

# POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE

Council of the County of Maui

## MINUTES

June 5, 2014

Council Chamber, 8<sup>th</sup> Floor

**CONVENE:** 9:03 a.m.

**PRESENT:** Councilmember G. Riki Hokama, Chair  
Councilmember Gladys C. Baisa, Member (Out 10:02 a.m.)  
Councilmember Robert Carroll, Member  
Councilmember Elle Cochran, Member  
Councilmember Stacy Crivello, Member  
Councilmember Don S. Guzman, Member (In 9:04 a.m.)  
Councilmember Michael P. Victorino, Member (Out 9:47 a.m.)  
Councilmember Mike White, Member (In 9:15 a.m.)

**EXCUSED:** Councilmember Donald G. Couch, Jr., Vice-Chair

**STAFF:** Carla Nakata, Legislative Attorney  
Sharon Brooks, Legislative Attorney  
Tammy M. Frias, Committee Secretary  
  
Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)  
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)  
Erin Fleming, Legislative Attorney, assisting at Hana Council Office (via telephone conference bridge)

**ADMIN.:** Michael J. Molina, Executive Assistant, Office of the Mayor (Items PIA-2(29), -2(30))  
Michael M. Miyamoto, Deputy Director, Department of Environmental Management  
(Item PIA-1(3))  
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel  
(Items PIA-10(9), -10(11))  
Thomas W. Kolbe, Deputy Corporation Counsel, Department of the Corporation Counsel  
(Item PIA-1(37))  
Patrick K. Wong, Corporation Counsel, Department of the Corporation Counsel (Item  
PIA-1(3))  
Richelle M. Thomson, Deputy Corporation Counsel, Department of the Corporation  
Counsel (Item PIA-1(3))  
Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation  
Counsel

**OTHERS:** Faraz Azizoltani, nominee to the Maui County Commission on Persons with Disabilities  
(Item PIA-2(30))  
Colleen Doyle, Esq., Hunton & Williams LLP (Item PIA-1(3))

*Seated in the gallery:*

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

Tina Gomes (Item PIA-10(2))  
Mercer "Chubby" Vicens

**PRESS:**     *Akaku--Maui County Community Television, Inc.*

---

CHAIR HOKAMA:   ...*(gavel)*... The Policy Committee of the Council, its regular meeting of June 5, 2014 shall come to order. This morning present we have our Chair, Ms. Baisa present.

COUNCILMEMBER BAISA: Good morning.

CHAIR HOKAMA: Good morning. We have Mr. Victorino.

COUNCILMEMBER VICTORINO: Good morning, sir.

CHAIR HOKAMA: Ms. Cochran.

COUNCILMEMBER COCHRAN: Good morning, Chair.

CHAIR HOKAMA: Ms. Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR HOKAMA: And welcome back, Mr. Carroll.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR HOKAMA: Good morning. Good morning. Excused are Mistery Couch, White, and Guzman. Members, at this time we'll be taking testimony on any item that we have agendized for today's meeting, so I will ask is there anyone wishing to provide testimony in the Chambers at this time?

MS. FRIAS: No.

CHAIR HOKAMA: Okay, having none, I will go to our District Offices. We'll go to the Hana Office and ask Erin if there is anyone wishing to provide testimony.

MS. FLEMING: There is no one here wishing to testify at the Hana Office.

CHAIR HOKAMA: Okay, thank you, Erin. Lanai, Denise, is there anyone wishing to provide testimony, please?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: Thank you. Molokai, Ella, is there anyone wishing to provide testimony, please?

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR HOKAMA: Thank you very much, ladies. We appreciate your assistance. We welcome Mr. Guzman to the meeting.

COUNCILMEMBER GUZMAN: Good morning, Chair.

CHAIR HOKAMA: Thank you for being here. Members, with no objections, the Chair will close testimony for today's meeting.

COUNCIL MEMBERS: No objections.

CHAIR HOKAMA: Okay, thank you. So ordered.

**ITEM PIA-2(29): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS  
(MAUI COUNTY COMMISSION ON PERSONS WITH DISABILITIES) (CC 13-42)**

**ITEM PIA-2(30): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS  
(MAUI COUNTY COMMISSION ON PERSONS WITH DISABILITIES) (CC 13-42)**

CHAIR HOKAMA: Members, we have for us today Policy Item 2(21)...(29), excuse me. And as you have noticed in the posting, I've also placed up PIA-2(30). Both are with the, under the heading of Nominations to Boards, Committees, and Commissions. Both relate to the Maui County Commission on Persons with Disabilities. And so with no objection, Members, the Chair will take both items at the same time.

COUNCIL MEMBERS: No objections.

CHAIR HOKAMA: Thank you very much. The first one is on 2(29), Members, is a correspondence dated May 7, 2014, from Mayor Arakawa, where he is proposing the nomination of Gabriel Johnson to the Maui County Commission on Persons with Disabilities, and this is for a term expiring March 31, 2017, due to a vacancy of Mr. Felipe of Lanai. And I can tell you that Mr. Johnson is also from Lanai. Under 2(30), Members, we have a correspondence dated May 14, 2014, also from Mayor Arakawa, whereby he is nominating Faraz Azizsoltani to the Maui County Commission on Persons with Disabilities, for a term expiring March 31, 2016. And this is to fill a vacancy due to the resignation of Ms. Charlotte Smith who many of us know. We'll ask Mr. Molina if he has any comments he'd like to share with us with, regarding either nominee, please.

MR. MOLINA: Okay. Thank you, Mr. Chairman. And good morning, Committee members. First with regards to Mr. Johnson, he is currently an employee of Expeditions Ferry and was a former

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

teacher over at Lahaina Intermediate and also a hotel employee over at Manele Bay amongst his other employment activities. And he has certainly expressed an interest in giving back to the community so to speak, and he would certainly appreciate having the opportunity to serve. We did ask him with regards to time if it will work out with his employers, and he did indicate to us he could work out this opportunity to serve on this Commission with his employees [*sic*]. The Commission typically meets once a month on I believe the first or second Thursdays of the month. And with regard to Mr. Azizoltani, he did come before you previously as a nominee I believe to the Street Naming Committee, but since that time the Committee has been dissolved or abolished, and Mr. Azizoltani has expressed an interest in continuing to serve our community this time in this capacity as a member of the persons on the or Commission on Persons with Disabilities. So with that said, I'm open for questions and the Administration certainly would appreciate your support of both of these individuals. Thank you, Mr. Chairman.

CHAIR HOKAMA: Thank you, Mr. Molina. Any questions for Mr. Molina on comments he provided regarding either nominee, Members?

COUNCILMEMBER COCHRAN: Chair?

CHAIR HOKAMA: Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And thank you, Mr. Molina, for being here. In regards to Mr. Azizoltani, his, currently I guess he does seasonal police work, officer work in California?

CHAIR HOKAMA: Ms. Cochran --

COUNCILMEMBER COCHRAN: Sorry.

CHAIR HOKAMA: --let me interject at this time with my apologies to both you and Mr. Molina. We do have Mr. Azizoltani --

COUNCILMEMBER COCHRAN: Oh, okay.

CHAIR HOKAMA: --present --

COUNCILMEMBER COCHRAN: Sorry, I didn't realize.

CHAIR HOKAMA: --and I did, you know, ask if he would swing by --

COUNCILMEMBER COCHRAN: Okay.

CHAIR HOKAMA: --to answer that type of question.

COUNCILMEMBER COCHRAN: Oh, okay, fine.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: So --

COUNCILMEMBER COCHRAN: I can wait 'til then.

CHAIR HOKAMA: --shortly we'll ask the gentleman to come forward.

COUNCILMEMBER COCHRAN: Okay. Thank you, Chair. And thank you, Mr. Molina.

CHAIR HOKAMA: Thank you.

MR. MOLINA: Thank you.

CHAIR HOKAMA: Any other questions for Mr. Molina? If not, I'll ask Mr. Azizoltani if he would please come down to the lectern, please. And if you would please introduce yourself, sir, and, you know, give us some comments.

MR. AZIZOLTANI: Good morning.

CHAIR HOKAMA: Good morning.

MR. AZIZOLTANI: Please excuse me, I was doing aquarium service at Diamond Resorts 'til like 5:00 this morning so I'm kind of fading but I'm --

CHAIR HOKAMA: Okay.

MR. AZIZOLTANI: --together for now.

CHAIR HOKAMA: Thank you for being here.

MR. AZIZOLTANI: To answer your question, madam, it's an unusual position. I do about up to two weeks a year, so like this August I'll be gone for 10 to 14 days. It's just to hold on to the position 'cause it took me my whole life to become a cop and to do what I did so I'm just kind of holding on to it. But it's nothing like I'll be gone for a few months or anything so it won't affect this position. Years ago, one of my training officers referred to people that just talk and don't do anything as the they people, when people say why don't they do this and why don't they do that. One of the things that satisfies me doing public service is I'm not one of those people that says they, I actually go and do it instead of saying why don't they do this when I'm doing it. Public service is a privilege, I've always enjoyed it, done for a good part of my life. I didn't get two or three of your votes last time, although I was disappointed, I understood 'cause you didn't know me. I'm reliable. Every meeting that actually took place I attended. I had to miss one. I really enjoyed it, I learned a lot. I look forward to your support for the privilege to serve on the Persons with Disabilities, and thank you for the consideration.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: Thank you for your presence this morning. Ms. Cochran, would you care to have additional --

COUNCILMEMBER COCHRAN: Yeah.

