

MINUTES

of the

COUNCIL OF THE COUNTY OF MAUI

June 1, 2012

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 FRIDAY, JUNE 1, 2012, BEGINNING AT 9:06 A.M., WITH CHAIR DENNIS A. MATEO PRESIDING.

CHAIR MATEO: Council of the County of Maui special meeting of June 1, 2012, will come to order.

Mr. Clerk, may we have the roll call, please.

ROLL CALL

PRESENT: COUNCILMEMBERS GLADYS C. BAISA, ROBERT CARROLL, DONALD G. COUCH JR., G. RIKI HOKAMA, MICHAEL B. WHITE, VICE-CHAIR JOSEPH PONTANILLA, AND CHAIR DENNIS A. MATEO.

EXCUSED: COUNCILMEMBERS ELEANORA COCHRAN AND MICHAEL P. VICTORINO.

DEPUTY COUNTY CLERK LANCE TAGUCHI: Chairman, there are seven Members present, two Members excused. A quorum is present to conduct the business of the Council.

CHAIR MATEO: Thank you.

Will everyone please rise and join us in reciting the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE

The Members of the Council, and others in attendance, rose and recited the Pledge of Allegiance.

CHAIR MATEO: Mr. Clerk, do we have anyone signed up for public testimony this morning?

DEPUTY COUNTY CLERK: Chairman, we have one individual who signed up prior to the meeting.

CHAIR MATEO: Prior to the Clerk calling down the, the testifier this morning, the Chair would like to set the parameters for those providing testimony to the Council. We welcome anyone wanting to share your comments with the Council this morning. You will be provided three minutes to share your testimony with the Council.

A lighting system on the podium is there to assist you with your testimony. At the start of your comments, the green light will be lit. At the two minute thirty second mark, the yellow light will be lit letting you know you have thirty seconds to conclude. And at the three minute mark, the red light will be lit letting you know you will need to conclude your testimony. If additional time is needed, an additional minute will be provided for you to conclude your testimony.

And for those of us with cell phones and other noise making devices, this would be a good time to either turn them off or set them on the silent mode. Decorum in this chamber will be maintained.

Mr. Clerk, call up our testifier please.

DEPUTY COUNTY CLERK: Chairman, the first person to testify is Jim Smith, testifying on agenda item 12-104 and 12-105.

TESTIMONY

MR. JIM SMITH (testifying on County Communications 12-104 and 12-105):

Chairperson Mateo, Members of the, the Maui County Council. I'm so grateful that you are having this meeting today because, and recalling for the Policy Committee the proposed resolutions that were transmitted to the Planning Commission *[sic]* and to, and to take those matters up in the, in the Policy Committee.

It's, it's odd that at this time we should, we should need to protect our Charter and protect our local control and that's what you are doing basically. It's right that you take this to the Policy Committee. And then if that's what you want, you move it out and you vote on it twice because our Charter, our organic document is our

community and gives us that authority and says these are the ways and uses the word "only". And that's such a common word. It means no other, okay.

And then if you look at the history in 1963, the Legislature adopted the ability to create a Charter Commission and that was HRS 50. That same year, we had our Commission come up with a Charter. Throughout HRS 50, it talks about facilitating and mechanism for this. It's a special law for a special purpose. It is not like HRS 91, 92, okay.

At, it's sad but Corporation Counsel may have facilitated confusion when it argued that had submitted to a letter to the AG saying that it was a general law in a, in effect when it certainly is not. The end at 50-10 says the Charter shall supersede any conflicting. Now it says that clearly okay. So this is the right way to go no matter where you are. And you're taking that and you're protecting our sovereignty. This is a constitutional issue. It shouldn't be the power of an attorney to take from me that ability.

And it traces to '67. And in '67 it came up with the language that says only. And it's comes straight through. And then in 2002, you can submit alternatives. Well, to me, you're on the right track and I appreciate greatly your efforts in that regard. Thank you.

CHAIR MATEO: Thank you, Mr. Smith.

MR. SMITH: I, I'd like, and these are, I'd like to testify now on the communication from the Charter Commission. And I attended the meeting, the Charter Commission meeting, in which they reviewed your work, okay, your, your report. And it's a very, it's a very political body. And, and there are forces, and there are forces saying, "throw it out there, throw it out there, we don't need to decide this, we're not able, throw it out there". And the others are saying, "let's make a good judgment, it's our job to make a judgment, we think it's in your interest, here's our proposal". Not, "we can't make up our mind, here you make it up for us". But that's political.

