

**COST OF GOVERNMENT COMMISSION  
MINUTES  
Kalana O Maui Building, 9<sup>th</sup> Floor, Mayor's Conference Room  
Thursday, May 8, 2014**

- PRESENT:** Tina Gomes, Chair  
Yuki Lei Sugimura, Vice Chair (excused at 12:04 p.m.)  
Garrett Evans, Member (excused at 11:00 a.m.)  
Kent Hiranaga, Member  
Gabriel Hoeffken, Member  
Stanford Lantias, Member (excused at 12:19 p.m.)  
Gayle Long, Member  
John Watling, Member
- STAFF:** Ed Kushi, First Deputy Corporation Counsel  
Shelley Pellegrino, Technical Writer for the Commission
- OTHER:** Lance Taguchi, County Auditor  
Camille Sakamoto, Administrative Officer, Office of the County Auditor  
Linden Joesting, Deputy Corporation Counsel  
Herman Andaya, Chief of Staff, Office of the Mayor  
David Raatz, Director, Office of Council Services

**I. CALL MEETING TO ORDER**

Chair Gomes called the meeting to order at 9:08 a.m.

**II. PUBLIC TESTIMONY**

There was no public testimony.

**III. INTRODUCTION OF COMMISSIONERS AND STAFF**

Commissioners and staff introduced themselves.

**IV. ELECTION OF VICE CHAIR**

Chair Gomes opened nominations for Commission Vice Chair. Commissioner Hiranaga nominated Commissioner Sugimura, and Commissioner Long seconded the motion. Commissioner Long nominated Commissioner Evans, and Commissioner Lantias seconded the motion. Commissioners Sugimura and Evans then explained why they wished to be considered for the position.

Commissioners Hiranaga, Hoeffken, Lantias, Sugimura, and Watling voted in favor of Commissioner Sugimura. Commissioners Evans, Gomes, and Long voted in favor of Commissioner Evans.

Commissioner Sugimura was elected Vice Chair by a 5-3 vote.

**V. REVIEW AND DISCUSS APRIL 10, 2014 MINUTES**

Chair Gomes noted that the first page of the minutes needed to be amended to reflect the meeting date of April 10, 2014. Commissioner Long moved that the April 10, 2014 minutes be approved as amended, and Commissioner Watling seconded the motion. The minutes as amended were approved without objection.

**VI. REVIEW AND DISCUSS CORRESPONDENCE RECEIVED**

There was no correspondence received.

**VII. DEPARTMENT OF THE CORPORATION COUNSEL (FIRST DEPUTY CORPORATION COUNSEL EDWARD S. KUSHI, JR.) REVIEW AND DISCUSSION**

A. Review of the Revised Charter of the County of Maui, as Amended.

First Deputy Kushi provided the commissioners with the following handouts:

- (1) Maui County Charter, Section 8-16.1 (2007);
- (2) Maui County Charter Section 3-9.1–3-9.4 (2013);
- (3) Rules of Practice and Procedure for the Cost of Government Commission (2001);
- (4) Letter from Joshua Stone, Chair, Maui County Charter Commission, to the Honorable Danny A. Mateo, Council Chair, dated May 25, 2012, Regarding Maui County Charter Commission Response to Council's Recommendations and Proposed Alternatives Received on April 27, 2012; and
- (5) 2011-2012 Maui County Charter Commission Revised Final Report to the County Clerk (2012).

First Deputy Kushi explained that the first two handouts allowed the Commission to compare the Commission's duties before the 2012 Charter amendments and afterwards. The third handout delineates the Commission's administrative rules. On the fourth handout, First Deputy Kushi asked commissioners to review pages 5-7, which included the following language:

[T]he Commission debated whether or not to continue the functions of the Cost of Government Commission, and concluded that it was necessary in order to give the highest priority to independence. The Commission disagrees with the Council and has decided that continuing the Cost of Government Commission would enhance and provide further protection in a system of checks and balances.

Finally, First Deputy Kushi asked the Commission to review the portion of the fifth handout (pp. 23-28) that discusses the role of the Office of the County Auditor ("OCA") and the Cost of Government Commission ("Commission" or "COGC").