CHAIR HOKAMA: --question with the gentleman?

COUNCILMEMBER COCHRAN: No, not at this time. I'll relinquish the floor for others.

CHAIR HOKAMA: Okay. Is there any questions? Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. And thank you so much for being here.

MR. AZIZSOLTANI: Thank you, ma'am.

COUNCILMEMBER BAISA: And thank you for volunteering for this Commission. Just curious, is there any special interest that you have like a friend or a family member or any particular connection to this community?

MR. AZIZSOLTANI: No. I've always done volunteer work in my past. This seems something that was minimal commitment, it wasn't something I'll have to go every day like I've done previously. I have two little kids now. So it appeared to be a reasonable duty that I could commit to and do at 100 percent which typically maybe once or twice a month at most. But no, other than the folks I've met through the process I, there's no other connection of any...nothing like that at all.

COUNCILMEMBER BAISA: Okay, thank you very much. I was just curious. Many times, you know, there's been some kind of personal experience that increases your interest in this particular area. So thank you very much.

MR. AZIZSOLTANI: Thank you.

CHAIR HOKAMA: Any other questions? Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. Thank you, Azizoltani --

MR. AZIZSOLTANI: Yes, sir.

COUNCILMEMBER GUZMAN: --for being here and your, I guess your interest as well on this committee. On the...in regards to any of your experience with persons with disability, have you worked with them before or had any other type of involvement with persons with disability?

MR. AZIZSOLTANI: The answer, Mr. Guzman, is no but as a police officer I provided citations to people that violated people's rights, one being people with disabilities. So I have very little knowledge compared to someone that's already been on the board and doing it, but I feel that

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

with my life experience and my background in enforcing laws for people with disabilities I feel that I should be given a shot at the position.

COUNCILMEMBER GUZMAN: Thank you, Chair.

CHAIR HOKAMA: Okay, thank you very much. Members, any other questions? Ms. Baisa.

COUNCILMEMBER BAISA: Not a question, Chair, but I would suggest, sir, respectfully that before you take office if you have time you might want to research the American Act for Persons with Disabilities, the ADA. It's the piece of legislation, Federal legislation that governs the Commission's activities and is really the root of many of the laws we have related like to parking passes and buildings being made accessible and reasonable accommodation. So if you have some time to study that you'll find it much easier to fit in really quickly because most of the discussion will be concerning ADA. Just a tip.

MR. AZIZSOLTANI: That's great advice, madam. I'll take you up on that for sure. Thank you.

COUNCILMEMBER BAISA: Thank you. The reason I'm so involved is I was on the State commission as well as the local commission when the act was passed, and it does...it's the gospel of Americans with Disabilities Act. Thank you.

MR. AZIZSOLTANI: Thank you so much.

CHAIR HOKAMA: Thank you. Any other questions for the gentleman, Members? Okay, just for understanding and clarification, Mr. Azizsoltani. The two weeks is...you get to pick the two weeks you wish to serve --

MR. AZIZSOLTANI: Correct.

CHAIR HOKAMA: --back in Contra Costa County?

MR. AZIZSOLTANI: It's actually Humboldt County --

CHAIR HOKAMA: Humboldt.

MR. AZIZSOLTANI: --it's City of Ferndale.

CHAIR HOKAMA: Okay, and you get to pick when you like to return back --

MR. AZIZSOLTANI: Correct.

CHAIR HOKAMA: --for your weeks of service?

MR. AZIZSOLTANI: If I may expand a little bit?

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: Sure.

MR. AZIZSOLTANI: Typically that kind of a position much more commitment is required. This is a very unusual thing 'cause the chief there is one of my former chiefs and it's a very small town, they pretty much don't even need me. He just did me a favor to so I could hold on to my POST certificates and still act like a cop every once in a while. But it's very minimal commitment, I could even go four days if I wanted to. But I make a vacation out of it 'cause my family is in Contra Costa County and my parents are elderly so I go and spend about a week with them and then I do about four or five days there and then I head back. So that's really what it is.

CHAIR HOKAMA: Okay, okay. So you would...you are a regular law enforcement officer when you go back to California?

MR. AZIZSOLTANI: Yes. In fact it's a very unusual position, it doesn't exist in Hawaii. I'm actually on with California as a full-time officer hired seasonally, believe it or not, so my status is full time, hired seasonally.

CHAIR HOKAMA: Okay.

MR. AZIZSOLTANI: And it's up to the agency to require one hour or one month a year. Technically California says there's no hour...as long as you keep up with your training, you know, perishable skills, domestic violence, range, defensive tactics, and some other things, then you can hold on to your peace officer status. And it's up to the agency how many hours per year or days per year they require.

CHAIR HOKAMA: Okay, okay. So you may and/or may not be called to court for an arrest or a case that you will be involved with then?

MR. AZIZSOLTANI: No, because what happens is when I'm there in an event that I would have to sign a citation I wouldn't issue the citation unless I had to, another officer would, to avoid having to go to court. That's exactly the...good question, sir.

CHAIR HOKAMA: Okay, okay. Well thank you for responding that candidly.

MR. AZIZSOLTANI: Thank you for the opportunity.

CHAIR HOKAMA: Yes, Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair. Would you consider yourself a full-time resident of California or of Lahaina, Maui?

MR. AZIZSOLTANI: I'm legally a full-time resident here, madam. I own the house on 90 Shaw Street. Both of my boys go to school here, one goes to Kam III and the other one Montessori.



**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

COUNCILMEMBER CRIVELLO: So to serve as a police officer whether it's seasonal or not, you don't have to be a full-time resident from your, in your county?

MR. AZIZSOLTANI: No, California...I don't know about how Hawaii works but there's actually police officer in California that live in Nevada because it's cheaper to live there. So there's no requirement by California that if you have a peace officer status you have to live in California. So it's just a very unusual thing. I don't know how long it'll continue but it's once a year thing so I do vacation, visiting family and a few days there.

COUNCILMEMBER CRIVELLO: Okay.

MR. AZIZSOLTANI: So it won't interrupt with the position, I assure you.

COUNCILMEMBER CRIVELLO: Okay. Thank you.

CHAIR HOKAMA: Okay, thank you. We recognize the presence of Mr. White. Thank you for being here.

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR HOKAMA: We are on Items 2(29) and (30) since it both deals with the same Commission and it's just a week apart in communications of the two nominees, and currently we have Mr. Azizsoltani present at the lectern to answer any questions that the Committee may have. So any further questions for the gentleman, Members? Having none, we thank you for your presence, we thank you for responding to the Committee's questions, and thank you very much for volunteering your services.

MR. AZIZSOLTANI: Thank you for the opportunity and consideration.

CHAIR HOKAMA: Thank you. Okay, Members, what I'm going to propose since it's two separate items we've posted but I'm going to propose that we consolidate the resolution since it is basically the same except for the names of the nominees. And so I will be recommending that we consolidate. We'll put both items under one Committee report. We'll consolidate and put one into one resolution, and therefore, Members, I am recommending to place on Exhibit B for approval the names of Mr. Gabriel Johnson to the Maui County Commission on Persons with Disabilities, for a term expiring March 31, 2017, as well as the name of Mr. Faraz Azizsoltani to the Maui County Commission on Persons with Disabilities, for a term expiring March 31, 2016.

COUNCILMEMBER BAISA: So moved.

CHAIR HOKAMA: Ms. Baisa...thank you.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

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

COUNCIL MEMBERS: Aye.

CHAIR HOKAMA: Opposed, say "no"? Motion passes with eight ayes and one excused, Mr. Couch.

**VOTE:           AYES:           Chair Hokama and Councilmembers Baisa, Carroll, Cochran, Crivello, Guzman, Victorino, and White.**

**NOES:           None.**

**EXC.:           Vice-Chair Couch.**

**ABSENT:       None.**

**ABSTAIN:      None.**

**MOTION CARRIED**

**ACTION:        Recommending ADOPTION of revised resolution approving the nominations.**

CHAIR HOKAMA: Thank you, Members.

**ITEM PIA-10(9): PROPOSED CHARTER AMENDMENTS (PENALTIES) (CC 09-229)**

**ITEM PIA-10(11): PROPOSED CHARTER AMENDMENTS (MAXIMUM AMOUNT OF PENALTIES) (CC 09-229)**

CHAIR HOKAMA: May we move on to now Policy Item 10(9), and this is under the heading of Proposed Charter Amendments, specifically under the subtitle of Penalties. And again, Members, if you wish we can...I don't have a problem bringing up both 10(9) and 10(11) with no objections, Members.

COUNCIL MEMBERS: No objections.

CHAIR HOKAMA: Thank you. We have a couple of what I would say...we had discussion on this previously, we did send a correspondence I believe to Corporation Counsel on the question about whether by increasing the financial penalty we must also consider adjusting the imprisonment time or jail time for violations. And the written response we got from Corporation Counsel and I'm going to paraphrase since I haven't put it up yet is that it is not required that we increase the

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

jail or imprisonment time, and that we can, we have the authority just to adjust the financial or monetary fine portion. We have both, we have First Deputy Kushi as well as our other Deputy this morning, so who is going to give us the comments this morning, gentlemen?