I mean the members on that Commission were seriously twisting and, and trying to influence others to that point of view. Let it go. We don't have to get past a certain point. Let the people judge. But that's the . . .

It's good judgment that you come up with that makes law believable. It makes us want to consent to be governed. It's not going out. It's not the quantity of support. It's the quality of judgment that you preserve. And it seems as though they missed this, the Charter Commission missed this because on page two of the letter, they talk about, in one paragraph, they talk about the Commission has determined that its amendments are in the best interest. And then right following that, in defense and

against the, the suggestion that, that matters be handled by ordinance, it says they decided that the decision to make the proposed amendment should be made by the people, okay.

So they say basically, and allow them, meaning the voter, to have the final decision on whether the proposed amendment should be included in the Charter. Well they've decided they should be included in the Charter by proposing them, okay. So this is that kind of a, a quirk. Well, what are you saying now in this circumstance? Look, you guys are disputing with us, let's let the people decide. No, it's the best judgment that we consent to be governed by. And it's that consent to be governed that you give example to by taking this and putting it out on two resolutions because you're being governed by our constitution and our Charter. And that's what we have to do. And it's that good judgment, not the quantity, it's the quality that I'm so grateful to see here from you. Mahalo.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased? Thank you, Mr. Smith.

Members, Mr. Smith was the only individual who had signed up to provide testimony this morning. The Chair will allow anyone in the gallery wanting to provide testimony to the Council, if, you want to share your testimony please advance to the podium at this time. Members, no one advance. With no objections, we will close public testimony for the day. Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR MATEO: Thank you. So ordered.

Mr., Mr. Clerk.

DEPUTY COUNTY CLERK: Chairman, proceeding with county communications.

The following County Communication was presented.

COUNTY COMMUNICATION

NO. 12-104 - JOSHUA A. STONE, CHAIR, MAUI COUNTY CHARTER COMMISSION, (dated May 25, 2012)

Transmitting the Charter Commission's response to the Council's recommendations and proposed alternatives received on April 27, 2012.

CHAIR MATEO: Thank you.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, with no objections, I would ask the Members to allow this to be referred to your standing Committee on Policy for additional review and discussion.

CHAIR MATEO: Thank you. Members, the request from Mr. Hokama is, with no objections, to refer County Communication 12-104 to the Policy Committee. Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR MATEO: Thank you. So ordered.

Mr. Clerk, proceed.

NO. 12-105 - G. RIKI HOKAMA, CHAIR, POLICY COMMITTEE,
(dated May 25, 2012)

Transmitting the following proposed resolutions entitled "RECALLING COUNCIL'S ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COUNTY COUNCIL TERM LIMITS"; and "RECALLING COUNCIL'S ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR" and informing of his intention to consider one or more of the following motions:

1. A motion to WAIVE the requirement of committee referral and report as provided for in Rule 7(E) of the Rules of the Council;
2. A motion to ADOPT the proposed resolution entitled "RECALLING COUNCIL'S ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COUNTY COUNCIL TERM LIMITS";
3. A motion to REFER Resolution No. 12-44 entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COUNTY COUNCIL TERM LIMITS" to the Policy Committee;

4. A motion to ADOPT the proposed resolution entitled "RECALLING COUNCIL'S ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR";
5. A motion to REFER Resolution No. 12-45, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR" to the Policy Committee; and
6. A motion to FILE this communication.

CHAIR MATEO: Thank you.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you very much.

I MOVE TO WAIVE THE REQUIREMENT OF COMMITTEE REFERRAL AND REPORT AS PROVIDED FOR IN RULE 7(E) OF THE RULES OF THE COUNCIL.

COUNCILMEMBER CARROLL:

SECOND.

CHAIR MATEO: We have a motion on the floor made by Mr. Hokama and second by Mr. Carroll to waive the requirement of committee referral and report as provided for in Rule 7(E) of the Rules of the Council.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, this would allow the Council to make consideration on the attached proposed amendments that the, our current Charter Commission has made their comments on and as well as to allow your Committee to post a Committee meeting to have additional public testimony as well as to allow the Members to have the time to review the Commission's comments regarding their positions and allow the Committee to have an opportunity to consider its options and what it may or may not want to forward for Council for final determination.

CHAIR MATEO: Thank you, Mr. Hokama. Members, further discussion? All those in favor of the motion to waive the requirement of committee referral and report as provided for in Rule 7(E) of the Rules of the Council, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL, COUCH,
HOKAMA, WHITE, VICE-CHAIR PONTANILLA, AND
CHAIR MATEO.

CHAIR MATEO: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS COCHRAN AND VICTORINO.