B. Brief Explanation of Term “Advisory”

First Deputy Kushi then briefly discussed the Commission’s “advisory” role with respect to the County Auditor. He noted that there is no legal definition of the word, so he looked to its plain meaning, noting that if someone wants advice, he or she will ask for it. First Deputy Kushi added that the County Auditor has a duty to maintain independence and the Commission must recognize this fact. Nonetheless, the Commission does have the power to investigate any department, including the OCA.

First Deputy Kushi also pointed out that the County Council’s Policy and Intergovernmental Affairs Committee (“PIA Committee”) would be considering a proposed Charter amendment to abolish the Cost of Government Commission at its May 15 meeting.

The Commissioners then discussed whether its members could testify at the PIA Committee meeting. Because of Sunshine Law restrictions, the Commissioners agreed that no more than four members would testify before the PIA Committee. All members could provide written testimony if they chose to do so.

**VIII. COUNTY AUDITOR’S UPDATE**

A. Information Update on the Office of the County Auditor

County Auditor Taguchi stated that his office would begin searching for a person to fill the senior analyst position this month.

B. Discussion on the Relationship Between the Office of the County Auditor and the Commission

County Auditor Taguchi provided the Commission with a handout summarizing the County Charter sections that pertain to the OCA and the COGC. He then explained that he relied on the Charter for direction when he set up the OCA.

County Auditor Taguchi discussed each provision of the Charter listed on his handout, which was broken down into the following four sections: (1) OCA’s Relationship with Council; (2) OCA’s Independence from Council and Mayor; (3) COGC’s Relationship with OCA; (4) COGC’s Relationship with Council and Mayor.

County Auditor Taguchi then explained that OCA has an obligation to administratively support the COGC. However, he noted that because the OCA and COGC conduct separate investigations, and the OCA’s resources are limited, a paid consultant should provide as much support to the COGC as possible. It would also help the departments to distinguish between a COGC investigation and an investigation initiated by the OCA.

With respect to the COGC being “advisory” to the OCA, County Auditor Taguchi stated that he does not agree with the prior COGC’s concept of its role as a “board of directors” that evaluates the County Auditor’s performance annually. He stated that he does not support this type of relationship for two reasons. First, the Commission does not appoint the County Auditor and, as such, does not have the authority to evaluate the Auditor. The County Charter is silent with respect to evaluations of the Auditor, and the County Council, which has the authority to appoint the Auditor, has not entered into

any discussions with the Auditor regarding annual performance evaluations. At the same time, County Auditor Taguchi stated that he recognizes the need for some type of performance evaluation and is considering adopting “generally accepted auditing standards” which require a peer-review process every two years. It is also consistent with what is done with other auditors in the State of Hawaii.

Second, the County Auditor stated that he does not support an annual performance review by the COGC because the COGC is not independent from the Mayor, who appoints COGC members, and the County Council, which approves the appointment. The Mayor also has a voice on the Commission as an ex-officio member.

With respect to the type of advice that would be helpful to the OCA, County Auditor Taguchi stated that he welcomes advice from the COGC as long as it is not perceived as directive or an attempt to control the actions of the OCA. The County Auditor also cautioned that although COGC advice is welcome, the OCA might choose not to follow the advice.

Finally, County Auditor Taguchi stated that he recognized the COGC does have the power to investigate the OCA, but asked that the COGC have a reason to investigate rather than simply decide it wants to use its investigative authority to guide the OCA.

#### **IX. DISCUSSION WITH MAYOR ALAN ARAKAWA ON SUGGESTIONS OF INVESTIGATIVE AREAS FOR THE COMMISSION TO CONSIDER**

Herman Andaya, Chief of Staff for the Office of the Mayor, appeared before the Commission on behalf of Mayor Alan Arakawa. Mr. Andaya noted that the current Administration values the work done by the COGC and has implemented many of COGC’s recommendations over the past three years. Mr. Andaya also encouraged commissioners to appear before the County Council’s PIA Committee to testify against the proposed Charter amendment to abolish the COGC.