MR. HOPPER: Mr. Chair, I'm available for...Deputy Michael J. Hopper. I'm here for questions if the Committee has any. We did send our opinion and I think you paraphrased it correctly.

CHAIR HOKAMA: Thank you for that, Mr. Hopper. Okay, under 10(9) I believe, Members, we have one proposal for I believe \$10,000. Excuse me. And then on the other one we have it...well that's on 2 dash...10(11) up to \$10,000 for violations of the Charter and violation of ordinances and rules having the force and effect of law. Let's see. So, Mr. Hopper, you have any additional comments you wish to share with the Committee regarding the penalties component of the Charter to the Committee?

MR. HOPPER: No, Mr. Chair. One thing that I did see in the, Mr. Couch's proposal, it may be advisable, the Charter question states, shall Section 13-10 of the Charter be amended to remove the limitation on the amount of a penalty that may be imposed, you may want to add "by ordinance" or something to that effect to make clear which penalty is being, what penalty is being discussed there. That's a suggestion I had, it's not necessarily a requirement, but it may help to clarify that that ballot question. I think the way it's written now is an acceptable way of writing but maybe adding that phrase "by ordinance" may be something that would assist voters in determining that issue.

CHAIR HOKAMA: Okay. Well we'll be definitely working with your office, Mr. Hopper, to ensure that the question if this does pass the Council is presented in a manner that is clear and defined both for the voter and the County at large. Mr. Kushi.

MR. KUSHI: Yeah, Mr. Chair, just to clarify. You know your agenda items PIA-10(9) and 10(11), they're not mutually exclusive, meaning that you have to choose one or the other, both cannot...*(inaudible)*...

CHAIR HOKAMA: No, I understand. I understand, Mr. Kushi. Thank you for that comment also. For discussion purposes the Chair will allow both items to be discussed but we, if we move anything out as Mr. Kushi just shared, that's the Chair position, we would move out only one item. Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you, Chair. And I'm glad for that clarification 'cause that was my first question, so that's been clarified. Second question I have, whichever proposal we decide on, this year would that...I mean would this Charter amendment be able to be put on the ballot for this year? I guess this is the next question I have.

MR. KUSHI: I believe so. The resolution...you need to pass a resolution, then it goes to the Clerk's Office --

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

COUNCILMEMBER VICTORINO: Okay. So...

MR. KUSHI: --to publish, and I believe you're within the time frame to do it.

COUNCILMEMBER VICTORINO: Okay.

MR. KUSHI: It'll be on the general election ballot.

COUNCILMEMBER VICTORINO: Right. Okay, so I just wanted that clarification because I know there's certain types of amendments that if you haven't gotten it in by now you can't. So I just wanted to understand if this one in particular would be able to bring, be brought forward.

CHAIR HOKAMA: Anything that we have agendized, Members of the Committee, is following the Chair's timetable that whatever...if we follow the schedule and Council passes the resolution it will be on the November ballot. That is the time frame that the Committee has set up to take these considerations.

COUNCILMEMBER VICTORINO: Okay, thank you. Next question I guess would be you for Mr. Chair. You know in yours versus Mr. Couch's one, you have put in increasing the maximum penalty to 10,000. Again, the maximum penalty to 10,000. This does still give the various entities because it says but no penalty shall exceed \$10,000, but that would give them the leeway to go 5,000, 7,000, 1,000, whatever they --

CHAIR HOKAMA: Yeah, yeah.

COUNCILMEMBER VICTORINO: --so feel or deem as appropriate?

CHAIR HOKAMA: Correct, Mr. Victorino. Mine is just a cap.

COUNCILMEMBER VICTORINO: Cap of 10,000.

CHAIR HOKAMA: A cap.

COUNCILMEMBER VICTORINO: Okay.

CHAIR HOKAMA: Maximum 10,000. Yeah, so there's flexibility depending on the seriousness of the violation.

COUNCILMEMBER VICTORINO: Okay. And I guess the last question I have for you or maybe Corp. Counsel, I'm not sure where this would be answered, if the voters were to say yes to this then it would go back to the various departments or back to us to set the parameters or it would be up to the departments to set the...like say Planning, you violate Plumbing Code, I'm just using that example, please, or whatever and they say 5,000 for that infraction? Who would set those up? I mean now you've given 'em leeway, who would set? Because then you still have to

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES  
Council of the County of Maui

June 5, 2014

---

have some specificity when you talking somebody breaking a law or breaking a rule or breaking a policy and then now finding out they gotta pay ten when they had nothing in there. So if somebody could answer that question, please.

CHAIR HOKAMA: Yeah, before I recognize Mr. Kushi or, and, or Mr. Hopper, it is the Chair's position that it will continue to operate the way we currently operate under the current Charter, amended Charter. Yeah. Things by ordinance needs to be done by Council, rules and regulations would need to be done by the Administrative Procedures Act through the departments that goes still through a public process, is the Chair's understanding. I'll ask Mr. Hopper or Mr. Kushi if they have additional comment or different points they want, wish to bring up.

MR. KUSHI: You are totally and utterly correct, Mr. Chair.

COUNCILMEMBER VICTORINO: Okay, thank you. I just wanted the public to understand that, you know, that this is something that 10,000 is not where it's all going to be across the board, it is going to be discretionary by the departments or by ordinance by this Council or by the Council, a sitting Council. Thank you very much, Chair. Thank you, Mr. Kushi.

CHAIR HOKAMA: Okay. Members, other questions for either the Chair or our Corporation Counsel representatives regarding either 10(9) or 10(11)? If you folks have a preference on which measure you folks have...

COUNCILMEMBER VICTORINO: I like 10(11).

CHAIR HOKAMA: I do too but that's my proposal so. But I'm open to comments and other suggestions from the Committee members if you have any. Mr. Guzman, thoughts? ...*(inaudible)*...

COUNCILMEMBER GUZMAN: Yeah, thank you, Chair. I, my only question would be at some point could we go higher than, could the cap be higher than 10,000 without circumventing or not circumventing but I guess without somehow violating HRS' restriction of 10,000? I mean could there be a possibility that one day we would higher than 10,000?

CHAIR HOKAMA: I'll have Mr. Hopper or Mr. Kushi make comment regarding the comparison to the statutes of the State.

COUNCILMEMBER GUZMAN: Right.

MR. HOPPER: Thank you, Mr. Chair. We looked into this issue and there does not appear in HRS to be a limitation on the amount of civil fine that the Council can impose by ordinance. It says each county may impose civil fines in addition to criminal penalties, so this is considered separate and distinct from the criminal penalties. Again, if there's no...the odd thing was that there's a limit in the Charter of \$1,000 and then after that the Council would still have to pass an ordinance and then say what the civil fine is in a subsequent act. So having that limitation in the Charter, the

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

earlier proposal by Mr. Couch would be to have no limit specified in the Charter, but when the Council passes an ordinance and sets violations of that ordinance, it would have to specify the fine amount. There would be no restriction on the Council in HRS of the amount of the civil fine that it could impose. The Council would have to do that by ordinance. Criminal penalties are a bit different. Going beyond a felony or going to a felony is something that it does not appear the Council has the authority to do, because there's language in HRS regarding punishments by misdemeanors, petty misdemeanors or violations, it does not mention felonies. But because the language says the civil fines are in addition to criminal penalties provided, you know, due process is followed in imposing those fines, there's no limit at least in HRS of the amount of civil fine that the Council can impose by ordinance.

COUNCILMEMBER GUZMAN: Okay.

MR. HOPPER: State law for example has Special Management Area fines separate and distinct and those run up to \$100,000 for a, for the initial fine and \$10,000 per day. That's an example of a State fine. But, you know, the limitation that the Council would have would be by the Charter, and your amendment is either to make it 10,000, so no ordinance could go above 10,000 as a civil fine if that passed or no limitation in which case the Council later could pass an ordinance with any maximum fine that it would like in the future.

COUNCILMEMBER GUZMAN: Okay, thank you. Chair --

CHAIR HOKAMA: Yes.

COUNCILMEMBER GUZMAN: --the reason why I asked that is that because I would rather see us have more flexibility in the future. Instead of putting a set target or a set amount for the cap now, make it more flexible wherein we could increase it later on and thereby just deleting the limitation. I would prefer that we look at it that way as opposed to putting a set cap now.

CHAIR HOKAMA: Okay. That would be under 10(9), the proposal of 10(9) --

COUNCILMEMBER GUZMAN: Yes.

CHAIR HOKAMA: --as proposed by Mr. Couch?

COUNCILMEMBER GUZMAN: Yes, so that we could up to 100,000 and even 10,000 a day if possible. Okay, thank you.

CHAIR HOKAMA: Thank you. Mr. White.

COUNCILMEMBER WHITE: No, I'm comfortable with either draft.

CHAIR HOKAMA: Okay. Ms. Baisa?

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

COUNCILMEMBER BAISA: I'm comfortable with what I'm hearing but I'm also intrigued with the idea of having the flexibility, 'cause, you know, every now and then something might be very egregious and, you know, you want to whack 'em with more than \$10,000. But I, my question is I don't know why but somewhere in the back of my mind is a statement that these kinds of things have to have a rational nexus to the amount we charge. Is that so?

