamber or at the District Offices.

CHAIR KING: Aloha.

PROSECUTING ATTORNEY DON S. GUZMAN (testifying on Committee Report 19-151):

Aloha.

CHAIR KING: Your entourage is very impressive this morning.

PROSECUTING ATTORNEY: A lot of, a lot of practice. Thank you, Chair. I speak in support of this measure. And we all know that it's an important measure; something that is going to be historic considering the fact that in 2019, we've had 22 deaths, fatalities and 15 of those were involved in impaired driving. And to honor those and my only opportunity to do so is at this podium, is to say their names, to remember them. And we've had the mother of Kai'o here in 2018.

But those in 2019 remember the purpose why this bill is on this floor: Mau Loa Pacheco, age 20; Jordan Lawrence, age 35; Brandon Wilson, age 22; Rebekah Stauffer, age 40; James Mallobox, age 41; Cameron Kosman, age 21; Teresa Pham, age 39; Hannah Brown, age 19; John Smith, age 57; Mildred Jouvenat, age 49; Jacob Jouvenat,

age 14; Aliya Hue Sing, age 24; Jeremy Tackett, age 41; Gregory Rawlerson, age 38. These names, if you look at the totality of the situation, could be a mass violence situation in other jurisdictions. Fourteen to 15 people died on our roads because of impaired driving.

The buck stops now. This Council can make a difference. Give these officers in blue the tools to take these people off the roads, at least temporarily, and, and send a message that if you take that drink, do not get in your car because you will not have your car that afternoon or that evening until basically we, that car is returned to you.

We're not talking about constitutional issues here. We're talking about saving lives. And this is why each and every one of you, my colleagues, and the Council that sits before us is here to protect our community. So, I thank you, all of you for doing your job.

This year alone was 541 arrests. We've got to stop the bleeding. We've got to stop this immediately. It, it, it needs to be done, and we definitely thank all of your support. And thank you for the introducer of this bill, Councilmember Sugimura, and the Members that showed up for the checkpoint. They made three arrests that night; three people were off the road, that didn't cause an accident. Thank you.

CHAIR KING: Mahalo, Mr. Guzman. And it's great to be working with you either side of, you could have been sitting there and working with us on this as well. But thank you for your support. Will you be around for a little bit, while, when we get to this issue? Okay. So, if Members don't, if there's no objections, we'll ask Mr. Guzman to be resource when it comes up.

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Okay. Thank you.

Mr. Clerk.

COUNTY CLERK: Next testifier is Jasee Lau.

CHAIR KING: Okay.

COUNTY CLERK: Following Mr. Lau, there are no further individuals signed up in the Council chamber or District Offices.

CHAIR KING: Mr. Lau.

MR. JASEE LAU (Committee Report 19-151):

Aloha.

CHAIR KING: Aloha.

MR. LAU: How you say that Keani, aloha?

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha `Auinala.

MR. LAU: `Auinala. Thank you. I'm Jasee Lau. I apologize, I got to speak English, because other than Spanish that's about the only language I know too good. Jasee Lau from Kula. I was actually on the Towing Advisory Board for my city. I'm sure Don Guzman could probably look that up if he wanted to. I'm not going to tell you which city, I've said it before.

I didn't read the, the bill or ordinance or whatever you guys are passing, but I've been going to the meetings of the Multimodal Committee. I heard Mayor Michael on the radio this morning ask the community if they wanted to come say something and it kind of tied into something I've been working on Upcountry, the five, six families on Kula Highway there. I wondered what that memorial was when I walked down, when I first got here, right there on the bend before you hit that Kulamalu. So, yea, I don't, I don't have anything, I don't have a dog in this fight, because I don't have a car and I don't, I don't drink. So, yea, it really doesn't affect me.

There was nothing left of . . . car by the way. So, I don't know what they're going to do about that situation. I'll just have to pick up pieces that are . . . You could put it on the back of the flatbed but, you know, there's nothing to hook the chain to, so.

So, and in conclusion I'd like to thank the, the staff of Yuki Lei Sugimura's office. And especially Tasha Kama's office, also, was very helpful in helping me get, get a mission almost accomplished for Christmas. Mele Kalikimaka.

CHAIR KING: Mr. Lau, we have one question for you.

Councilmember Paltin.

COUNCILMEMBER PALTIN: Thanks Chair. I just was wondering if you travel on the roadways for Maui County, roadways ever?

MR. LAU: Excuse me.

COUNCILMEMBER PALTIN: How did you get over here from Upcountry?

MR. LAU: Could you say that in Hawaiian, please?

COUNCILMEMBER PALTIN: No.

MR. LAU: The bus.

COUNCILMEMBER PALTIN: So, I mean, I think it does affect you.

MR. LAU: Oh, I see.

COUNCILMEMBER PALTIN: Because if a drunk driver hit the bus, you could be injured.

MR. LAU: . . . off.

COUNCILMEMBER PALTIN: Yea.

MR. LAU: But I see--

COUNCILMEMBER PALTIN: But if you walk along the side of the street, so I, I kind of feel like it affects everybody cause, you know, most people get from point A to point B on the roads. And drunk driving affects all of us.

MR. LAU: Oh, I see what you're saying. Yes, I should've known you was methodical in asking the questions. Thank you.

COUNCILMEMBER PALTIN: Thanks.

CHAIR KING: Okay. Any other questions for the testifier?

MR. LAU: Mahalo.

CHAIR KING: Mahalo. Happy Holidays.

Mr. Clerk, do you have any testifiers?

COUNTY CLERK: Madam Chair, there are no other individuals in the District Offices nor the chamber who wish to offer testimony, and we have received written testimony.

CHAIR KING: Okay. Any objections to receiving written testimony into the record?

MEMBERS VOICED NO OBJECTION.

THERE BEING NO OBJECTION, WRITTEN TESTIMONY
RECEIVED FROM THE MAUI CHAMBER OF COMMERCE
WAS MADE A PART OF THE RECORD OF THIS MEETING.

CHAIR KING: Okay. So ordered. And I believe that's, any objections to closing testimony?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Okay. Testimony is closed.

Councilmembers, since we have so many of our police officers here and our
Prosecuting Attorney's Office, I'd like to ask if anybody has any objections to taking up
this item first on the agenda.

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Okay. So, we'll do that. We'll take up Council, I mean Committee Report 151.

And if we can proceed with that, Mr. Clerk.

COUNTY CLERK: Madam Chair, proceeding with committee reports.

COMMITTEE REPORTS

COMMITTEE REPORT
NO. 19-151 - MULTIMODAL TRANSPORTATION COMMITTEE:

Recommending that Bill 70 (2019), entitled "A BILL FOR AN ORDINANCE
RELATING TO POLICE AUTHORITY TO HAVE MOTOR VEHICLES TOWED," be
PASSED ON FIRST READING and be ORDERED TO PRINT.

CHAIR KING: Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Before I start, I wanted to thank you for taking this bill up
and make, creating the special meeting for the Council. So, thank you very much.

CHAIR KING: You're welcome. And the intent is to get this done before Christmas.

COUNCILMEMBER SUGIMURA: Yea, thank you. I appreciate it.

I MOVE TO ADOPT THE RECOMMENDATIONS IN
COMMITTEE REPORT 19-151.

COUNCILMEMBER HOKAMA:

SECOND.

CHAIR KING: Okay, moved by Councilmember Sugimura, second by
Councilmember Hokama.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair. Your Multimodal Transportation
Committee met on December 2, 2019, to discuss a proposed bill to authorize police
officers to tow a motor vehicle if a motorist is arrested for certain traffic violations in
accordance to Hawaii Revised Statutes, such as operating or habitually operating a
vehicle under the influence of intoxicant.

After learning through Committee discussions that nearly 66 percent of traffic fatalities
in Maui County are attributed, attributed to drugs or alcohol, this is another tool the
Department of Police and Department of Prosecuting Attorney can use to keep
impaired drivers off the road, keep our roadways safer, and ultimately save lives. Both
departments also expressed full support for this bill. The bill models Hawaii County
legislation enacted in 2012, known as "Aliyah's Law", in memory of a 17-year-old *[sic]*
Aliyah Braden from Kailua-Kona who was killed by a drunk driver.

CHAIR KING: Okay. Thank you, Ms. Sugimura. Did you want to go ahead and make your
motion for your amendment?

COUNCILMEMBER SUGIMURA: Sure. Yea, so, I'd like to, did you pass out this
amendment? Everybody has it? Okay.

I WOULD LIKE TO MOVE TO AMEND SECTION 10.08.010(F)
OF THE BILL BY DELETING ITEM 7 RELATING TO
"FRAUDULENT USE OF PLATES, TAGS, AND EMBLEMS IN
VIOLATION OF HRS SECTION 249-11";

AND SECOND, I'D LIKE TO MOVE TO AMEND
SECTION 10.08.010(I) OF THE BILL TO READ AS FOLLOWS,

WITH DELETED CONTENT IN BRACKETS AND ADDED
CONTENTS UNDERSCORED:

I. THIS SECTION DOES NOT AUTHORIZE THE TOWING OR
IMPOUNDMENT OF VEHICLES IF THE:

1. VEHICLE IS PARKED ON PRIVATE PROPERTY THAT IS
LAWFUL, THAT IS A LAWFUL RESIDENCE OF THE
REGISTERED OWNER OR THE OPERATOR OR IF THE
OWNER OF THE PROPERTY WHERE THE VEHICLE IS
PARKED DOES NOT OBJECT;

AND I ADD, WE ADDED BACK IN THE TWO THINGS THAT WE
HAD DELETED, SO I'M PUTTING IT BACK INTO THE BILL AND
I'LL EXPLAIN. 2. REGISTERED OWNER OF A PASSENGER
PRESENT IN THE VEHICLE AT THE TIME OF THE STOP HAS
A VALID DRIVER'S LICENSE AND IS WILLING AND LEGALLY
ABLE TO DRIVE THE VEHICLE AT THE TIME OF THE STOP;
OR

3. VEHICLE IS LEGALLY PARKED AT A TIME AND PLACE
WHERE TRAFFIC AND PUBLIC SAFETY IS NOT IMPEDED.

The reasons for this--

CHAIR KING: Well we, let's see if we can get a second first and then we can go into--

COUNCILMEMBER HOKAMA:

SECOND.

CHAIR KING: Okay. Moved by Councilmember Sugimura, seconded by
Councilmember Hokama.

Ms. Sugimura, do you want to--

COUNCILMEMBER SUGIMURA: Yea. Thank you.

CHAIR KING: --speak to the motion?

COUNCILMEMBER PALTIN: Can we go into executive session?

CHAIR KING: Well, we, would you like to speak to the motion first and then we ask questions and make comments about the amendment?

COUNCILMEMBER SUGIMURA: Okay. Yes.

CHAIR KING: So, Ms. Sugimura will speak to the amendment, to the reasons for the amendment.

COUNCILMEMBER SUGIMURA: The reasons, the first item that I made, the fraudulent use of plates, tags, or emblems is a traffic violation, and is not an arrestable offense according to the Department of Police, so we deleted that from the ordinance.

And then we reinserted the two exceptions under Section I which addresses concerns from Corporation Counsel regarding the legality of empowering police to tow and impound vehicles in potential violation of an individual's rights under the U.S. Constitution, and possibly the Constitution of the State of Hawaii. The bill, as revised, would model the exemptions as noted in Hawaii County's legislation.

So, thank you, Members for allowing me to make these two amendments.

