

POLICY COMMITTEE

Council of the County of Maui

MINUTES

October 5, 2011

Council Chamber, 8th Floor

CONVENE: 9:04 a.m.

PRESENT: VOTING MEMBERS:

Councilmember G. Riki Hokama, Chair
Councilmember Robert Carroll, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Elle Cochran, Member
Councilmember Donald G. Couch, Jr., Member
Councilmember Danny A. Mateo, Member
Councilmember Joseph Pontanilla, Member
Councilmember Michael P. Victorino, Member
Councilmember Mike White, Member (In 9:06 a.m.)

STAFF: Carla Nakata, Legislative Attorney
Jo-Ann Sato, Substituting Committee Secretary

ADMIN.: Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation Counsel
Michael J. Molina, Executive Assistant to the Mayor, Office of the Mayor
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel
(Item No. 1(18), 1(1), 1(15), 1(17), and 1(10))
Patrick K. Wong, Corporation Counsel, Department of the Corporation Counsel
(Item Nos. 1(18))
Gary A. Yabuta, Chief, Department of Police
John D. Kim, Prosecuting Attorney, Department of the Prosecuting Attorney
Patrick T. Matsui, Deputy Director, Department of Parks and Recreation
Thomas Kolbe, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: **Item 1(18):** Peter Cahill, Attorney at Law, Cahill & O'Neill (*sitting in gallery*)

CHAIR HOKAMA: . . .(*gavel*). . . Policy Committee shall come to order. This is the regular meeting of 5 October 2011. This morning we have our Vice-Chairman Mr. Carroll. Also present are Members Baisa, Cochran, Couch, Mateo, Victorino, and Pontanilla. Excused is Mr. White from today's proceedings. We have a bunch of litigation and settlement requests before the Committee. Prior to that, we shall take up Policy Item 2(21) but since this is a published meeting, do we have any requests for public testimony this morning?

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MS. SATO: No, Mr. Chair.

CHAIR HOKAMA: Since we have no testimony requests, testimony shall be closed for today's meeting with no objections.

COUNCIL MEMBERS: No objections.

CHAIR HOKAMA: So ordered. Let us move forward with Policy Item 2(21).

POL-2(21): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS
(COMMISSION ON PERSONS WITH DISABILITIES)

CHAIR HOKAMA: We have Mr. Molina from the Office of the Mayor in conjunction with a draft resolution that the Mayor sent us on September 2, 2011, notifying this Committee of his intention to appoint Paulo Sabado to the Commission on Persons with Disabilities for a term expired on March 31, 2015. Mr. Molina, do you have any comments in which to share this morning?

MR. MOLINA: Thank you, Mr. Chairman, and good morning, Committee Members. For your consideration, the Mayor would like you to consider nominating Mr. Paulo Sabado to the Commission on Persons with Disabilities. He's currently employed with the ARC of Maui, and if you'll take note of his application he's been involved in a number of organizations and activities related to the art community as well. And he's certainly very enthused about serving and, again, the Mayor would like your consideration for this matter. Thank you, Mr. Chairman. Thank you, Committee Members.

CHAIR HOKAMA: Okay. Thank you, Mr. Molina. We note the presence of Mr. White to the proceedings this morning. All right are there any questions for Mr. Molina on the proposed nominee of Mr. Sabado to the Commission on Persons with Disabilities? Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair, and thank you, Mr. Molina. I just have one question. It's serendipitous that we're discussing this today. We were talking about this Commission yesterday, and it seems that there is a concern about attendance. Are we clear that this gentleman can put in the time?

MR. MOLINA: That is a very good question, Council member. We did talk to Mr. Sabado and he is very committed to attending. As a matter of fact, he was quite enthused that he was being considered and definitely made it a point to attend. And that is typically one of our first questions when we do ask potential nominees is their availability to attend meetings.

COUNCILMEMBER BAISA: Thank you very much. That was the only concern I had.

MR. MOLINA: Thank you.

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CHAIR HOKAMA: Okay. We have more questions from the Members so the Chair will give each Member an opportunity. Mr. Carroll? Vice-Chairman Carroll, any questions?

VICE-CHAIR CARROLL: No questions.

CHAIR HOKAMA: Thank you. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. I will be supporting this nominee. But I do have a question in regards to the Commission itself for Mr. Molina.

CHAIR HOKAMA: Pursue.

COUNCILMEMBER PONTANILLA: Mr. Molina, you know, I've been approached by people of the blind community in regards to persons with disability. Do you know if we have anybody that represents the blind community here in Maui County?

MR. MOLINA: If I get your question correctly, if there's a member currently sitting on the Commission that is visually impaired? I believe we don't but I'd have to go back and check. I can confirm that with you at a later date if that's okay with you, Mr. Chairman.