CHAIR MATEO: Motion is carried with seven "ayes"; two Members "excused", Ms. Cochran and Mr. Victorino.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you once again.

I MAKE A MOTION TO ADOPT THE PROPOSED RESOLUTIONS: ONE, "RECALLING COUNCIL'S ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO THE COUNTY COUNCIL TERM LIMITS"; AND A PROPOSED RESOLUTION ENTITLED "RECALLING COUNCIL'S ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR".

COUNCILMEMBER CARROLL:

SECOND.

CHAIR MATEO: Motion on the floor to adopt the proposed resolutions. One, "RECALLING COUNCIL'S ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COUNTY COUNCIL'S TERM LIMITS". And two, motion to adopt proposed resolution entitled "RECALLING COUNCIL'S ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR".

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. Chairman, as the head of your Policy Committee and our understanding of how Corporation Counsel has provided guidance to us regarding the options and procedures that the Council has regarding the current review of our Charter, we did receive by correspondence dated May 25, 2012, from the current Charter Commission, notifying this Council of its rejection of the Council's alternative proposals. Thereby under the current State statute provisions that is currently providing guidance to us this morning, Section 50-9, the Council only has a ten-day window after receiving such notification to either recall, withdraw any or all of the alternative proposals rejected by the Charter Commission.

The ten-day window also includes the weekends, Mr. Chairman. So therefore, the Council's deadline, as we currently calculate according to the statute, falls on Monday, June 4, 2012. Taking action today would allow the Council to have additional time to have your standing Committee to post and have additional review as well as public comment regarding then the remaining options available for your Committee to review and discuss, including whether or not we wish to frame our own ballot question and then provide that recommendation to this body and have the Council makes its final determinations.

CHAIR MATEO: Thank you, Mr. Hokama. Members, further discussion? Members, the motion involves the two proposed resolutions listed in, under County Communication 12-105, as number two and number four.

Ms. Baisa.

COUNCILMEMBER BAISA: Chair, I don't know if its better we wait until we have the Policy Committee meeting, but is there any brief reason that the Chair can, Policy Committee Chair can share with us why these were rejected? Just very briefly. I realize we'll get into it in, in the Committee.

CHAIR MATEO: Right. Initially, before the Chair recognize Policy Chair Hokama, they had provide to us their apparent report to us in terms of their recommendations in, in rejecting the Council's proposal. So, one, initially it is provided for us in writing.

Secondly, the Chair will recognize Mr. Hokama, should you want to expand on Ms. Baisa's query.

COUNCILMEMBER HOKAMA: Thank you, Chairman. And, and I appreciate the question from Ms. Baisa cause it is an important question. And I would hate to paraphrase what the Commission's, how I interpret, and again, here we go into the word interpretation, Members, my fellow colleagues.

But in County Communication that we have just referred to the Policy Committee, which is 12-104, the Commission stated in written form for the record, their comments of why they made the rejections. And part of it is also through the guidance as they were made to understand their options and what they may or may not be able to do by Corporation Counsel.

And so, you know with all respect to Ms. Baisa and all my fellow other Members, this would allow us, again, to take the time to review the Commission's positions on why they chose to reject our proposals and on that basis then allow the Committee to have that full discussion.

And, and, again, with all respect, at this point in time I would hate to paraphrase in my interpretation of the Commission because I'm sure that they are, maybe Commission Members who would say that is not an accurate portrayal of their position. So to avoid any misunderstandings and to have the Committee have the opportunity for this discussion and review, as well as have additional public input, I would ask that the Members please support the motion at this time.

CHAIR MATEO: Thank you, Mr. Hokama.

Ms. Baisa.

COUNCILMEMBER BAISA: Thank you, Mr. Chair. I certainly appreciate what Chair is trying to tell us. The reason I asked the question at all was that, you know, everybody's following this matter, these Charter amendments very closely. And unless you have the time to sit in front of your TV for a lot of hours, which I did, and see, you know, how our recommendations were received and their reactions. You know, if all you see is this ten minute, fifteen minute meeting, you may totally lose the whole thing because when we have the next meeting you may be at work and not see it. So if there was any opportunity for, you know, we rejected it because we don't feel it's correct or whatever, I thought that might be helpful. But I do understand and can wait till the meeting. Thank you.

CHAIR MATEO: Thank you, Ms. Baisa.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, a, a, and one last comment please, to, to you and my fellow Councilmembers. It is your Policy Chair's intent working with Committee staff and the Chairman, with guidance again from Corporation Counsel, to put forth a committee report that reflects very detailed and accurately the rationale to explain whatever the Committee does, its intent and legislative reasoning why we will

be proposing or making, forwarding to Council certain recommendations on these two items that we are being, we, I am asking for recall consideration today.