CHAIR HOKAMA: I know we used that premise regarding rates and fees. Under penalties, that's an interesting question and I would ask our learned attorneys if they have comment on your question, Ms. Baisa.

MR. HOPPER: You're correct, Mr. Chair. The rates and fees have to be essentially tied to how much it costs the County to process a permit because that's not considered a penalty, that's essentially a type of user fee is what it's called. And penalties are a bit different but that still doesn't mean a municipality could charge a million dollar fine for a speeding ticket necessarily. I think there has to be some type of...whichever department's imposing the fine would need to show they're not being arbitrary and capricious in imposing that fine and providing criteria, particularly when you're getting up to the higher numbers and providing a basis for why the fine was what it was, based on a variety of factors is advisable in any type of...usually that would be done in administrative rule making by the department when they're looking at that. So in looking at subsequent ordinances to impose fines, that's something that would have to be looked at in each of those ordinances as they come up to see is there, you know, is there...at the very least you need a rational basis behind is what they call, what the legal term is for what the fine imposed would be. So while there's no limit in HRS or potentially would be in the Charter, when we adopt the legislation to create that, those violations, we would want to look at that amount and to see, and to look at that issue potentially.

COUNCILMEMBER BAISA: Well that's where I was going because, you know, if we have it open ended I just want to make sure we don't capriciously charge you 1,000 and charge somebody else 30,000. I mean I would think there has to be a basis, and what I'm hearing is that would be in the rule making process.

MR. HOPPER: Yes. That's...for example we have for civil fines, for zoning violations, and for Building Code violations there's administrative rules that talk about that, you know, the department, that they set forth different fine schedules for different types of violations, and they also say the daily fines, the director has the authority to waive daily fines and can consider a variety of factors in waiving them if requested. And the departments go through that process in determining, you know, what fines to be imposed. Similarly under the SMA, that's something that the department goes through, and when we enter into settlement agreements with parties, that's what's explained to the Planning Commission which has to approve those settlement amounts, that's what's explained to them. And the department always has that in the mind. I can't speak for other departments 'cause I haven't dealt with them as much but I know Planning and Public Works have those in their administrative rules.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

COUNCILMEMBER BAISA: Thank you. You know based on that kind of safeguard being built in, I'm kind of excited about the idea of just leaving the discretion in there, Chair.

CHAIR HOKAMA: Okay.

COUNCILMEMBER BAISA: Thank you.

CHAIR HOKAMA: Thank you. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And hearing the discussion I feel like I can support your proposal here at the cap. I mean I understand there's oversight from departments versus this body and what have you, but again for me the flexibility opens up a lot more, there could be where there's no agreement also. You know there's just too much leeway, maybe too much flexibility. I mean I want to trust and believe that people are going to make sound decisions and fair judgments but at this point I think bumping it from the 1,000 to 10,000 is a good start to imposing, you know, stricter penalties where needed. And for me I'm comfortable with your proposal of the 10,000, Chair. Thank you.

CHAIR HOKAMA: Okay, thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: I'm okay with your proposal, Chair.

CHAIR HOKAMA: Okay, thank you. Mr. Carroll, your thoughts?

COUNCILMEMBER CARROLL: Thank you, Chair. If penalties are designed to be a deterrent, I think this is very appropriate because \$1,000 to many violations is something that I've heard people say well that's all right, they got what they wanted for \$1,000. I think it is totally appropriate and I think we need to upgrade this. I approve. Thank you.

CHAIR HOKAMA: Okay. Do you have a preference, a cap or no cap, Mr. Carroll?

COUNCILMEMBER CARROLL: No cap.

CHAIR HOKAMA: No cap. Okay. Yes, Mr. Victorino.

COUNCILMEMBER VICTORINO: And thank you. And for the second and final time, I believe...

CHAIR HOKAMA: There's no motion, Mr. Victorino, at this time.

COUNCILMEMBER VICTORINO: Oh, okay.

CHAIR HOKAMA: Yeah, there's no motion.

COUNCILMEMBER VICTORINO: Well I mean sometimes, you know, can go on and on.



**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: So yeah, we're just under discussion right now.

COUNCILMEMBER VICTORINO: Okay. I will go with yours and primarily because unlimited I still no matter how many safeguards you have if someone or some department was to be arbitrary and capricious, by the time we were to change it or to try to get it corrected or really end up in court again for some reason or another is not something I'd like to have happen. I think \$10,000 a day is...unless you're talking a major project really is a deterrent. There's not many people out there as an individual who can afford \$10,000 a day if that was the maximum penalty allowed under this ordinance. So I can support yours, Mr. Chair. I think it brings more definitive to the problem. I think it focuses on what we're trying to accomplish. In the future, yeah, we may have to look at it, but then again let the future take its own course. Maybe certain areas may need more, others may need less, but I think 10,000 is a good threshold for right now just to send the message that if you're going to violate there is a substantial penalty to be paid. And, you know, again, that's up to the departments and this Council or other Councils in the future to set that parameter. But the maximum I think is very important at this point. So thank you, Chair. I can support yours.

CHAIR HOKAMA: Okay, thank you. Further discussion, Members? The Chair's happy to hear all points of view on this matter. Any further thoughts, Mr. Guzman? I understand your point about flexibility as well as Chair Baisa.

COUNCILMEMBER GUZMAN: Yeah. I just worry that...when was the last time this provision of the Charter was amended from 1,000? And so what I worry about is that it may not be amended again for, I don't know, the next 20 years, and 10,000 could be equivalent to what we're looking at 1,000 right now. So I like the cap but I would like to see it a little higher in anticipation of our future inflations and things like that. Other than that I again would like to have it not have a cap at all so that we would have that flexibility to go higher. That's my only concern.

CHAIR HOKAMA: Well what I will share with the Committee is that, you know, what I'm hearing is the baseline is 10,000 and the upper end is no limit. The Chair is open to if you folks feel that there's a number in between no limit and 10,000 you folks feel more comfortable with, the Chair is very open, you know, to those type of discussion and consideration. So if the Committee wants to say we think this number is the more appropriate whatever it may be, 25,000, 15,000, but I can tell you I cannot remember the County changing this \$1,000 over the last maybe 40 years.

COUNCILMEMBER GUZMAN: So 40 years ago \$1,000 could be...

CHAIR HOKAMA: Meant something.

COUNCILMEMBER GUZMAN: It meant something. So maybe we're looking at 100,000 now if we're not going to change this for another 40 years. I don't know.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: No, and that's part of this discussion . . . *(inaudible)* . . .

COUNCILMEMBER GUZMAN: I'm willing at 100,000 if we haven't changed this in the last 40 years and if we're anticipating the next 40 years we're going to look at this. So I would propose 100,000. That's a good cap.

CHAIR HOKAMA: Okay. Any other thoughts, Members? Ms. Baisa.

COUNCILMEMBER BAISA: I know where...I mean I'm hearing all sides of this and I certainly understand it, you know, it's time to change it. The idea that we're...the maximum is 1,000 is ridiculous in this day and age because \$1,000 is just not a big deal anymore but it was when this was initially...

CHAIR HOKAMA: We all remember when a dollar was . . . *(inaudible)* . . .

COUNCILMEMBER BAISA: Yeah, and I used to buy a donut for five cents, right. I bought some this morning for more than a dollar each, so, you know, things have really changed. Also I'm thinking in relation to the kind of fines that are imposed on us when we do something wrong. I mean they charge us \$100,000 a day and think nothing of it, and say there were some company, a large company that was discovered to be doing something very environmentally wrong or, you know, something bad and we couldn't charge them more than \$10,000, I don't know if that's a good idea 'cause they might get away with something really bad. And I would like to see some kind of, you know, if everybody's more comfortable with a limit, but I think \$10,000 is, could be adjusted upward. Because to fit again having the reason to fit, you know, the penalty fit the crime, I can see a huge difference between some kinds of offenses and other offenses which cause serious harm to our community, and who winds up paying for all that is the taxpayers. I'd rather see the fine go to the person who caused the problem.

CHAIR HOKAMA: Okay. Additional comments, Members?

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR HOKAMA: Mr. Victorino.

COUNCILMEMBER VICTORINO: You know I do agree with Ms. Baisa but as history has proven out many times in the past, when these fines become very extensive many of these companies will just shut their doors, re-form somewhere else and come out of the woodwork, and that's happened many times in our society. So although I agree we want the entity that has caused the problem to pay for it, whether it's a Love Canal or whatever it may be, many times these guys just disappear. They fold up. So as far as, you know, more than 10,000, I mean I got no problem with that, unlimited I worry because if some department was to set something up, whether there's a nexus or not would be concerning for me, because who would be hurt is maybe an individual or a citizen of this community. So I would like...if there's any kind of number that you want, I'm a man of compromise. I always learned compromise is better than nothing at all or getting

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

too ridiculous. I'd rather go to 50,000 and make that the limit, and put a provision in here that we revisit in 10 years. That's another thing we've done more and more often is putting a revisit or a sunset clause in some of these items so that people are forced to look at. A new future Council is, has to take a, take the time to look at it instead of waiting until it gets so egregious that now it's 40 years later. So I would also proposed in this and I don't know, I'm not the legal beagles, I guess they'll have to address that, is some kind of sunset or some kind of review time or whatever you want to call it and ten years. You know I think all of this should be looked at every ten years, just like the Charter is, every ten years. Why not put this as part of it. So that would be my thought process in that regard.