CHAIR KING: Okay. Well, we haven't voted on them yet. But we'll speak to them.

Councilmember Paltin, you have a comment or question about the amendment?

COUNCILMEMBER PALTIN:

IF WE'RE GOING TO DISCUSS IT, I WOULD MOVE TO GO
INTO EXECUTIVE SESSION JUST TO NOT GIVE FOLKS
REASON TO SUE US.

CHAIR KING: Okay. I don't know, do we have that on the, on the agenda, Mr. Clerk?

COUNTY CLERK: Madam Chair, the antici, an executive session wasn't anticipated prior to posting, so that language wasn't included. But I, I'd defer to the attorneys as to whether or not a executive session could still be held. But my recollection is that it can as long as it's specified as the intent and a specific section as to the Hawaii Revised Statutes is cited.

CHAIR KING: Alright. Ms. Lutey.

CORPORATION COUNSEL MOANA LUTEY: Thank you, Chair. I think maybe what we could do is try and work through some of this in open session and if not, then we can try for executive session on this specific issue. My intention is to discuss this in a more broad term under the constitutional provisions that would apply here.

CHAIR KING: Okay. Do you want to give us your input on the constitutional, constitutionality of the proposed amendments and then we can go from there?

CORPORATION COUNSEL: I think related specifically to these exceptions that have been placed back in, and that's based on case law which is public. I wouldn't get into an analysis and get in my work product type discussion because that would be privileged between the Council and myself.

CHAIR KING: Okay. But you can, can you give some advice because apparently these came from your office?

CORPORATION COUNSEL: Yes.

CHAIR KING: Okay. So, can you tell us--

CORPORATION COUNSEL: Sure.

CHAIR KING: --why you asked to have that put back in?

CORPORATION COUNSEL: Yes. So, in terms of the exceptions, the reason my office asked to have them included back into the packet is that there is a Ninth Circuit case that came out; it's United States versus Torres. And under this particular case, it does bind us to this decision because that's currently case law that governs us as well, is that there needs to be a reasonableness standard for this and that's pretty much always the case when you talk about constitutional issues and police. And so, under this particular case, what the court did in its analysis was determine whether or not a very similar provision where a vehicle is impounded was reasonable or not. And part of that analysis included the exceptions that are now placed back into this particular resolution, and so that's why we've asked that to be back in.

CHAIR KING: Was that case a drunk driving arrest?

CORPORATION COUNSEL: It was an, yes.

CHAIR KING: Okay. So, it was a drunk driving arrest.

CORPORATION COUNSEL: Yes.

CHAIR KING: And basically, it was upheld that they should have been allowed to have someone else drive it home?

CORPORATION COUNSEL: What the court talks about under the reasonableness standard here is whether or not they can, we have to establish whether or not the impoundment of the vehicle was reasonable. And so, part of that analysis is was there another driver in the vehicle that was licensed and legally able to drive available to take that vehicle away. In this case, there was not.

And then also, in terms of the exception about it being parked legally, the court also addressed that. And what they referred to is what's called the "Community Caretaking Doctrine", and that is so that this vehicle wouldn't impede drivers on the roadway or block entrances or exits to driveways and so forth. So, those were exceptions that the court found were reasonable when the officer used his discretion in determining whether or not a tow was appropriate.

CHAIR KING: Okay. So, the, just let me ask you if the tow, the reason for the tow, if they were saying you can't do that as a punitive measure then? Is that the--

CORPORATION COUNSEL: Right. It's, it's--

CHAIR KING: So, and if we are, we're trying to enact something that is partially punitive, you're saying that's not constitutional according to this case?

CORPORATION COUNSEL: Well, anytime we seized a vehicle, even if it's on a stop, that's a seizure, so that would fall under Fourth Amendment. And so, under the Fourth Amendment, there are exceptions to when it would not be unreasonable or improper. And these, that's what this case is talking about; is if you, if there's someone else that can drive it, then we're not seizing it, we're having it drive home, or wherever it's going. And also, if it's impeding traffic, then that's a reasonable basis for us to also tow it.

CHAIR KING: Okay. Okay. I have another question, but I'll let Ms. Paltin continue.

COUNCILMEMBER PALTIN: Thank you, Chair. I just was wondering, was this particular case have to do with search and seizure?

CORPORATION COUNSEL: There is, it's both. So, in this particular case, and there's another case out of Washington State from this year, in, in these cases, inventory seizure in the one that we're currently talking about, Torres, there was an inventory of the vehicle and that was found to be reasonable in this case as well but there are standardized procedures for this. In this Torres case, the vehicle was actually towed

to the police station and that's where they did the search. In our situation, the tow is to a private base yard.

COUNCILMEMBER PALTIN: So, my, my question is, if there is no search of the vehicle and we're, the police are not the one seizing it, would it not then be okay because there's no, no search, which is what was the reason the case was the way it was?

CHAIR KING: Ms. Lutey.

CORPORATION COUNSEL: Thank you, Chair. It's actually two-fold. So, it's, the Fourth Amendment covers both searches and seizures. And so, when we seize the vehicle, that would implicate the Fourth Amendment. If we search it, it also implicates the Fourth Amendment, so you need a warrant or consent typically, or exigent circumstances. But in this particular situation, it's not my understanding, looking at Mike Hopper, that we're actually searching the vehicle. It's just seizing. Yup, here he comes.

CHAIR KING: Mr. Hopper. And if you can also address the issue of the loophole we are trying to close, which is the issue of somebody, of the police being in pursuit and, and taking their car to a private residence or a place off the road because that was one of our issues.

DEPUTY CORPORATION COUNSEL MICHAEL HOPPER: Thank you. Thank you, Madam Chair. After these exceptions were taken out at the last Committee meeting, I did take a look at this case law. And the idea is in general a, in general a seizure of a vehicle is not allowed without a warrant. There are exceptions to that.

And I think the language from the Big Island's ordinance deal directly with those exceptions, that's what came from the Ninth Circuit. And so, those exceptions were in the original version of this bill. They did get taken out. I think putting them back in makes this, this mirrors the Big Island's bill and I think would be in compliance with those cases.

The issue of, the issue of the person driving to a private, private place, I mean if it's, if it's lawful for them to, to do that and they're in an area where they would meet one of these exceptions based on the case law, I don't see how police could, could tow them if those are, those exceptions are here. It's not to encourage people to, to do that and, you know, I believe, you know, police pull you over, you have got to pull over. I don't think you get to drive wherever you feel like for, for a period of time. You have to get pulled over.

But the research after those exceptions were taken out, led, led me to, to request that those exceptions be put back in based on the case law that dealt with these exact circumstances. I mean, it was, it was on, it was very clear that the Big Island, when they adopted Aliyah's Law, put these in there because of the case law that that was out in the Ninth Circuit on these topics. So, I think it's important to have those in there so that the, the tow can be upheld as constitutional as a seizure, as an exception to the general rule of requiring a warrant to not just search the car but also to seize the car.

CHAIR KING: Okay. Ms. Paltin, did you have a follow up question?

COUNCILMEMBER PALTIN: I just hope if we're going to be seizing them, we also go through the act of searching, since that's what the problem is and, and get a warrant. Because if they're driving under the influence, then what other laws are being broken?

CHAIR KING: Okay. Thank you.

And, Mr. Hopper, any response?

DEPUTY CORPORATION COUNSEL: Just, and as opposed to the case law where they're talking about a seizure, land, or talking about an inventory search in addition to a seizure, my understanding is that with this situation where the tow would be to a private tow yard, that it would, it would be generally possible for police to, to request a warrant and get approved for a warrant before searching in those cases. Now, police could maybe comment on the situation and what they would plan to do. This ordinance deals specifically with towing to a private tow yard.

Generally, the separate issue of searching the vehicle after that, the, the court in the Ninth Circuit case did find that as long as the seizure was lawful, the inventory search was lawful because it complied with police procedures. In this case of this bill, if they're towing to a private tow yard, I, as I understand it, the police would generally intend to get a search warrant to search the vehicle in those cases. If there's something other than that, then, you know, perhaps police can comment. This bill only deals with the ability to tow the car consistent with HRS under certain circumstances and, and doesn't address a subsequent search of the vehicle. So, that's what's covered in this particular bill.

CHAIR KING: So, the police are not allowed to search a vehicle when they stop you for, because they think you've been drinking and driving?

DEPUTY CORPORATION COUNSEL: And again, police and prosecutors can maybe get into that Fourth Amendment analysis. My understanding is that it may be possible in

certain cases if, if they, you know, if they see something in the car that's in plain view, that they may be able to use that as evidence and, and go forward there. I don't, I don't spend a large, the police and prosecutors, I think, would be better able to answer that general question.

CHAIR KING: Okay. We can, we can ask Mr. Hankins to come down here if he's willing to. So, do, do Councilmembers, do you want to have, do you want me to ask Mr. Hankins to come down here?

Oh, Member Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chair. Excuse me. In the Committee, we heard the Department give their comments. We've heard prosecutors, various components of prosecutors give their components, we've heard Mr. Hopper's, I'm ready to vote, Chair.

CHAIR KING: Okay, we're, we're looking at, we're voting just on the amendment, so I just want to find out if there are any other questions on the amendment.

Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I, I support the amendments. Mahalo, Member Sugimura for proposing them.

I had a question for Corporation Counsel, using the same rationale that Member Sugimura used to remove Section F.7., or the proposal to remove Section F.7. Which of these "F" one through seven, or I guess one through six are arrestable?

CHAIR KING: Mr. Hopper. Oh, Ms. Lutey.

CORPORATION COUNSEL: Thank you, Chair. Only the criminal offenses, so that would be one, two, three, four, five, six, not seven. The fraudulent use of plates, there is a provision under that where you could possibly, but I, I think it's, seven needs to be taken out.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo. So, for "F.1.", driving without a license, that's an arrestable offense?

CORPORATION COUNSEL: Yes. It's a petty misdemeanor.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. In HRS 286-102, where in the Statute does it say that?

CORPORATION COUNSEL: I don't have it in front of me.

VICE-CHAIR RAWLINS-FERNANDEZ: Or is it just because it's a petty misdemeanor on the penalty section.

CORPORATION COUNSEL: Mr. Guzman's, yea, says it's in the penalty section.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo. Mahalo, Chair.

CHAIR KING: Okay. Mahalo.

Mr. Molina.

COUNCILMEMBER MOLINA: Yea, thank you, Madam Chair. And I thank Member Sugimura for proposing these amendments, so, cause I had questions related to that as well. And myself and I believe Member Rawlins-Fernandez, we're not Members of the Committee as well so, you know, we, I want to express my right to ask questions because by doing it in Committee, I have no voting authority. And so, this is why, and I'm sorry to, if it causes a delay for Members.

CHAIR KING: No. No go ahead. Ask away.

COUNCILMEMBER MOLINA: So, I'd like to ask--

CHAIR KING: I'm glad you have questions, Mr. Molina.

COUNCILMEMBER MOLINA: Yea, cause that's our job, is to make sure whatever we vote on we vet it appropriately and to maybe make the bill even stronger or more, you know, more effective, yea. So, but I just wanted to state that for the record, that I support the amendments. And I'll have more questions related to the other aspects of the bill.

CHAIR KING: Okay. So, you don't have any more questions, specific?

COUNCILMEMBER MOLINA: Well, at least just, at least just on this amendment. But once we get, do the vote on the amendment then we get back to the bill as amended, then I'll have my questions--

CHAIR KING: Okay.

COUNCILMEMBER MOLINA: --I guess more for the Prosecutors Office and possibly the Police.