With respect to potential areas of investigation, Mr. Andaya recommended that the COGC review the budget process. He provided a number of statistics regarding the significant amount of time and concomitant costs associated with an annual review of the County budget. For example, the Council’s Budget and Finance Committee (“BFC”) met for 168 hours over the course of 24 days during its six-week budget review process. Mr. Andaya stated that he conservatively estimated the total cost during this process to be \$184,800 (17 County employees — 9 Council members, 5 Office of Council Services employees, a Corporation Counsel attorney, the Budget Director, and a department director — at a cost of \$1,100 per hour for 168 hours). In addition, the BFC sent 60 letters to departments asking for additional information, which took 479 hours to respond to at a total cost of \$30,000. Mr. Andaya stated that his figures did not include other time and costs associated with the Administration’s preparation of the Mayor’s budget or the public hearings held by the County Council members in their respective districts. Finally, Mr. Andaya pointed out that for the past two years, the BFC Chair’s proposal did not seem to reflect any information garnered during the budget process, but rather used figures from previous years.

Mr. Andaya also called attention to the relative ease of the State budget process as compared to the County process, despite the fact that the State operates on a \$14 billion budget and the County manages a \$600 million budget.

Commissioner Hiranaga asked Mr. Andaya whether the Mayor's Office was advocating a biennial budget process. Mr. Andaya responded that things do not change too much year to year, so perhaps the COGC could review a biennial budget process as an option.

In response to a query by Vice-Chair Sugimura, First Deputy Kushi confirmed that a recommendation to change to the budget review process from an annual to biennial process would require a Charter amendment.

Mr. Andaya returned his discussion to the role of the COGC and suggested that perhaps the COGC be given more power than it currently is provided under the County Charter, and also that the COGC, rather than the County Council, have the authority to hire and fire the County Auditor.

**X. DISCUSSION WITH COUNCIL CHAIR GLADYS BAISA ON SUGGESTIONS OF INVESTIGATIVE AREAS FOR THE COMMISSION TO CONSIDER**

David Raatz, Director of the Office of Council Services (OCS), appeared before the Commission on behalf of Council Chair Gladys Baisa.

Mr. Raatz stated that the Council Chair did not have any advice for the Commission, but welcomes the Commission's advice.

Mr. Raatz also offered the services of the OCS central staff regarding research OCS has done on issues that might be of interest to the Commission. Vice-Chair Sugimura asked whether OCS had researched the biennial budget process, and Mr. Raatz responded that OCS likely had documents it could provide.

***Chair Gomes recessed the meeting at 10:30 a.m. and reconvened the meeting at 10:38 a.m.***

**XI. SUNSHINE LAW AND MAUI COUNTY CODE PRESENTATION BY DEPUTY CORPORATION COUNSEL LINDEN JOESTING**

Deputy Corporation Counsel Linden Joesting distributed a "Sunshine Law Quiz" to commissioners and, based on the quiz, made the following points: (1) a board or commission may not require a person to provide his or her name as a prerequisite to testifying; (2) board and commission members may not e-mail each other, even if they are e-mailing less than a quorum of the membership; (3) board and commission members may talk to members of the public or a lobbyist about an issue they are investigating; (4) a board or commission must mail its notice and agenda at least six days prior to every meeting to any individual member of the public who has asked to be notified by mail; and (5) if a board wants to hold an all-day workshop with presentations and a break-out discussion on an issue before the board, the board must note the workshop as a meeting and follow the requirements for notice, agenda, public attendance, and testimony. With respect to item three (3) above, First Deputy Kushi added that the one instance in which a commissioner should not speak to a member of the public about an issue is when the individual has been subpoenaed by the Commission.

Deputy Joesting also distributed a handout summarizing the Sunshine Law. She discussed the overall purpose and spirit of the law (public accountability; openness and transparency), defined “board business,” and specifically reviewed the requirements for meeting agendas, permitted interaction groups (PIGs), permitted interactions between members, executive sessions, and minutes. Deputy Joesting used the August 2013 Hawaii Supreme Court decision in Kanahele v. Maui County Council (2012) to explain why government boards must not only meet the letter of the law, but also the spirit of the law.

***Commissioner Evans was excused at 11:00 a.m.***

## **XII. DISCUSS IDEAS FOR 2014-2015 ANNUAL REPORT**

### **A. Review and Discuss Recommendations for Future Investigations by the Commission**

Chair Gomes first asked that the Commission be prepared to form its temporary investigative groups (TIGs) by the June 2014 meeting. The Commission also discussed the general investigative process undertaken by TIGs and the type of exhibits that can be used by TIGs when preparing their portion of the annual report. Ms. Pellegrino, Technical Writer to the Commission, explained that the TIG does not need to use or reference every e-mail or document it receives during its investigative process, and advised commissioners to reference only relevant information when drafting its report.

