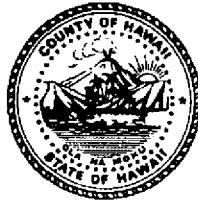


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 09 5 BILL NO. 2

AN ORDINANCE AMENDING SECTION 25-8-2 (NORTH AND SOUTH KONA DISTRICT ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL – 20 ACRES (A-20a) TO AGRICULTURAL – 10 ACRES (A-10a) AT KALOKO, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-3-27:14.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Section 25-8-2, Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Kaloko, North Kona, Hawai'i, shall be Agricultural – 10 acres (A-10a):

Beginning at the Northwesterly corner of this parcel of land, being also the Northeasterly corner of Lot 1 of Block 10 of Kaloko Mauka Subdivision, Increment 2 (File Plan 1010) and being a point on the Southerly side of Kaloko Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA" being 9,585.42 feet South and 7,484.54 feet East and running by azimuths measured clockwise from True South:

- | | | | |
|----|----------|----------|--|
| 1. | 304° 30' | 900.00 | feet along the Southerly side of Kaloko Drive to a point; |
| 2. | 34° 30' | 1,283.98 | feet along Lot 6 of Block 10 of Kaloko Mauka Subdivision, Increment 4 (File Plan 1433) and along the remainder of Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha to a point; |

3. 154° 50' 1,042.75 feet along Lot 3 of Block 10 of Kaloko Mauka Subdivision, Increment 2 (File Plan 1010) and along the remainder of Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha to a point;
4. 214° 30' 757.36 feet along Lot 1 of Block 10 of Kaloko Mauka Subdivision, Increment 2 (File Plan 1010) and along the remainder of Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha to the point of beginning and containing an area of 21.088 Acres.

All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof.

SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code 1983 (2005 Edition), the County Council finds the following conditions are:

- (1) Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or
 - (2) Reasonably conceived to fulfill needs directly emanating from the land use proposed with respect to:
 - (A) Protection of the public from the potentially deleterious effects of the proposed use, or
 - (B) Fulfillment of the need for public service demands created by the proposed use.
- A. The applicants, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
 - B. The applicants, successors or assigns shall be responsible for complying with all requirements of Chapter 205, Hawaii Revised Statutes, relating to permissible uses within the State Land Use Agricultural District.

- C. The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety (90) days from the effective date of this change of zone.
- D. Final Subdivision Approval of the proposed agricultural subdivision shall be secured from the Planning Director within five (5) years from the effective date of this ordinance. The applicant shall reserve the following easements and special setbacks in perpetuity for purposes of protecting and maintaining naturally forested areas and shall delineate such easements and setbacks on plans submitted for subdivision review:
1. a 100-foot wide "forest reserve easement" along the existing roadway frontage of the subject property, exclusive of the access point permitted by the Department of Public Works;
 2. a 30-foot "forest reserve easement" along all lot lines not covered by the 100-foot easement; and
 3. a 100-foot wide structural setback in lieu of the required 30-foot setback along the existing property's public street frontage to provide an additional buffer.
- E. Restrictive covenant(s) in the deeds of all the proposed agricultural lots fronting existing roads shall specify and uphold the easements and setbacks set forth in Condition D. The restrictive covenant(s) shall also specify that, including the area comprising the forest reserve easements described in Condition D, no less than eighty percent (80%) of the entire lot area shall be retained in forest. A copy of

the proposed covenant(s) to be recorded with the Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicant and the County and recorded with the Bureau of Conveyances prior to the issuance of Final Subdivision Approval.

- F. Restrictive covenants in the deeds of all the proposed lots within the subject property shall give notice that the terms of the zoning ordinance prohibit the construction of a second dwelling unit and condominium property regimes on each lot. This restriction may be removed by amendment of this ordinance by the County Council. The owners of the property may also impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State of Hawai'i Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.

- G. A forest management plan for the proposed lots within the subject property shall be prepared and submitted for review and approval by the Planning Director in consultation with the State Department of Land and Natural Resources. The forest management plan shall require the following:
 - 1. Include at minimum, the best forest and reforestation practices program for implementation and other applicable forestry management criteria, including those of the State Department of Land and Natural Resources (i.e. Forest Stewardship Program).