COUNCILMEMBER PONTANILLA: Okay.

MR. MOLINA: I can find that information and get that to you.

COUNCILMEMBER PONTANILLA: Thank you. I went to this cane walk for blind, and I had an opportunity to talk to this particular group and one of the questions was specifically what I asked you if anyone that was sitting on the Commission itself from the blind community so thank you.

MR. MOLINA: Thank you, Mr. Council member. Mr. Chair, if I may, just add a quick comment. We will certainly look for future nominees that someone who may express interest who is visually impaired that could potentially sit on that Commission as well. So we will certainly take that into consideration.

COUNCILMEMBER PONTANILLA: Thank you. Thank you, Chair.

CHAIR HOKAMA: Thank you very much. Mr. White, questions?

COUNCILMEMBER WHITE: No, questions.

CHAIR HOKAMA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you. Mr. Molina, are you aware that yesterday when they came this was one of the commissions that they wanted to actually combine with . . .

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COUNCILMEMBER PONTANILLA: Aging.

COUNCILMEMBER COCHRAN: Aging.

COUNCILMEMBER VICTORINO: Council on Aging. Everybody was helping me because I had a senior moment. And I think I'm going to be crossing over soon for the aging. I'm sorry. Nuff with the comments, please. Mr. Chair, get the order in this Council please. Anyhow, anyhow, seriously now, are you aware of that?

MR. MOLINA: Yes, sir, Council member. I believe this commission and I guess a couple of other boards and commissions were being considered for either consolidation or being down-sized. And ultimately, that would be a decision of the Charter Commission and maybe that could be a potential proposal from the Council as well.

COUNCILMEMBER VICTORINO: The reason for that question is, does this gentleman Ms. Baisa asked about the commitment of time, but does he understand the mission and is there a mission? Because that was another thing that came out very loud and very clear, you know, so here's a new guy coming in all excited, goes to a few meetings nothing happens, he loses his enthusiasm and that's what happens a lot of a time. So, are you guys working to ensure that these people, when they come in some orientation and some help in that area -- what the vision of the Commission itself is?

MR. MOLINA: You're correct with your assessment, Mr. Victorino. When we do talk to nominees, we try to encourage them or motivate them, if you will, of the importance of serving on the Commission and the commitment they make. So we certainly try to do our best and sometimes you win, sometimes you lose in terms of people staying. Of course the hope is that most people will stay ultimately for the full term. But just for example today Mr. Sabado is being considered to replace Mr. Crugnale who resigned for personal reasons. So things can happen along the way as to why people resign but it is with the hope that it is not related due to the lack of enthusiasm. So we will certainly work on that, Mr. Victorino.

COUNCILMEMBER VICTORINO: And again, that's my concern that we do not lose these commissions in the shuffle to be efficient or just do away with certain ones or combine and then, hopefully, they'll come together because I think I see differences. How much time do you spend doing this? How much time do you spend on these applications and interviews?

MR. MOLINA: Um . . .

COUNCILMEMBER VICTORINO: Give me a rough estimate - two hours, five hours? Give me your best guess.

MR. MOLINA: It can vary.

COUNCILMEMBER VICTORINO: Okay.

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MR. MOLINA: Depends on what type of board or commission. Some of them are more high profile commissions like Planning Commission and Ethics and so forth, those take more time. Police Commission, Fire Commission where you have a large number of applicants, there's a large number of names that we do go through so it can range.

COUNCILMEMBER VICTORINO: Okay.

MR. MOLINA: But we try to spend as much time as we can in screening potential nominees and, of course, interviewing them. We certainly do consult with you as well as area representative.

COUNCILMEMBER VICTORINO: Why thank you because that was another discussion yesterday about soft cost and the cost behind the scenes that you don't really see so I was just curious how that came up. And if you do, I'll write a little letter to the Chair about that and try to get some numbers 'cause that's going to be important for some . . . another issue but not this one today. But thank you. I can support this nominee. I know him and I think he'll do a great job. Thank you, Mr. Chair.

CHAIR HOKAMA: Thank you. Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, I'll be supporting the nomination of Mr. Sabado to the Commission. I think it's been over a decade that he's currently employed with the Arc of Maui. The Arc of Maui provides immediate services to the disabled community. This, for me, I see as an extension of his work where he's now able to continue providing the services for the specific community so I'm rather pleased that it is this individual and by all means I'm ready to vote on this nominee. Thank you, Chair.

CHAIR HOKAMA: Thank you. Mr. Couch?

COUNCILMEMBER COUCH: No.

CHAIR HOKAMA: Ms. Cochran?

COUNCILMEMBER COCHRAN: No comments, thank you.

