

**COMMITTEE OF THE WHOLE**  
Council of the County of Maui

**MINUTES**

**February 5, 2016**

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

**CONVENE:** 1:35 p.m.

**PRESENT:** Councilmember Don S. Guzman, Chair  
Councilmember Stacy Crivello, Vice-Chair  
Councilmember Don Couch  
Councilmember Riki Hokama  
Councilmember Mike White

**EXCUSED:** Councilmember Gladys C. Baisa  
Councilmember Robert Carroll  
Councilmember Elle Cochran  
Councilmember Michael P. Victorino

**STAFF:** Carla Nakata, Legislative Attorney  
Tammy Frias, Substitute 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.:** Edward S. Kushi, First Deputy Corporation Counsel, Department of the Corporation Counsel  
Brian A. Bilberry, Deputy Corporation Counsel, Department of the Corporation Counsel  
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel  
Caleb P. Rowe, Deputy Corporation Counsel, Department of the Corporation Counsel  
Tivoli S. Faaumu, Chief, Department of Police (COW-1(25), -1(32), -1(28))  
Ralph J. Thomas, Equal Employment Opportunity Specialist, Department of Management (COW-1(32))

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

---

CHAIR GUZMAN: . . .*(gavel)*. . . Committee of the Whole shall now come to order. The time is 1:35 p.m., February 5<sup>th</sup>. I'd like to introduce our Members for today. I'm Don

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**February 5, 2016**

---

Guzman, the Chair of the Committee. We have Stacy Crivello, the Vice-Chair of the Committee.

VICE-CHAIR CRIVELLO: Aloha, Chair.

CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Aloha, Chair.

CHAIR GUZMAN: Riki Hokama.

COUNCILMEMBER HOKAMA: Mr. Chairman.

CHAIR GUZMAN: Mike White.

COUNCILMEMBER WHITE: Aloha, Chair.

CHAIR GUZMAN: And...good afternoon, and we have four excused, Gladys Baisa, Mike Victorino, Elle Cochran, and Bob Carroll. And for our Staff we have Committee Secretary Tammy Frias, Legislative Attorney Carla Nakata. We also have for our Corporation Counsel, Deputy Corporation Counsel Moana Lutey present.

MS. LUTEY: Good afternoon.

CHAIR GUZMAN: Thank you. Before we begin let me check, do we have anybody signed up to testify?

MS. FRIAS: No, Mr. Chair.

CHAIR GUZMAN: Okay. Why don't we go ahead and check in with our district offices. In Hana District Office, is there anyone wishing to testify?

MS. LONO: Good afternoon, Chair. This is Dawn Lono in the Hana Office and there's no one waiting to testify.

CHAIR GUZMAN: Thank you, Ms. Lono. On Lanai Office, is there anyone wishing to testify?

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez at the Lanai Office and there is no one waiting to testify.

CHAIR GUZMAN: Okay. Thank you, Ms. Fernandez. On Molokai Office, is there anyone wishing to testify?

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

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**February 5, 2016**

---

CHAIR GUZMAN: Thank you. Thank you, Ms. Alcon. Without any objections, Members, I'd like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR GUZMAN: Okay. Thank you.

**COW-1(25):     LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN THE STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, ON BEHALF OF CLINTON GOUVEIA AND COUNTY OF MAUI, MAUI POLICE DEPARTMENT; SHOPO CASE M-2014-073) (CC 15-6)**

CHAIR GUZMAN: Moving on to our first item on today's agenda. We have COW-1(25). Let's read the description here for the record. The Committee is in receipt of the correspondence dated January 21, 2016, from the Department of Corporation Counsel, requesting consideration of a proposed resolution entitled "AUTHORIZING SETTLEMENT OF IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN THE STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, ON BEHALF OF CLINTON GOUVEIA AND COUNTY OF MAUI, MAUI POLICE DEPARTMENT, SHOPO CASE NO. M-2014-073." The proposed resolution states that the State of Hawaii Organization of Police Officers has filed a grievance on behalf of former Maui Police Department Officer Clinton Gouveia. The purpose of the proposed resolution is to authorize settlement of the case. The Committee may consider whether to recommend adoption of the proposed resolution, with or without revisions and also may consider other related actions. We have...I believe this is Moana Lutey's case and before we begin we'll go ahead and have her give a brief opening of the statement of the case. So the floor is yours, Ms. Lutey.

MS. LUTEY: Thank you, Chair. Mr. Gouveia has filed a grievance through his union which is SHOPO. He was a police officer that was terminated by the Department. This is an active arbitration. There's not currently a date set, but there's...we do have an arbitrator and this is pending. There has been a demand provided to the County in this matter and that is something we would like to present to you. It'll have to be in executive session because of the nature of grievances and also the fact that it's a settlement offer...or demand.