2. The forest management program shall include a restrictive covenant for the proposed lots within the subject property which shall be recorded with the State of Hawaii Bureau of Conveyances and/or Land Court. A copy of the covenants to be recorded shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicant and the County and recorded with the Bureau of Conveyances prior to the issuance of Final Subdivision Approval.
 3. If more than twenty percent (20%) of the subject property has been cleared or grubbed prior to the submittal of the forest management plan or the recording of the restrictive covenant(s), the reforestation program for any cleared or grubbed area(s) in excess of the 20% within the subject property shall be substantially implemented prior to the issuance of Final Subdivision Approval.
 4. This forest management plan shall govern the proposed lots within the subject property for a period of fifty (50) years and its termination may be considered after the 50-year period has elapsed by amending this ordinance requiring County Council approval by ordinance.
- H. All development generated runoff shall be disposed of on-site and not be directed toward any adjacent properties.

- I. A drainage study of the project site, if required, shall be prepared for review and approval by the Department of Public Works, prior to submittal of plans for subdivision review. Drainage improvements, if required, shall be constructed in a manner meeting with the approval of the Department of Public Works prior to the issuance of Final Subdivision Approval.

- J. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.

- K. The applicant shall prepare a Solid Waste Management Plan for the development, meeting with the approval of the Department of Environmental Management.

- L. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the subject property with respect to roads. The amount of the fair share contribution shall be the sum which is the product of multiplying the number of lots proposed to be subdivided by the amounts allocated hereinbelow for each such lot, and shall become due and payable within ninety (90) days of the effective date of this ordinance. The fair share contribution to address the potential road impacts shall be in the form of cash and/or in-kind services approved by the County Council and shall be applied to improving the Kaloko Drive/Mamalaho Highway intersection. The fair share contribution shall have a value of **\$10,368.57 per additional lot**. Based upon the applicant's representation of intent to subdivide and develop up to one (1) additional lot, the indicated total fair share contribution is **\$10,368.57**. The fair share contribution shall be allocated as follows:

- **\$10,368.57 per lot** for an indicated total of **\$10,368.57** to the State or County to support road and traffic improvements.

The fair share contribution shall be adjusted annually by the Hawaii County Planning Department, beginning three (3) years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). Upon approval of the fair share contributions, the Planning Director shall submit a final report to the County Council for its information that identifies the specific approved fair share contributions, as allocated, and further implementation requirements.

- M. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fee Ordinance.
- N. The applicant shall comply with all applicable County, State and Federal laws, rules, requirements and regulations.
- O. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:
 - 1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, its successors or assigns, and that are not the result of their fault or negligence.

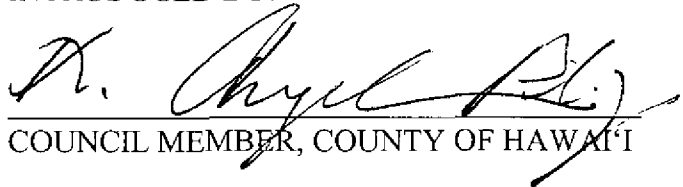
2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
3. Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone.
4. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the area to its original or more appropriate designation.

SECTION 3. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

SECTION 4. This ordinance shall take effect upon its approval.