And that would hopefully guide future Council's, future Commissions, as well as Corporation Counsel on the clarity and reduce the need of confusion and further interpretation of what as exactly the intent of this Charter proposal or amendment that may be ratified by the people. And so, stating that, again Members, I would just ask that we give ourselves that opportunity. Let us have that discussion, clear up and reduce the amount of confusion of an interpretation and let us make our legislative intent very clear so that we can avoid future issues of uncertainty. Thank you, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Hokama. Members, further discussion? All those in favor of the motion to: one, adopt the proposed resolution entitled "RECALLING COUNCIL'S ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COUNTY COUNCIL TERM LIMITS; and two, to adopt the proposed resolution entitled "RECALLING COUNCIL'S ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR". All those in favor of the motion, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL, COUCH,
HOKAMA, WHITE, VICE-CHAIR PONTANILLA, AND
CHAIR MATEO.

CHAIR MATEO: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS COCHRAN AND VICTORINO.

CHAIR MATEO: Motion is carried with seven "ayes"; two Members "excused", Ms. Cochran and Mr. Victorino.

Mr. Hokama.

COUNCILMEMBER HOKAMA:

MR. CHAIRMAN, MY FINAL MOTION THAT I'M PROPOSING TO YOU AND THE MEMBERS THIS MORNING IS THAT, I MOVE THAT THE PROPOSED, THAT THE, I MOVE THAT WE REFER RESOLUTION NO. 12-44 ENTITLED "PROPOSING AND ALTERNATIVE AMENDMENT TO THE REVISED

CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO THE COUNTY COUNCIL TERM LIMITS", AS WELL AS REFERRAL OF RESOLUTION NO. 12-45 ENTITLED "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR", BE REFERRED TO YOUR COMMITTEE ON POLICY AND THAT COUNTY COMMUNICATION 12-105, BE FILED.

COUNCILMEMBER CARROLL:

SECOND.

CHAIR MATEO: Members, we have a motion on the floor made by Mr. Hokama, second by Mr. Carroll, to refer Resolution No. 12-44 and Resolution 12-45 to the Policy Committee, and the motion does include the filing. Members, discussion?

Mr. Hokama, further discussion on your motion?

COUNCILMEMBER HOKAMA: No, Chairman, I think, you know, I've explained the, the reasoning why, by referral, it will allow the Committee to again post for an open meeting to receive public testimony as well as review the two proposed, excuse me, the two proposed resolutions. I take that back, it's not proposed, the two resolutions that have been adopted and we have recalled, back to Committee for further discussion, explain the amount, the, the, all of the options available to the Committee for consideration and then allow the Committee to come up with its recommendations for Council. Thank you.

CHAIR MATEO: Thank you, Mr. Hokama. Members, further discussion? Members, all those in favor of the motion to refer to the Policy Committee, Resolution No. 12-44 and 12-45, and the motion does include the filing of this communication as well. All those in favor, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL, COUCH,
HOKAMA, WHITE, VICE-CHAIR PONTANILLA, AND
CHAIR MATEO.

CHAIR MATEO: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS COCHRAN AND VICTORINO.

CHAIR MATEO: Motion is carried with seven "ayes"; two "excused", Ms. Cochran and Mr. Victorino.

Mr. Clerk.

DEPUTY COUNTY CLERK: Chairman, for the record RESOLUTION NOS. 12-54 and 12-55.

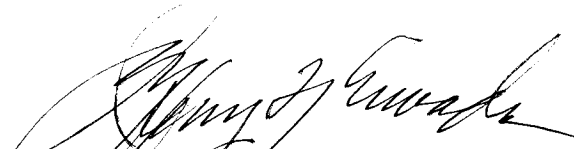
Chairman, nothing further is scheduled to come before the Council.

CHAIR MATEO: Thank you. Members, we've concluded our business for, for the day. The Chair would like to recognize those individuals that continue to provide support to the Council: sitting in for the Corporation Counsel, we have First Deputy, Mr. Kushi; our Deputy County Clerk, Mr. Taguchi; the Director of, of Council Services, Mr. Fukuoka; as well as our support staff, both Joyce Murashige and Theresa Valdez.

Members, thank you very much for your attendance and work this morning. The Council of the County of Maui special meeting of June 1, 2012 is adjourned.

ADJOURNMENT

The special meeting of June 1, 2012, was adjourned by the Chair at 9:31 a.m.



JEFFREY T. KUWADA, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII