

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE

Council of the County of Maui

MINUTES

August 31, 2015

Council Chamber, 8th Floor

CONVENE: 9:02 a.m.

PRESENT: Councilmember Michael P. Victorino, Chair
Councilmember Don Couch, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Robert Carroll, Member (In 9:17 a.m.)
Councilmember Elle Cochran, Member
Councilmember Stacy Crivello, Member (In 9:03 a.m.)
Councilmember Don S. Guzman, Member
Councilmember Riki Hokama, Member
Councilmember Mike White, Member (In 9:10 a.m.)

STAFF: Kimberley Willenbrink, Legislative Analyst
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)
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: Kyle K. Ginoza, Director, Department of Environmental Management (Item PIA-49)
Richelle M. Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel (Item PIA-49)
Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Rosemary Robbins
Joli Tokusato, Unite Here Local 5 Hawaii (Item PIA-53)

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

CHAIR VICTORINO: . . .(*gavel*). . . Good morning. The Policy and Intergovernmental Affairs meeting of August 31, 2015 will now come to order. I want to thank the Members who are here this morning. Let me introduce, first of all, the Vice-Chair of our Committee, Mr. Don Couch from South Maui.

VICE-CHAIR COUCH: Good morning, Chair.

CHAIR VICTORINO: Good morning. Mr. Carroll from East Maui will be arriving around 10:00 p.m....10:00 a.m., excuse me, later this morning. Our lovely lady from Upcountry, Ms. Gladys Baisa.

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COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR VICTORINO: Good morning. Our young lady from West Maui, Ms. Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha. Good morning, Chair.

CHAIR VICTORINO: Good morning. Ms. Stacy Crivello will be joining us shortly. Also from Lanai, Mr. Riki Hokama.

COUNCILMEMBER HOKAMA: Mr. Chairman.

CHAIR VICTORINO: Good morning. And then our Central and our Vice-Chair of our Council, Mr. Don Guzman.

COUNCILMEMBER GUZMAN: Good morning, Chair.

CHAIR VICTORINO: And the Chair...good morning, sir. And our Chair of our Council, Mr. Mike White will be joining us later. And I am also the Committee Chair, Mike Victorino, excuse me. And so from the Administration, we have from the Department of Corporation Counsel the First Deputy Corporation Counsel, Mr. Ed Kushi.

MR. KUSHI: Good morning.

CHAIR VICTORINO: Joining us in a little bit will be Richelle Thomson, Deputy Corporation Counsel and also joining us will be Kyle Ginoza, Director of the Environmental Management. Our Staff, and we cannot do without them, our Legislative Analyst, Ms. Kim Willenbrink.

MS. WILLENBRINK: Good morning, Chair.

CHAIR VICTORINO: Good morning. And Tammy Frias, our Committee Secretary.

MS. FRIAS: Good morning, Chair.

CHAIR VICTORINO: Good morning. And now at this time I'd like to check with the outlying districts to make sure that they're set up to take public testimony. First, I'll start with our Hana Office, Dawn Lono, are you there?

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office.

CHAIR VICTORINO: Thank you. Good morning, Dawn. From our Lanai Office, Ms. Denise Fernandez, are you there?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai.

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CHAIR VICTORINO: Good morning, my dear. And of course from our Molokai Office, Ella Alcon. Ella, are you there?

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai.

CHAIR VICTORINO: Thank you very much, Ella. Today we have...oh, before we start, I would like to ask everyone to put their phones on silent or turn them off. Decorum will be carried out in this Chamber throughout the morning. At this time, we have four items on today's agenda and I would like to begin with public testimony, with no objections.

COUNCILMEMBERS: No objections.

CHAIR VICTORINO: Today, testimony will be limited to three items, I mean, three items, will be limited to three minutes. At two-and-a-half minutes, the light will turn yellow and at three minutes the light will start blinking red. At that time, I will ask you to conclude. Please state your name and any organization you may be representing, and I would like to recognize the young lady from Molokai, Ms. Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR VICTORINO: Good morning and aloha. We have established connections with our District Offices and if, with no objections, I'd like to start with our District Offices. Any objections to that?

COUNCILMEMBERS: No objections.

CHAIR VICTORINO: Okay, thank you. Let's start with our Hana Office, Dawn Lono, do you have anyone wishing to testify?

. . .BEGIN PUBLIC TESTIMONY. . .

MS. LONO: There is no one waiting to testify in the Hana Office.

CHAIR VICTORINO: Thank you, Dawn. Denise Fernandez on Lanai, is there anyone wishing to testify?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR VICTORINO: Thank you, Denise. And then on Molokai, Ella, is there anyone wishing to testify on Molokai?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR VICTORINO: Thank you, ladies. What I will do is after we're through with the Chamber's testifiers, I will come back to all three of you to ask if anyone has stopped

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by. In the meantime, if someone does stop by, please e-mail our office and we will then make sure that we recognize that, the testifier. Moving on, first testifier this morning is Rosemary Robbins and she'll be speaking on PIA-3(1), PIA-6(2), PIA-49, and PIA-53. In other words, she's speaking on all four items. We could have just said, I could have made that real simple, Rosemary. Good morning, Ms. Robbins.

MS. ROBBINS: Good morning. Good morning, everybody. There's a thread in those four.

CHAIR VICTORINO: Okay.

MS. ROBBINS: Okay. So, the first one on our agenda this morning is on Policy and Intergovernmental Affairs Item No. 3(1) and it's talking about the Sunshine Law. And the concern is...over the weekend I had the opportunity, I had a 50th wedding anniversary to celebrate up in Makawao, it was wonderful. I got a chance to just be in the company of a lot of people that I only see rarely. They're chomping at the bit and saying the election isn't until later next fall. Quietly as I sit back here I said, what, I'm sorry, tell me why you're saying that? And they said because there's such heavy campaigning going on, so I'm just telling you that's the mindset that's out there in the community. So we need to make sure, I assured them that I'm here for a number of the meetings sitting there quietly listening and that that's not just a case of campaigning. But they had their own thoughts on that. So they are concerned in this item about amending the Sunshine Law. I'm certainly in favor of some improvements in that but they want to be very careful that when the plans, the community plans, and the zoning plans are changed from what the folks put such hard work into developing, it's like they don't count and they spent months and years doing that. So the caution is to beware of having this order that's coming up before you this morning just be an order for people to have an opportunity to go to those County meetings and campaign. Too early they're saying. So, that's the first item on there today. And then over on Page 3, amendments to the Rules of the Council and the roll-call voting, this is about having a person or persons who are here and available to vote, just not vote and then be identified as being with the prevailing vote being something against what they're saying. So I kind of wrote down what they said. They said folks expect their elected lawmakers to do their homework and to vote accordingly. Some of the peoples there have said that on this proposed amendment it is a political move to enable a candidate to say he/she never voted against the proposal that the public sense should not be voted in. Okay, then over to, it's on the bottom here, PIA-49 and the data for all of that is in on Page 2. And this one really caught my attention. I'm no ornithologist but this talks about birds and the fact that there has been a history of Canada, Mexico, the United States and its territories, and this is within the timeframe that Hawaii was a territory, of violations alleged by the U.S. Department of Interior, Fish and Wildlife Service concerning the take of endangered birds and migratory birds, nests or eggs. So I got to the library and looked up some of that and something that is not mentioned in here is feathers. And it talks about what an industry that used to be for people getting feathers for hatbands and I remember the vanda orchids and some of the feathers on the plates in restaurants in years past, so a little recognition but not heaps on that. This also says nothing about money. And when I looked this up in the actual bills that are being proposed for today, these are takes in the geography of the