CHAIR HOKAMA: I would say that would work really well if the limit was set by ordinance. In my experience, Members, the Charter already requires us to have that annual ten-year review, so if it's in the Charter it's going to be reviewed by the reconvened Charter Commission at every interval that the Charter requires. If it's by ordinance I would say that is a very good recommendation that it be required to be reviewed.

COUNCILMEMBER VICTORINO: I'd recommend that, Mr. Chair. If that can be incorporated I'd be more than happy to make that amendment.

CHAIR HOKAMA: Okay.

COUNCILMEMBER VICTORINO: I'm not sure how it can be done but I would recommend that, yes.

CHAIR HOKAMA: Okay. Any...Members, other thoughts? I see smiles so I'm trying to interpret the smile. Like we agree, we don't agree.

COUNCILMEMBER BAISA: Yes, Mr. Chair, we're seeking advice from our very intelligent Chair.

CHAIR HOKAMA: I don't have all the answers, Members. I would just ask Mr. Kushi or Mr. Hopper if they have any comments they wish to share with the Committee that might assist us in coming to a decision or narrowing the parameters.

MR. KUSHI: One comment, Mr. Chair, and this is Member Victorino's comment about sun setting. I've never heard a situation where you sunset a Charter provision, I've seen it in ordinances, so we'd have to look into that and get back to you.

CHAIR HOKAMA: Okay.

MR. KUSHI: I would also recommend, you know, whatever amount you come up with, you know, right now it's unlimited on one proposal and then it's capped at ten, we signed off on both; however, ten is, sounds reasonable. If you want to go higher, you know, 50, 100 or whatever, I'd suggest you also compare yourselves to other counties to see if you're in line or if you're way out of whack, and maybe look at the State. And remember, these are monetary civil fines --

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: Yes.

MR. KUSHI: --these are not monetary criminal fines that a judge will impose after sending you to jail, in addition to sending you to jail. These are civil fines that the County would assess and collect administratively, and these monies would stay with us, it doesn't go into the State General Fund.

CHAIR HOKAMA: Correct. Thank you for that points shared with the Committee members. Mr. Guzman...I'm sorry, Mr. Hopper, you had additional comments?

MR. HOPPER: Just another point that the existing ordinances that provide for penalties won't automatically be amended by this Charter provision, so if you've got an ordinance that says \$1,000 is the maximum then \$1,000 is still the maximum until you would actually, the Council would actually go and amend those ordinances. Or but under new ordinances the Council could allow for the, whatever the new maximum is, whether it's unlimited or not. But the...it will require subsequent Council action on ordinances in order to impose the higher fines, 'cause right now everything in the Charter...in the Code's going to say up to \$1,000 for each violation. And in order to change that the Council would still need to take subsequent Council action to amend those ordinances or pass new ordinances with different fine caps. So just as a note.

CHAIR HOKAMA: Okay, thank you for that comment, Mr. Hopper. Okay, Members...

COUNCILMEMBER COCHRAN: Chair?

CHAIR HOKAMA: Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: And can I just get comment from yourself as to the one-year imprisonment, you left it at that and just your reasoning behind that, and also maybe if you know historically have we imposed imprisonment on any violators and at this...*(inaudible)*...

CHAIR HOKAMA: I cannot in my recollection, maybe Mr. Kushi or Mr. Hopper may have read cases where the County did utilize the imprisonment penalty of the Charter, but not to my knowledge. One, the reason I left it is I didn't know how to deal with it. I thought that it is still a very good penalty, a one-year imprisonment, but for me my thought was more on the civil component and the administrative collection. Because for me it was about if you violate the County thing then the County should get the fines, not the State. So for me was about ensuring the ability of the County to appropriately penalize a violator of our laws or Charter and that whatever fines is received goes into our General Fund for community benefit use in the future, so that's the only reason. And that's why we sent the question to Corporation Counsel earlier about whether or not the imprisonment had to be parallel to the financial penalty portion and the response was no, it did not have to increase or adjust the imprisonment term to meet the financial fine. And that's why my proposal is just on the financial component.

COUNCILMEMBER COCHRAN: Okay. Okay, and I understand that. Yeah, it is kind of a different thing to look into the whole imprisonment portion. But I guess if...can we ask of --

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES  
Council of the County of Maui

June 5, 2014

---

CHAIR HOKAMA: Sure.

COUNCILMEMBER COCHRAN: --Corporation Counsel if they have any historical knowledge of us imposing imprisonment on any violators?

CHAIR HOKAMA: Gentlemen, can recall anything?

MR. KUSHI: Unless I forgot I don't recall anybody being administratively assessed a fine and also taken to court. It can happen, it's in several of your ordinances where the imprisonment penalty is authorized. What would happen is that the Prosecutor's Office would file some sort of complaint based on a violation, and to my knowledge I haven't heard of any yet.

COUNCILMEMBER COCHRAN: Okay.

MR. KUSHI: But we could check with the --

COUNCILMEMBER COCHRAN: Yeah, no, just if you...

MR. KUSHI: --Mr. Kim's Office.

COUNCILMEMBER COCHRAN: Thank you, Mr. Kushi. Thank you, Chair. Just if they had this off the top of their head I was just curious in regards. Thank you.

CHAIR HOKAMA: Okay, any other questions? Ms. Baisa.

COUNCILMEMBER BAISA: Yeah, just one last thought.

CHAIR HOKAMA: Sure.

COUNCILMEMBER BAISA: Following up on the idea of a sunset date and I heard what Corporation Counsel said, but when you look at the way the Affordable Housing Fund is set up, it started with in adopting Fiscal Years 2008 through 2015 Annual Operating Budget and CIP Programs, the Council shall appropriate, and it just specified those years, that's why we had to redo it.

CHAIR HOKAMA: Yeah.

COUNCILMEMBER BAISA: So could we do the same thing with this?

CHAIR HOKAMA: I believe we...I mean if, you know, I believe so. I'm going to, you know, ask our attorneys but, you know, this document, the Charter is the people's document --

COUNCILMEMBER BAISA: It's...yeah.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: --and it's the people's will that, you know, sets up the US Constitution, the State Constitution, and the Charter is the people's choice by ratifying amendments or the proposal. So I think it's a doable thing but I'll ask our attorneys who are more into the law itself. Mr. Kushi, Mr. Hopper?

MR. KUSHI: I'll try to respond. Member Baisa brings up a good point. Of course we could craft it such that effective certain date up to certain date the penalties shall be authorized as follows. The question happens of course if you don't do anything else it automatically expires, right. We wouldn't recommend that 'cause then, you know, you don't want to leave anything unknown, of course, but it's possible. I would think the voters would be more confused. I mean to say, you know, what's going to happen, you know, we got a free, you know, we have to behave ourselves to the State and then thereafter what's going to happen? I've never seen any criminal assessments or fines dated such, but again, it is possible.

COUNCILMEMBER BAISA: Thank you.

CHAIR HOKAMA: Thank you. Mr. Guzman.

COUNCILMEMBER GUZMAN: Yeah, Chair, I have a question. On the...when we're talking about a \$10,000 cap are we talking about per violation? Or let's say we have three violations, are we talking about a consecutive or a concurrent situation where the maximum of the, of those five violations is only 10,000 or are we talking 10,000 per violation is the cap?

CHAIR HOKAMA: Mr. Hopper.

MR. HOPPER: Yeah, thank you, Mr. Chair. That's considered per violation --

COUNCILMEMBER GUZMAN: Okay.

MR. HOPPER: --so if there's three violations it would be maximum of 30,000 if 10 was the, you know, and 10 for each, and each violation could be separately, you know contested. And in fact for zoning and building violations each day it's considered a separate violation that the violation continues, so that's how we've always read that provision.

COUNCILMEMBER GUZMAN: Okay. And I guess getting back to being able to have that flexibility. Like in some civil cases you have special damages, you have consequential damages, and then you have punitive damages. The punitive damages are for the punishment portion of it. And so I would assume that if we had more flexibility for those that are more outrageous we could hit 'em much harder. You know we would have, you know, that flexibility to go 50,000 for one of the three violations because one of the three violations is just outrageous. I just would like to see us have that flexibility, and maybe the cap...I'm agreeable to a cap but maybe we could go higher than the 10,000. A hundred thousand or 50,000 and we can look at it in the next 40 years. Thanks, Chair.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: Thank you. Mr. White.

COUNCILMEMBER WHITE: Yeah, the fact that we have these penalties assessed by day really sets a pretty high number pretty quickly. I would be concerned that if we put a number as high as 100,000 or 50,000 or even 25,000 that it may not pass, and I think we do need to adjust it. But I would prefer if we're going to move it up I would move it up to maybe 20,000 and then revisit all the various ordinances in which these penalties are mentioned and take a look at each type of offense and craft something that makes it clear that we want these penalties to have an effect on the people that are doing things wrong. But I would be concerned if we push the number up too high we may just not get anything changed. So I would prefer staying in the neighborhood of 20,000 and then revisiting the ordinances that outline how these penalties are put forth.