CHAIR GUZMAN: Okay. Also, just to note for the record, we're also in receipt of the revised proposed resolution and that is transmitted by correspondence, dated February 1, 2016, from the Department of the Corporation Counsel, correcting the SHOPO case number. Members, also as previously noted this case has been authorized...already had authorized settlement via Resolution 15-138. So is there any questions that we may have in open session? Seeing none, is there a request to enter into executive session?

MS. LUTEY: Yes, Chair.



**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**February 5, 2016**

---

proposed resolution is to authorize settlement of the case. The Committee may consider whether to recommend adoption of the resolution, with or without revisions and also may consider other related matters. I believe this is also...wait.

MS. LUTEY: It's Mr. Rowe's, but I can --

CHAIR GUZMAN: Mr. Rowe's, yes.

MS. LUTEY: --I can do the introduction --

CHAIR GUZMAN: Okay.

MS. LUTEY: --part of this. This is a workers' compensation matter and because the nature of that type of matter we will need to request executive session in order to address settlement in that particular case.

CHAIR GUZMAN: Okay. Thank you. So is there any questions in open session? Seeing none, there's been a request to enter into executive session. The Chair will entertain a motion to convene executive meeting pursuant to Section 92-5(a)(4) of the HRS to consult with legal counsel on questions pertaining to powers, duties, liabilities, and privileges concerning the County, Council, and this Committee; and also under Section 92-5(a)(8) of the HRS regarding decision making and deliberation that requires consideration of information that would be held confidential under order or under Federal or State law.

VICE-CHAIR CRIVELLO: I so move.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Couch. Any further discussion? Seeing none, all those in favor, say "aye".

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Five ayes, no noes, four excused. Motion carries. Thank you.

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

February 5, 2016

---

**VOTE:**       **AYES:**   **Chair Guzman, Vice-Chair Crivello, and Councilmembers Couch, Hokama, and White.**

**NOES:**   **None.**

**ABSTAIN:** **None.**

**ABSENT:** **None.**

**EXC.:**   **Councilmembers Baisa, Carroll, Cochran, and Victorino.**

**MOTION CARRIED.**

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

CHAIR GUZMAN: Members, we're I think...did I miss a matter here? Oh, I did. I apologize.

**COW-1(32):    LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION V. COUNTY OF MAUI POLICE DEPARTMENT, ET AL., CIVIL 13-00698 LEK-KSC) (CC 15-6)**

CHAIR GUZMAN: Members, reverting back to the agenda we have COW-1(32) and I'll read for the record the description. The Committee is in receipt of the correspondence dated January 22, 2016, from the Department of Corporation Counsel, requesting consideration of the proposed resolution, entitled "AUTHORIZING SETTLEMENT OF U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION V. COUNTY OF MAUI POLICE DEPARTMENT, ET AL., CIVIL NO. 13-00698 LEK KSC," and transmitting a copy of the Complaint. The Complaint alleges Lars Sandstrom applied for employment with the Department of Police, but was not hired due to age discrimination, the County of Maui violated the Age Discrimination in Employment Act of 1967, as amended. The purpose of the proposed resolution is to authorize settlement of the case. The Committee may consider whether to recommend adoption of the proposed resolution, with or without revisions, as well as to consider any other related actions. I believe this is --

MS. LUTEY: This is mine.

CHAIR GUZMAN: --Ms. Lutey's case.

MS. LUTEY: Yes.

CHAIR GUZMAN: You may go ahead and present in open session.

MS. LUTEY: Thank you, Chair. I've provided you with the civil lawsuit and basically what happened is that in 2009 Lars Sandstrom applied for a job at the Maui Police Department and was denied a position. Mr. Sandstrom claims that the Police



**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**February 5, 2016**

---

**COW-1(29): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: LARS M. GASCON V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-11-01155; LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD CASE AB 2015-319(M)) (CC 15-6)**

CHAIR GUZMAN: The Committee is in receipt of the correspondence dated January 21, 2016, from the Department of Corporation Counsel, requesting consideration of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF LARS M. GASCON V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 7-11-01155; LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD CASE NO. AB 2015-319(M)." The workers' compensation appeal has been brought by Dr. James Hattaway, Lars M. Gascon's treating physician, of a decision by the Disability Compensation Division that Dr. Hattaway had committed 69 counts of fraud. The purpose of the proposed resolution is to authorize settlement of the workers' compensation appeal. The Committee may consider whether to recommend adoption of the proposed resolution, with or without revisions and also may consider other related matters in this case. I believe this is also Mr. Rowe's case. You may go ahead and present, Mr. Rowe, if you have any opening statements or comments.