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Wailuku-Kahului Wastewater Reclamation Facility, that's in 2014 year, and the other one is on the island of Lanai in the wastewater area treatment over there. And what you're going to be asked to do today, I'm reading now from here, Section 3.16.020(b) provides that any settlement in excess of \$7,500 shall require Council authorization. The Department of Corporation Counsel has requested authority to settle this matter under the terms set forth in an executive meeting, remember that's been explained that public not allowed, for the Policy and Intergovernmental Affairs. So there are two separate, so we're talking about 7,500 for this one and 7,500 for this one. Now we're up to 15,000, none of which is mentioned in this agenda item on Page 3...on Page 2 this morning. So it was a huge question, who pays for this? And after we just went through time after time after time after time about the fact that we've been sued under Federal law for other issues and the deal was when attorneys were hired to deal with that, the cost of hiring those attorneys was not to exceed, and it started out with a quarter of a million, it has been re-requested and re-requested, it's now up to just a quarter of a million short of three million. Whoa.

MS WILLENBRINK: Three minutes.

MS. ROBBINS: And people are asking who's paying for this? So, we need to be very careful about this. Folks do not want to have these bills for debt payment creaming them. The fact that we're not increasing property tax. They're being, they feel like they're being bled by other techniques and they're pretty unhappy about that. So I would just like to say quickly that on the other issue that's in there today that talks about requiring transparency regarding rate setting for patient services for any item that's selected for partnership authorized under Act 103 for the health systems...always, early and always to have transparency in that. People are being priced out of their food, their homes, for being hit with fees that they didn't anticipate coming. So definitely in favor of that one. Didn't find anybody out there that was not in favor of that one, so thank you for having brought that up.

CHAIR VICTORINO: Are you done?

MS. ROBBINS: I am.

CHAIR VICTORINO: Thank you very much. Any questions for clarification from the testifier? Seeing none, thank you, Ms. Robbins, for being here.

MS. ROBBINS: You're welcome.

CHAIR VICTORINO: Do we have any other testifiers in the Chamber at this time?

MS. FRIAS: No, Mr. Chair.

CHAIR VICTORINO: And before I go back to our District Offices, I'd like to recognize the...okay. Have you signed, you haven't...okay, then you need to sign up. That's okay, come up now and then introduce yourself and what I would like you to do is to fill out the registration form, please, if you don't mind.

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MS. TOKUSATO: Now or later?

CHAIR VICTORINO: Later. Later, you can do it later. Okay, go ahead.

MS. TOKUSATO: Okay, my name is Joli Tokusato. I'm representing Unite Here Local 5, 11,000 members in the hotel, healthcare and food service industry. Thank you for letting me speak. This is regarding the resolution supporting transparency regarding rate setting for patient services. We, Local 5, Unite Here Local 5 is very, very concerned about the privatization of Maui Memorial Medical Center and but because it's inevitable, we wanted to make sure that we let you know that we are all for the transparency. We feel that it can help communities monitor and protect against price inflation and other unfair practices for healthcare providers. We urge you to move this resolution forward. Thank you so much, and I do stand by my written testimony as well. Thank you so much.

CHAIR VICTORINO: Thank you very much. Any questions for the testifier for clarification purposes? Seeing none, thank you very much. And if you would sign in the back, please, I'd appreciate it. Okay, before I move on to our District Offices, are there anyone else wishing to testify in the Chambers? I see someone rushing up but it's not a testifier. I would like to recognize the attendance of our Council Chair, Mr. White, and now arriving --

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR VICTORINO: --our East Maui representative, Mr. Carroll. Good morning, gentlemen.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR VICTORINO: Okay. Thank you. Okay, going...I'm sorry? I did. Oh, you didn't hear me? I did. She was wondering if I had introduced you, Ms. Crivello, and I said yes I did. Okay, let's go back to our District Offices since there's no one else in the Chamber wishing to testify. Hana Office, Dawn, is there anyone wishing to testify?

MS. LONO: There's no one waiting to testify at the Hana Office.

CHAIR VICTORINO: Thank you. Lanai Office, Denise Fernandez, anyone wishing to testify?

MS. FERNANDEZ: There is no one waiting to testify at the Lanai Office.

CHAIR VICTORINO: And Molokai Office, Ella Alcon, do you have anyone wishing to testify?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR VICTORINO: Thank you, ladies. And seeing no one else in the Chamber, with no objections, I will close public testimony for this morning.

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COUNCILMEMBERS: No objections.

CHAIR VICTORINO: Thank you very much, Members.

. . .END OF PUBLIC TESTIMONY. . .

ITEM PIA-3(1): HAWAII STATE ASSOCIATION OF COUNTIES (“HSAC”) (2016 HSAC LEGISLATIVE PACKAGE) (CC 15-157)

CHAIR VICTORINO: Let us begin with Item No. 1. This is the Hawaii Association of Counties, HSAC, 2016 HSAC Legislative Package, PIA-3(1). The first item PIA-3(1) relates to the 2016 State Association of Counties Legislative Package. HSAC President Rapozo set a deadline of September 11th for submittal of proposals. At the HSAC meeting last week Thursday, he agreed to accept proposals until October 15th, HSAC’s meeting. Today, we have one bill to consider for inclusion in the HSAC package. This bill is already under a Maui County package. The package is from the 2015 and will carry over to the 2016 Legislative Session. The Committee is in receipt of correspondence dated August 25, 2015, from me, transmitting a proposed resolution entitled, Approving for Inclusion in the 2016 Hawaii State Association of Counties Legislative Package a Bill to Enable Members to Freely Attend Community and Educational Meetings, I should correct that, Councilmembers to Freely Attend Committee and Educational Meetings. The purpose of the proposed resolution is to approve for inclusion in the HSAC package the proposed State bill to allow two or more Members of the County Council to attend and to speak at community educational or informational meetings that are open to the public. So at this time, I’d like to ask the maker of the motion or the maker of that, Ms. Baisa, if she would like to add a little more to that. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. As everyone knows, this is not a new effort that we’re trying. We’ve been trying this now for quite a while and every time we put it out there, there is concern about us trying to skirt the Sunshine Law and that has never been our intent. Our intent is that we want to be able to attend community meetings. We want to be able to understand and speak and get the manao of the public and it’s very difficult to do with the current legislation. So we’re going to, I would really ask my colleagues to try to move forward one more time. You know, sometimes you just have to keep on trying and eventually people understand what you’re trying to do. And so I would ask my colleagues to please support this. I hope we can get the support of HSAC as well because it will be much more powerful if we have a Statewide effort. So thank you very much, Chair.