CHAIR HOKAMA: Okay, thank you for your comments. Any other thoughts, Members? Well I believe we need to...I think it's our responsibility to put to the voters a consideration regardless, and I am happy to hear this discussion because I believe the community is going to listen in on this meeting and get a sense of our discussion and where we're trying to take this component of the Charter. You know we all hope that this would be a deterrent that stops bad decisions and illegal activities as it regards to our ordinances, our rules, and our Charter. And we all have heard the stories from the departments of well for some what's \$10,000, 10 days of fines when I got my million dollar project done in two weeks and I didn't have to wait six months for the permit so I paid my 10,000 and I'm happy? That was not a deterrent, that was a penalty that they said didn't make sense and was cheap enough to ignore the law. Okay. That we should not continue to encourage. So I would say hearing the discussions and I appreciate Mr. White, I think you're right 'cause that's what the Chair was thinking about, if we do have this presented, the voters ratify it, then, you know, part of the work of next term would be to revise and review those ordinances that need to be amended accordingly unless we do an omnibus proposal which may not be to the benefit of our communities. So I'm going to propose, Members, hearing it, I think we should stay in the 20s. So I'm open to 20,000-25,000 as the cap. You guys have any preference? Mr. White, you brought up...

COUNCILMEMBER WHITE: Chair, I'll move that the number be adjusted to 25,000.

COUNCILMEMBER BAISA: Second.

CHAIR HOKAMA: Okay. Before we, I take that motion I'm going to first then let you know that I would recommend that we amend the resolution as it is proposed on Policy Item 10(11) which already has an underscoring of the proposal for 10,000. So may I direct you again to the resolution under 10(11), a proposed Amendment to the Revised Charter of the County of Maui (1983) as Amended Relating to Maximum Amount of Penalties. You see in the resolution under the first resolved clause, Section 13-10, Penalties, bracketed to be deleted is \$1,000.00, currently underscored is \$10,000. I will now recognize the motion made by Mr. White, seconded by Ms. Baisa that the 10,000 will now be \$25,000.

COUNCILMEMBER WHITE: Correct.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: That is the motion before you, Members. Is there any further discussion on the motion? Having none, all in favor of the motion, please say "aye".

COUNCIL MEMBERS: Aye.

CHAIR HOKAMA: Opposed, say "no"? Motion passes with seven ayes, Mr. Victorino and Mr. Couch are excused.

**VOTE:       AYES:       Chair Hokama and Councilmembers Baisa, Carroll, Cochran, Crivello, Guzman, and White.**

**NOES:       None.**

**EXC.:       Vice-Chair Couch and Councilmember Victorino.**

**ABSENT:    None.**

**ABSTAIN:   None.**

**MOTION CARRIED**

**ACTION:    APPROVE amendment.**

CHAIR HOKAMA: Now, Members, I'm going to be open to a motion to recommend to Council that the revised resolution entitled Proposing an Amendment to the Revised Charter of the County of Maui (1983), as Amended, Relating to Maximum Amount of Penalties move forward.

MS. NAKATA: Excuse me, Mr. Chair?

CHAIR HOKAMA: Yes?

MS. NAKATA: Would you like to also make a comparable revision to the question?

CHAIR HOKAMA: Yes, thank you. With no objection, Members.

COUNCIL MEMBERS: No objections.

CHAIR HOKAMA: That is...thank you for the reminder, we need to adjust the question as well as the proposal. So with no objections, the Chair will have the Staff make that adjustment.

COUNCIL MEMBERS: No objections.



**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: Any further discussion on the motion? Current motion? If not, all in favor of the motion, please say "aye".

COUNCIL MEMBERS: Aye.

CHAIR HOKAMA: Opposed, say "no"? Motion passes.

**VOTE:**       **AYES:**       **Chair Hokama and Councilmembers Baisa, Carroll, Cochran, Crivello, Guzman, and White.**

**NOES:**        **None.**

**EXC.:**        **Vice-Chair Couch and Councilmember Victorino.**

**ABSENT:**     **None.**

**ABSTAIN:**    **None.**

**MOTION CARRIED**

**ACTION:**     **Recommending FIRST READING of revised resolution.**

CHAIR HOKAMA: And I am going to now take a motion to file Policy Item 10(9).

COUNCILMEMBER BAISA: So moved.

COUNCILMEMBER WHITE: So moved. Second.

CHAIR HOKAMA: I have a motion by Ms. Baisa, seconded by Mr. White. Any discussion? All in favor of the motion, please say "aye".

COUNCIL MEMBERS: Aye.

CHAIR HOKAMA: Opposed, say "no"? Motion passes.

**VOTE:**       **AYES:**       **Chair Hokama and Councilmembers Baisa, Carroll, Cochran, Crivello, Guzman, and White.**

**NOES:**        **None.**

**EXC.:**        **Vice-Chair Couch and Councilmember Victorino.**

**ABSENT:**     **None.**

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

**ABSTAIN: None.**

**MOTION CARRIED**

**ACTION: Recommending FILING of correspondence (PIA-10(9)).**

CHAIR HOKAMA: Thank you very much. I know you have to leave, Ms. Baisa, so thank you very much.

**ITEM PIA-10(2): PROPOSED CHARTER AMENDMENTS (COST OF GOVERNMENT COMMISSION) (CC 09-229)**

CHAIR HOKAMA: Members, we have the...let's take the last Charter proposal and then take a short recess after that. May I please direct you to 10(2). We had discussion on this the last meeting, and again, the Chair has his proposal before you. And I believe I shared my comments with you at the last meeting why I believe that they have outlived their requirement as far as from a Charter standpoint to continue. And again, I will state that the Mayor in his, under his authority has the ability to create his own taskforce and ad hoc committees to review certain items that he feels is necessary from an administrative standpoint. We also currently have the brand new County Auditor as required by the Charter in place. And that is what is before you under Policy Item 10(2). The Chair is aware of some of the discussion by the Committee during the last meeting, and the Chair is now going to open up discussion for further consideration. Mr. White, any thoughts?

COUNCILMEMBER WHITE: You know, Chair, the, some of the testimony at the last meeting was very concerning. I mean because I like you have been very put off by the Commission's focus on evaluating or investigating or supervising or in any other way controlling or exercising control over the Office of the Auditor. And you know and the other Members know that the way that we crafted the Charter amendment to establish the Office of the Auditor was so that it was independent of the Administration and independent of this body, and that's exactly how it was passed. And the Cost of Government Commission was to be advisory, not supervisory, and so for them to move from an advisory position in which case the Auditor has the option of asking for advice, he doesn't have to listen to anything they want to do. They have their function, the Auditor has his, and they could be complementary and I think they should be complementary. So I will take the new chair's comments that she's going to work well with the Auditor as a sign that things may be changing. The Cost of Government is appointed by the Administration, it is then confirmed by this body, but it generally works with the Administration. And a body that works with the Administration should not be in a position to do anything more than either the Administration or us could do to control the actions of the Auditor. The Auditor must be independent. It is set up to be independent, and they need to leave the Auditor alone to do his job. And they have a very valuable function, they've provided us with some valuable work over the years, but to see the focus in the most recent report outlining that they're going to investigate

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

the Auditor when they haven't even started...oh, and they've just barely started their work is simply outrageous. And I hope that they will move forward in a much more positive fashion than we've seen from the Cost of Government over the last year. You know we really wanted to set something up that's independent and there's been nothing but intrusive actions and unnecessary I'll call it stumbling and bumbling around by the Cost of Government Commission. I hope it stops and I hope that the Auditor will be allowed to do his work as outlined in the Charter and voted on by the people of Maui. So thank you, Chair.

CHAIR HOKAMA: Thank you. Other comments? Staff, why don't you pass the Chair's...the Chair has an additional consideration that I am going to present at this time to you. And thank you, Mr. White. I heard the testimony as well as the other Members at the last meeting, and I would say I would feel more comfortable and if you need a few minutes to look at this proposal, Members, the Chair is happy to call a short recess. But the role of it should be exactly what was stated by Mr. White and what the Council supported for the voters to consider. I'm going to take a short two-minute recess. . . .(gavel). . .

**RECESS: 10:08 a.m.**

**RECONVENE: 10:11 a.m.**

CHAIR HOKAMA: . . .(gavel). . . The Policy Committee shall return to order. We are currently on Policy Item 10(2), Proposed Charter Amendments, subheading Cost of Government Commission. Members, the Chair has just handed out to you a proposal for consideration regarding the Cost of Government Commission. I will note for you that we have not had this reviewed and signed off by the Department of Corporation Counsel as of yet, so this is something brand new. And I was going to tell Mr. White I thought he was psychic because only the Staff and I knew of this proposal, so his comments was pretty psychic to me when he just shared it. Questions on my handout to you, Members? Yes, Ms. Crivello.

