

MINUTES

COMMITTEE OF THE WHOLE

Council of the County of Maui

Council Chamber

May 1, 2001

CONVENE: 1:32 p.m.

PRESENT: Councilmember Dain P. Kane, Chair
Councilmember G. Riki Hokama, Vice-Chair
Councilmember Alan M. Arakawa, Member
Councilmember Robert Carroll, Member
Councilmember Jo Anne Johnson, Member
Councilmember Patrick S. Kawano, Member
Councilmember Michael J. Molina, Member
Councilmember Charmaine Tavares, Member

EXCUSED: Councilmember Wayne K. Nishiki, Member

STAFF: Richelle K. Kawasaki, Legislative Attorney
Pauline Martins, Committee Secretary

Jock Yamaguchi, Executive Assistant to Councilmember Kane
James Johnson, Executive Assistant to Councilmember Johnson

ADMIN.: James Takayesu, Corporation Counsel, Department of the Corporation Counsel
Richard Bissen, Prosecuting Attorney, Department of the Prosecuting Attorney (Item No. 11[3])
Richie Nakashima, Assistant Chief, Department of Police (Item No. 11[3] & 11[4])
Victoria Takayesu, Deputy Corporation Counsel, Department of the Corporation Counsel (Item No. 11[3] & 11[4])
David Goode, Director, Department of Public Works and Waste Management (Item No. 11[1])
Wesley Lo, Director, Department of Finance (Item No. 11[1])
Luke Bruno, Risk Manager, Department of Finance (Item No. 11[1])
Judith M. E. Williams, Deputy Corporation Counsel, Department of the Corporation Counsel (Item No. 11[1])

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OTHERS: William Ota, Esq., Robbins & Rhodes (Item Nos. 11[6] & 46[9])

PRESS: None.

CHAIR KANE: The Council's Committee of the Whole will come to order. For the record, we have Councilmembers Kawano, Arakawa, Carroll, Johnson, Tavares present. We also have from Corporation Counsel, Jimmy Takayesu, Tori Takayesu . . . uh . . . and staff--Pauline and Richelle. Also present is Michael Molina--Councilmember Molina. (*NOTE: Bob Carroll is pointing to Councilmember Arakawa, who just arrived at his seat*) Yes, I saw him coming down. Excused from this meeting is Mr. Hokama and Mr. Nishiki. Good afternoon, members.

MEMBERS: Good afternoon.

CHAIR KANE: Before we get started, I wanted to direct your attention to Mr. Molina. Everybody look at him and wish him a happy birthday, today.

MEMBERS: . . . (*cheers and applause*) . . .

CHAIR KANE: Happy birthday, Mr. Molina.

OTHERS: . . . (*applause*) . . .

COUNCILMEMBER MOLINA: Thank you, Mr. Chair.

CHAIR KANE: Speech, speech. . . . (*chuckled*) . . .

MEMBERS: . . . (*chuckled*) . . .

COUNCILMEMBER KAWANO: Blow your horn.

CHAIR KANE: Yeah, blow your horn.

COUNCILMEMBER MOLINA: . . . (*chuckled*) . . .

MEMBERS: . . . (*chuckled*) . . .

CHAIR KANE: There you go. . . . (*chuckled*) . . .

COUNCILMEMBER MOLINA: Thank you. . . . (*chuckled*) . . .

CHAIR KANE: All right.

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COUNCILMEMBER MOLINA: I'll support whatever you say, Mr. Chair. . . . *(chuckled)* . . .

MEMBERS: . . . *(chuckled)* . . .

CHAIR KANE: Members, we have five items on today's agenda. And as you can see, they have a very specific scope and so I wanna make sure and if . . . uh . . . you folks have a problem with me keeping the discussions tight on these items, please let me know that you feel that I'm not being fair about it. But, nonetheless, again, I will be very tight on the discussion since the, the . . . uh . . . items are very specific in nature. We're not discussing broad themish type of agenda items so I wanted to make that announcement. Also, members, before we get started, we will handling the executive session portions of our meeting a little differently. You need to bear with us, and I ask you to bear with the Chair. We will be asking for . . . uh . . . a convening of executive sessions on each individual item. And the reason for that is . . . when people, or if a court needs to subpoena records or, or executive session meetings, we would like to have them only have a specific agenda item and not the whole day's worth of executive session meetings. Because it's all done together in the past, we're gonna do it separately. So, it'll create a little inconvenience for us, in the beginning, but if you bear with us and help the Chair make the adjustment, we should be fine as we go down the road. So, again, members, I wanna announce that before we get started.