CHAIR VICTORINO: Thank you, Ms. Baisa. And I believe that HSAC themselves have had OIP come in and sit down with us and so we’re keenly aware even though we are not bound by Sunshine Law, we have operated under that manner for many, many years and sometimes it’s very constraining to get information or to participate in certain activities to gather information. So I think that’s what, and I hope the testifier and others out there understand it is to gain knowledge. It’s not to have secret meetings.

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It's not to meet with different, what do you call that, powers to be. It's really to be a part of public forums and public meetings especially associations such as Kula Community Association, such as Kihei Community Association, Waiehu, Waikapu, I mean there is a lot of great community associations that sometimes I would want others, including myself, to attend. But when two go, then we're prohibited from that point. If four go, some of us have to leave and that's very frustrating and that's what we're asking for. Nothing more, nothing less. Any other comments or questions in regards to this item? Mr. Hokama, go right ahead.

COUNCILMEMBER HOKAMA: Not a question, Chairman. I support the intent. I think it's very clear this is about open public meetings. So for those that wouldn't support it, I would question why? But, Chairman, mostly my comment at this point is the State's own inconsistency. I mean, you guys all know my position but just, what, a week or two ago when we discussed expanding the limits, the current limitations of the County's investment policy, when you look at that State Statute, what did they call the County Council, a County Legislature, and as a legislature, you know, the Legislative Branch of this County, we have certain rights and abilities to perform under State law, or I should say State Constitution and County Charter. We are not a damn board. You know, anyone that thinks that we're a board gotta go do their civics and learn what the hell everything's all about, especially how we've run this, our government for over a hundred years. You know, we never have this problem 30 years ago. Our people understood what the Council was for, okay, because they lived it. They understood where we came from. And so, you know, I'm in full support of this. I think this is something that I think we need to do but again, Chair, I think we need to get the State squared away and maybe it's time for a Constitutional Convention to make sure that the councils are what it truly is, a legislature of the county government. Thank you.

CHAIR VICTORINO: Well, the last Constitutional Convention was almost 40 years ago if I'm correct in my timetable.

COUNCILMEMBER HOKAMA: Nineteen seventy eight, Chairman.

CHAIR VICTORINO: Yeah, so almost 40 years ago maybe. You're absolutely correct. Maybe it's time because there are many, many more questions out there than we're getting answers from the State. Yes, Ms. Baisa, you wanted to add something?

COUNCILMEMBER BAISA: Yes, thank you. I forgot. One of the things that I wanted to say is, you know, the reason why I think this is really important is while we understand our limitation, when we're approached by an organization and they say we want you folks to come and we say all of us can't go, sometimes it's misunderstood. They think we don't want to go or they think we're trying to escape the whole issue but the public needs to understand that we have this limitation and it's not us that don't want to participate. We are legally prevented from participating. And so I think it's very important that it be made clear that there's nothing dark or sinister here. This is really trying to help the public with the transparency that they want. So I think it's important we clarify that. Thank you.

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CHAIR VICTORINO: Thank you, Ms. Baisa, because also it's very embarrassing when you arrive, walk in, and find out there's five others there then you have to walk out. And that is misconstrued as lack of concern by the public. So I've been on all sides of this spectrum and I think it's time for us to really look at every, the issue in itself, public forums and meetings. Mr. White?

COUNCILMEMBER WHITE: Thank you, Mr. Chair. You know, we are, we're able to have what's called a limited meeting where more of us can go but it requires videotaping and for minutes to be taken and provided at the next Council meeting and one has to ask themselves the question who are we taking the minutes for? Who are we providing the video for? It's for people who have chosen not to go to that meeting. So it's my feeling that we should have the ability to go to these meetings and participate as long as, as this outlines, it's open to the public because, you know, we're subject to Sunshine, public meetings are the epitome of Sunshine. We're there to learn. We're there to share and most times it's to learn. And so if we're having to take videos and keep, take meeting minutes for people who choose not to attend, I don't think that's fair. So I support this measure and agree with Mr. Hokama that if you don't support it, you better have a pretty good reason because this is simply not serving our community very well, and the communities of Kauai and Maui are different because all of us run at-large and so we effectively do represent the entire island or the entire County. On Oahu and the Big Island it's different. They have, they are voted in by district so they generally only want to attend the meetings that are within their own district. So I think this is a reasonable bill and I know it's going to be a challenge to get this through.

Note: Meeting interrupted by the fire alarm system indicating a fire emergency in the County building and to evacuate the building.

CHAIR VICTORINO: With no objections, I'm going to recess the meeting until this emergency is called off or whatever. Meeting in recess. . . .(gavel). . .

RECESS: 9:28 a.m.

RECONVENE: 9:59 a.m.

CHAIR VICTORINO: . . .(gavel). . . Welcome back. Let, don't need to worry that at this time, I've been, it's to my understanding, that we do not have any live stream and no coverage from *Akaku* at this time. So upon consulting with the Chair, we've decided to continue the meeting. I believe we can still conduct meetings in this manner. This is an unforeseen emergency and I want it put on the record that we tried everything and we've been told until they can get back up and running, it is okay for us to hold the meeting and conduct the business of the Council. So if there's any questions, you can please e-mail them to Mr. White. Well, you're the Chair, sir, I just figured, I followed your advice, sir. Okay, anyhow, moving right along, we were in the middle of discussion on the, adding Ms. Baisa's Maui package bill for the changing of or to include in the 2016 Hawaii Association of Counties package...oh, come on now. Okay,

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whew. I get some more emergencies, I really have a problem this morning. Walking down once was enough. I cannot do it twice. Anyhow, so any other further discussion? I mean, I think we, most of the Members had agreed. Yes, Mr. Couch?

VICE-CHAIR COUCH: Thank you. Just wanted to see if community meetings included candidate's forums? Because I know we had that discussion before. If we...

CHAIR VICTORINO: Well, we were told by candidate forums, that was not one of them. That they would ask us to do a special --

VICE-CHAIR COUCH: Gotcha.

CHAIR VICTORINO: --minutes.

VICE-CHAIR COUCH: Okay.

CHAIR VICTORINO: I was told by OIP that that's...

VICE-CHAIR COUCH: Thank you.

CHAIR VICTORINO: Sorry. We have reverberation right now. And because it's a forum open to the public, questions are asked both of the existing office holder and their opponents, they didn't see that as a problem. They wanted not before items discussed before this Council by different groups. And what they're really concerned with from what I can basically understand is that special interest groups and/or corporations and developers may start putting on meetings in the guise of public meetings and, you know, we get sucked in. And I think, I don't know. I think we're smarter than that. But however, the community associations and neighborhood boards like they have in Oahu conduct many of these meetings. They invite a number of representatives. Again because it's district-wise, they more or less the districts but they also, I've been told, ask outside of their district councilmembers to attend and some do. So all I think we're asking is for clarification to allow us to attend public forums, meetings, informational, when the public is the one that puts it on or a community association, which is considered the public. So without any objections or anything else, anybody else want to share anything?

COUNCILMEMBER BAISA: Recommendation?