CHAIR KING: Okay. Any other questions? Because I do have a question of, I think I'll ask of the Prosecutors Office just if you can give us some comments on the amendments, because I think you were here when we actually took these exemptions out. Mr. Guzman, would you be willing to or, and maybe Lieutenant Hankins, you could come down?

Mr. Hopper.

DEPUTY CORPORATION COUNSEL: I just wanted to add one thing. I think, and Lieutenant Hankins can maybe add this as well, for number three under the new exceptions, there was some language left out from the original Big Island bill. The original Big Island number three stated, "The vehicle is legally parked at a time and place where the likelihood of it being subject to theft or vandalism is remote, and traffic or public safety is not impeded". The language about vandalism was originally taken out. I think that should be in there. That would actually give the police additional justification for towing and the Lieutenant can maybe comment on that. He had requested that be put in. And, and I'm fine with that because it's, that's the language from the case law. But number three, I'd recommend in your amendment to just have it read as number three in the Big Island's ordinance would be.

CHAIR KING: Okay. Let me just, because I did request them come up, if you could comment, Lieutenant Hankins, on the amendments that are proposed, and then our Prosecuting Attorney.

Thank you for being here; appreciate it.

LIEUTENANT WILLIAM HANKINS: When the amendments were first taken out, you know, we were fully in support of this and making this bill have a little bit more teeth to it. That being said, I think we need to listen to Corporation Counsel because if there's any challenges that come to the County on this, this is going to be something that they're going to have to fight for. So, that being said, I did talk to Mr. Hopper and we, we made some discussions about putting these requirements back in. And my thing is I would like to see it mimic exactly what the Big Island is doing. They have not had any issues. I've reached out to the Big Island, my law enforcement counterparts over there, they have not had any issues with this yet, the way their restrictions are put in there.

The one restriction that I would like to see put back in there as far as if "The vehicle is legally parked at a time and place where the likelihood of it being subject to theft or vandalism is remote, and traffic or public safety is not imposed *[sic]*." What I'd like to see is that put back in there, because there have been issues where cars have been parked on the side of the road, people have been arrested for OUI and their vehicle

has been set on fire, their vehicle has been damaged, their vehicle has been stolen. So, we would like to have the ability to make a decision out there in the field if this is an isolated area or an area where this could possibly happen, we want to be able to tow that vehicle away.

And then the one thing I definitely want to make sure that the Council understands is we are not taking these vehicles. This is not a seizure that the police are taking the vehicle and we're going to do a search on. We are removing this weapon from the hands of an impaired driver and it's going to a private tow yard, okay. Once that vehicle leaves the police when we have that stop, we are not going to have any control of it.

If we wanted to do a search of the vehicle, if we needed to get a search warrant, we have our own contracts with tow companies, and they will be towed to a impoundment yard where we control the vehicle and then we would apply for a warrant. We would never go let a private tow company take it to the yard and then us go back and get a warrant because we lose the chain of custody at that point.

So, again, going back to these restrictions in here, we do support these restrictions. We think it's, it's a good thing. If the Corporation Counsel is willing to recommend they go in, I think we should put them in. I definitely want to see the language in there again about the vandalism, give us a little bit more options so that we can do this right.

And then again, I just want to make clear that these vehicles are not being, I've heard the word impounded, seized, we're not impounding, we're not seizing anything. These vehicles are being removed from drivers who made the choice to drink and drive and put everybody's life at risk. So, I think they lose that right to have their vehicle at that particular time. They can get their vehicle at any time afterwards but with no repercussions from the police.

CHAIR KING: Thank you for that. And then does that, does that language, if we insert the Big Island language back in there, does that give the police officer, the arresting police officer the discretion as far as the remoteness?

LIEUTENANT HANKINS: Yes.

CHAIR KING: Okay. So, that's a decision that you would be making. And then the other question I had was if you're giving chase to somebody that you suspect may be a drunk driver, is there a certain amount of, of time that they have to pull over? I mean, is there, does it become, you know, if you go three, three miles down the road does it become resisting arrest? Or how does that work so that you can, cause I, we heard the comment earlier that someone's going to pull over right away and they don't always do that, I don't think.

LIEUTENANT HANKINS: You have to understand when you're dealing with impaired drivers, you're dealing with a different animal on every stop. Some of them pull right over. Some of them pull halfway off the road. Some of them pull all the way off the road into ditches. It's, you know, they do different things. Some of them, it's something that we look at, it's a slow response.

The DUI Taskforce officers and anybody that's worked out there will tell you every stop is different. So, for someone who is impaired, to have the cognitive skills to say, hey I better keep driving another two miles so I can get home safe. I'm not going to tell you it hasn't been done, but if that's the case, and we actively know that they're behind us, then they're going to be charged with resisting an order to stop a motor vehicle. The charges just keep impounding from that point on.

CHAIR KING: Okay. Alright, thank you.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: So, I wanted to, a tow company from Honolulu, they had a question or a situation I never thought about where somebody would try to, try to get their car. Can, can you answer that?

LIEUTENANT HANKINS: That--

COUNCILMEMBER SUGIMURA: You heard that situation?

CHAIR KING: Could you--

LIEUTENANT HANKINS: You want me to answer, or?

CHAIR KING: Mr., Mr. Hankins.

COUNCILMEMBER SUGIMURA: Whoever.

LIEUTENANT HANKINS: To me, that's a simply solution. If, if somebody shows up at the tow yard, and again, we're not talking about somebody who's going to be bailing or getting their vehicle out of, in the impound yard, you know, during normal business hours. The majority of these arrests are going to be after normal business hours. If these companies are open after normal business hours, that is entirely up to them. Otherwise, they may have to wait until the next morning to get their vehicles, which is ideally what we'd like; give them more time to sober up. When the business opens up for normal operations, they can get their vehicle.

However, exactly like the owner from Pinky said, yea, there probably will be times when somebody shows up and they can detect alcohol or some type of impairment on that person and yea, they do have to give that vehicle back because, again, this is not a seizure. That person has a right to their property. The simple solution to that is call us. Let us know that someone is here, they're trying to get their vehicle out. They can control the time period of which that person gets the vehicle until we get an officer over there to make an assessment. If somebody's insistent upon getting their vehicle and wanting to drive off that lot, I guarantee you with one police officers there, they won't make it five feet down the road before they're going to get stopped and we're going to roll that vehicle right back into that impound lot.

COUNCILMEMBER SUGIMURA: Okay. Thank you.

CHAIR KING: Thank you for that question. I forgot I was going to ask about that. And that would be, that's not something we have to legislate, maybe it would be in Administrative Rules, or?

LIEUTENANT HANKINS: I don't think so. I mean, I'd let the attorneys that are involved in this make that decision. But it's not something I think that we need to add in. I think it's already built in. And an example I can use is, we have bars all the time. People will call us from a bar, and they'll say this guy is really, really messed up, we just kicked him out of the bar, he doesn't want to listen. And officers will end up showing up at a bar and we see somebody leaving. And you know that for us is reasonable suspicion to follow this vehicle, or if they want to make a statement, that's probable cause enough for us to pull them over.

CHAIR KING: Okay. Alright, thank you. And then, Mr. Guzman, do you have any, you wanted to say a few words about the amendments? Are you okay with those?

PROSECUTING ATTORNEY DON GUZMAN: Thank you, Chair. I would just defer to Corporation Counsel. I know during Committee, the exception "1.2." regarding allowing the passenger, who is a valid driver, to be able to take the vehicle came up in response to, at least trying to make the ordinance more strict in terms of putting the responsibility on the community or the family as a whole.

Like, if you're at a party or at the beach, I believe the Brown Family mentioned that a lot of times the, the driver is the dominant father or spouse and takes control of the vehicle while the passengers allow it to happen. So, we were going to put the onus of the responsibility on the family or the people at that event to stop the driver initially. I understand why it was taken out.

As well as number three, "I.3.", Chair, I believe you brought that, that issue up in regards to if a person wants to avoid having their car being towed when they're at the scene, they would then drive their vehicle to a nearby parking lot. So, that exception would allow the vehicle not to be towed if they drove it further down the road into a parking lot.

Valid arguments, but I, I, my, my point is if Corporation Counsel determines that it is some kind of factor that would later on cause a challenge to this bill, then it is basically your rights right now to, as Members, to determine is it worth it? I mean, you can take these out. You have, you can take these, these exceptions out. But also remember, are we willing to then go to battle on a constitutional issue later down the road? So, that, that lies in your hands, you know.

I, I'm either way. I love the fact that you guys took those out to make it stronger, but you have to do the balancing test. It's your jobs, it's your positions now to do that.

CHAIR KING: Thank, thank you, Mr. Guzman. And I, and I brought that up because, you know, when you gave your testimony you said this is not about the Constitution, but in reality, it is about the Constitution. You know, we're trying to save lives, but that's what, that's what ties our hands sometimes.

Councilmember Lee. Oh, Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I support what Officer Hankins was saying for "I.3.", in expanding the language to more mimic Hawaii County's law. So, then my follow up to that is if, if we put that language in there, would it make sense to remove Section J in the bill?

CHAIR KING: You're asking Lieutenant Hankins?

VICE-CHAIR RAWLINS-FERNANDEZ: Whoever wants to answer.

CHAIR KING: Or Corp. Counsel.

LIEUTENANT HANKINS: I can, I can answer that. I'd like to see "J." left in there, where basically it says, "The Police Department has no duty to protect any vehicle left on any roadway property after the operator has been arrested for a violation under the section." That also protects the County. I believe that's what you're talking about right there? Yea, I definitely think that that's something we should leave in.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Chair.

CHAIR KING: Okay. Mahalo.

Let's see, do we want, well, Councilmember Lee.

COUNCILMEMBER LEE: Thank you, Madam Chair. Just wondering, this would be, I guess for Mike Hopper. What was the rationale for deleting the verbiage that the Big Island included? Because they seem to have given this a lot more thought than we did.

DEPUTY CORPORATION COUNSEL: I, I think there was concern for the, well, the two and three was in the last Committee. So, you, I think you could look at the Committee minutes. If you're talking about deleting the specific language on likelihood of theft or vandalism, that appeared to be a difficult thing for our police officer to assess in a, in a given case. But in, under further review, the case law does allow for that as a, as a way for police to tow the car if they do believe the car is subject to vandalism. So, that one was one that I did work with police on that I now see, based on the case law, could come back in.

(Vice-Chair Rawlins-Fernandez was excused from the meeting at 2:00 p.m.)

DEPUTY CORPORATION COUNSEL: Deleting two and three though, that was the Committee's discussion at the last meeting. And I did research that subsequently to see that that as far as a, a legal issue, that could certainly, that would be created by deleting that. But I think, yea, the rationale for two and three coming out in their entirety, I think it was after some discussion about, I think, wanting families to, as Member Guzman talked about, sorry, Prosecutor, sorry, as Prosecutor Guzman had talked about, sorry, force of habit, as he had talked about the issue of, you know, having someone else in the car even if they're legally able to drive, not, not able to drive. I think that was looked at; I think by the Committee as a deterrent effect. And looking at the case law, I don't think that that's, that's the best way to go about it based on how the court cases have looked at these.

COUNCILMEMBER LEE: And one last question. A constituent asked if, what happens in the case of a rent-a-car?

DEPUTY CORPORATION COUNSEL: The HRS's are, and Lieutenant could also maybe respond, but HRS does talk about notifying the registered owner of the vehicle. And so, that's, that's I believe what would happen. Again, there's an existing HRS 291C-165.5(a) that governs how the private towing company, after they get the tow, is required to notify the registered owners and what the owners have to do to get the cars. That's the same provision Big Island relied on as far as towing. So, I believe notification would have to go to the rental car company, but I think the Lieutenant can maybe help answer that question as well.

COUNCILMEMBER LEE: Okay.

LIEUTENANT HANKINS: Yea, that's, there's a real simple answer to that, Councilmember. Basically, if it's a rent-a-car company, say a visitor or anybody in the community who's renting a car gets stopped and arrested for OUI, it falls within the provisions of this bill where we can tow it, we're going to tow it. And plain and simple, what's going to happen is the officer is going to notify Dispatch of whatever rent-a-car company it is, because all the rent-a-car companies have contracted tow companies. That rent-a-car company then would send a tow company over to pick up that car while the person operating that car would be going to the station for arrest and process.

CHAIR KING: Okay. Thank you, Member Lee.

And Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Yea, one other question that came from the written testimony we got wanting to know if the 30 days for this person to pick up their vehicle at the tow company is enough time, or do they need a longer period of time?

CHAIR KING: I think they're paying on a daily basis, so I think they're going to want to pick it up as soon as possible.

COUNCILMEMBER SUGIMURA: Oh, okay, okay.

CHAIR KING: But, so they pay, they pay whatever the daily rate is and it just racks up, so.

COUNCILMEMBER SUGIMURA: So, that would cause them to want to get their car as fast as possible?

CHAIR KING: Right.

COUNCILMEMBER SUGIMURA: Okay. Thank you.

CHAIR KING: Councilmember Paltin.

COUNCILMEMBER PALTIN: I just had a couple questions for Lieutenant Hankins on what the Police Department deems legally able. Would they need to have their driver's license on them and pass a field sobriety test as well?

CHAIR KING: Lieutenant Hankins.

LIEUTENANT HANKINS: You're talking about if someone is arrested and the passenger wants to drive, what do we define as someone who would be legally able to drive that vehicle? First of all, somebody who is not impaired, if they're showing any signs of impairment. Basically, what we have is we have portable breath test instruments that are out on the, in the field; we call them PBT's. We would ask that person if they would be willing to take a test. And if they say, no and we don't believe that they can drive, then we're not going to let them drive. If they have a valid license, there's no signs of impairment, you know, they're legally able to drive that vehicle and they want to drive that vehicle under this provision, yea, we would let them drive.

(Councilmember Kama was excused from the meeting at 2:04 p.m.)

LIEUTENANT HANKINS: But let me just tell you, those situations are few and far between because the driver is usually the least drunk person in that car. So, what would happen is these vehicles would be subject to tow and the passengers would need to find alternate transportations. And that way, it's going to keep everybody safe from getting behind the wheel of that car.

COUNCILMEMBER PALTIN: Do they need to have their license on them?

LIEUTENANT HANKINS: No. If, if someone is legally able to drive, they do not have their driver's license on them, we can check. We have systems in the car that can check for a driver's license to see what their driver's license status is. You're supposed to, by law, have your license with you; it's an infraction. As far as not having a driver's license on your person, it's not something that you can be arrested for, something you can be cited for. In the grand scheme of things, I do not see our officers citing somebody for not having their license on them when they're trying to get them home safe. That, that's just unreasonable to me. I can't see that happening.

CHAIR KING: Thank you.

Ms. Sugimura, do you want to make a friendly amendment to your amendment--

COUNCILMEMBER SUGIMURA: Yes.

CHAIR KING: --and add the language back in from the Big Island?

COUNCILMEMBER SUGIMURA: Add the language that was suggested.

CHAIR KING: Are there any objections if we add that language that was originally taken out?

Can you read that again, Mr. Hopper? Or maybe Lieutenant, yea.

DEPUTY CORPORATION COUNSEL: Thank you, Madam Chair. This would have the third exception under the, I think it was Section I now.

CHAIR KING: "I".

DEPUTY CORPORATION COUNSEL: It would read as follows, the vehicle is, oh, let's see. "The vehicle is legally parked at a time and place where the likelihood of it being subject to theft or vandalism is remote, and traffic or public safety is not impeded".

CHAIR KING: Okay. So, that'll be added to the amendment that we're about to vote on. Okay. Any other comments or question?

I guess my only comment is I'm kind of disappointed we couldn't make it more strict. But I do understand the legal, legal constraints that we have. And you know, I, I guess we'll wait and see how effective this is and hopefully it'll be, I think Big Island has found it effective, which is why we're doing it. So, hopefully it'll be as effective as we are hoping. But I do appreciate this Council's initial intent, which was trying to make this strict as possible, because we find it intolerable that people are risking their own lives and the lives of other people on the road.

So, with that, I will call for the question for the amendment. All those in favor say "aye".

AYES: COUNCILMEMBERS HOKAMA, LEE, MOLINA,
PALTIN, SINENCI, SUGIMURA, AND CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

EXCUSED: COUNCILMEMBER KAMA AND VICE-CHAIR
RAWLINS-FERNANDEZ.

CHAIR KING: Okay. Measure passes seven "ayes", two "excused"; Vice-Chair Rawlins-Fernandez and Pro Tem Tasha Kama.

Okay. So, that's the amendment.

COUNCILMEMBER SUGIMURA: Yes.

CHAIR KING: Member Sinenci, you have a question about, we're back to, we're on the main motion now as amended. So, do you have a question?

COUNCILMEMBER SINENCI: Okay. There was a, an ask to, to make another amendment on "F1" and "2". Is this where I make those--

CHAIR KING: Oh.

COUNCILMEMBER SINENCI: Those.

CHAIR KING: We don't, we didn't, we don't have anything that's, is that something that you want to do that we don't know about yet?

COUNCILMEMBER SINENCI: Right.

CHAIR KING: Okay.

COUNCILMEMBER SINENCI: And I can speak to the motion.

CHAIR KING: If you have another amendment, now is the time to make it.

COUNCILMEMBER SINENCI: Okay. So, I was, I wanted to add number "4. Driving without a license or driving while the license is suspended or revoked." And some of the reasons were that for some constituents, not all licenses are, and this is driving under license, while drive, the license is suspended or revoked under HRS Section 286-132. Not all licenses are, are suspended or revoked for operating a vehicle under the influence of intoxicants. Some licenses are suspended or revoked because of financial reasons. And some suspensions and revocations are due to auto insurance issues. So, I've had a couple calls about, you know, I guess just those, those people that that had their license revoked for other reasons beside the drunk driving.

COUNCILMEMBER SUGIMURA: Number two.

CHAIR KING: Okay. I, I think that the purpose of this is to allow the police to tow for any arrestable offense, so that was included in arrestable offenses. Because it's, you can get arrested for driving without a license, or a revoked license. So, are you proposing to take those out?

COUNCILMEMBER SINENCI: To, to delete one and two of, under "F", Subsection F. Or to add and, and to add for driving without a license. Are you saying that that is a arrestable offense, driving without a license?

CHAIR KING: Yes.

COUNCILMEMBER SINENCI: Can I get--

CHAIR KING: Go ahead, Ms. Lutey.

CORPORATION COUNSEL: Thank you, Chair. Yes, it is arrestable for driving without a license under 286-102. And I think, Member Sinenci, what you were talking about is like the SR21's and SR22's? I'm going to have to, it's been a while since I've dealt with that issue. I don't know if Lieutenant Hankins, I don't know if that's arrestable. It's, it would be driving without license, right? Yea, it would fall within a driving without a license situation, because your license would be suspended under an SR21 or SR22.

COUNCILMEMBER SINENCI: Okay.

CHAIR KING: Okay.

COUNCILMEMBER SINENCI: I'll yield to other Members.

CHAIR KING: Okay. Councilmember Lee.

COUNCILMEMBER LEE: Corporation Counsel, could you tell us what HRS Section 286-102 outlines and/or prohibits, and 286-132 specifically? And where are these in the Big Island ordinance?

CHAIR KING: Anybody who has that on the top of their head they could share with us? So, she's asking about, because the first two, the first two arrestable offenses, driving without a license in violation of HRS 286-102, and then number two is driving while a license is suspended or revoked under HRS Section 286-132. What, what are those sections? I, what is the offense there as far as driving without a license under that section?

LIEUTENANT HANKINS: Chair, if I can?

CHAIR KING: Lieutenant.

LIEUTENANT HANKINS: There's a bunch of different sections that you're related to with your driver's license. 286-102 basically is telling you anybody that does not have a valid driver's license should not be driving; happens frequently, unfortunately.

What Member Sinenci is talking about is SR22, somebody who has insurance issues. If you get cited so many times for insurance or, you know, exactly what he's talking about, financial reasons, if someone is stopped and they're found to be driving on a suspended license, I believe it's 286-132, that is also an arrestable offense. Bottom

line is if they don't have a license and their license is invalid and illegal, they shouldn't be driving to begin with.

And then the other thing, just to clarify one other thing, no license on person is something completely different than what we're talking about. No license on person basically says you have a valid license, for whatever reason you left your wallet at home, it's, we can check that. That's something that we can check very, very quickly to verify do you have a license. And I can guarantee you almost every time the officer is just going to warn the person, remember, you need to have your driver's license with you. That's not something that we cite for regularly but can.

CHAIR KING: Okay. Thank you. But, but it's not arrestable? You can cite someone for that, but you can't arrest them for that?

LIEUTENANT HANKINS: Correct. You cannot be arrested for drive, or for driving with no license on person. If you do not have a valid driver's license, whether it be under 286-102 or whether it be under 286-132, or whether it be 291E-64, I believe, driving after license suspended and revoked for OUI; they are all arrestable offenses.

COUNCILMEMBER SINENCI: Chair.

CHAIR KING: Mr. Sinenci.

COUNCILMEMBER SINENCI: So, yea, my, my concern was that we were, I get the bill we're addressing intoxicants and, and, and drunk drivings, but I know there's some, some members that they, they drive without, with those Hawaiian plates and so, some other plates. But I'm wondering if the bill would also target those drivers that are not intoxicated and, and, and don't have those regular licenses in these specific situations? That was my concern.

CHAIR KING: Yea, I think, Lieutenant, I mean, I don't, I don't think there's a discretion. They wouldn't know, I mean, they, there's going to be some reason they're pulling you over. So, something your, your, I'm assuming you're not, you're not driving normally or something, but if they find out you have a, no driver's license, basically what you're saying is you don't belong on the road.

LIEUTENANT HANKINS: Just to clarify, Councilmember Sinenci, the intent of this bill is, is mostly targeting and directed against impaired driving. However, that is not the only driving problem that we have out there. With this bill, there are chronic people who have no license on person, or I'm sorry, no driver's license ever on their person because they don't have a license.

And a case in point is just this morning I stopped somebody for tax and safety, and he had outstanding warrants for no driver's license, he's got all kinds of problems, he just doesn't have his license. This is somebody who not only doesn't have a license, they don't have insurance. So, if they hit you, guess who's going to be flipping the bill for that? They should not be driving on the road.

So, to answer your question, we're not going to target anybody with this. We're going to do our job and if you fall into that category, then, yea, you could get your vehicle towed. Now, somebody who just didn't renew their license two months ago, they totally forgot about it, life happens, you're not going to get your vehicle towed for that. That's not the intent and that's the way I'm going to train the officers when we hopefully get this bill passed. You know, as to what the intent is, we're not trying to take away vehicles from people who are trying to earn a living and make it through life. We're trying to take vehicles away from people who could take someone else's life.