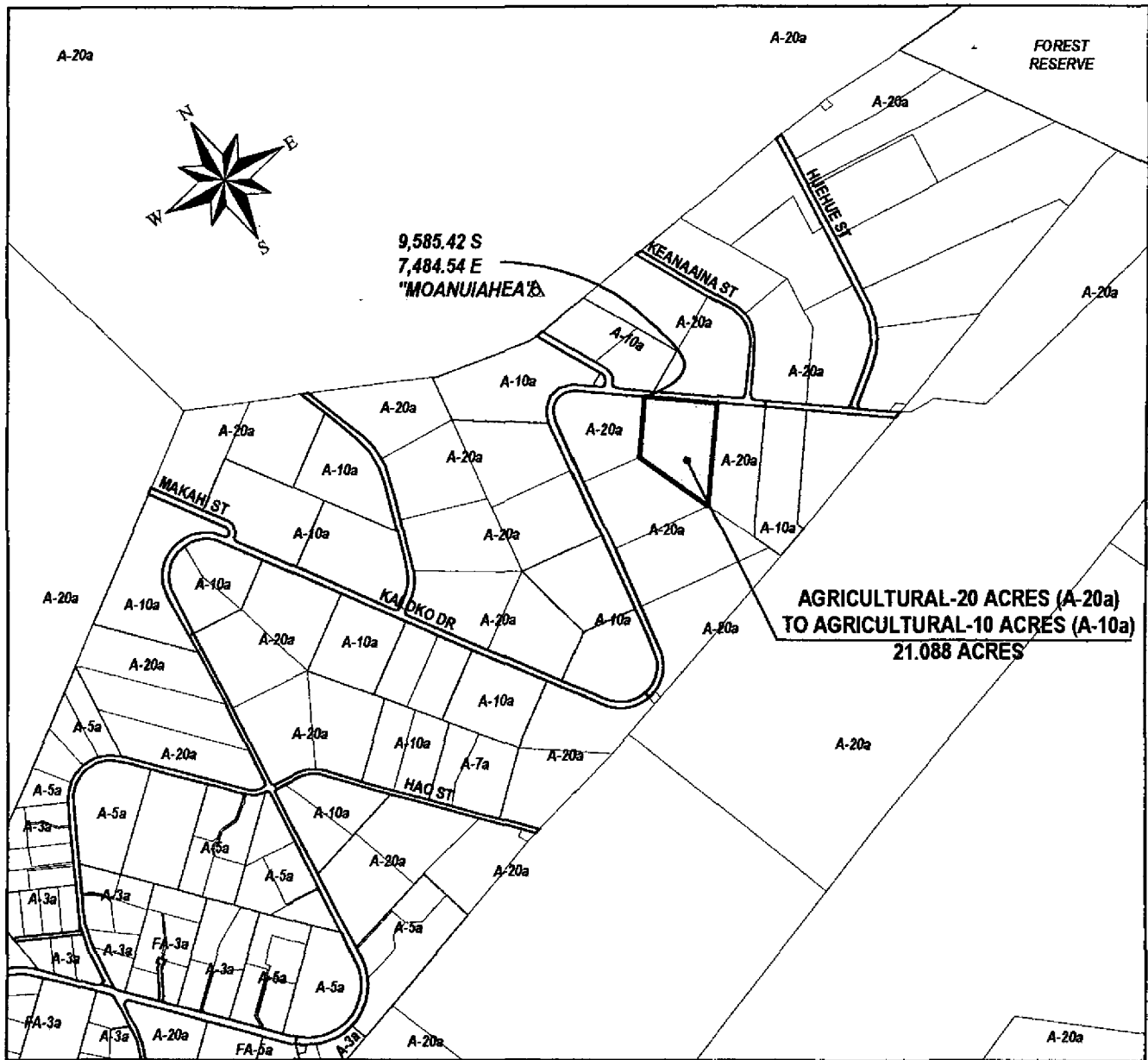
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

_____ Kona _____, Hawai'i

Date of Introduction: January 7, 2009
Date of 1st Reading: January 7, 2009
Date of 2nd Reading: January 23, 2009
Effective Date: February 9, 2009

REFERENCE: Comm. 4



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-2 (NORTH AND SOUTH KONA DISTRICT ZONE MAP)
ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE
1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION
FROM AGRICULTURAL-20 ACRES (A-20a)
TO AGRICULTURAL-10 ACRES (A-10a)
AT KALOKO, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT
COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK
County of Hawai'i
Kona, Hawai'i

RECEIVED
Time 2:44 pm By BT
Date 2/09/09
County Council

Introduced By: K. Angel Pilago
Date Introduced: January 7, 2009
First Reading: January 7, 2009
Published: January 16, 2009

REMARKS: _____

Second Reading: January 23, 2009
To Mayor: February 2, 2009
Returned: February 9, 2009
Effective: February 9, 2009
Published: February 19, 2009

REMARKS: _____

| ROLL CALL VOTE | | | | |
|----------------|------|------|-----|----|
| | AYES | NOES | ABS | EX |
| Enriques | X | | | |
| Ford | X | | | |
| Greenwell | X | | | |
| Hoffmann | | X | | |
| Ikeda | X | | | |
| Naeole | X | | | |
| Onishi | X | | | |
| Yagong | X | | | |
| Yoshimoto | X | | | |
| | 8 | 1 | 0 | 0 |

| ROLL CALL VOTE | | | | |
|----------------|------|------|-----|----|
| | AYES | NOES | ABS | EX |
| Enriques | X | | | |
| Ford | | X | | |
| Greenwell | | X | | |
| Hoffmann | | X | | |
| Ikeda | X | | | |
| Naeole | | X | | |
| Onishi | X | | | |
| Yagong | X | | | |
| Yoshimoto | X | | | |
| | 5 | 4 | 0 | 0 |

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO
FORM AND LEGALITY:

[Signature]
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date **FEB 3 2009**

[Signature]
Approved/Disapproved this 9th day
of February, 2009

MAYOR, COUNTY OF HAWAII

[Signature]