COW-11(3) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS (DAVID LEE GARDNER, ET AL. V. DEAN RICKARD, ET AL., CIVIL NO. CV00-00508 DAE BMK)

CHAIR KANE: Members, I'd like to direct your attention to the first item on the agenda is COW-11(3), settlement authorization of claims and lawsuits--the David Lee Gardner, et al. versus Dean Rickard, Civil No. CV00-00508 DAE BMK. Members, we are here to consider the possible settlement of case that alleges false arrest and malicious prosecuson., proshecut., prosecution--excuse me. Members, I will pass the mic over. We are in open session and so . . . uh . . . your questions--if we can just get the presentation from Corporation Counsel and bring us up to speed on what we're talking about and then we'll go from there.

MS. TAKAYESU: Thank you, Council Chair. This case involves an arrest that occurred in 1999. The individual plaintiff was arrested for harassment in Costco-Kahului by an off-duty officer. The individual has filed . . . um . . . a complaint for harassment--I mean I'm sorry--for malicious prosecution and false arrest under State law as well as Section 1983 claims in Federal court. I'd like to discuss settlement of this issue in executive session. I have had a settlement conference with the magistrate in this matter--last week--and we have recommendations we'd like to discuss.

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CHAIR KANE: Thank you very much, Ms. Takayesu. Members, any questions? Hearing none, members, I'd like to ask for a motion to enter into an executive session meeting, following the open session. We will recess the open session and reconvene in executive session . . . uh . . . and this is pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes. And members, you folks are familiar with this, to consult with legal counsel on the questions and issues pertaining to the powers, duties, privileges, immunities and liabilities of the County, Council and the Committee. Members, can I have a motion, please?

COUNCILMEMBER ARAKAWA: So moved.

COUNCILMEMBER KAWANO: Second.

COUNCILMEMBER MOLINA: Second.

CHAIR KANE: It's been moved by Arakawa, seconded by Molina. Any discussion? Hearing none, all in favor say "aye".

COUNCILMEMBER KAWANO: "Aye".

COUNCILMEMBER MOLINA: "Aye".

COUNCILMEMBER ARAKAWA: "Aye".

CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Kawano, Molina and Tavares, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Nishiki and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: EXECUTIVE SESSION.

CHAIR KANE: It's been carried. We will convene in executive session . . . uh . . . in a, in a little while.

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COW-11(4) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS (WALTER J. WHITTEN V. COUNTY OF MAUI, ET AL., CIVIL NO. CV00-00628 HG BMK)

CHAIR KANE: Members, I'd like you to direct your attention to COW-11(4), settlement authorization of claims and lawsuits. This is the Walter J. Whitten versus County of Maui, et al., Civil No. CV00-00628 HG BMK. Members, this case alleges racial discrimination within the Police Department. We will be considering whether to authorize a settlement of this matter. At this time, I'd like to ask Corporation Counsel to give us an update on this item. Corp. Counsel, please?

MS. TAKAYESU: Thank you, Council Chair. This is a, as was stated . . . um . . . a complaint in Federal court for racial discrimination and retaliation--hostile work environment--filed by a former Police Officer, while he was stationed on Moloka'i. The lawsuit is against . . . um . . . the particular Sergeant with the Police Department as well as the County of Maui. We are in settlement negotiations, right now, with the plaintiff's attorney and I'd like to discuss those recommendations in executive session.

CHAIR KANE: Thank you very much. Members, any questions? Hearing none, members, again, I will be asking for a motion to enter into an executive session . . . uh . . . an executive meeting--excuse me--again, pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes.

COUNCILMEMBER ARAKAWA: So moved.

CHAIR KANE: Can I have a motion, please?

COUNCILMEMBER ARAKAWA: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR KANE: It's been moved by Arakawa, seconded by Molina. Any discussion? Hearing none, all in favor say "aye".

COUNCILMEMBER ARAKAWA: "Aye".

COUNCILMEMBER KAWANO: "Aye".

COUNCILMEMBER MOLINA: "Aye".

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CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Kawano, Molina and Tavares, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Nishiki and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: EXECUTIVE SESSION.

CHAIR KANE: We will convene in executive session at a later time.

COW-11(6) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS (O'CONNOR, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 94-0544 (1))

CHAIR KANE: Members, I will direct your attention, please, to 11(6), COW settlement authorization of claims and lawsuits in the O'Connor, et al. versus County of Maui, et al., Civil No. 94-0544 (1). Members, this case stems from an alleged injury at Makena Beach Park. The prior Council's Committee of the Whole deferred action on this case and so we are now in discussion--if we can have Corporation Counsel review this matter with us. Corporation Counsel?