CHAIR VICTORINO: Recommendation, thank you. With no further discussion, the Chair would like to entertain a motion to adopt the proposed resolution entitled, Approving for Inclusion in the 2016 Hawaii State Association of Counties Legislative Package a Bill to Enable Councilmembers to Freely Attend Community and Educational Meetings. Mr. Couch?

VICE-CHAIR COUCH: Thank you, Mr. Chair. I move to adopt the resolution as you read it.

COUNCILMEMBER BAISA: Mr. Chair, I second the motion.

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CHAIR VICTORINO: It has been moved by Vice-Chair Couch and seconded by Ms. Baisa. Any further discussions? Seeing none, all those in favor, signify by saying "aye."

COUNCILMEMBERS: Aye.

CHAIR VICTORINO: Opposed? Let the record show eight "ayes," one excused, Ms. Cochran. Okay.

VOTE: AYES: Chair Victorino, Vice-Chair Couch, and Councilmembers Baisa, Carroll, Crivello, Guzman, Hokama, and White.

NOES: None.

EXC.: Councilmember Cochran.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending ADOPTION of resolution.

ITEM PIA-49: INTERGOVERNMENTAL AGREEMENTS WITH U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR SETTLEMENT OF ALLEGED VIOLATIONS AT THE WAILUKU-KAHULUI RECLAMATION FACILITY AND LANAI WASTEWATER TREATMENT FACILITY
(CC 15-216)

CHAIR VICTORINO: Okay, our next item is Intergovernmental Agreements with the United States Department of Interior, Fish and Wildlife Service, for a Settlement of Alleged Violations at the Wailuku-Kahului Reclamation Facility and the Lanai Wastewater Treatment Facility, PIA-49. The Committee is in receipt of the correspondence dated August 10, 2015, from the Department of Corporation Counsel, transmitting the following, a revised proposed bill entitled, A Bill for an Ordinance Authorizing the Mayor of the County of Maui to Enter Into an Intergovernmental Agreement with the United States Department of Interior, Fish and Wildlife Service, for the Settlement of Alleged Violations at the Wailuku-Kahului Waste [sic] Treatment Reclamation Facility. The purpose of the revised bill is to authorize the Mayor to enter into an intergovernmental agreement with the Fish and Wildlife Services for the settlement of alleged violations under the Federal mitigation, Migratory, excuse me, Federal Migratory Bird Treaty Act regarding the take of endangered birds and migratory birds, nests, or eggs at the Wailuku-Kahului Waste [sic] Reclamation Facility. And the revised bill entitled, A Bill for an Ordinance Authorizing the Mayor of the County of Maui to Enter Into an Intergovernmental Agreement with the United States

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Department of Interior, Fish and Wildlife Service, for the Settlement of Alleged Violations at the Lanai Waste [sic] Treatment Facility. The purpose of the proposed bill is to authorize the Mayor to enter into an intergovernmental agreement with the Fish and Wildlife Service to negotiate a settlement for alleged violations under the Federal Endangered Species Act and Migratory Bird Treaty Act regarding the take of endangered birds and migratory birds, nests and eggs at the Lanai Wastewater Treatment Facility. Today, we have the Deputy Corporation Counsel, Richelle Thomson, Thomas...Thomson, yeah, excuse me. Ms. Thomson, at this time, I would like to ask you to give us some background information in open session, and specifically can you explain to us what the word "take" means in the first sentence in section one. Ms. Thomson?

MS. THOMSON: Thank you, Chair. So as you stated, the purpose that we're here today before you is to present two settlement agreements related to allegations made by the U.S. Fish and Wildlife Service that the County caused harm or death to endangered or migratory birds at the Lanai and the Kahului-Wailuku Wastewater Reclamation Facilities. Both of these agreements, if accepted and approved by Council, are in lieu of the Fish and Wildlife Service filing formal charges against the County. And we have both settlement agreements to present to you in Executive Session. Quickly, I'll go over the Endangered Species Act and the Migratory Bird Treaty Act, and as the Chair requested, the word "take" is, it's a legal term that means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. The word "take" also involves significant habitat modification or degradation. The allegations brought by Fish and Wildlife Service involve the killing or the allowing to be killed by circumstances that the County is alleged to have created or allowed to take place at these, the wastewater reclamation facilities. The Endangered Species Act, the purpose of...their both Federal laws. So the Endangered Species Act, the purpose is to conserve the ecosystems on which threatened or endangered species depend and also to conserve and to recover the species of plants or animals that are listed. The Endangered Species Act is not what they call a strict liability statute. So were this to go further into an administrative or judicial proceeding, the Fish and Wildlife Service would need to prove that the County actually caused the harm. Criminal and/or civil penalties can be assessed against the County. The Migratory Bird Treaty Act, it was enacted in the early 1900s. As the testifier said, you know, during a time when many bird species were threatened by commercial trade in feathers and in birds themselves. Under that treaty, it's unlawful, excuse me, it's unlawful to hunt, capture, kill, or sell the listed birds that migrate between states and countries, such as Mexico, Canada, and the U.S. The Migratory Bird Treaty Act, unlike the Endangered Species Act, is a strict liability statute, meaning that liability can be imposed without a finding of fault, such as negligence. It just needs to be proved that a violation occurred and that, in this case, the County was responsible. And again, we can discuss some of the allegations or situations that led to these proposed agreements in open session but the settlement agreements themselves we can present to you in Executive Session. So I believe that the Director has some information on both situations.

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CHAIR VICTORINO: Yes, Mr. Ginoza, Director of Environmental Management, would you like to add, too?

MR. GINOZA: Sure. Kyle Ginoza, Director of Environmental Management. So regarding the Wailuku-Kahului Wastewater Reclamation Facility incident, as you know, we have a shoreline revetment project, which is a Capital Improvement Project to prevent against wave and tsunami damage at our Wailuku-Kahului Treatment Plant. As part of that project, we conducted a full environmental impact statement, EIS, which included consultation with the U.S. Fish and Wildlife Service as part of that EIS. However, we didn't receive a response and so the issue regarding the nesting season and the location of nesting sites for birds for these wedge-tail shearwater birds were not identified during this process and as a result it wasn't noted in the construction best management practices, BMPs for the project. And so what happened was during construction activities for this revetment project, the construction activities resulted in the deaths of a number of these shearwater birds, which are protected under the U.S. Migratory Bird Treaty Act as Ms. Thomson just mentioned. Once we realized that birds were harmed, the contractor responded appropriately, let us know and all the work was stopped after discovery of the situation. The County halted project, halted progress on the project until the nesting season was over. During the investigation of the incident, the U.S. Fish and Wildlife Service informed us that the wedge-tail shearwater colony that nests annually in burrows in dunes along the forest line in the vicinity of the project. However, this was not known to us before this investigation was performed. We were able to rescue two live chicks and were able to rehabilitate those chicks via the Hawaii Wildlife Center and both chicks survived and were released into the wild. So that's the first incident during construction activities of the shoreline revetment project at that facility. The second incident occurred at the Lanai...oh.

COUNCILMEMBER HOKAMA: Chairman, can we just focus on one issue at a time, please?