COUNCILMEMBER SINENCI: Okay. Thank you, Lieutenant Hankins.

CHAIR KING: Okay. Thank you, Mr. Sinenci. Anything else?

Member Molina.

COUNCILMEMBER MOLINA: Yea, the--

CHAIR KING: Don't limit your questions.

COUNCILMEMBER MOLINA: Yea, okay. Just following up on that issue with the tow companies' concerns. I know, like the bar owners, you can just say, you know, give the discretion to the bar owner to call the police, but because their's litigation and I, just to make the businesses feel more comfortable, I would like to add language in there so that way it's specific, at least for the tow companies.

CHAIR KING: In where?

COUNCILMEMBER MOLINA: Where whichever aspect of the bill, you know, with regards to the person who wants to reclaim their vehicle, because it is a real possibility that that guy could come back drunk or impaired and want to claim their vehicle again. So, this way at least the tow companies know, and they can tell their employees to be aware that if, if a person that had their vehicle . . . because they were under the influence that in order to get it back they'd have to have some kind of certification that you're sober. So, I don't know if there's something that we can add in writing. I, I'd just personally would feel more comfortable, so this way there's less likelihood of a lawsuit on either

the company or the County of Maui. So, I don't know if maybe Mr. Guzman can comment on that?

CHAIR KING: Mr. Guzman.

PROSECUTING ATTORNEY: Thank you very much, Councilmember Molina. I, I did listen to the tow companies testify. Lieutenant Hankins did mention that that could be easily resolved by an SOP, "Standard Operating Procedures", wherein if we do an RFP, "Request For Service", and we get some bids from the tow companies, we can build that in to as part of the RFP as well as the "Standard Operating Procedures" wherein there's an agreement between the towing company and MPD. And they basically, they, the towing company has indications of intoxication, they are then required to then call MPD to be present on the premises. There could be that agreement. That could be the simple fix. The other way would be having to go back to the State Leg. and expand the enabling legislation, which allows us to, which allows your, this Council to enact authorization for MPD to tow.

COUNCILMEMBER MOLINA: Yea, that was going to be my--

PROSECUTING ATTORNEY: So, we're going to go beyond that scope of the HRS section. So, you know, I'm not quite sure if we can. That's something that the Corporation Counsel can elaborate on, on whether or not this Council can go beyond the enabling legislation from the HRS.

COUNCILMEMBER MOLINA: Okay. Yea, that was going to be my next follow up, is there, is there something more, it had to be handled on the State level to incorporate something like that? Because I can see the, the tow companies concerns with that, but if--

CHAIR KING: I think the--

COUNCILMEMBER MOLINA: --if the simpler fix is that--

CHAIR KING: --Mr. Grace from the tow company did say that they, they figured out that fix was to call the police, which is what our police is, is suggesting; that if there's a question of whether the person trying to come and pick up the car is, is intoxicated, they'd call the police.

COUNCILMEMBER MOLINA: Yea, so, so the responsibility is to train those employees. Because you never know, you might have an employee that's really not aware, or will not be able to spot, you know, cause--

CHAIR KING: Yea, I mean, anything, anything you, any agreement they're going to have with the towing companies, it's the towing companies' responsibility to train their employees on all the aspects of that.

COUNCILMEMBER MOLINA: Yea, cause alcohol you can smell. If somebody's under, you know, a drug, maybe not like marijuana that may not give off a smell, you don't know if that person for sure is, you know, intoxicated or under some kind influence. So, that's where my concern. Maybe I'm being just overly cautious on it, but if the simple fix works then so be it.

But so, this is why it's important, I think for the tow companies to train their employees that you got to look for all aspects cause, you know, being drunk is one thing, you can smell the alcohol or somebody smoking marijuana you can smell, but there's other drugs you cannot smell.

CHAIR KING: Right. But I think the point was that it's, they can't legally withhold the car, the vehicle, so the police are the only ones. If they bring the police, if they call the police and the police follow the person two blocks outside of the towing company, pull them over, then it's, then they can deal with it at that point.

COUNCILMEMBER MOLINA: So, I guess when in doubt, call the police, yea?

CHAIR KING: Right. Yea, Mr. Grace is raising his hand back there, in case you wanted to hear from him. Did you, Mr. Molina?

Mr. Grace, so the, the issue of when you release the car back. That's what we're discussing.

MR. GRACE: Yea, I'm just anxious, because I came all the way from Kapolei to hear this, you know what I mean?

CHAIR KING: Okay.

MR. GRACE: And if I can shed any light, I'm willing to.

CHAIR KING: Okay. But you said that you, can you reiterate, you said that you, you solved the problem by now you call the, you have an agreement to call the police?

MR. GRACE: Yes. We had to adopt that ourselves.

CHAIR KING: Okay.

MR. GRACE: The problem is when, when we, when we get cars towed to our lot in our County, it comes in as a traffic hazard. So, when the girl at the desk pulls the tag out, it doesn't say "OUI", "DUI"; it says, "traffic hazard". So, we just trying to hurry up get them their car, right? If the car is tagged "OUI" or "DUI" or whatever it is, now it's a red flag for us, right? So, now my people can say, okay, we got to call HPD, come here and say that this guy is not intoxicated or, or he's okay to take his car, relieving the liability from us. Because if we cannot determine that because we're not trained to do that, then we open for lawsuit.

If the policeman comes and he says, yep, this guy can take his car or no, give him another 24, we're going to tag it. Nobody can come get this car for the next 24 hours. He comes back in 24 hours, we got to call the cops again. That's just to protect us. Because you, if you doing all of this and the guy comes and get his car and our people is not trained enough to see it, you're doing this for nothing. Now is the time to make the, the, put the teeth in it so that everybody protected; the County, the tow company, so that the purpose of this bill is going to stand strong.

CHAIR KING: Okay. Thank you.

MR. GRACE: Thanks.

CHAIR KING: Lieutenant is that, is that basically the, going into administrative rules or SOP's?

LIEUTENANT HANKINS: You know, what, the situation in Honolulu with the tow companies is something that I really am unfamiliar with. But I can tell you what happens with Maui. We have a tow list and these individuals are volunteering to be on a rotational tow list. We're, Prosecutor Guzman was saying the request for proposal and things like that; we don't need that because they are on a rotational tow list. They are volunteering to be a part of our tow list. So, what our intent is, you know, should this pass and hopefully it will is we're going to send letters out to all of the tow companies on our list, and if they choose to opt out of being on the rotational list, then they, they very well can.

To go back and, and talk about what Mr., I forget his last name, I'm horrible with names, Grace was saying, we don't need to have a police officer at every time a tow is released. I, I think that's a little bit redundant. However, like he said, when they tow vehicles in Honolulu, because they don't have this ordinance, it's always going to be something relating to a traffic hazard. When we tow vehicles here, we're going to tell

Dispatch, you know, hey, you know, send me a tow, this is an OUI tow. So, however the tow company wants to tag it at that point is on them.

Now, that being said, if somebody impaired comes to the tow company and wants to remove their vehicle and the tow company says, hey look, I'm not comfortable releasing this guy's vehicle. You know, we can't tell them to hold it another 24 hours, because then it becomes a police seizure. That's when we have problems with that. We can tell him, look, you have to release the vehicle, but if this guy drives off, we're right here waiting and they're going to see us here. And any fool that gets in that car knowing that the police is waiting for them at the other end of that driveway when they release that vehicle, they get what they get, you know.

I really think that the releasing of the vehicles, as far as the liability goes, is something that we can work with the tow companies on. It's, again, once we release the vehicle at the scene to the tow company, it falls into their policies and procedures as to how that vehicle is going to be released. The police cannot come over and say hold it another 24 hours, because now we're opening a whole can of worms with Fourth Amendment stuff that we don't want to get into.

Again, I really, really think that the simplest solution to this is they're going to know that it's a, a tow for an OUI or whatever the case may be, impaired driving. If they come over there and they have any questions at all, these tow companies know, like every other business out there, call us. We have bars that do that now. We have restaurants that do that now. We have citizen that do that now, that'll call us and say, hey look I don't want my cousin, or I don't want my aunty to drive, they've been drinking.

And then we'll come, and we'll talk to them. And then generally when they see the light, they go okay we're going to leave the vehicle here. I understand, in this situation with the tow, that that person may want to get that car out and move it right off to the side of the road or whatever the case is to get it out to avoid the tow fees. But if they choose to drive that car, even on private property impaired, you can be arrested.

CHAIR KING: Okay. Thank you.

Councilmember Molina. Are you ready? Okay, can we call for the question?

COUNCILMEMBER MOLINA: Oh sorry, I just have one more question.

CHAIR KING: Oh, oh you have another question.

COUNCILMEMBER MOLINA: More on the authority of the Chief where it says Section 10.08.015, which grants the authority to the Chief to close a roadway if it is unsafe for travel for up to 60 days. My question is, basically are we then relieving authority from the Public Works Director by allowing the Chief of Police to, by giving that authority to the Chief of Police?

CHAIR KING: Mr. Hopper.

DEPUTY CORPORATION COUNSEL: Just a note, this came up at the last meeting. That 10.08.015 is existing code language. I know it's underlined, but it's being moved. If you look back, it's on page three of the bill, there's a Subsection E that has brackets around it. It's an existing code section, it's just being moved. So, this is all in current code and is not changing from the current code. So, we're not changing that authority at all right now. This is still, this is an existing code, it's just being moved. So, the police of chief, the Chief of Police already has this authority; you're not actually changing this ordinance. It's a little confusing because it's all underlined, which generally means new language. But that was necessary because it's being moved to a new section.

COUNCILMEMBER MOLINA: Okay. Thank you for that clarification.

CHAIR KING: I think I brought that up. I know you aren't on that Committee, so thanks for the question, for clarifying.

COUNCILMEMBER MOLINA: Okay.

CHAIR KING: Anything else?

COUNCILMEMBER MOLINA: Nope. That's it.

CHAIR KING: Okay. Mr. Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair. I just had some clarifying questions. And so, when you're, when you're arrested and your, your car is scheduled to be towed, the violator would have the breathalyzer test, everything taken, for your alcohol level?

CHAIR KING: Are, who are you asking?

COUNCILMEMBER SINENCI: And, and I'm only asking, I mean, I'm still kind of stuck on this trying to--

CHAIR KING: Corp. Counsel?

COUNCILMEMBER SINENCI: Well, to LT.

CHAIR KING: Oh. Lieutenant Hankins.

COUNCILMEMBER SINENCI: About just having the, the DUI separate from the, the illegal driving. Only because, you know, I just, I know you said that you were going to use, you know, train the officers to, so we just wanted to make sure that your car is not being towed if you're not drunk. I mean, yea, that's why I was looking at trying to take out one and two only because those are, I know they're, they're arrestable offenses, but it's just that I didn't want them to be towed in this bill. I, I just wanted to keep it strict that this is for drunk driving and not because you had lost your, your license and any, I get it that you'll get arrested, I just didn't want to get their car towed if they're not intoxicated. Does that make sense, LT?

CHAIR KING: Lieutenant, I think it'll--

LIEUTENANT HANKINS: Councilmember Sinenci, it makes sense, but let me explain it to you differently. If somebody's driving out there on a suspended license or no insurance or anything other than OUI and they crash into your car or your family member and cause them injury and damage to your property. And then you find out that that officer has cited that person five, six, seven, eight times before within the last month and we've had the opportunity to take that vehicle away at some point in time and didn't, I think that you might be a little bit upset that you took that language out.