MR. ROWE: Thank you, Chair. So this one's a little bit complicated. We had a worker who was injured during the scope of his duties. He signed up for treatment with Dr. James Hattaway. While he was being treated for his industrial injury he was in a car accident. That car accident exacerbated the injuries that he already had. Based on him continuing to treat under the workers' comp, as well as under the private insurance for the car, we ended up bringing 69 counts of fraud against Dr. Hattaway for treatments that were rendered. The DCD, Disability Compensation Division, agreed with us that the 69 counts of fraud had been committed and found against Dr. Hattaway. That decision has been appealed. There has been a settlement that has been offered in that...in the appeal. Part of that would also require us to withdraw our fraud complaint and I can get a little bit more into the details of that in executive session and for further details I would like to go into executive session because this is in active litigation.

CHAIR GUZMAN: Okay. Members, do you have any comments or questions in open session? Seeing none, we have a request to enter into executive session. The Chair will entertain a motion to convene executive meeting pursuant to Section 92-5(a)(4) of the HRS to consult with legal counsel regarding any liabilities, immunities, and privileges; also under Section 92-5(a)(8) of the HRS to consult with our attorney regarding decisions that could be made regarding confidential information under State, Federal, and court order.

VICE-CHAIR CRIVELLO: I so move, Chair.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Couch. Any further discussion? Seeing none, all those in favor, say "aye".





**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**February 5, 2016**

---

MR. BILBERRY: Good afternoon, Council Members, Chair. This is a case involving pretty extensive allegations by a litigant who lost his home in foreclosure, as you may recall, and is trying to connect his loss of his home in foreclosure to actions which he's alleged in a 134-page complaint that somehow connected to conduct by eight County officials in their purported official capacity and individual capacity, as well as several departments and the County of Maui. We came initially and asked for funding for special counsel to represent the individual defendants or the eight persons who had been named individually, and I believe you know who they are because of potential conflicts of interest and because of a claim for punitive damages, which Mr. Salem has made against those individuals. At that time we were authorized to retain special counsel on behalf of the individuals and we were granted \$50,000 to begin the case. Right now counsel has given us two invoices which I think the first of which has been paid, the second which is currently being processed. The balance left on the 50 currently is \$11,149.51. The case is kind of still in its beginning stages. We've had initial pleadings filed. They are currently pending motions before Susan Mollway...not Susan Mollway, but Leslie Kobayashi, the Federal Judge hearing the case. The Special Counsel for the individuals has appeared, responded to the complaint by filing a motion to dismiss, and they've asked for the court to dismiss virtually all of the allegations in the complaint against the individuals with the exception, I believe, of the 1983 claim because that's going to be a factually intensive claim which will require a motion for summary judgment after some discovery when the case occurs. So that motion is pending. We have a...the County has filed a counterclaim against Mr. Salem for abuse of process and we believe there are extensive, factual, and evidentiary bases for those claims given Mr. Salem's history with the County and their current tactics in this litigation. So that motion is...and Mr. Salem and his attorney have filed a motion to dismiss the County's counterclaim. So those two motions are pending. They have been set for hearing twice but have been continued pending other matters which Mr. Salem and his attorney have been engaging the County and regarding the existence of their claim in Federal Court. As you recall, the County removed this case to Federal Court because we feel like we will...well, that...I can have that discussion in executive session to talk about the strategy. But the case was removed to Federal Court from the Second Circuit by the County. It is currently in Federal Court. Mr. Salem attempted to have the case remanded to State Court. His motion to have the case remanded was denied. He's filed a couple of other motions, including the one that's pending. One of his other motions was denied. I think that was titled a "Motion to Dismiss the Individual Defendant's Motion to Dismiss." The Court summarily dismissed that motion for what it was and so that's kind of where the case is now. Again, without getting into legal strategy and I'm prepared to do that in executive session if you want to have further discussion about where the case is going. But at this point we've gotten through the initial pleadings. We're anticipating discovery will occur and that will include some written discovery from Mr. Salem, Mr. Salem's deposition, along with the deposition of a couple of other witnesses who we've identified, and then we will at that point be taking up dispositive motions to attempt to dispose of the entire case with respect to the individuals, as well as the officials, and potentially the County.

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

February 5, 2016

---

CHAIR GUZMAN: Okay. Thank you, Mr. Bilberry. Is there any questions or comments that Members have in open session? Seeing none. At this time are you requesting executive session?

MR. BILBERRY: Yeah, I can do that. I can request an executive session. I'm prepared to talk further about what the strategy is and the end game for this case.

CHAIR GUZMAN: Thank you. The Chair...there's been a request to enter into executive session. The Chair will entertain a motion to enter into executive session pursuant to Section 92-5(a)(4) for the purpose to consult with legal counsel regarding liabilities, privileges, and immunities regarding this Council, the Committee, and Maui County. Is there any motion?