MR. GINOZA: Oh, sure.

CHAIR VICTORINO: If you so desire. I mean, I just thought we'd, you know, because both are really related. They're similar items. But if you have any questions on item number one, which would be the Kahului-Wailuku Wastewater Facility, I'll open up the floor, and I will let you, Ms. Thomson, be our guide as far as where we're going with this and if we're straying too far off. And we're going to call for an Executive Session and at that point in time we will call for an Executive Session. Any questions or would you rather wait until we go into Executive Session?

COUNCILMEMBER HOKAMA: . . .(inaudible). . .

CHAIR VICTORINO: Mr. White? Oh, okay.

COUNCILMEMBER HOKAMA: Oh no, thank you. No, Chairman...

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CHAIR VICTORINO: I just looked up and all three of you raised your hand almost simultaneously so Mr. White, Mr. Hokama, and then you, Mr. Guzman. Okay.

COUNCILMEMBER WHITE: Thank you. Yeah my understanding was that this was going to be an authorization for negotiations to begin but it sounds like we actually have a presentation of some sort of a settlement agreement, which should have gone to COW not to this. Could you share with us exactly what, not exactly, but in general terms what is being presented this morning in the way of a settlement agreement?

MS. THOMSON: Sure. Thank you, Chair.

CHAIR VICTORINO: Go ahead, Ms. Thomson.

MS. THOMSON: The, we, you're correct. We do have two agreements that we feel are good agreements and worth bringing to your attention. They're not final so they are subject to your approval and consideration, of course, before they would be authorized for the Mayor to enter into them. The reason that they are in this Committee is that it has been past practice to bring intergovernmental agreements, so, of any variety because they need to be approved by ordinance to bring intergovernmental agreements to this body. I agree with you that they are settlement agreements and they are agreements that are being brought in lieu of formal charges or actions so I agree that they probably should be held in COW but the practice through Council Services has been to send all intergovernmental agreements of any variety to this Committee.

COUNCILMEMBER WHITE: Yeah. I'm not sure that's the case. I was under the impression that this was giving them authorization to proceed with negotiations and if the settlement was higher than the 7,500 limit, then it would come back to us through COW. But this is, I'm assuming that the settlement is higher than the 7,500?

MS. THOMSON: Right. They're both higher than the 7,500.

CHAIR VICTORINO: Okay, with that in mind, I'm going to call for a quick recess.
...*(gavel)*...

RECESS: 10:16 a.m.

RECONVENE: 10:23 a.m.

CHAIR VICTORINO: ...*(gavel)*... The Policy and Intergovernmental Affairs Committee will reconvene. It is my recommendation to the Committee, being that we have reviewed and been told certain things that unfortunately were not brought to my attention that I am going to, with the Committee's consensus or agreement to refer both items, item, shoot, PIA-49--sorry, yeah, excuse me--PIA-49 to COW for their disposition on the issue. Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

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CHAIR VICTORINO: Thank you.

ACTION: Recommending REFERRAL of communication to the Committee of the Whole.

ITEM PIA-53: RESOLUTION SUPPORTING TRANSPARENCY REGARDING RATE SETTING FOR PATIENT SERVICES (CC 15-221)

CHAIR VICTORINO: All right, moving right along. Okay. Next one, Item No. 3, a Resolution Supporting Transparency Regarding Rate Setting for Patient Services, PIA-53. The Committee is in receipt of County Communication 15-221, from Councilmember Elle Cochran, transmitting a proposed resolution entitled, Urging the Board of Directors of the Maui Region of Hawaii Health Systems Corporation to Require Transparency Regarding Rate Setting for Patient Services. The purpose of the proposed resolution is to urge the Board of Directors of the Maui Region Hawaii Health Systems Corporation, to require transparency regarding rate setting for patient services from the entity selected by the partnership authorized under Act 103, 2015. At this time, I will call upon Ms. Cochran to give us an overview. Thank you.

COUNCILMEMBER COCHRAN: Thank you very much, Chair, and for having this on your agenda so expeditiously from our last full Council meeting. And basically it states in the whereases of the resolution the intent and it's a resolution so no force and effect of law whatsoever. It's urging the powers that be that are making the decisions, looking into the decisions as we speak as to who the, who will be involved with the public-private partnership of our hospital. And, you know, I at first thought well, how's the County Council really involved with this but it really, we are as our constituency is part of this community and their medical services are definitely impacted on our level so it's my intent that we support what's being said in this resolution to help urge the, you know, the fair, appropriate decision making to happen. And it looks like Local 5 Unite Here did submit written testimony and Joli was here to paraphrase briefly what it states and if we all can take a look at that, it really explains the true reasons for needing to push this resolution forward in their decision-making process. And it's about fairness, the transparency will create affordability and that openness, I think, that everyone talks about. So in this medical profession it's definitely needed. So that's kind of my opening comments, Chair, and we'd like to hear from other Members on their take about, in reference to this resolution. Thank you, Chair.

CHAIR VICTORINO: Thank you, Ms. Cochran. I'll start with Mr. Couch and move right across. Mr. Couch, you're the Vice-Chair. Do you have any comments?

VICE-CHAIR COUCH: Thank you, Mr. Chair, and thank you, Ms. Cochran, for bringing this up. I'm fine with this. My only question would be is that, are there public notifications of rate setting under the current system that is fully public right now? That's my, that would be, I mean, to ask that a private entity do something that the State isn't required to do might be worrisome.

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CHAIR VICTORINO: What I'll do is I'll list that as a question for a letter to be forwarded to the State Department of Health or whoever's in charge of the hospitals, the regional board and find out. Okay? So I have no qualms in asking that question. Any other questions? Are you done, mister...

VICE-CHAIR COUCH: Yeah.

CHAIR VICTORINO: Okay. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you, Chair. Thank you, Member Cochran, for bringing this forward. I support her efforts to urge the board of directors for the Maui region of Hawaii Health Systems to require transparency regarding rate setting for patient services, and I agree with her approach that we represent all of Maui County on behalf of our constituents. I think this, I support what she's trying to do with this resolution. Thank you.

CHAIR VICTORINO: Thank you. Mr. Hokama, and I know you have a big stake in this because Lanai is part of this whole process, so, Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. Definitely I support the intent of Ms. Cochran's proposed resolution, Mr. Chairman. I can say that it is my understanding Mr. Lo from the Maui Regional Hospital Center is planning to be on Lanai this Wednesday September 2, as I understand it to hold a community meeting to give Lanai residents a chance to be briefed on the current status of what is going on with this Act 103 that Governor Ige signed into law as well as taking into account community input on what we, how we see regional healthcare on the island of Lanai to move forward in the near future, Mr. Chairman. So we look forward to hearing from Mr. Lo and the representatives from the Maui Memorial Hospital system on its impact on Lanai. I would just like to, you know, bring up also, Mr. Chairman, that my understanding, being 1 of the 102 delegates there in '78, that part of the State's responsibility regarding healthcare is also to raise the revenues to provide for healthcare and education in this State. And I'm not too sure the Constitution's intent was for us to look at private-public partnerships. This was part of what we always felt was the government's responsibility to provide Statewide equal opportunity and access of any State resident to equal healthcare as well as education, and I find it interesting that we are going to go by maybe counties and have regional healthcare systems that may not be equal to other parts of the State. I find that potentially disturbing. Because that is not what we had intended, as I understand and believe, our intention was in 1978 with the current State Constitution. But saying that, I think it is only pertinent that part of a successful hospital healthcare program is the transparency on rates, its ability to explain its expenses, and the need to create sufficient funding resources to plan for future capital improvements. So I look forward to this resolution moving forward, Mr. Chairman, and I thank Ms. Cochran for allowing us to have this discussion this morning.