CHAIR HOKAMA: Okay. Any further questions to Mr. Molina on the nomination of Mr. Sabado? Having none, it's the Chair's recommendation to have a motion to forward the draft resolution entitled "APPOINTMENT OF MEMBER TO THE COMMISSION ON PERSONS WITH DISABILITIES". Mr. Carroll?

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VICE-CHAIR CARROLL: So move.

COUNCILMEMBER BAISA: Second.

CHAIR HOKAMA: Okay, I have a motion by Mr. Carroll and seconded by Ms. Baisa. The Chair is open to motion to amend to place the name of Paulo Sabado on Exhibit "B", which is to approve the nomination. Mr. Carroll?

VICE-CHAIR CARROLL: So move.

COUNCILMEMBER BAISA: Second.

CHAIR HOKAMA: Thank you. I have a motion and second by Mr. Carroll and Ms. Baisa to amend the main motion by inserting the name of Paulo Sabado to Exhibit "B". Any questions? All in favor of the motion, please say "aye"?

VICE-CHAIR CARROLL: Aye.

COUNCILMEMBER COCHRAN: Aye.

COUNCILMEMBER BAISA: Aye.

CHAIR HOKAMA: Oppose say no? Motion is carried.

VOTE: AYES: Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Pontanilla, Victorino, and White.

NOES: None.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED.

ACTION: ADOPT MAIN MOTION, AS AMENDED.

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CHAIR HOKAMA: Back to the main motion. Any discussion? If not, all in favor of the motion, please say "aye"?

VICE-CHAIR CARROLL: Aye.

COUNCILMEMBER COCHRAN: Aye.

COUNCILMEMBER BAISA: Aye.

CHAIR HOKAMA: Oppose say no? Motion is carried by nine ayes.

VOTE:	AYES:	Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Pontanilla, Victorino, and White.
	NOES:	None.
	EXC.:	None.
	ABSENT:	None.
	ABSTAIN:	None.

MOTION CARRIED.

ACTION: ADOPT MAIN MOTION.

CHAIR HOKAMA: Thank you very much. Thank you very much, Mr. Molina.

MR. MOLINA: Thank you very much, Mr. Chairman. Thank you, Committee Members.

CHAIR HOKAMA: Members, let me direct you to Policy Item 1(18). It is the first of five litigation matters before you this morning.

POL-1(18): LITIGATION MATTERS (SPECIAL COUNSEL AUTHORIZATION: JACKI JURA V. COUNTY OF MAUI, ET AL.; CIVIL NO. 11-00338 SOM RLP)

CHAIR HOKAMA: The first item is regarding a Special Counsel request for the Department of the Corporation Counsel. This is Jacki Jura v. County of Maui, et al., Civil No. 11-00338 SOM RLP. We are in receipt of a correspondence dated September 13th from the Department of the Corporation Counsel whereby they have forwarded a resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL CAHILL & O'NEILL, IN JACKI JURA V.

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COUNTY OF MAUI, ET AL., CIVIL NO. 11-00338 SOM RLP". This morning we have our three top lawyers. We'll have Mr. Wong start with his comments to the Committee. Mr. Wong?

MR. WONG: I'll defer to Ms. Lutey.

CHAIR HOKAMA: Okay. Ms. Lutey shall represent the Department this morning.

MS. LUTEY: Thank you. Good morning.

COUNCILMEMBER VICTORINO: Good morning.

COUNCILMEMBER COCHRAN: Good morning.

MS. LUTEY: Jacki Jura was a Deputy Prosecuting Attorney from December 2006 to December 2007. In August of this year, Ms. Jura filed a lawsuit against the County, Benjamin Acob, and Marie Kosegarten. Our office has a conflict with the representation of Marie Kosegarten in this matter because Ms. Kosegarten is currently the Plaintiff in a lawsuit against the County of Maui. Because Ms. Kosegarten is being sued in this Jura lawsuit, in her capacity as a Deputy Prosecuting Attorney, she's entitled to legal representation in this case. Due to this conflict that we have with her, however, our office is unable to represent her. Our office has negotiated a flat fee agreement subject to Council approval for Peter Cahill to represent Ms. Kosegarten. The flat fee arrangement calls for compensation, including trial, not to exceed \$50,000. And the way this fee structure will work is that Mr. Cahill will receive a certain amount of money when he signs an agreement with us if it's approved. The remaining payments will be spread out over the course of the litigation with the largest payments being at the back end or closest to trial. Typically, what we do is pay a bulk amount 30 days before trial and the remainder of that bulk payment on the date of trial. It's basically a back end heavy contract. Mr. Cahill is present today in Council Chambers if this body has questions for him. But because we're dealing really only with the issue of appointment of special counsel for Ms. Kosegarten, I believe this is something we can address in open session.