COUNCIL CHAIRPERSON

[Signature]

COUNTY CLERK

Bill No.: 2 (2006-2008)
Reference: C-4/PC-3
Ord No.: **09 5**

**Ordinances Numbered 09-5, 09-6, 09-7, 09-8, 09-9, 09-10,
09-11, 09-12, 09-13, 09-14, 09-15, 09-16, & 09-17**

I hereby certify that the following Ordinances passed second and final reading at the meeting of the County Council on January 23, 2009, by vote, as listed below:

Ordinance 09-5 (Bill 2) (2006-2008): An Ordinance Amending Section 25-8-2 (North and South Kona District Zone Map), Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), by Changing the District Classification From Agricultural – 20 Acres (A-20a) to Agricultural – 10 Acres (A-10a) at Kaloko, North Kona, Hawai'i, Covered by Tax Map Key 7-3-27:14. AYES: Council Members Enriques, Ikeda, Onishi, Yagong, and Chair Yoshimoto – 5; NOES: Council Members Ford, Greenwell, Hoffmann, and Naeole – 4; ABSENT: None; EXCUSED: None.

Ordinance 09-6 (Bill 28) (2006-2008): An Ordinance Amending Section 25-8-2 (North and South Kona District Zone Map), Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), by Changing the District Classification From Agricultural – 20 Acre (A-20a) to Agricultural – 10 Acre (A-10a) at Kaloko, North Kona, Hawai'i, Covered by Tax Map Key 7-3-026:017. AYES: Council Members Enriques, Ikeda, Onishi, Yagong, and Chair Yoshimoto – 5; NOES: Council Members Ford, Greenwell, Hoffmann, and Naeole – 4; ABSENT: None; EXCUSED: None.

Ordinance 09-7 (Bill 317) (2006-2008): An Ordinance Amending the State Land Use Boundaries Maps for the County of Hawai'i by Changing the District Classification From the Agricultural to the Urban District at Kapalaalaea 2nd, North Kona, Hawai'i, Covered by Tax Map Key 7-7-008:121. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 09-8 (Bill 322, Draft 3) (2006-2008): An Ordinance Amending Section 25-8-3 (North Kona Zone Map), Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), by Changing the District Classification From Agricultural – 5 Acres (A-5a) to Single Family Residential – 7,500 Square Feet (RS-7.5) at Kapalaalaea 2nd, North Kona, Hawai'i, Covered by Tax Map Key 7-7-008:121. AYES: Council Members Enriques, Ford, Greenwell, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 8; NOES: Council Member Hoffmann – 1; ABSENT: None; EXCUSED: None.

Ordinance 09-9 (Bill 1): An Ordinance Amending Chapter 24 of the Hawai'i County Code 1983 (2005 Edition, as Amended), Relating to Vehicles and Traffic. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 09-10 (Bill 2): An Ordinance Amending Chapter 24 of the Hawai'i County Code 1983 (2005 Edition, as Amended), Relating to Vehicles and Traffic. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 09-11 (Bill 3): An Ordinance Amending Chapter 24 of the Hawai'i County Code 1983 (2005 Edition, as Amended), Relating to Vehicles and Traffic. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 09-12 (Bill 4): An Ordinance Amending Chapter 24 of the Hawai'i County Code 1983 (2005 Edition, as Amended), Relating to Vehicles and Traffic. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 09-13 (Bill 5): An Ordinance Amending Ordinance No. 08-64, Which Amended Chapter 24 of the Hawai'i County Code 1983 (2005 Edition, as Amended), Relating to Vehicles and Traffic. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 09-14 (Bill 6): An Ordinance to Amend Ordinance No. 08-78, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2009. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 09-15 (Bill 7): An Ordinance Amending Ordinance No. 08-79, as Amended, Relating to Public Improvements and Financing Thereof for the Fiscal Year July 1, 2008 to June 30, 2009. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 09-16 (Bill 9): An Ordinance to Amend Chapter 25, Article 2, Division 7, Section 25-2-71, Hawai'i County Code 1983 (2005 Edition, as Amended), Relating to the Zoning Code. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 09-17 (Bill 10): An Ordinance to Amend Ordinance No. 08-78, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2009. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 9; NOES: None; ABSENT: None; EXCUSED: None.



Kenneth G. Goodenow
County Clerk

(Hawai'i Tribune-Herald – February 19, 2009)
(West Hawai'i Today – February 19, 2009)

Note: The original Digest/Affidavit is attached to Ordinance 09-5.