CHAIR VICTORINO: Thank you, Mr. Hokama. Mr. Guzman?

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COUNCILMEMBER GUZMAN: Thank you. I also would like to commend Councilmember Elle Cochran for this resolution. This is, I think it's very important to incorporate requirements of transparency especially when we're dealing with a public-private partnership. I would assume that the rate setting for patient services would go through some kind of RFP process when it was conducted by the State. So I'm not sure whether there are provisions in the new act that require the same type of RFP programs when you're combining it with a partnership with a private entity. But it's good to have this set forth to at least become aware of this could be a potential issue. So in doing, in saying that, I do support this reso. Thank you, Chair.

CHAIR VICTORINO: Thank you, Mr. Guzman. Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. Yeah, I totally support Ms. Cochran's efforts in this regard. I, like Mr. Couch, have the same question. Is there transparency now with the State operating the hospital? I think that's a good question to have asked and answered, but at the same time we do represent all of our constituents here in Maui County and I think it's important for us to show our support for making sure that we get the best bang for our buck at our medical facilities. And I believe Mr. Hokama has hit on a couple of things that are, things that need to be considered as we move forward with this as well. Thank you, Chair.

CHAIR VICTORINO: Thank you. Mr. Carroll? Nothing. Ms. Baisa?

COUNCILMEMBER BAISA: I'd like to express my support and thank Member Cochran for bringing it forward. You know, this whole hospital acquisition is one of the biggest issues I think that all of us have a stake in. You know, it's our health and it's the welfare of our people and I think as Councilmembers, we need to go on the record and I think transparency is really, really important. Anytime we're dealing with the State particularly, you know, we're often accused of not being transparent but, you know, there's a bigger block, the farther up you go, the bigger the block. So I am in full support. Thank you.

CHAIR VICTORINO: Thank you. And I will concur with the rest of you that this is something very, very important. I think this is on the people's minds more than anything else at this time in Maui County, especially the island of Maui and Lanai. I think the constituency and the residents of these two islands are very, very concerned in how this will turn out, what this will cost them, what services will be provided, what services may be cut, and I think these are all questions that many of us in the community have heard from our constituents and so I do concur that this is something very important. I do agree and then part of my questioning would have been along the same lines, you know, the RFP system that is used by the State and how is this in reflection to us as a privatization becomes of a State institution. And so I think there is a number of questions that you, Mr. Hokama, have brought up which I will incorporate in our letter and see what answers we get. The resolution, again, like Ms. Cochran mentioned, has no force of law but it is really stating our position in the respect of the acquisition and whomever acquires the hospital, and both Lanai and Maui Memorial will have the, at least the courtesy if not the willingness to sit down

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and let people know what's going on as far as rates and services and what are going, what the costs would be. So if there is no other further discussion...yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: And thank you very much. And I want to thank my fellow Members here for their support as they've all been individually stating. And in reference to Mr. Couch's question about is there already transparency on the State level, no. And that's why we're hoping to urge it. And I want to say that this is going to work in conjunction with some efforts by House Representative Angus McKelvey also who has been drafting some legislation. I guess, unfortunately the last several sessions it's failed so he's tweaking it and working with and trying to adjust it and this, our resolution to urge and showing our sentiment of where we stand will help assist him, too, in moving forward with efforts he's providing. So I just want to say thanks everyone for their support on this.

CHAIR VICTORINO: Thank you. And, I believe, and Mr. Hokama might be able to answer this but if not I will incorporate it with our questions, whenever the medical facilities, medical rates are set, there's an approval process and I'm not sure. Not like, it's not PUC but there's some other entity...am I correct, Mr. Hokama? And I can't think of it right off the top of my mind right now.

COUNCILMEMBER HOKAMA: Chairman, you're right. The hospital system uses part of the subarea regional health councils --

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: --to help vet out those type of proposals with the public and community at large.

CHAIR VICTORINO: Yeah, okay.

COUNCILMEMBER HOKAMA: So there's a process already in place.

CHAIR VICTORINO: There is a process. So thank you. And, again, Ms. Cochran, we'll put this forward and we can always improve on the system. And but I knew there was a methodology for which the public was involved to a point as far as the hospitals were concerned and health centers throughout the region, yeah? So if there's no more discussion, I'd like to make my recommendation.

COUNCILMEMBERS: Recommendation.

CHAIR VICTORINO: The Chair would like to entertain a motion to adopt the proposed resolution entitled, Urging the Board of Directors of the Maui Regional, Region I should say, of Hawaii Health Systems Corporation to Require Transparency Regarding Rate Setting for Patient Services, and the filing of County Communication 15-221.

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MS. WILLENBRINK: Excuse me, Chair? Could you include nonsubstantive revisions in that portion?

CHAIR VICTORINO: Okay, and allow the Staff to make any nonsubstantive corrections or changes.

VICE-CHAIR COUCH: Mr. Chair, I move to adopt the resolution as you read and allow nonsubstantive changes and filing of County Communication 15-221.

COUNCILMEMBER COCHRAN: And, Chair, I second the motion.

CHAIR VICTORINO: Thank you. It's been moved by Mr. Couch and seconded by Ms. Cochran. Any further discussion? Seeing none, all those in favor signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR VICTORINO: Opposed? Let the record show nine "ayes," no "noes," and no one excused. Thank you very much.

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

NOES: None.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending ADOPTION of revised resolution and FILING of communication.

ITEM PIA-6(2): AMENDMENTS TO THE RULES OF THE COUNCIL (ROLL CALL VOTING) (CC 13-45, CC 15 186)

CHAIR VICTORINO: Moving right along, the final item today, Item 4, is Amendments to the Rules of the Council, Roll Call Voting, PIA-6(2). The Committee is in receipt of correspondence dated August 25, 2015, from the Department of Corporation Counsel, transmitting a revised proposed resolution entitled, Amending Rule 10, Rules of the Council, Relating to Roll Call Voting. The purpose of the proposed resolution is to amend Rule 10 of the Rules of the Council to clarify that for roll call votes, a failure to

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vote by any non-abstaining member who is present shall constitute an affirmative vote and in accordance to Rule 9(B) of the Rules of the Council. I would ask Mr. Couch to explain and to make his opening remarks. Mr. Couch?