COUNCILMEMBER CRIVELLO: I don't have a question really, I have comments more. I appreciate this proposal because it definitely clarifies. I think that's where maybe some of the dotted line or solid line got confused as far as the role of the Cost of Government Commission, and I think whereby this clearly clarifies that what is expected of the, you know, they've done good things as far as the identifying the efficiency of County government and how we need to be more cognizant as far as expenditures within the departments. And I think their move or recommendation that they did with the GPS on vehicles is a good example of the kind of contributions that they do. And then it clearly separates why we have the Office of the Auditor. And, you know, it's when they...the Office of the Auditor asks for advice then they become the advisory, and I like how it says here. So hopefully Corporation Counsel can formalize this and that we will take this proposal into consideration. I think the abolishment kind of like is quite drastic but this like I say it adds clarity and gives them direction as to their role for the whole County as well as the actual separation of duties. So thank you for this consideration.

CHAIR HOKAMA: Okay, thank you. Mr. Guzman?

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

COUNCILMEMBER GUZMAN: Thank you, Chair. I too appreciate the amendments. I like the clear distinction in the Section 3-9.3, the sentence where it says the Commission shall provide advice to the County Auditor only upon...oh, only upon the Auditor's request. That's clearly showing the independence and it's only upon the request of the Auditor. I also like the number three, submit a report of its findings and recommendations to the Mayor, Council, and County Auditor if requested by the Auditor to provide advice. I do like those two amendments; however, the deletion of the duties and the powers, at some point I'm looking at this and wondering what is the Commission's duties then if you're going to delete all their duties to investigate organizations? And so it looks as though you're deleting that...

CHAIR HOKAMA: It becomes just like the Board of Water Supply, they're an advisory --

COUNCILMEMBER GUZMAN: Oh, I see.

CHAIR HOKAMA: --to the department, period --

COUNCILMEMBER GUZMAN: Okay.

CHAIR HOKAMA: --unless they're assigned by law or rules additional responsibilities within the parameters of the Charter and the ordinances. And that's why, you know, the Council made a decision by ordinance to allow the Board of Water Supply to take care of appeals, that is something that can be legislated. But for me take...part of the deletion of some of the current duties is to take away confusion on who has the power to do the audits and that's to me the Auditor, he has the investigative authority, he can subpoena, he has the power to subpoena. I don't want an administrative department to have that same powers. The Auditor has that powers, the people voted to have the Auditor to have that powers, and for me it is I would like that separate entity to be able to look at both the Executive and Legislative Branch of the County in equal eyes. And that's why I've presented this proposal to you in that manner. If anybody is going to make the call it's the Auditor, not the Cost of Government Commission, not the Council, not the Mayor's Office, the Auditor.

COUNCILMEMBER GUZMAN: So, Chair, in regards to the language that's used in I guess defining the role of the Board of Water Supply, is it similar language as what you've proposed here to create the advisory type situation only?

CHAIR HOKAMA: I took that as my example, I didn't take the exact language, Mr. Guzman, but I took it as the way I've understood the role of that board to operate.

COUNCILMEMBER GUZMAN: Okay.

CHAIR HOKAMA: And again, prior to Council giving them authority to take care of appeals and others, it was pretty much the same, they were just advisory to the Department of Water Supply.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

COUNCILMEMBER GUZMAN: Okay. Thank you for that clarification, Chair.

CHAIR HOKAMA: Okay. Mr. Carroll, any thoughts, sir?

COUNCILMEMBER CARROLL: No further comment.

CHAIR HOKAMA: Thank you. Ms. Crivello, any additional thoughts?

COUNCILMEMBER CRIVELLO: Not at this time, Chair.

CHAIR HOKAMA: Thank you.

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR HOKAMA: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And yes, I appreciate your amendment here and can totally support it, because it does as others have mentioned clarify their powers and duties and role in this. So I can completely support that. And thank you.

CHAIR HOKAMA: Thank you. Mr. White?

COUNCILMEMBER WHITE: A couple of questions for you --

CHAIR HOKAMA: Sure.

COUNCILMEMBER WHITE: --Chair. I understand and appreciate the clarity that this provides, the question I have is will they still be able to if they're instructed or requested by the Auditor to study a particular function of government or a branch of government, is the Auditor able to confer...if we take out the language on investigate is the Auditor able to--for a lack of a more artful term--deputize the Cost of Government Commission with the ability to investigate or request things? Or would they have to come back to the Auditor's Office for some sort of authorization or approval for them to get questions answered?

CHAIR HOKAMA: The way I was viewing this, Mr. White, is I would leave it up to the Auditor to administer his operation and program and how he would like to utilize the Cost of Government Commission. For certain things I believe the Auditor would prefer to go out and get professionals in specific fields of certain audits. If he feels that the Cost of Government can assist with getting community input, the common layman's understanding of the operations or proposal, you know, I would leave it up to the Auditor. But for me I don't want a multi-headed hydra, I just want one person we can hold accountable who's going to have that authority and will take that responsibility to respond. I don't want it spread out over ten people, nine commissioners and an auditor or a deputy auditor. Who takes responsibility of the work then? 'Cause we've seen how the State operates and the Auditor always takes it and puts the target on

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

its chest or the person's chest, I'm the responsible person. These people may have done the studies, may have put together the document, but it's my report under my signature and I'm held responsible and it's very clear, and that is part of what I'm trying to do here in this proposal, make it very clear that the one responsible regarding the audits and the operations of this County is the County Auditor.

COUNCILMEMBER WHITE: Yeah, I'm just trying to get a sense of how the Cost of Government Commission would work. Would they be...I believe at this point they come up with their own ideas of what to look into or they get ideas from the Administration as to what to look into. So under this set of circumstances would they be able to come up with their own ideas and then get authorization from the Auditor or would it simply be based on the Auditor's instruction?

CHAIR HOKAMA: The way I foresee it I leave it under the Auditor's discretion and direction.

COUNCILMEMBER WHITE: I do appreciate having, you know, having one entity in charge, because I think it will lend itself to greater collaboration, that they can, you know, they can work together. I think they can do a lot more than if especially the way it's working now where there at somewhat...or not somewhat, significantly at odds with each other. So thank you for those answers, Chair.

CHAIR HOKAMA: Okay. Further discussions and questions, Members? Again, Members, if the new proposal is something that moves out we are going to need to work with Corporation Counsel in wording the question before the voters appropriately, and so I'll state that upfront that if the new proposal goes forward that we're going to need to properly rephrase the question that is currently on the original proposal. Okay. So no further discussion? The Chair would be open to a motion to move forward the new proposal under the revised resolution under the heading of Proposing an Amendment to the Revised Charter of the County of Maui (1983), as Amended, to Clarify the Duties of the Cost of Government Commission.

COUNCILMEMBER WHITE: So moved.

COUNCILMEMBER COCHRAN: Second.

CHAIR HOKAMA: I have a motion and a second made by Mr. White, seconded by Ms. Cochran. We're under discussion, Members. All in favor of the motion, please say "aye".

COUNCIL MEMBERS: Aye.

CHAIR HOKAMA: Opposed, say "no"? Motion passes with six ayes, three excused, Mr. Couch, Ms. Baisa, and Mr. Victorino.

**VOTE:       AYES:       Chair Hokama and Councilmembers Carroll, Cochran, Crivello, Guzman, and White.**

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES  
Council of the County of Maui

June 5, 2014

---

**NOES:** None.

**EXC.:** Vice-Chair Couch and Councilmembers Baisa and Victorino.

**ABSENT:** None.

**ABSTAIN:** None.

**MOTION CARRIED**

**ACTION:** Recommending **FIRST READING** of revised resolution clarifying the duties of the Cost of Government Commission.

CHAIR HOKAMA: Thank you very much, Members. We are going to take a mid-morning recess and then we'll come back to our main final two items under litigation. And we'll take a ten-minute recess, Members. Please return by 10:35. . . .(gavel). . .

**RECESS:** 10:24 a.m.

**RECONVENE:** 10:37 a.m.

CHAIR HOKAMA: . . .(gavel). . . The Policy Committee shall return to order. Thank you for that short recess, Members.

**ITEM PIA-1(37): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: PATRICE FALCONE AND ROBERT FALCONE V. COUNTY OF MAUI, ET AL., CIVIL 13-1-0716(2)) (CC 13-41)**

CHAIR HOKAMA: May I please direct you to Policy Item 1(37). This is under the heading of Litigation Matters (Settlement Authorization: Patrice Falcone and Robert Falcone V. County of Maui, Et Al., Civil No. 13-1-0716(2)). What is before us, Members, is we have correspondence from Corporation Counsel dated April 15, 2014 where we have a proposed resolution entitled Authorizing Settlement of Patrice Falcone and Robert Falcone V. County of Maui, Et Al., Civil No. 13-1-0716(2) along with a copy of the complaint. This morning we have Deputy Counsel Tom Kolbe that will give his comments in open session to the Committee. Mr. Kolbe.

MR. KOLBE: Thank you, Mr. Chair. This is a case involving a woman who was visiting from California who went to the DT Fleming Beach Park north of Lahaina and when she went to shower off after going to the beach, she slipped and fell allegedly on algae that was growing on the shower pad at the outside shower area. And based on her injury she was...suffered an alleged head injury and was treated here and in California. This case has...the attorneys on the other side have provided me with a settlement request and I would request that we go into an executive session to discuss what our settlement options are in this matter.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

CHAIR HOKAMA: Okay, thank you for that. Any questions for Mr. Kolbe in open session, Members, with his comments? Okay, having none, the Chair will take a motion to enter into executive session on Policy Item 1(37) as allowed by Hawaii Revised Statutes, Section 92-5(a)(4) which is to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and this Committee. As well as Section 92-5(a)(8) of the Hawaii Revised Statutes which is to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law or a court order.