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: Seconded by Mr. Couch. Any further discussion? Seeing none, all those in favor say "aye".

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have five ayes, no noes, four excused. Motion carries.

**VOTE:       AYES:   Chair Guzman, Vice-Chair Crivello, and Councilmembers Couch, Hokama, and White.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmembers Baisa, Carroll, Cochran, and Victorino.**

**MOTION CARRIED.**

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

CHAIR GUZMAN: Before we recess, I'd like to recall COW-1(28), that's Lisa Haupu v. County of Maui. I believe we do have present Mr. Rowe to give opening comments on the floor.

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

February 5, 2016

---

I know that Ms. Lutey did so very briefly but maybe Mr. Rowe has other comments he may want to add. Thank you, Mr. Rowe, the floor is yours.

**COW-1(28): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: LISA L. HAUPU V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-09-00326) (CC 15-6)**

MR. ROWE: Thank you, Chair, and I apologize for being late. We were having some copying issues down at our office. So Ms. Haupu was a 39 year old Police Officer I. She was injured during a training program. She suffered injuries to her knee. She subsequently had surgery on her knee. That did little to fix the problem. In fact, there were complications that ended up also causing her to have an impairment of her back. Currently, we are looking to settle not only the issues of permanent partial disability, but we are also looking to wash all future medical and indemnity benefits. She is currently treating and she also is in vocational rehabilitation. So both of those would be waived if we do end up settling this. The amounts are outside of our authority so we needed to come to you and ask for authority and I can discuss that in more detail what that settlement will look like in executive session.

CHAIR GUZMAN: Thank you. Members, have any questions or comments for Mr. Rowe? Seeing none. Okay. Thank you. Members, we're going to go ahead and take a recess so that we can prep the Chamber's for executive session. . . .(gavel). . .

**RECESS: 2:00 p.m.**

**RECONVENE: 4:12 p.m.**

CHAIR GUZMAN: . . .(gavel). . . February 5, 2016, Committee of the Whole shall now reconvene in open session. Calling on the agenda Item COW-1(25), pursuant to our executive session, the Chair will entertain a motion to adopt the resolution entitled "AUTHORIZING SETTLEMENT OF IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN THE STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, ON BEHALF OF CLINTON GOUVEIA AND COUNTY OF MAUI, MAUI POLICE DEPARTMENT, SHOPO CASE NO. M-2014-073."

**COW-1(25): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN THE STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, ON BEHALF OF CLINTON GOUVEIA AND COUNTY OF MAUI, MAUI POLICE DEPARTMENT; SHOPO CASE M-2014-073) (CC 15-6)**

VICE-CHAIR CRIVELLO: Chair, so moved.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: Seconded by Mr. Couch. Any further discussion?



COMMITTEE OF THE WHOLE MINUTES  
Council of the County of Maui

February 5, 2016

**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused: GCB, RC, EC, MPV)

**ACTION: DEFER pending further discussion.**

CHAIR GUZMAN: Thank you. Moving on to the next item, COW-1(29), Lars M. Gascon v. County of Maui; Disability Compensation Division Case No. 7-11-01155. Without objections, Members, I'd like to defer that matter.

**COW-1(29): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: LARS M. GASCON V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-11-01155; LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD CASE AB 2015-319(M)) (CC 15-6)**

**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused: GCB, RC, EC, MPV)

**ACTION: DEFER pending further discussion.**

CHAIR GUZMAN: Thank you. Moving on to COW-5, Christopher Salem v. Alan Arakawa, et al., Civil No. 15-00384 LEK-KSC. Without any objections, Members, I'd like to defer that matter as well.

**COW-5: SPECIAL COUNSEL AUTHORIZATION: CHRISTOPHER SALEM V. ALAN ARAKAWA, ET AL., CIVIL 15-00384 LEK-KSC (CCs 15-219 and 15-257)**

**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused: GCB, RC, EC, MPV)

**ACTION: DEFER pending further discussion.**

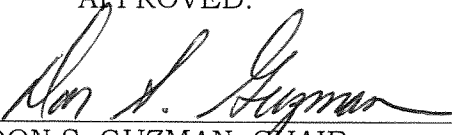
CHAIR GUZMAN: Thank you. That will conclude our items on the agenda and our meetings for today. Thank you very much.

COUNCILMEMBER COUCH: Go Panthers. . . *(laughter)* . . .

CHAIR GUZMAN: Thank you very much and everybody have a safe Super Bowl weekend. Adjourned. . . *(gavel)* . . .

**ADJOURN:** 4:15 p.m.

APPROVED:

  
DON S. GUZMAN, CHAIR  
Committee of the Whole