VICE-CHAIR COUCH: Thank you, Mr. Chair. And, you know, I just brought this up because the Clerk had a hard time at one meeting where a name was called and it was not responded to after the second or third time. So I just wanted to put that in there so that the Clerk wouldn't keep calling the name or I don't know. It felt uncomfortable for the Clerk at that time so I brought that up. The other option, I mean, this is the one option but there was another option that we could do with as well if other Members are so inclined. So that's why I brought it up and I just wanted to make it a little bit better, less awkward. Thank you.

CHAIR VICTORINO: Thank you, Mr. Couch. Any other comments? Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I noticed that our sister county, the City and County of Honolulu allows its members to abstain. So they have four options, aye, no, they may be excused, or abstention. I would ask the Members to maybe think of it from another perspective of maybe we should allow Members to abstain. You know, it's rare of course but you could have seven Members here, two in favor, two against, and three abstentions so where do you put the abstentions 'cause the ayes and noes have equal votes? But if anything, Chairman, maybe we should look at that there's not enough support for either movement either way and therefore that item should be retained within the body's jurisdiction for future consideration since there's obviously not enough support to make a final determination with the majority. And again, every Member needs to defend their vote or I guess non-vote in whatever they do and that would be our responsibility to explain to the community why we chose to abstain on a specific thing. And again, we allow certain types of abstentions, particularly with conflicts. We allow Members to excuse themselves from voting because of potential conflicts of interest which we've exercised independently among each other and the respect we give each other on that issue, Mr. Chairman. So, you know, for me maybe it's time we allow the Members that option of abstention as part of their choices on the motion before the body either in committee or at the Council level, Chairman. Thank you.

CHAIR VICTORINO: Thank you. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I feel very strongly about this. I feel that everybody should have to vote unless they are excused because of a legitimate conflict. I think it's important that the public know where our people stand and yes it has some political ramifications but that's the story of if you can't stand the heat, get out of the kitchen. I'm sorry, that's how I feel.

CHAIR VICTORINO: Thank you. Other Members? Yes, Mr. Couch?

VICE-CHAIR COUCH: Thank you.

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CHAIR VICTORINO: And then followed by Ms. Crivello.

VICE-CHAIR COUCH: Oh, okay. Thank you, Mr. Chair. I just wanted to note for the Members Rule 9(B) says voting generally required, no voting Member shall refrain from voting on any matter unless abstaining pursuant to the causes Mr. Hokama talked about, Section D and D...D and C. The failure to vote in any non-abstaining voting Member, who is present, shall be deemed an affirmative vote and shall be so recorded. Which is fine when we use our, a voice vote but at the time of roll call, that's when it gets a little bit awkward. So and I'm fine with, you know, we want to go with an abstention. we would want to discuss that a little bit more or the other one is what is it, the City and County uses *kanalua*, or the State, I can't remember which, that whole thing too.

CHAIR VICTORINO: We don't want to get into that one. I don't want to get into that one, Mr. Couch. Thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you. I think when we have a roll call, I think all of us do respond nay or yea, and I'm wondering, Mr. Couch mentioned that this situation occurred with the County Clerk and I don't want that to be an automatic affirmative vote. So at this point, I don't think I want to support this amendment. We have Rule 9(B) for what it stands for and I think the roll call is crucial and that either should be abstention or a vote.

CHAIR VICTORINO: Thank you. Mr. White?

COUNCILMEMBER WHITE: You know, I don't think we should be abstaining just because we don't want to take a position. I think it's appropriate to abstain in a number of occasions like we've seen in the past. But I'm wondering if Mr. Hokama could share with us whether there are guidelines in the City and County of Honolulu for abstention. I'm assuming that it's generally for reasons of conflict or something similar but...

CHAIR VICTORINO: Well, you know, what we can do, and depending on how, what action we want to take, deferral is also an option now. We could write to the City and County of Honolulu and get their response as far as how they allow abstentions to be made if there are any pre-requirements like what we have now in Rule 9 or is it if a Councilmember just feels strongly they don't want to vote on the issue that they're allowed to abstain. So I think I would like to get that answer from them and check with the other councils if any others allow abstentions in their voting process. Okay. So that, you know, we'll be fair to everyone. But I agree, you know, I'm sorry, you have anything else before I say anything more? Sorry.

COUNCILMEMBER WHITE: No, I agree with Ms. Baisa's point that we're, you know, we're here to do a job. But at the same time if there are guidelines that provide for abstentions that are slightly beyond the bounds of what we do now, I'd be willing to at least take a look at them whether, and see whether they make sense or not.

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CHAIR VICTORINO: So, if you don't mind, I will do that research and come back at a later meeting and, you know, keep this alive as far as the point of reference, Mr. Couch, you know, and with the permission I'll defer this item. But before I do anything more, I'm allowing anybody else...Mr. Carroll, would you like to add anything?

COUNCILMEMBER CARROLL: Thank you, Chair. If we were having a vote and I were to abstain, it's a no vote. It is because it's not going to go a yes vote. If you're not here...

CHAIR VICTORINO: Yeah, guys, please, let Mr. Carroll finish.

COUNCILMEMBER CARROLL: If you are not present, yeah, if I was not present, I cannot be a positive vote. And so it's going to be, you have the same effect as a no vote.

CHAIR VICTORINO: Although, Mr. Carroll, our rules state right now that it's considered an affirmative. Our Rule 9 says that.

COUNCILMEMBER CARROLL: Yeah, but I mean we were talking about changing that.

CHAIR VICTORINO: Well, Rule 10 is on the roll call, when we take an actual roll call and that if you were not to respond, Mr. Couch is saying it should follow Rule 9 and be an affirmative vote.

COUNCILMEMBER CARROLL: Yeah, I agree on that.

CHAIR VICTORINO: Okay. So that's what we're talking about at this point.

COUNCILMEMBER CARROLL: Yeah. I agree on that. Thank you.

CHAIR VICTORINO: Okay. Okay, Mr. Carroll. Thank you very, very much. And I guess the only one that hasn't said anything is you, Mr. Guzman. Do you have anything you'd like to add?

COUNCILMEMBER GUZMAN: I'd like to abstain. I'm just kidding.

CHAIR VICTORINO: I think typical. Never mind, never mind.

COUNCILMEMBER GUZMAN: Well, you know, Chair --

CHAIR VICTORINO: Okay, go ahead.

COUNCILMEMBER GUZMAN: --I just wanted to point out like there are some issues that, you know, some legislation that comes through that is positive but yet if tweaked could then change a Councilmember's vote and by having to move forward or say no definitely it puts, it's a very difficult situation to be in. I can see the value of being able to abstain for reasons put forth in some type of guidelines. I never could understand why by not being present or not voting it's an affirmative vote in Rule 9. I could never, because you're pushing legislation out so for the gatekeepers it should

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always be no and then...it just seems more logical. Why if you're not going to vote it's already automatically assumed it's a yes. It's an affirmative vote. So currently I can't support this because I have issues with the affirmative vote situation. So thank you.

CHAIR VICTORINO: Thank you, Mr. Guzman. I think the challenge is because the State has always taken the position if you didn't vote, especially on Constitutional amendments, it was considered an affirmative vote. Am I correct? And I think that's, no, different? It's a no?

UNIDENTIFIED SPEAKER: It's the other way, it's a negative.

CHAIR VICTORINO: Negative vote?