CHAIR HOKAMA: Okay. You've heard the opening comments by Deputy Lutey. The Chair, however, will consider executive session if it feels it necessary regarding this specific Policy item before us. The Chair will note for the record that we also have Mr. John Kim present. He is here this morning as a Prosecuting Attorney; however, Mr. Kim's name is also part of the proceeding before you. The Chair will also note do not get confused because of this other pending lawsuit within the Committee's jurisdiction which is the Kosegarten issue. This is somewhat connected but not quite. Okay, this is about a special counsel request. This is not about the suit per se but about a special counsel request since the Department believes it is conflicted out to present proper representation. Okay, with that, the Chair is open to questions from the Committee members to the Department of the Corporation Counsel regarding this request of special counsel as well as the proposed compensation proposal. Questions, gentlemen, ladies? Mr. Victorino?

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COUNCILMEMBER VICTORINO: Thank you. This maximum of \$50,000 this is inclusive of all proceedings this case may take on? I mean, I'm not really privy to how this all works. So what does this mean specifically with a max of \$50,000?

MR. WONG: Till the date of trial, through trial.

COUNCILMEMBER VICTORINO: Okay. So if it goes to trial --

MR. WONG: Correct.

COUNCILMEMBER VICTORINO: --then we'd have to renegotiate something else with this particular
...

MR. WONG: No.

COUNCILMEMBER VICTORINO: No?

MR. WONG: Through trial.

COUNCILMEMBER VICTORINO: Through trial. Okay, I'm sorry.

MR. WONG: So in the event the case is appealed after a trial, then that's a separate matter.

COUNCILMEMBER VICTORINO: Right.

MR. WONG: However, if the case is dispensed with sooner by way of Motion of First Summary Judgment or any other type of pre-trial motions, then the fee remains the same.

COUNCILMEMBER VICTORINO: Okay. So, the maximum of \$50,000 takes us through trial. Anything else before that this . . . so we're paying \$50,000 no matter what we get?

MR. WONG: Correct.

COUNCILMEMBER VICTORINO: So long as we go up through trial?

MR. WONG: Correct.

COUNCILMEMBER VICTORINO: Okay.

MR. WONG: Now, that's the fee.

COUNCILMEMBER VICTORINO: Yes.

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MR. WONG: Now, if there's expenses that are incurred because this case is in Federal District Court, there's going to be neighbor island travel and expenses, those we will have to cover. That's separate and apart from the fee. This is a flat fee of \$50,000 and that's it. So if there's deposition costs, --

COUNCILMEMBER VICTORINO: Right.

MR. WONG: --if there is travel expenses, if there's a retention of expert all those other extraneous matters that are typically attached to litigation, we will have to pay for those things separate and apart from the fee.

COUNCILMEMBER VICTORINO: Again, so this is just the retaining fee and that's it.

MR. WONG: That's correct.

COUNCILMEMBER VICTORINO: Anything else we may have to come up with, in fact, we will come up with more money because you just said there will be depositions, --

MR. WONG: Absolutely.

COUNCILMEMBER VICTORINO: --there will be travel and there will other stuff so this could be a lot more expensive than we see right now, the \$50,000 if anything?

MR. WONG: And that's no different than retaining any other special counsel and any other matter.

COUNCILMEMBER VICTORINO: Okay. I just wanted the public to understand what that meant.

MR. WONG: All right.

COUNCILMEMBER VICTORINO: Okay, thank you.

MR. WONG: Sure.

COUNCILMEMBER VICTORINO: I appreciate that. Thank you, Chair.

CHAIR HOKAMA: Okay. The Chair will allow every Member to have an opportunity. The Chair will state for the record that I am aware that Corporation Counsel Wong and Deputy Lutey did make an attempt and contact our sister Corporation Counsels of the sister counties and through various issues and concerns that have been brought up there are not able to assist us in this specific case this morning. And so the Chair is satisfied with the consideration before you this morning on this special counsel request. Mr. Mateo, questions for the Department?

COUNCILMEMBER MATEO: Chairman, I have no questions. I'm just awaiting the Chair's recommendation.

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CHAIR HOKAMA: Okay. Thank you. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Just wanted to ask Corporation Counsel, if we were doing this in-house you'd still have to have the expenses of the depositions and the expert witnesses and all the other things that this person might be charging. You would still incur those charges as well, right?

MR. WONG: That is absolutely correct.

COUNCILMEMBER COUCH: Okay. So it's nothing new. The only thing is the retainer?

MR. WONG: *(Nodded yes)*

COUNCILMEMBER COUCH: All right. Thanks.

CHAIR HOKAMA: Ms. Cochran?

COUNCILMEMBER COCHRAN: No questions, Chair.

CHAIR HOKAMA: Ms. Baisa?

COUNCILMEMBER BAISA: Just a quick one, and it probably is not necessary but I'll ask just for the sake of the record. I'm assuming that the firm that we're wanting to retain has special capabilities in the area that this suit is concerned with --

MR. WONG: Yes.