And I understand where you're saying you're trying to protect people financially. But the bottom line is, is they have an obligation to follow the law regardless of your finances, just like everybody else. Now, that being said, if again, if you get stopped repeatedly for driving after your license is suspended or not having a driver's license, I think you should have the, the police should have the opportunity to take that vehicle away if we do. Because it's only a matter of time that we have seen that that person is going to cause some kind of a problem on the road.

I, I do understand what you're talking about with the finances. But again, I'll say it again, regardless of your financial status, everybody is required to follow the law just like everybody else that makes money and doesn't make money in this County. That's why we have them.

COUNCILMEMBER SINENCI: Thank you, Lieutenant. And, and no, I agree. I agree with that. I just wanted this to be the DO, the DUI bill you get towed for drunk driving. I, I get that that's a problem, but I just wanted to make it clear that this is what the bill is

about; this bill is about drunk driving. And it's to, I support it all the way that it should deter people from drinking and driving. I just wanted to, to make it clear that this is what the bill is and we're not kind of picking, piggybacking some other stuff onto the bill to, to, you know, we can address that somewhere else. I, I was, that's all; I just wanted to make sure that this was very clear, that this is what this bill is about.

LIEUTENANT HANKINS: The, the intent of this bill is exactly what you said, you know. The intent of this bill is generated and directed around innocent victims losing their lives at the hands of impaired drivers; that is exactly what the intent of this bill was for. With this other language that's in there, it gives police a tool to address other problems that are associated with impaired driving, okay. The goal is to remove the impaired driver's vehicle when we can under the provisions. Again, like I said, if someone is, doesn't have their license for two months, they, you know, they just recently expired, that's not a situation where we're going to necessarily pull the vehicle.

Again, an example this morning, like I told you, the guy that I stopped this morning for all of the driving without licenses he had, if this bill was in place, I would have towed his vehicle because he's a menace on the road. He's, he's causing traffic infractions on the road, nothing is legal with his vehicle. He has no business being on the road with people who are trying to come back and forth to work. And after so many times of going to court, going to jail, whatever the case is, they're still out there driving. So, I think that the, to leave that provision in there is extremely important to help us attack the broader spectrum of everything. But again, the target audience for this is impaired driving. I totally agree with you.

COUNCILMEMBER SINENCI: And I agree. And so, if, you know, if there was the report on their blood alcohol levels, then that would show that you were actually intoxicated and, and driving, so.

LIEUTENANT HANKINS: The officers who are screening these drivers perform a battery of field sobriety checks. If they feel you're impaired to the point that you shouldn't be operating that vehicle, you're going to get arrested. Whether you take a preliminary breath test at the scene or not is voluntary. When you come to this station, you're required by law to take a breath or a blood test. Everybody who signed for their license has agreed that that's what they're going to do. And if they don't, then the administrative driver's license sanctions kick in and then they're going to have to face the consequences for not upholding to their end of the bargain.

But yea, to answer your question, when officers take a vehicle off the, or when officers arrest somebody for impaired driving, it's because they believe that person is under the influence of drugs or alcohol and they should not be behind the wheel of that car.

COUNCILMEMBER SINENCI: Thank you. Thank you for the explanation.

CHAIR KING: Thank you, Councilmember Sinenci.

Councilmember Lee.

COUNCILMEMBER LEE: Madam Chair, I do understand Member Sinenci's concerns, because I'm wondering how hard it would be to take these two provisions and put it in another section of the code. Only because, unless, unless there's no other place you can put it, yea, then I can see keeping it here. How would you know that, I mean, normally you stop someone who's impaired because of the reckless driving, or speeding, or something like that. But somebody who doesn't have a license wouldn't necessary drive that way; just wondering, officer, Lieutenant.

LIEUTENANT HANKINS: What, what is your question? I'm sorry, Councilmember Lee.

COUNCILMEMBER LEE: How hard would it be to take these two provisions and put it in another section of the code that's probably more relevant than putting it in, under DUI, the DUI section?

LIEUTENANT HANKINS: I think that's something that would be better answered by Corp. Counsel.

COUNCILMEMBER LEE: Okay.

CHAIR KING: It's actually the section is not a DUI section, it's called "Authority of Police Officers", so.

COUNCILMEMBER LEE: But in the DUI bill.

CHAIR KING: This, well, like you said, it's one of the intents of taking this bill and putting this language in it, but we're, it's not, that's, the section isn't, isn't called, you know, "impaired driving section"; this is the "Authority of Police Officers".

But, Mr. Hopper.

DEPUTY CORPORATION COUNSEL: I just wanted to clarify, although there's been a lot of, the public awareness campaign's been, has been focused on DUI, the title of the bill is, is "A BILL FOR AN ORDINANCE RELATING TO POLICE AUTHORITY TO HAVE MOTOR VEHICLES TOWED". The key with this section, this isn't making anything illegal that's not already illegal, cause it's referencing current HRS sections. What it is,

is giving the police officers the authority to tow a car in certain cases for these violations.

And you can decide to include or not include these violations, you know, as, as offenses that may allow police to tow as a policy issue. But I think if, if you do want someone to be subject to tow for these violations, this would be the section to put it in, because this is going to be the section that, that would authorize the Police Department to tow a car under certain circumstances. So, you can decide to take in or, or to leave in or to take out these, these items. That's a policy call of the Council, but I think the general purpose of the bill is to allow police to tow cars for certain existing violations of the code, not just the DUI but for other ones. And again, it's up to you if you'd like to leave them in or not. The Big Island has all of these and I think that's how it was originally modeled, so that's why they're in there.

COUNCILMEMBER LEE: Okay. I, I just needed, well, not needed, but wondered about it, because from beginning to end we've been talking about targeting impaired drivers, you know. We've spent a lot of time and testimony on this and when the actual bill has a broader purpose and that is to tow vehicles for a variety of infractions, not only for impaired drivers. Thank you.

CHAIR KING: Okay. So, let's see if everybody, second and final and then we'll go to Mr. Hokama and then I want to call for the question after that.

Member Paltin.

COUNCILMEMBER PALTIN: I just wanted to clarify with Member Sinenci on his points he was making. Is it that you're concerned they, that the police aren't targeting kingdom citizens, that they're just targeting impaired drivers?

CHAIR KING: Mr. Sinenci.

COUNCILMEMBER SINENCI: Yea, right. I did mention that we did have, you know, those sovereignty plates that were on there and I don't know if those were legal or not. But I guess some of the concerns was, you know, just those people who are already financially, they cannot hand, you know, for those people that cannot pay their bill or, you know, we're, we're almost continuing that, that life that they're, they're still going to be, they gotta pay for this, that. So I'm just trying to help out those citizens that, that who cannot financially, you know, pay their, their bills and we're constantly putting more bills onto them. It just kind of generating the same, you know, lifestyle. So, I just wanted to address that for some. I don't know if I'm wording it right, but.

COUNCILMEMBER PALTIN: But the purpose is to target impaired driving, right, not kingdom citizens or any other reason? Impaired driving is the purpose.

CHAIR KING: Mr. Hopper.

DEPUTY CORPORATION COUNSEL: I, I think any of these violations will allow the police to tow the car. So, impaired driving is certainly a major purpose of the bill, but the other violations which deal with, you know, public health and safety, if someone's driving without a license and the other, the other violations, I think the intent is to deal with those violations. And again, not to make them illegal where they're otherwise legal, but to allow the police to tow for these violations. If there's violations in here that you don't want to give police the authority to tow for, that's, that's a legislative decision. But as it is now, the bill would allow towing in a variety of cases, including driving without a license or with it being suspended.

CHAIR KING: Okay. Okay. Councilmember Hokama, did you have a, another comment?

COUNCILMEMBER HOKAMA: Yea, I'll speak in support on second and final, Chair. For me, it's very basic. This is about bad driving period, okay. And it's not about the financials, whatnot. If you're breaking a law, you shouldn't be driving. I have no problem towing anybody's car that is not legal, including licenses, permits, decals, okay. There's a reason why we have requirements. And part of it is the discipline of application of the law, not because you cannot afford it, or you can afford it. If you cannot afford it, don't do it, you're breaking the law, you're going to be punished. Simple. Why are we trying to make excuses for following the law? So, I say very simply, Chair, this is a bill that's going address bad driving. It . . . impacts those who, that are under impairment or the influence. I support that. But I support anything that will help curb bad driving. Thank you.

CHAIR KING: Okay. Thank you, Mr. Hokama.

Okay. Second and final, Mr. Molina.

COUNCILMEMBER MOLINA: Yea, thank you. I'd like to speak in support of the motion as amended. And I want to thank the maker of the, this legislation, Ms. Sugimura, as well as Prosecutors Office, Police. And, and it's my hope that the public education campaign to emphasize to the public that this is what you will face in addition to what you're already subject to if you drive impaired. But like Mr. Hokama made the point about those who driving without licenses and doing it knowingly to violate the law, it's certainly not fair to the rest of us who follow the law.

And I'm just hoping that this will further, again, that the key in all of this is the deterrent; just making that person really think before they get behind that wheel whether intoxicated or not, if they are breaking the law. So, I'm hoping this adds to that. But thank you, and allowing me, also, for the privilege of asking questions at the Council level for this very important legislation. Thank you, Madam Chair.

CHAIR KING: Absolutely. Thank you.

Any second and final, Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. And thank you, Members, for your comments. You know, I, I support the bill as a bill to, to curb drunk driving. And, and I get that the police, and it is a deterrent for, for people who, who drink and drive. And so, that's why I am supporting this bill. My, my issues is just making sure that this is a clear bill that addresses what the intent is for. Like the names that the Prosecuting Attorney read up here; this is why I'm supporting the bill, because of all the lives that was, was lost. And so, I just wanted to make that clear. This is what this bill is about. It's nothing about anything else. It's about curbing drunk driving. Mahalo, Chair.

CHAIR KING: Mahalo. Okay, well, I think we're ready to make a vote. Do you have anything critical, Mr. Hopper?

DEPUTY CORPORATION COUNSEL: Just that, as a nonsubstantive change on the purpose section, we'd be changing seven listed state laws to six listed state laws. I don't think that's an action you'd want to take, but just for the record, so we don't get tripped up with any issues.

CHAIR KING: Oh, in the introduction page?

DEPUTY CORPORATION COUNSEL: That'll be changed, yea, that'll be changed into six. I think this--

CHAIR KING: Under one or more of seven listed. So, illegal operation of a motor vehicle under one or more of seven listed. Oh, because we changed it to six.

DEPUTY CORPORATION COUNSEL: Yes.

CHAIR KING: Okay. So, we can make that nonsubstantive change.

DEPUTY CORPORATION COUNSEL: Certainly.

COUNCILMEMBER HOKAMA: Yea, we leave that to you and the Clerk, Chair.

CHAIR KING: Right. Okay. Thanks for pointing that out. And I just want to say that I support this bill. And I agree with you, Mr. Hokama, that we want to stop bad driving. People get killed all the time for drunk driving, but there are other reasons why. And people who should not be on the road, should not be on the road regardless of their income level.

I want to get this done while it's still December. And in case folks don't know, this is National Impaired Driving Awareness Month. And so, after this passes, which this is first reading, it has to go through one more reading, there still will be a period of time where the department is writing administrative rules and educating the public before they actually start doing the towing. Although, they have the discretion to do that if there's someone in a bad enough condition or if they feel it's warranted.