The Commission discussed the suggestions made by the 2013-2014 Commission, as well as considered suggestions by the current Commission.

First, Commissioner Hiranaga expanded on his request that the Commission investigate water conservation issues. He explained that the Department of Water Supply’s water delivery system is extremely antiquated and many of the older pipes leak. As such, he would like to investigate the County’s pipe replacement program.

Second, Commissioner Hiranaga provided background information on his request that the Commission investigate the use of multiple-island planning commissions. He explained that Lana’i and Moloka’i each have their own planning commissions, but the work done by those commissions is minimal. For example, according to Commissioner Hiranaga, usually four County employees travel to Moloka’i for a one-hour meeting at significant expense to the County. Commissioner Hiranaga suggested that the Commission investigate whether the County can minimize its costs by abolishing these commissions, making them advisory only, or amending their rules.

Commissioner Hoeffken asked that more information be provided on suggestions made by the 2013-2014 Commission. Commissioner Long agreed.

Chair Gomes also suggested that the Commission review previous annual reports and investigate whether any progress has been made on prior Commission recommendations.

Chair Gomes offered to formally request that the following department directors attend the June 2014 COGC meeting to provide information on the areas of interest outlined by the Commission: (1) Michele McLean, Deputy Planning Director, regarding the community plan process and multiple-island planning commissions; (2) David Taylor, Director of Water Supply, regarding the pipe replacement program; (3) Sandy Baz, Budget Director, regarding the budget process; (4) and Jo-Ann Ridao, Director of Housing and Human Concerns, regarding the grants review process.

Commissioners decided not to consider the County procurement process, real property tax rates, and emergency preparedness as suggested by the 2013-2014 Commission.

The Commission decided to continue its review of potential areas of investigation at its June meeting.

**XIII. DISCUSS MEETING WITH MAUI COUNTY COUNCIL MEMBERS REGARDING THE 2013-2014 ANNUAL REPORT**

Chair Gomes explained that in previous years, commissioners met with Council members individually as a courtesy to discuss the COGC's most recent annual report. Unlike previous years, however, most of the commissioners are newly appointed and unfamiliar with the content of the 2013-2014 Annual Report. Chair Gomes asked whether the new commissioners were interested in meeting with Council members and they declined. It was suggested that previous Commission members meet with Council members instead. Chair Gomes responded that it would be possible to ask for their assistance, but that the previous members would not be able to represent the Commission officially.

**XV. DISCUSS MEETING SCHEDULE (DATE/TIME) FOR 2014-2015 COMMISSION TERM**  
(Note: Agenda Item XV taken out of order. See below for Agenda Item XIV.)

Commissioner Hiranaga moved that COGC meetings begin at 1:30 p.m., and Commissioner Watling seconded the motion. The motion passed unanimously, with Commissioner Evans excused.

**XVI. DETERMINE NEXT MEETING DATE, TIME, AND AGENDA**

The next meeting is scheduled for June 12, 2014, in the Mayor's Conference Room, at 1:30 p.m.

Commissioner Hoeffken requested that the Commission consider investigating the use of in-house services versus outside contracting services for road striping and repaving.

**XIV. DISCUSS PROCUREMENT PROCESS FOR HIRING OF INDEPENDENT CONSULTANT TO ASSIST COMMISSION IN FISCAL YEAR 2015** (Note: Agenda Item XIV taken out of order)

First Deputy Kushi recommended that the Commission call an Executive Session to discuss the procurement process. Vice-Chair Long moved that the Commission go into Executive Session and Commissioner Hoeffken seconded the motion. The Commission voted to go into

Executive Session for the purpose of consulting with the Commission's attorney on questions or issues regarding the Commission's powers, duties, privileges, immunities and liabilities in accordance with Section 92-5(a)(4), Hawaii Revised Statutes.

A recess was called at 12:04 p.m. Following its Executive Session, the Commission called its regular meeting back to order at 12:25 p.m.

## **XV. ADJOURNMENT**

Commissioner Long moved to adjourn and Commissioner Hoeffken seconded the motion. The motion passed unanimously with Chair Gomes and Commissioners Hiranaga, Hoeffken, Long, and Watling voting in favor. Vice-Chair Sugimura and Commissioners Evans and Laniyas were excused. The meeting adjourned at 12:30 p.m.