MR. TAKAYESU: This, this is a lawsuit arising out of an accident that occurred at Makena--well, Big Beach--in May of 1994. At that time, the County did have an agreement with the State to provide various services at that beach. We have . . . um . . . a hearing or a m., meeting with the court, later this week and, at this time, we'd like to be able to talk to you about this case in executive session, with respect to a possible settlement proposals. Mr. Bill Ota from Mr. Robbins' Office is, is here today and he will also assist us in updating the case.

CHAIR KANE: Thank you very much. Members, any questions? Hearing none, members, I'm asking your . . . uh . . . for your authorization and a motion to enter into executive session, pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes.

COUNCILMEMBER ARAKAWA: So moved.

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COUNCILMEMBER TAVARES: Second.

COUNCILMEMBER KAWANO: Second.

CHAIR KANE: It's been moved by Arakawa, seconded by Tavares. Any discussion, members?
Hearing none, all in favor say "aye".

COUNCILMEMBER TAVARES: "Aye".

COUNCILMEMBER KAWANO: "Aye".

COUNCILMEMBER MOLINA: "Aye".

CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Kawano, Molina and Tavares, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Nishiki and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: EXECUTIVE SESSION.

CHAIR KANE: Carried. We will be convening in executive session at a later moment or a later time.

COW-46(9) SPECIAL COUNSEL (O'CONNOR, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 94-0544 (1))

CHAIR KANE: Members, direct your attention, please, to COW-46(9), special counsel request for the O'Connor, et al. versus County of Maui, et al., Civil No. 94-0544 (1). Members, this matter stems from an alleged injury at the Makena Beach Park. The Committee will consider whether to recommend additional compensation for special counsel Robbins & Rhodes. Corporation Counsel?

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MR. TAKAYESU: Again, this is the same case as the last item. Robbins & Rhodes is ret., has been retained as special counsel to represent the County. Again, the, we are requesting . . . uh . . . consideration of a resolution to increase the compensation for special counsel.

CHAIR KANE: Thank you, Corp. Counsel. Members, any discussion? Hearing none, members, I'll be asking for a motion to enter into executive session.

COUNCILMEMBER MOLINA: So moved.

COUNCILMEMBER TAVARES: Second.

CHAIR KANE: This is pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes. It's been moved by Molina, seconded by Tavares. Discussion? Hearing none, all in favor say "aye".

COUNCILMEMBER TAVARES: "Aye".

COUNCILMEMBER MOLINA: "Aye".

CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Kawano, Molina and Tavares, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Nishiki and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: EXECUTIVE SESSION.

CHAIR KANE: Carried. We will be convening in executive session at a later moment.

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COW-11(1) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS (MARGARET TOBA'S DAMAGE CLAIM NO. 2001-030)

CHAIR KANE: Members, the last item on the agenda--we are in open session--is COW-11(1), settlement authorization of claims and lawsuits for the Margaret Toba's damage claim No. 2001-030. We are here to consider Margaret Toba's claim for alleged damages caused by flooding from a sewer-line obstruction in Wailuku on February 22nd of this year. Members, we will--are in discussion. Corporation Counsel, you have the floor.

MR. TAKAYESU: Again, the, the Chair has a . . . uh . . . given a good summary of the nature of this particular claim. We would like to meet with you in executive session to discuss this case.

CHAIR KANE: Thank you. Members, thank you for bearing with me. At this point, I will be asking for a motion to enter into executive meeting, pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes.

COUNCILMEMBER CARROLL: So moved.

COUNCILMEMBER ARAKAWA: So moved.

COUNCILMEMBER JOHNSON: So moved.

COUNCILMEMBER TAVARES: Second.

CHAIR KANE: It's been moved by . . . a lotta people. . . . (*chuckled*) . . .

MEMBERS: . . . (*chuckled*) . . .

CHAIR KANE: It's been moved by Carroll, seconded by Tavares. Any discussion? Hearing none, all in favor say "aye".

COUNCILMEMBER CARROLL: "Aye".

COUNCILMEMBER JOHNSON: "Aye".

COUNCILMEMBER TAVARES: "Aye".

COUNCILMEMBER MOLINA: "Aye".

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CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Kawano, Molina and Tavares, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Nishiki and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: EXECUTIVE SESSION.

CHAIR KANE: Carried. We will be convening in executive session. Members, at this time--first of all, I'd like to recognize Councilmember Hokama, present this afternoon.

VICE-CHAIR HOKAMA: Excuse my delay, Mr. Chairman.

CHAIR KANE: No problem. Councilmember Hokama is the Vice-Chair of the Committee. Members, at this time, I will be taking a recess in open session and will be convening an executive session on each individual item as . . . uh . . . we get to them. And we will reconvene back in open session, once we complete that. Take a recess. Members, we'll take a 5-minute recess and we'll restart at 1:45. Meeting is in recess.

RECESS: 1:42 p.m.

(THE COMMITTEE OF THE WHOLE MEETING ENTERED INTO EXECUTIVE SESSION AT 1:45 P.M. AND ENDED AT 3:42 P.M.)

RECONVENE: 3:46 p.m.

CHAIR KANE: Members, I'd like to reconvene the recessed meeting that we . . . uh . . . we are in open session.

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COW-46(9) SPECIAL COUNSEL (O'CONNOR, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 94-0544 (1))

CHAIR KANE: Members, there is one vote that we need to take in open session. That is on Item 46(9), the recommendation of adoption of the proposed resolution authorizing additional compensation of \$75,000 to outside counsel Robbins & Rhodes. And that's . . . uh . . .

COUNCILMEMBER ARAKAWA: So moved.

CHAIR KANE: That authorization is not to exceed \$200,000.

COUNCILMEMBER ARAKAWA: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR KANE: It's been moved by Arakawa, seconded by Councilmember Molina. We are under discussion, members. Hearing no discussion, all in favor say "aye".

VICE-CHAIR HOKAMA: "Aye".

COUNCILMEMBER CARROLL: "Aye".

COUNCILMEMBER MOLINA: "Aye".

CHAIR KANE: Opposed?

VOTE: AYES: Councilmembers Arakawa, Carroll, Johnson, Kawano, Molina and Tavares, Vice-Chair Hokama, and Chair Kane.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Nishiki.

MOTION CARRIED.

ACTION: ADOPTION OF PROPOSED RESOLUTION APPROVING ADDITIONAL COMPENSATION FOR ROBBINS & RHODES.

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CHAIR KANE: Carried. It's been moved on to the full Council as a recommendation by the Committee.

COW-11(3) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS (DAVID LEE GARDNER, ET AL. V. DEAN RICKARD, ET AL., CIVIL NO. CV00-00508 DAE BMK)

CHAIR KANE: Also members, just so everybody is clear . . . uh . . . under Item 11(3), recommendation of adoption of a revised proposed resolution authorizing settlement of this case in the amount of \$20,000 was voted and . . . uh . . . voted on and approved as a recommendation on to the full Council.

COW-11(4) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS (WALTER J. WHITTEN V. COUNTY OF MAUI, ET AL., CIVIL NO. CV00-00628 HG BMK)

CHAIR KANE: Under Item 11(4), the recommendation of adoption of a revised proposed resolution authorizing settlement of the case, the correction would be to the name Clarence Kenui. The revised proposed resolution will reflect Clarence Kenui, Jr. Members, that was voted on and approved as a recommendation on to the full Council for consideration.

COW-11(6) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS (O'CONNOR, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 94-0544 (1))

CHAIR KANE: Under Item 11(6), recommendation of adoption of the proposed resolution authorizing settlement of the case was voted on and approved as a recommendation to the full Council for its consideration.

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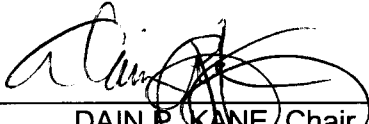
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COW-11(1) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS (MARGARET TOBA'S DAMAGE CLAIM NO. 2001-030)

CHAIR KANE: Item 11(1), the recommendation for adoption of a revised proposed resolution authorizing settlement of the case. This was voted on and approved . . . uh . . . for authorization as a proposed . . . uh . . . recommended for approval at the full Council. Members, we are under announcements. Seeing none, the Chair only has one announcement that . . . uh . . . again, a reminder in . . . uh . . . it's important to understand that whatever was discussed in executive session remain. So, if you get any phone calls or contacts from people outside who are curious to know what went on in executive session, please limit your comments to things that won't compromise the integrity of what executive session is all about. Anything else? Seeing none, members, this meeting is adjourned.

ADJOURN: 3:48 p.m.

APPROVED BY:



DAIN R. KANE, Chair
Committee of the Whole

cow:min:010501:pm

Transcribed by: Pauline Martins