And so, I want to thank the Prosecutors Office, the Police Department. I want to thank you guys for taking leadership on this issue, because we, you know, this is the first time this has come up because of your, your leadership and your determination to lower that number from 15. And thank you to Councilmember Sugimura for bringing it up in her Committee and supporting it all the way.

And I know none of us really wanted to weaken the bill. I'm really sad, because I was wanting to propose some of these amendments, but we, we are, have our hands tied and we don't want to incur additional liabilities for the County. And hopefully, and we'll see, you know, we'll see what happens. And, you know, if we have to go stricter, maybe we'll be in a position where we can do that at some point. But I just want to thank everybody for having the will to do this, because, and thank you for Mr. Grace coming from Oahu and, and, and speaking about how, you know, this isn't happening on all the islands.

So, with that, I want to call for the question. All those in favor of the motion on the floor, say "aye".

AYES: COUNCILMEMBERS HOKAMA, LEE, MOLINA,
PALTIN, SINENCI, SUGIMURA, AND CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

EXCUSED: COUNCILMEMBER KAMA AND VICE-CHAIR
RAWLINS-FERNANDEZ.

CHAIR KING: Measure passes seven "ayes", two "excused"; Vice-Chair Rawlins-Fernandez and Pro Tem Kama.

And so, thank you very much, everybody. Appreciate, appreciate all the, the deputies that came from the Prosecuting Attorney's Office and the police officers. And, and you have all the background on the bill now because you heard our entire discussions and you know the intent. And we really appreciate you being out there on the frontline and doing what you can do to make our, our other, our drivers on the road safer.

With that, let's see, do we want to take a quick break, or do you want to go right into the second item legislation? Break. Okay. Well, let's take a, let's take a ten-minute break and then we'll let the police officers leave.

And thank you to the Brown Family for being part of this. And you guys keep us on this, so, you know, if you feel like it's not working, come back down here and rattle the cage some more, okay? Alright. Thank you.

Break, ten-minute break. Come back at 2:55.

(THE MEETING WAS RECESSED BY THE CHAIR AT 2:44 P.M., AND WAS RECONVENED AT 3:00 P.M., WITH ALL MEMBERS PRESENT, EXCEPT MEMBERS HOKAMA, KAMA LEE, AND VICE-CHAIR RAWLINS-FERNANDEZ, EXCUSED.)

CHAIR KING: Okay. We're reconvening the special Council meeting of December 12, 2019. I'm Kelly King, the Maui County Council Chair. And we have a bare quorum right now. We're waiting for a couple of other Councilmembers to come back in. But wave at me if you have some personal needs, then we have to take a recess. Okay. We went through this a lot last term, right, Councilmember Sugimura. We had bare quorum, so some of us are used to it.

But so, Members, we have two items left, but they're both pertaining to the Maui County Council Legislative Package for this next State Legislative Session. So, I'm going to try to see if we can take them up together, they're both up for adoption.

Mr. Clerk, the, can you read us the, the bill number for the bill we just passed?

COUNTY CLERK: For the record, BILL 70 (2019).

CHAIR KING: Okay. Thank you. Seven zero?

COUNTY CLERK: Seven zero.

CHAIR KING: Okay. Okay. Mr. Clerk.

COUNTY CLERK: Madam Chair, proceeding with county communications.

(Councilmember Lee returned to the meeting at 3:01 p.m.)

COUNTY COMMUNICATIONS

NO. 19-496 - KELLY T. KING, COUNCIL CHAIR,
(dated December 5, 2019)

Transmitting a proposed resolution entitled "APPROVING PROPOSALS ON HOUSING, ENVIRONMENTAL, GOVERNANCE, AND PUBLIC SAFETY ISSUES FOR INCLUSION IN THE 2020 MAUI COUNTY LEGISLATIVE PACKAGE".

COMMITTEE REPORT

NO. 19-150 - GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE:

Recommending the following:

1. That Resolution 19-202, entitled "APPROVING FOR INCLUSION IN THE 2020 MAUI COUNTY LEGISLATIVE PACKAGE A STATE BILL TO INCREASE FUNDING FOR AGRICULTURE," be ADOPTED;
2. That Resolution 19-203, entitled "APPROVING FOR INCLUSION IN THE 2020 MAUI COUNTY LEGISLATIVE PACKAGE A STATE BILL TO AUTHORIZE SUPPLEMENTAL CATEGORICAL FUNDING FOR REMOTE SCHOOLS AND APPROPRIATE FUNDS," be ADOPTED; and
3. That Resolution 19-204, entitled "APPROVING FOR INCLUSION IN THE 2020 MAUI COUNTY LEGISLATIVE PACKAGE A STATE BILL TO PROMOTE TRAFFIC SAFETY ON TWO-LANE ROADWAYS," be ADOPTED.

CHAIR KING: Okay. Councilmember Molina.

COUNCILMEMBER MOLINA: Thank you very much, Madam Chair.

I MOVE TO ADOPT THE PROPOSED RESOLUTION
ATTACHED TO COUNTY COMMUNICATION NO. 19-496, AS
WELL AS THE FILING OF COUNTY COMMUNICATION 19-496,
AND ALSO TO MOVE TO ADOPT THE RECOMMENDATIONS
OF COMMITTEE REPORT 19-150.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay. Moved by Member Molina, seconded by Councilmember Lee.

Mr. Molina.

COUNCILMEMBER MOLINA: Thank you very much, Madam Chair. Starting with the County Communication 19-496, the Maui County Council submitted a number of proposals related to environmental, governance, and public safety issues for inclusion in the 2020 HSAC Legislative Package. However, of the ten proposals we submitted, only two were approved.

And the Council also submitted a number of housing related proposals to a housing summit meeting, which was hosted by Senator Schatz in October. And we were told that such proposals should be supported by either HSAC or the respective counties legislative package. And the proposals, which are attached to this communication are just top concerns for Maui County in these key areas and should be included in the 2020 Maui County Legislative Package.

And Madam Chair, further, going onto the committee report. The Council's GET Committee met on August 20, 2019 and December 3, 2019 to discuss the three proposals submitted by Councilmember Shane Sinenci for inclusion in the 2020 Maui County Legislative Package. And the three proposals relate to increased State funding to support agriculture; supplemental categorical funding for remote schools; and requiring the driver of the lead vehicle on Hana Highway, where passing is unsafe and five or more vehicles are backed up behind the lead vehicle, to use turnouts and permit vehicles following the lead vehicles, to pass safely. So, I think I've said enough on this and I yield the floor to my fellow colleagues. Thank you, Madam Chair.

CHAIR KING: Okay. Thank you, Councilmember Molina.

Any comments? I think we have a proposed amendment on one or two of the bills.
Councilmember Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair.

I MOVE TO AMEND THE RESOLUTION BY REVISING
EXHIBIT "A" AS FOLLOWS:

ADD THE FOLLOWING TEXT IN SECTION 1 AFTER THE
FIRST SENTENCE:

"THE PURPOSE OF THIS BILL IS TO APPROPRIATE
ADDITIONAL FUNDING TO SPECIFIC DEPARTMENT OF
AGRICULTURE PROGRAMS AND DIVISIONS TO INCREASE
BIOSECURITY AT AIRPORTS AND HARBORS, SUPPORT
SMALL LOCAL FARMERS, AND PROMOTE THE SAFETY OF
WORKERS AND THE PUBLIC AS IT PERTAINS TO
AGRICULTURE, INVASIVE SPECIES, AND NATIVE
ECOSYSTEMS".

ALSO, TO ADD THE FOLLOWING TEXT IN SECTION 2 AT THE
END OF THE SECOND SENTENCE:

"FOR ALL BRANCHES OF THE PLANT INDUSTRY DIVISION
AND AGRICULTURAL DEVELOPMENT DIVISION."

CHAIR KING: Okay.

COUNCILMEMBER MOLINA:

SECOND.

CHAIR KING: Okay. Moved by Member Sinenci, seconded by Member Molina.

Would you like to speak to the motion, Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. The purpose of the resolution is to
encourage the State Legislature to provide additional funding to the Department of Ag

to increase biosecurity at the major airport and harbor, regulate pesticide usage and farmworker safety, and support small local farmers. The language in the resolution is very broad. Members have expressed the desire to specifically state where the funding should go. I'm proposing amendments that do that.

Due to the isolated location in the Pacific Ocean, Hawaii has a multitude of endemic species, plants, and animals that only live here. Island species are incredibly fragile and depend upon one another for survival. A healthy ecosystem is essential for the native species to thrive.

Staff has handed out the Amendment Summary Form and so my motion is to specifically direct the money to the Department of Ag Plant Industry Division and the Agricultural Development Division. The Plant Industry Division houses the pesticide branch, plant pest control branch, and the plant quarantine branch. And the Agricultural Development Division holds the marketing and statistic branches. Thank you, Chair.

CHAIR KING: Okay. Thank you, Mr. Sinenci. And I do recall that we were, I guess in discussion in Committee about how would we, how we would go and testify at the State Legislature for the additional funding; what we thought that . . . would be asked what, what you need it for. And so, I appreciate you putting in the specifics into this bill because that's real helpful as a person who intends to be testifying.

Any other, does everybody have the Amendment Summary Form and then the Ramseyer format for the bill? Any questions or comments?

Member Paltin.

COUNCILMEMBER PALTIN: I, I support this. I just wanted to make a comment that, you know, I feel like our island ecosystem is extremely resilient, but there's only so much that we can take. And so, that, in that case, we need to, you know, malama the, the, the in and out of, of transporting of agricultural and, and other things through the airport. But I don't want to commit to saying that our ecosystem is fragile, because I believe it's really resilient given all the things that we've done to it in the last 127 years. It's extremely resilient, but it can only take so much.

CHAIR KING: Thank you, Member Paltin.

Okay. Any other comments on the amendments? If not, all those in favor of the amendment on the floor, say "aye".

AYES: COUNCILMEMBERS LEE, MOLINA, PALTIN,
SINENCI, SUGIMURA, AND CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

EXCUSED: COUNCILMEMBERS HOKAMA, KAMA, AND
VICE-CHAIR RAWLINS-FERNANDEZ.

CHAIR KING: Measure passes six "ayes", three "excused"; Members Rawlins-Fernandez, Hokama, and Kama.

Okay. So, we're back to the original bill which in, the original motion which includes all the bills in the resolution. And I can just briefly read the titles of these bills.

Did you have another question, Mr. Sinenci?

COUNCILMEMBER SINENCI: Well, I did want to waive the delay requirement. Should I do it now or after?

CHAIR KING: Delay requirement for?

COUNCILMEMBER SINENCI: With Rule 19(C) of the Rules of the Council.

CHAIR KING: We don't, no, we don't have any. Because the, because the HSAC bills, when they come to the Council, they can come straight to the Council floor. We don't need a waiver for that.

Mr. Nishita.

COUNTY CLERK: Thank you, Madam Chair. What Councilmember Sinenci is referring to is a specific provision of the Rules relating to amendment at final reading. And the request is being made to waive the requirement that the resolution be read an additional time at a future meeting. So, he's not asking for a waiver of Committee referral and report, but a waiver of the requirement to have the resolution up for another reading.

CHAIR KING: Oh, okay.

COUNTY CLERK: Thank you.

CHAIR KING: Alright. So, I'm sorry. I'm sorry I interrupted you. Go ahead and read the request again, for the motion.

COUNCILMEMBER SINENCI: Okay. Yea.

I MOVE TO WAIVE THE DELAY REQUIREMENT OF
RULE 19(C) OF THE RULES OF THE COUNCIL.