COUNCILMEMBER BAISA: --cause this is kind of a very special area.

CHAIR HOKAMA: Mr. Wong?

MR. WONG: Yes, absolutely.

COUNCILMEMBER BAISA: Thank you.

MR. WONG: What I'd also like to share with this Committee is that Mr. Cahill is being retained specifically to represent Ms. Kosegarten in the defense of her claims. Now, our office will retain the defense of the remainder of the lawsuit. Okay. So we will be working almost hand in glove except that there's a direct conflict between our representation of Ms. Kosegarten so her communication with Mr. Cahill will be protected between them as the attorney-client privilege provides. So we cannot, and the purpose of this for that we're not able to provide direct defenses for Ms. Kosegarten. Okay.

COUNCILMEMBER BAISA: Thank you very much.

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CHAIR HOKAMA: Okay. Thank you. Mr. Carroll, questions?

VICE-CHAIR CARROLL: No questions.

CHAIR HOKAMA: Thank you. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: No questions.

CHAIR HOKAMA: Mr. White?

COUNCILMEMBER WHITE: No, sir.

CHAIR HOKAMA: Let me just make it very clear for the record, Mr. Wong, Ms. Lutey, my understanding is we have a, going to have an agreement with Cahill & O'Neill for an amount up to \$50,000.

MR. WONG: Right.

CHAIR HOKAMA: There is a point, however, that we may not spend the entire amount if certain things happen. Is that correct, Mr. Wong?

MR. WONG: You're correct.

CHAIR WONG: Can you state in open session what those issues or items may be that would not involve the entire \$50,000 amount to be encumbered or utilized?

MR. WONG: Well, as Ms. Lutey alluded to earlier, there will be a payment schedule. And based on the timing of the payment schedule depending on what point the litigation is at, I mean, at what point the litigation either resolves or moves forward, the payments will be dispensed during that period of time. So I would prefer not to, in open session actually, provide that because it's strategic --

CHAIR HOKAMA: Uh-huh.

MR. WONG: --in a sense, and we would not want to jeopardize any future strategic attempts in our defenses.

CHAIR HOKAMA: The Committee understands that, Mr. Wong. It's just that it's not in the reso the compensation plan. So if that's an issue of the Committee, then the Chair is willing to go into executive session if you need to have this explained to you in detail of how we're going to compensate and what is the strategy of this case. Is there a need for executive session, Members?

COUNCILMEMBER VICTORINO: No.

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COUNCILMEMBER COCHRAN: No.

CHAIR HOKAMA: Okay. The Chair will take that direction from the Committee. If there are no other questions, gentlemen, ladies, regarding this item for Mr. Wong or Ms. Lutey, it is the Chair's recommendation to . . . wait, on this one there is a time issue before the Committee and the Council so your Chair's intent is to defer this item. What has been sent to the Council for this Friday's Council meeting is a request to have a consideration of discharge of this matter so that the Council may make a decision on Friday since Ms. Lutey needs to give the court a decision by October 7th, Ms. Lutey?

MS. LUTEY: Our answer is due in this case I believe on the 17th.

CHAIR HOKAMA: On the 17th.

MS. LUTEY: Right.

CHAIR HOKAMA: Okay, so that's your Chair's intention is to defer this matter today and you will have an opportunity on Friday if the discharge goes forward to give a decision that Ms. Lutey can forward to the Circuit Court. Okay, any questions on this item? If not, with no objections this item shall be deferred.

COUNCILMEMBER VICTORINO: No objections.

COUNCILMEMBER COCHRAN: No objections.

COUNCILMEMBER BAISA: No objections.

CHAIR HOKAMA: Okay, Policy Item 1(18), Jacki Jura v. County of Maui, et al., Civil No. 01 . . . excuse me, Civil No. 11-00338 SOM RLP is deferred.

ACTION: DEFER.

CHAIR HOKAMA: Let us go to Policy Item 1(1).

POL-1(1): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: ELMER STEPHEN WEREB, ET AL., V. COUNTY OF MAUI, ET AL.; CIVIL NO. 09-00198 JMS LEK)

CHAIR HOKAMA: This is a settlement authorization - Elmer Stephen Wereb, et al., v. County of Maui, et al., Civil No. 09-00198 JMS LEK. Members, you have a correspondence dated January 24, 2011, from Corporation Counsel with a proposed resolution authorizing settlement regarding the Elmer Stephen Wereb case v. County of Maui. Joining us is Police Chief Yabuta and we may need to go into executive session so I'll ask Deputy Lutey to give us what she can in open session at this time. Ms. Lutey?