COUNCILMEMBER WHITE: So moved.

CHAIR HOKAMA: Thank you.

COUNCILMEMBER COCHRAN: Second.

CHAIR HOKAMA: I have a motion made by Mr. White, seconded by Ms. Cochran for executive session. Any further discussion, Members? All in favor, say, please say "aye".

COUNCIL MEMBERS: Aye.

CHAIR HOKAMA: Opposed, say "no"? Motion passes with six ayes, three excused.

**VOTE:       AYES:       Chair Hokama and Councilmembers Carroll, Cochran, Crivello, Guzman, and White.**

**NOES:       None.**

**EXC.:       Vice-Chair Couch and Councilmembers Baisa and Victorino.**

**ABSENT:   None.**

**ABSTAIN:   None.**

**MOTION CARRIED**

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

**ITEM PIA-1(3):   LITIGATION MATTERS   (SETTLEMENT AUTHORIZATION AND STATUS: HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI; CIVIL 12-00198 SOM BMK) (CC 13-41)**

CHAIR HOKAMA: I'm going to bring forward at this time also, Members, Policy Item 1(3) also under the heading of Litigation Matters, subheading (Settlement Authorization and Status: Hawaii



**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

June 5, 2014

---

Wildlife Fund, Et Al. V. County of Maui; Civil No. 12-00198 SOM BMK). This morning we have our Corporation Counsel, Mr. Pat Wong present. And, Mr. Wong, any comments you wish to state in open session at this time?

MR. WONG: Sure. We also have present Deputy Corporation Counsel Richelle Thomson and our appointed Special Counsel Colleen Doyle to join us here.

CHAIR HOKAMA: Okay, thank you very much, Mr. Wong.

MR. WONG: By way of initial comments that I have that we can make in open session, we're all aware that the Federal Court has issued its order, it's a published order. It's available on the internet and, you know, the general public can certainly review the order and draw their own conclusions. What we want to do is present to you in executive session when capable our review of the order, our thoughts, and our prospective strategy moving forward. In terms of the litigation itself, you know, we're still before the same Federal Court. There's vast remaining issues involved, and I'm concerned that as we move forward that communication about this order be limited. We did in a press release simply state that we, although we respect the court's opinion we are still evaluating our strategy and the order itself. I think I have addressed the topic of comments on litigated matters in the past in this manner and in others, and I feel compelled at this moment while we're in open session to raise it as a general caution to all Members that although you may have your personal opinions about how matters are handled and/or how the Administration may or may not conduct business, please recall that you're a component of the County of Maui. And in as much as you may speak to an item, reflect that your hat as a Council member remains fixed on your forehead, and unfortunately it's very, very hard to extract from the general public comments that you may have in a personal realm from official comments as a sitting Council member. I would hate for us to be confronted with published information that are not assigned to the County and should not be assigned to the County used against us. That's why we go into executive session where we can voice our concerns and our opinions. That's why we go into executive session so we can vet all issues and we can properly handle the strategy of the case collectively. Please adhere to the caution. And if you have made those comments out there please, please consider retracting and/or finding some other way to deal with it. With that, Chair, I'd like to suggest that, you know, the Chair consider some method of approach in dealing with published items on litigated matters.

CHAIR HOKAMA: Thank you for that, Mr. Wong. The Chair thanks you for your comments, and as our chief attorney we take your advice very seriously, this Committee, all members of this Committee. So I would say I support your comments and I will also reinforce as the Committee Chair that, Members, please, litigation matters until finalized and appropriate timing, please be aware of any type of communications until this is settled and finalized, and that the public can have full access to all communications and documents. The Chair will also state regarding this type of matters, if you have concerns, Members, please come to the Chair, we can have a discussion, or if you feel more comfortable to get the advice through Mr. Wong, please seek his guidance if there's issues you might...would like to have a comment on or anything. But besides my caution to the Members of this Committee, I've also talked with Mr. Wong about this, I also

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES**  
**Council of the County of Maui**

**June 5, 2014**

---

will caution the departments and the Administration that this matter is in the Council's hand in this Committee as a litigation matter. I also prefer unless it is provided by Mr. Wong that even the Administration not make public comments about any litigation case ongoing. They are not in our executive sessions, they are not privy to our information and our status components and our strategies, so I would also advise the Administration to not make inappropriate public comments itself at any time. The standard that I believe we should hold to ourselves needs to also be held against the Administration also. The litmus is the same. So I thank Mr. Wong for that guidance, and I hope the Administration and the various departments are also hearing this and being very cognizant of the sensitivity of litigation matters as it deals with the County of Maui. With that I believe Mr. Wong would like an executive session, so under Hawaii Revised Statutes, Section 92-5(a)(4) which allows this Committee to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and this Committee, I am entertaining a motion for executive session.

COUNCILMEMBER WHITE: So moved, Chair.

CHAIR HOKAMA: Thank you.

COUNCILMEMBER COCHRAN: Second.

CHAIR HOKAMA: Thank you. I have a motion made by Mr. White, seconded by Ms. Cochran to enter into executive session on Policy Item 10...oh, excuse me, 1(3). Any discussion, Members? All in favor of the motion, please say "aye".

COUNCIL MEMBERS: Aye.

CHAIR HOKAMA: Opposed, say "no"? Motion passes with six ayes, three excused.

**VOTE: AYES: Chair Hokama and Councilmembers Carroll, Cochran, Crivello, Guzman, and White.**

**NOES: None.**

**EXC.: Vice-Chair Couch and Councilmembers Baisa and Victorino.**

**ABSENT: None.**

**ABSTAIN: None.**

**MOTION CARRIED**

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

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES  
Council of the County of Maui

June 5, 2014

---

CHAIR HOKAMA: We shall go into recess to prepare for executive session. . . .(gavel). . .

**RECESS: 10:48 a.m.**

**RECONVENE: 12:22 p.m.**

CHAIR HOKAMA: . . .(gavel). . . The Policy Committee shall return to open session.

**ITEM PIA-1(37): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: PATRICE FALCONE AND ROBERT FALCONE V. COUNTY OF MAUI, ET AL., CIVIL 13-1-0716(2)) (CC 13-41)**

CHAIR HOKAMA: Members, thank you for those requirements of executive session. Regarding Policy Item 1(37) the Chair is happy to entertain a motion to move the proposed resolution Authorizing Settlement of Patrice Falcone and Robert Falcone V. County of Maui, Et AL., Civil No. 13-1-0712(2) [*sic*] forward under the terms as discussed in executive session.

COUNCILMEMBER WHITE: So moved.

CHAIR HOKAMA: Thank you.

COUNCILMEMBER COCHRAN: Second.

CHAIR HOKAMA: Thank you. I have a motion made by Mr. White, seconded by Ms. Cochran. Any discussion, Members? Having none, all in favor of the motion, please say "aye".

COUNCIL MEMBERS: Aye.

CHAIR HOKAMA: Opposed, say "no"? Motion passes with six ayes, three excused.

**VOTE: AYES: Chair Hokama and Councilmembers Carroll, Cochran, Crivello, Guzman, and White.**

**NOES: None.**

**EXC.: Vice-Chair Couch and Councilmembers Baisa and Victorino.**

**ABSENT: None.**

**ABSTAIN: None.**

**MOTION CARRIED**

**ACTION: Recommending ADOPTION of resolution.**

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES  
Council of the County of Maui

June 5, 2014

---

**ITEM PIA-1(3): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION AND STATUS:  
HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI; CIVIL 12-00198 SOM BMK)  
(CC 13-41)**

CHAIR HOKAMA: And with no objections, Policy Item 1(3) under the Settlement Authorization and Status of Hawaii Wildlife Fund, Et Al. V. County of Maui, this item shall be deferred.

COUNCIL MEMBERS: No objections.

**COUNCIL MEMBERS VOICED NO OBJECTIONS** (excused: DGC, GCB, MPV).

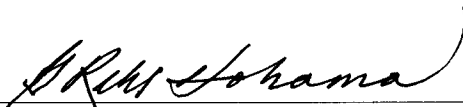
CHAIR HOKAMA: Okay, thank you, Members.

**ACTION: DEFER pending further discussion.**

CHAIR HOKAMA: No further business? Thank you for today's attendance and business. This meeting is adjourned. . . .(gavel). . .

**ADJOURN:** 12:23 p.m.

APPROVED:



\_\_\_\_\_  
G. RIKI HOKAMA, Chair  
Policy and Intergovernmental Affairs Committee

pia:min:140605:ds

Transcribed by: Daniel Schoenbeck

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES  
Council of the County of Maui

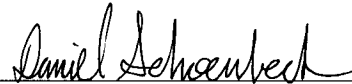
June 5, 2014

---

CERTIFICATE

I, Daniel Schoenbeck, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 12<sup>th</sup> day of June, 2014, in Kula, Hawaii

A handwritten signature in cursive script, reading "Daniel Schoenbeck", is written over a horizontal line.

Daniel Schoenbeck