COUNCILMEMBER MOLINA:

SECOND.

CHAIR KING: Okay, moved by Member Sinenci, seconded by Member Molina.

COUNCILMEMBER SINENCI: And what Josiah said.

CHAIR KING: Okay, what Josiah said.

All those in favor of the motion to waive, say "aye".

AYES: COUNCILMEMBERS LEE, MOLINA, PALTIN,
SINENCI, SUGIMURA, AND CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

EXCUSED: COUNCILMEMBERS HOKAMA, KAMA, AND
VICE-CHAIR RAWLINS-FERNANDEZ.

CHAIR KING: Okay. Motion passes six "ayes", three "excused"; Member Rawlins-Fernandez, Hokama, and Kama.

Okay. So, we, we passed the, the amendment and we're clear to pass the bills into the Legislative Package. And does everybody have the resolution page? It's got the titles of all the bills on it.

I'm just going to read the titles of the additional bills we're putting into the package along with the ones in the committee report.

A. House Resolution entitled "STRONGLY URGING THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE UNITED STATES CONGRESS TO ALLOW HAWAIIAN HOMESTEADS TO BE DIRECT RECIPIENTS OF FEDERAL NATIVE HAWAIIAN HOUSING BLOCK GRANTS UNDER THE NATIVE HAWAIIAN *[sic]* NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT". And so, this is trying to increase the number in that pot, because it, you know, this was proposed by Member Kama. It had, at one point, been, I think upwards of 20 million and it's dwindled down to one million. So, there's really very little being done with that fund and they would like more funding.

B. "A BILL FOR AN ACT RELATING TO HISTORIC PRESERVATION". And this is the one that would help us be able to hire our own archaeologist in the County and have that person, have that person's work stand for the SHPD review if that person is qualified according to the SHPD qualifications.

C. "A BILL FOR AN ACT RELATING TO CESSPOOLS", which is extending the tax credits for people who replace their cesspools. Right now, that's due to expire next year.

D. "A BILL FOR AN ACT RELATING TO INVASIVE SPECIES". This is increase in funding for the State Environmental Species Commission.

E. An act for, "A BILL FOR AN ACT RELATING TO CESSPOOLS". And this one extends the date for the Cesspool Conversion Working Group, because that's, that's expected to expire next year as well, so they're asking to extend there. They're still working on, on the, on the issue of replacement.

F. "A BILL FOR AN ACT RELATING TO COMMUNITY MEETINGS". And this is the bill that goes in every year and would allow Councils to attend informational and celebratory meetings without making these reports and without violating Sunshine. This is the bill that every year we get told by the State Legislature, yea, that's a no-brainer and then it never passes somehow. So, we'll see if we can make a different approach this year.

G. "A BILL FOR AN ACT RELATING TO THE USE OF INTOXICANTS WHILE OPERATING A VEHICLE". That's Exhibit "7".

H. "A BILL FOR AN ACT RELATING TO SEA LEVEL RISE", Exhibit "8".

I. "A BILL FOR AN ACT RELATING TO HOUSING", Exhibit "I" *[sic]*, I mean Exhibit "9".

J. "A BILL FOR AN ACT RELATING TO TRANSIENT ACCOMODATIONS HOSTING PLATFORMS". And this is to, we're asking the State to give the counties the authority to regulate hosting platforms. So, right now, we've been told, we, we have an opinion from the Attorney General that we don't have that authority; that that's a State authority only.

And the last one is "A BILL FOR AN ACT RELATING TO TAXATION". And we are asking the State Legislature to extend our ability, for specifically for Maui County, to enact a surcharge on the GET. And, I believe there's some other GET and some expansion on that that Kauai has put into that bill. But it was not accepted by HSAC, so it would probably be proposed mostly by Maui and Kauai. But this would allow us to take till the end of next year to enact a surcharge on the GET if they so desire.

So those are, any questions or comments on the Legislative Package?

Member Paltin.

COUNCILMEMBER PALTIN: I just was . . . two of those did make it onto the HSAC, yea?

CHAIR KING: Yea. I think we just decided that we were just go ahead and, and put those in our package too, so.

COUNCILMEMBER PALTIN: Is it too late to put two other ones that made it onto the HSAC; the TAT and the Tort liability? I think the Administration has been looking into providing ocean safety at Pu'u Keka'a and that would, if those two are passed it would make things a lot easier to get that accomplished seeing our ocean safety levels are staffed at a appropriate rate right now.

CHAIR KING: Okay.

COUNCILMEMBER PALTIN: Would it be too late.

CHAIR KING: Well we, we can't add those today because they're not on the agenda. But it's not too late. The Maui Legislative Package is a lot more flexible than HSAC, because we don't have to get the approval of the other three counties. So, if you want to write those up and, and have them added to the Maui Legislative Package, we can do that in the next Council meeting if you have, you know, the next Council meeting we put on the notice for.

COUNCILMEMBER PALTIN: Okay.

CHAIR KING: If you get it in by noon tomorrow, it can go on the December 20.

COUNCILMEMBER PALTIN: Okay.

CHAIR KING: So--

COUNCILMEMBER PALTIN: And that would just be the same--

CHAIR KING: Same bills.

COUNCILMEMBER PALTIN: --as what is--

CHAIR KING: Yea. And we can--

COUNCILMEMBER PALTIN: --in the HSAC?

CHAIR KING: Right. We can add those to the, to the agenda.

COUNCILMEMBER PALTIN: Okay.

CHAIR KING: To our legislative agenda.

COUNCILMEMBER PALTIN: Yea, I think Kauai proposed and Big Island proposed. And the TAT is different than what we've historically done. I think they're just asking for a percentage for specific purposes.

CHAIR KING: Yea, I think we, we've tried that before as well. There was a working group, a TAT working group two or three years ago that recommended, I think it was 45 percent to all the counties, and that sits on a shelf somewhere.

COUNCILMEMBER PALTIN: Yea, I, I believe there's a much smaller percentage for a specific purposes.

CHAIR KING: Okay. Okay, so, yea, if you could write those two up and just send it in as a communication we can put it on the agenda to add those two. I don't have a problem with adding more, because I think Councilmembers will kind of land on the ones that are important to you for your issues and, and focus on that, on the testimony for that. But I will be keeping those who want to be informed, informed of all of our package and the HSAC Package as those bills come up, so we can help testify on those.

Member Sugimura.

COUNCILMEMBER SUGIMURA: So, what made it to the HSAC Package? What two bills?

CHAIR KING: Oh, what, what? There were actually eight bills total that we, we approved last Council meeting. But they were, the only two from our package, because you heard our entire package that we proposed, were the one of the cesspool bills, the tax credit, it's saying the tax credit. And the other thing that that, that that bill does in its current form is it also eliminates the geographic boundaries for who can get those tax credits. Because right now, it says only if you're within, I think it's 500 yards or feet or something like that, of a waterway then you can get that tax credit. So, our proposal was just anybody should be able to get it because we need to replace all the cesspools, right? And Upcountry is a major part. It might not be next to a river or a, you know, an actual waters of the U.S., but we still need to replace those. So, that was the other thing that bill did.

And then the, the second bill that made it in, Ms. Paltin, you might have to refresh my memory.

COUNCILMEMBER SUGIMURA: I thought the alcohol one?

COUNCILMEMBER PALTIN: The .08 to .05.

CHAIR KING: Oh right. Okay, so the, yea, lowering the blood alcohol level. So, that was the, those were the two that rose to the top. And we made a big push, of course, to get them all in there. But that's okay, we'll, we'll forge ahead on our own. Maui County is strong, and we are being seen as leaders in the State. So, you know, I'm, I'm confident that we are going to be heard.

Okay. Any questions or comments about the package? If not, all those in favor of the motion on the floor to create the Maui County Legislative Package, say "aye".

AYES: COUNCILMEMBERS LEE, MOLINA, PALTIN,
SINENCI, SUGIMURA, AND CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

EXCUSED: COUNCILMEMBERS HOKAMA, KAMA, AND
VICE-CHAIR RAWLINS-FERNANDEZ.

CHAIR KING: Measure passes six "ayes", three "excused"; Member Rawlins-Fernandez, Hokama, and Kama.

And we will, I think we'll wait till the next meeting to, if we have two more to add and then we'll, we'll be creating a little package to send to, to give to the Legislators that has all of the Maui County legislation in it. And we can all kind of divvy those up and disburse those on the open day of Legislature.

So, again, contact me if you intend to go. And we're coordinating, you know, pick-ups on the other end that, we, so that, you know, we can just take one van. We get, we get one parking spot at the Capitol.

So, another thing I wanted to mention to everybody is that I would like to call a press conference and invite the Mayor to sign the bill that we just passed on first reading on the 20th, assuming it's going to pass on the 20th. And the only way we can really schedule it, because we don't know how long the meeting is going to be, is to have it during the lunch hour, like at 12:15 on the seventh floor. But I would like everybody to be there, you know, whoever can.

And we are allowed to do press conferences with a quorum or more if we've already taken the vote. So, if you could, that would be great. We'll have, you know, the, the Prosecutor and the, and the police there. And then that will be our first piece of education to the public that, you know, this is what we've done, and this is where we're headed for the holidays. So if Member Sugimura, if you could prepare a few words as the Committee Chair, that would be great.

Okay. So, with that, I guess we will see everybody on Saturday at our holiday party. What time again?

COUNCILMEMBER LEE: Five o'clock sharp.

CHAIR KING: Okay. Five o'clock sharp. And we all have to remember all of the greetings that we learned throughout the year. Is that what was on the agenda?

COUNCILMEMBER LEE: Yes. One of the requirements.

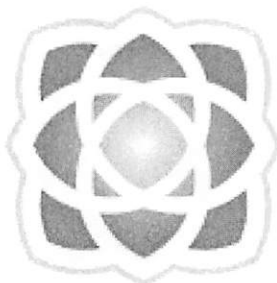
CHAIR KING: Okay. Alright. Thank you, Members. Thank you for attending this special meeting. I think we got some really important stuff done today and we'll see you this weekend. Aloha.

ADJOURNMENT

The special meeting of December 12, 2019 was adjourned by the Chair at 3:19 p.m.



KATHY L. KAOHU, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

RECEIVED
2019 DEC 11 PM 4:02

OFFICE OF THE
COUNTY CLERK

**Testimony on CR 19-151
Regarding Motor Vehicle Towing
Thursday, December 12, 2019**

Dear Chair King, Vice-Chair Rawlins-Fernandez and
Members of the Maui County Council,

While we support the intent of this bill, we would like to offer comments on the length of time the person has to retrieve their car from the towing company.

We understand this bill is a step towards further protecting the public and we commend Councilmember Sugimura and those who worked on this bill. Driving while impaired is a danger to the public and impacts us all. We agree that towing an offender's car is a smart way to deter people from driving while impaired (and committing the other offenses listed).

However, we are concerned that the offender only has 30 days from the time of notice from the towing company to retrieve and pay for their car or it is viewed as forfeited and can be sold. This does not take into account that some people cannot afford that fee, have extenuating circumstances or they may be in a rehabilitation center during that time. By allowing the towing company to sell or junk the car in such a short time, it takes away many people's ability to make a living. We acknowledge that people should think about the cost and inconvenience before making the decision to drive while intoxicated, but this will primarily affect those who cannot afford it.

We support this bill, but ask that the time to recover the towed vehicle be extended to 60 or 90 days to give those who cannot afford the expense or have extenuating circumstances recover their asset.

Mahalo for the opportunity to provide testimony.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.