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MS. LUTEY: Thank you. I will be asking for executive session in this matter to discuss potential settlement of this case. This is an active litigation and our trial date is currently scheduled for December 6th of this year. The basic facts are that on September 26, 2008, Dennis Patrick Wereb was arrested for terroristic threatening in the first degree, basically threatened a minor on one of the Maui Buses. He was taken to the Lahaina Police station where he was charged and booked. The following morning which was a Saturday, Mr. Wereb was taken out of his cell to smoke a cigarette. He provided a written statement and he made some phone calls. During that time out of cell block, which was approximately 30 minutes, he appeared fine. Mr. Wereb was then placed back in his cell and he was continued to be monitored and his movements were documented in a log every 15 minutes, and this is done by video camera by a public safety aide. Mr. Wereb was discovered deceased in his cell on Monday, September 28th. His parents have filed a lawsuit claiming wrongful death and various other Federal claims. The autopsy has shown that Plaintiff died of fatty metamorphosis of the liver which is typically related to alcohol abuse. And if you've got any questions that I can discuss in open session fine but since this is active litigation I have asked for executive session.

CHAIR HOKAMA: Okay. Thank you very much. Any questions on what has been presented in open session because we are definitely going in to executive session on this one, Members. No questions? Okay. If not, the Chair will take a motion for executive session on this matter regarding Elmer Stephen Wereb, et al., v. County of Maui, et al., Civil No. 09-00198 JMS LEK. And the Chair is requesting this executive session with regard to HRS Section 92-5(a), which allows us to consult with legal counsels on questions and issues pertaining to powers, duties, privileges, immunities, and liability of the County, the Council, and the Committee as well as 92-5(a)(8) of the Hawaii Revised Statutes to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to State or Federal law, or a court order. Mr. Carroll?

VICE-CARROLL: So move.

COUNCILMEMBER BAISA: Second.

CHAIR HOKAMA: Thank you. Motion by Mr. Carroll, seconded by Ms. Baisa to enter into executive session on Policy Item 1(1). Any discussion? All in favor of the motion, please say "aye"?

VICE-CHAIR CARROLL: Aye.

COUNCILMEMBER BAISA: Aye.

CHAIR HOKAMA: Opposed say no? Motion is carried with nine ayes.

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VOTE: **AYES:** **Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Pontanilla, Victorino, and White.**

NOES: **None.**

EXC.: **None.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.

CHAIR HOKAMA: Thank you very much. Next is Policy Item 1(15), Litigation Matters.

POL-1(15): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: MARK HIGA AND JASMINE HIGA V. DAVID ROARTY, COUNTY OF MAUI, ET AL., CIVIL NO. 10-1-0373(3))

CHAIR HOKAMA: Settlement Authorization, Members, Mark Higa and Jasmine Higa v. David Roarty, County of Maui, et al., Civil No. 10-1-0373(3). This is regarding a request for settlement of Mark Higa and Jasmine Higa v. David Roarty, et al., Civil No. 10-1-0373(3), and we have a resolution that has been forwarded on August 4th by the Department of the Corporation Counsel. We have also again with us this morning Police Chief Yabuta and Deputy Corporation Counsel Lutey. Ms. Lutey, any opening comments?

MS. LUTEY: Yes, thank you. On May 25, 2009, Officer David Roarty was responding to a car accident at Kele Street and Dairy Road. Officer Roarty was in authorized emergency mode, which means that his lights and sirens were on. As he approached the intersection of Dairy Road and Hana Highway heading in the direction of KMart, Officer Roarty slowly entered the intersection. When Officer Roarty got into the Wailuku bound lanes on Hana Highway, he collided with a truck operated by Mark Higa causing it to flip on its side. Mark Higa and his wife sustained injuries in this collision. In addition, their vehicle was considered a total loss. This matter is also in active litigation. I would like to discuss potential settlement of this matter during executive session.

CHAIR HOKAMA: Thank you, Ms. Lutey. Questions for the Councilor regarding open session comments? If not, the Chair is open for a motion for executive session on this item. The Chair is asking this under two items under Hawaii Revised Statutes 92-5(a) and 92-5(a)(8), excuse me, the first one is 92-5(a)(4) and 92-5(a)(8). Mr. Carroll?

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VICE-CHAIR CARROLL: So moved.

COUNCILMEMBER BAISA: Second.

CHAIR HOKAMA: I have a motion by Mr. Carroll, seconded by Ms. Baisa to enter into executive session regarding the settlement authorization of Mark Higa and Jasmine Higa v. David Roarty, County of Maui, et al., Civil No. 10-1-0373(3). Any further discussion? If not, all in favor of the motion, please say "aye"?

VICE-CHAIR CARROLL: Aye.

COUNCILMEMBER BAISA: Aye.

CHAIR HOKAMA: Opposed say no? Motion carries with nine ayes.

VOTE: AYES: Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Pontanilla, Victorino, and White.