COUNCILMEMBER BAISA: It's different.

CHAIR VICTORINO: Okay. See, it changes. I think in our Charter it was different. So it varies from position or from group to group, so again I believe that the time to look at it is now. So I think the questions to the various Councils and how they're doing it may be appropriate, especially we know the City and County of Honolulu does abstain. What rationale and what parameters are they allowed to abstain? You know I think this is very important. But I agree with you, Ms. Baisa, and I agree with you, Mr. White, you're here to do a job. You know, sometimes the job is not comfortable. I've had to say no. I've had to say yes on items that or legislation and ordinances and policies that without this part of it I'd be totally agreeable but because you added that particular sentence, phrase, I'm not comfortable with it. But again, if we always felt that we had to do things to be comfortable, would our constituents be really served correctly? Question, no statement towards anyone, just a question. I believe that we're here to do a job and as much as possible I would hate to see like you just mentioned, Mr. Hokama, a committee of seven, two yea, two nays and three abstentions. That'd give the public a real perception of like they don't really care enough to get the job done. That's my opinion and only my opinion. Okay. Ms. Baisa, you had something you wanted to add?

COUNCILMEMBER BAISA: Well, I guess everybody knows how I feel because, you know, I feel very strongly about this. I think that you need to stand up and be counted. And I'm not always comfortable with what I have to vote yes or no on but I figure that's my job, that's why I'm here. The other thing that, you know, I've observed, not necessarily here but it happens sometimes, people vote with their feet and they leave the floor.

CHAIR VICTORINO: That has happened. You're absolutely correct. And if you're not here and excused, that is, what do you call that, what was the word I was looking for now? Excused and it's not a vote yea or nay, it's not a positive or a negative vote, you're just excused. And there are times, you know, I've been home sick. Mr. Carroll, yourself, Ms. Baisa, all of us. Mr. Hokama at times had to travel for NACo and all of us have different issues, so at times if we're not here and we're not able to be counted in, well sometimes it just happens. But I believe if you're here in the building sitting in this chair to just walk away from saying yea or nay, in my opinion, shrugs your

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responsibility. But again that's each individual has their personal take on this and I'm not going to, you know, get into the personal takes. I agree with everyone. Mr. Hokama, you wanted to add something?

COUNCILMEMBER HOKAMA: Chairman, I support your recommendation to, as I understand, to defer to get more information. I think that is very worthwhile on the Committee's part, so thank you very much. I just would say though, a Member should never feel forced to make a decision that the Member is not ready for. And that's why certain bodies, like the U.S. Senate, has cloture which needs 60 votes, because other than that it doesn't get the daylight of a floor vote because people are not ready to vote. Government should not be making decisions that it's not ready to make just to be timely or expeditious. Our job is to make sure we do what is right, not what is popular or what is expeditious but what is right. And if it takes the time it needs to make the right decision, then so be it. I'm not going to make a decision because I have to make a decision. That's my right as a Member and it's my responsibility to explain my position. But it's not for the other eight Members to decide for me how I cast my vote. That's my responsibility to the people of this County and my responsibility to explain my position to the people of this County. So, you know, I think there's merits on both sides but I appreciate us getting information to see if there's ways for us to make revisions that will make it a better process for our people as well as for the Members to be able to make those important vote decisions, Chairman. Thank you.

CHAIR VICTORINO: Thank you. Yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And yeah, I, thank you for wanting to defer and gather more information as Mr. Hokama mentioned. And I hear his point too and there's been many times as being Chair and having items put on this agenda saying I'm pushing this through because I think we've had enough discussion and everything's very clear and plain as day and everyone understands what is being asked, but then we start talking and then more questions and more, and it has to be deferred for, you know, for future vote. Because at that time it just isn't, no one's comfortable and no one should be pushed into or forced into making a decision when not truly understanding what is in front of them. So I feel we do a very good job at that, such as this item right now. Not everyone's comfortable yet to move forward so let's set it aside, defer, and come back to it. But personally I feel like yes, that's what we're here to do is to vote and make a decision one way or the other but of course with the backing of some information and some homework and understanding why you're voting the way you are and being very honest about it, and so and it's not always easy. A lot of controversial things come across our desks and, you know, I think we all handle it as best as well all can at that time, so looking forward to having further discussion on this. And but personally I think if you're here, then the vote should be called and it should be one way or the other. Thank you, Chair.

CHAIR VICTORINO: Thank you. And I'll close by saying I agree wholeheartedly with all of the points that were made. We have in many cases, I know as Chair I've deferred like I'm doing now items that were not ready. I could feel that the sense that we're not ready to really bring it forth, more information needs to be ascertained so I have never

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had a problem in doing that. I think the question comes up, and I guess this is what I'm most concerned with is when we get to the Council level and hopefully by that point you have heard and decided or had gotten all the information you need to make that decision. Now, I have been and all of you have been in this room when something comes out of the, out of left field and all of a sudden you go whoa, where did that come from? And so we've had to defer or send back to Committee or to the next meeting to find out more information. Sometimes unilateral agreements and other issues come up; however, I'll say that decision making has to start somewhere and end somewhere and it starts and ends right here. And I will never question anyone's decision, their yea or nay vote, that is their decision. I've made my votes and when I've had to go out in front of the constituency to explain it, I had no qualms in saying why I voted the way I voted. So, I mean, I'll leave it at that. I want to thank all of you for being here. So with no objections, I would like to defer Item PIA, okay, 60...wait hang on, I lost my page again, 6(2).

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR VICTORINO: Defer that, no problem.

ACTION: DEFER pending further discussion.

CHAIR VICTORINO: Thank you very, very much. We're done. Sorry, we had a lot of excitement this morning and I'm sorry about the long walk down the stairs but let me tell you, on crutches, you have a sense of appreciation on going down stairs. Yeah, seven, eight floors. It's not easy and let me warn you, I wish that on no one because that was really, really difficult. Especially when you got down to the last three or four floors, I could feel the pain, you know. But, Mr. Mateo refused to let me go down with the ship. I had to abandon the ship. That was his quote. So I appreciate Mr. Mateo. Please, do not get me wrong. I'm glad the damage was not more serious and I'm glad no one was injured. So, and so, Mr. Guzman, I hope that you will expeditiously work on those two items because I think they are things that need to be done very quickly so I'll leave it in your hands. And if there's no objections, the meeting of the Policy and Intergovernmental Affairs Committee for August 31, 2015 is now adjourned. . . .(gavel). . .

ADJOURN: 10:59 a.m.

APPROVED:



MICHAEL P. VICTORINO, Chair
Policy and Intergovernmental Affairs Committee

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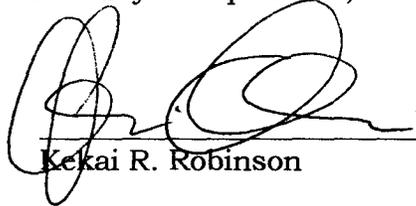
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CERTIFICATE

I, Kekai R. Robinson, 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 this 22nd day of September, 2015, Wailuku, Maui, Hawaii.



Kekai R. Robinson