NOES: None.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED.

ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.

CHAIR HOKAMA: Members, may I direct you to Policy 1(17).

POL-1(17): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: JAMES GIBBINS V. COUNTY OF MAUI, ET AL., CIVIL NO. 10-1-0443(3))

CHAIR HOKAMA: This also is a settlement authorization request from Corporation Counsel regarding James Gibbins v. County of Maui, et al., Civil No. 10-1-0443(3). And this is regarding a correspondence dated August 25, 2011. At this time, Mr. Matsui, the Deputy Director of Parks and Recreation can join us regarding this item. And presenting the case will be Ms. Lutey this morning. Ms. Lutey?

MS. LUTEY: Thank you. On April 12, 2009, Plaintiff James Gibbins was boogie boarding on the west side of Baldwin Beach Park. According to Plaintiff, he was riding a wave in and was being

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pushed up the beach when a tree stump suddenly appeared on the shore in front of him striking him on the top of the head. Plaintiff sustained injuries and has filed a suit against the County, the State, and A&B Properties. This matter is in active litigation and I am requesting executive session to discuss this matter.

CHAIR HOKAMA: Okay, thank you very much. Members, any questions for Ms. Lutey regarding her comments in open session? Having none, the Chair is open to a motion for executive session regarding the settlement authorization of James Gibbins v. County of Maui, et al., Civil No. 10-1-0443(3) under HRS 92-5(a)(4) and 92-5(a)(8). Mr. Carroll?

VICE-CHAIR CARROLL: So moved.

COUNCILMEMBER BAISA: Second.

CHAIR HOKAMA: We have a motion by Mr. Carroll, seconded by Ms. Baisa to enter into executive session. Any discussion? All in favor of the motion, please say "aye".

VICE-CHAIR CARROLL: Aye.

COUNCILMEMBER BAISA: Aye.

CHAIR HOKAMA: Opposed say no? Motion is carried with nine ayes.

VOTE: AYES: Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Pontanilla, Victorino, and White.

NOES: None.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.

CHAIR HOKAMA: Thank you, Members. The fifth litigation matter, Members, is Policy Item 1(10).

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POL-1(10): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: STACEY POUNDER V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0202(1))

CHAIR HOKAMA: This is also a settlement authorization request from the Department of the Corporation Counsel. This is Stacey Pounder v. County of Maui, et al., Civil No. 09-1-0202(1). And it is also attached to a correspondence dated August 8, 2011. This case also involves the Department of Parks and Recreation so we have Mr. Matsui. And Ms. Lutey shall give us the opening comments from Department of Corporation Counsel.

MS. LUTEY: Thank you. This matter is actually been addressed by Council a couple of times. I think the last time was in May of this year. The basic facts are that Stacey Pounder was injured after she stepped on a water meter box at the Eddie Tam Memorial Center and was injured. This case was scheduled for trial this summer but has been moved by the court to January 23, 2012. At a settlement conference last month, an offer was conveyed by Plaintiff's counsel and supported by the Judge. I'm here to convey that offer to this body at the instruction of the court. Because this matter is in active litigation, I am requesting executive session.

CHAIR HOKAMA: Okay. Thank you very much, Ms. Lutey. Questions for the Councilor regarding her comments in open session? If not, the Chair is open to a motion for executive session as allowed by Hawaii Revised Statutes 92-5(a)(4) and 92-5(a)(8) to enter into executive session for settlement authorization in Stacey Pounder v. County of Maui. Mr. Carroll?

VICE-CHAIR CARROLL: So moved.

COUNCILMEMBER BAISA: Second.

CHAIR HOKAMA: We have a motion made by Mr. Carroll, seconded by Ms. Baisa to enter into executive session. Any further discussion? All in favor of the motion, please say "aye"?

VICE-CHAIR CARROLL: Aye.

COUNCILMEMBER BAISA: Aye.

CHAIR HOKAMA: Opposed say no? Motion is carried with nine ayes.

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VOTE: **AYES:** **Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Pontanilla, Victorino, and White.**

NOES: **None.**

EXC.: **None.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED.

ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.

CHAIR HOKAMA: This Committee shall stand in recess in open session and we shall prepare for executive session for our cases. Recess. . . .(gavel). . .

RECESS: 9:39 a.m.

RECONVENE: 11:23 a.m.

CHAIR HOKAMA: . . .(gavel). . . Policy Committee shall return to open session for its regular meeting of October 5th, 2011. All Members present. Okay, Members, we have the following five items to take up.

POL-1(18): LITIGATION MATTERS (SPECIAL COUNSEL AUTHORIZATION: JACKI JURA V. COUNTY OF MAUI, ET AL.; CIVIL NO. 11-00338 SOM RLP)

CHAIR HOKAMA: Regarding Policy 1(18), which is the Special Counsel authorization of Jacki Jura v. County of Maui, et al., Civil No. 11-00338 SOM RLP, your Chair is deferring this item with no objections.

COUNCILMEMBER VICTORINO: No objections.

COUNCILMEMBER COCHRAN: No objections.

CHAIR HOKAMA: Okay, so ordered. Policy 1(18) is deferred.

ACTION: DEFER.

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POL-1(1): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: ELMER STEPHEN WEREB, ET AL., V. COUNTY OF MAUI, ET AL.; CIVIL NO. 09-00198 JMS LEK)

POL-1(15): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: MARK HIGA AND JASMINE HIGA V. DAVID ROARTY, COUNTY OF MAUI, ET AL., CIVIL NO. 10-1-0373(3))

POL-1(17): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: JAMES GIBBINS V. COUNTY OF MAUI, ET AL., CIVIL NO. 10-1-0443(3))

CHAIR HOKAMA: In regards to Policy Items 1(1), 1(15), 1(17), if there are any objections state it now unless if there's any objections, your Chair will take it in one motion.

COUNCILMEMBER BAISA: No objections.

COUNCILMEMBER VICTORINO: No objections.

CHAIR HOKAMA: Since all three items will be moving forward to the Council for final decision as proposed and discussed in executive sessions. So are there any objections for taking all three items at one time?

VICE-CHAIR CARROLL: No objections.

COUNCILMEMBER BAISA: No objections.

COUNCILMEMBER VICTORINO: No objections.

COUNCILMEMBER COCHRAN: No.

CHAIR HOKAMA: Therefore, the Chair is open to a motion to forward to the Council Policy Item 1(1), which is settlement authorization of Elmer Stephen Werek, et al., v. County of Maui, et al., Civil No. 09-00198 JMS LEK; Policy Item 1(15), litigation matters - this is the settlement authorization for Mark Higa and Jasmine Higa v. David Roarty, County of Maui, et al., Civil No. 10-1-0373(3) and Policy Item 1(17), litigation matters - settlement authorization of James Gibbins v. County of Maui, et al., Civil No. 10-1-0443(3) that this all moves forward as proposed and discussed in executive session. Mr. Carroll?

VICE-CHAIR CARROLL: So move.

COUNCILMEMBER BAISA: Second.

CHAIR HOKAMA: We have a motion made by Mr. Carroll, seconded by Ms. Baisa. Any further discussion? With none, all in favor say --

MS. NAKATA: Mr. Chair?

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CHAIR HOKAMA: --“aye”?

MS. NAKATA: Just for clarification for Staff. This would be a recommendation to adopt all three of the resolutions?

CHAIR HOKAMA: That is correct.

MS. NAKATA: Okay, thank you.

CHAIR HOKAMA: All opposed say no? Motion passes with nine ayes.

VOTE:	AYES:	Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Pontanilla, Victorino, and White.
	NOES:	None.
	EXC.:	None.
	ABSENT:	None.
	ABSTAIN:	None.

MOTION CARRIED

ACTION: RECOMMENDING ADOPTION OF PROPOSED RESOLUTIONS

CHAIR HOKAMA: Thank you very much, Members.

POL-1(10): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: STACEY POUNDER V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0202(1))

CHAIR HOKAMA: For Policy Item 1(10), litigation matters - settlement authorization: Stacey Pounder v. County of Maui, et al., Civil No. 09-1-0202(1). Your Chair is open to a motion to file correspondence dated August 8, 2011, relating to the case of Stacey Pounder v. County of Maui. Mr. Carroll?

VICE-CHAIR CARROLL: So move.

COUNCILMEMBER BAISA: Second.

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CHAIR HOKAMA: I have a motion made by Mr. Carroll, seconded by Ms. Baisa. Further discussion, Members? Having none, all in favor of the motion please say "aye"?

VICE-CHAIR CARROLL: Aye.

COUNCILMEMBER BAISA: Aye.

CHAIR HOKAMA: Opposed say no? Motion passes with nine ayes.

VOTE:	AYES:	Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Pontanilla, Victorino, and White.
	NOES:	None.
	EXC.:	None.
	ABSENT:	None.
	ABSTAIN:	None.

MOTION CARRIED

ACTION: RECOMMENDING FILING

CHAIR HOKAMA: There are no further business for the Committee. Ms. Nakata, any announcements we have?

MS. NAKATA: No.

CHAIR HOKAMA: Ms. Sato?

MS. SATO: No.

CHAIR HOKAMA: Okay, Members, thank you very much for today's meeting. This Policy meeting is hereby adjourned... (gavel)...

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ADJOURN: 11:27 a.m.

APPROVED:



G. RIKI HOKAMA, Chair
Policy Committee

pol:min:111005

Transcribed by: Jo-Ann Sato