

# COMMITTEE OF THE WHOLE

Council of the County of Maui

## MINUTES

May 31, 2016

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

**CONVENE:** 1:34 p.m.

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

**EXCUSED:** Councilmember Gladys C. Baisa  
Councilmember Robert Carroll  
Councilmember Michael P. Victorino  
Councilmember Mike White

**STAFF:** Carla Nakata, Legislative Attorney  
Clarita Balala, 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.:** Patrick K. Wong, Corporation Counsel, Department of the Corporation Counsel  
Edward S. Kushi, First Deputy Corporation Counsel, Department of the Corporation Counsel  
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel  
Thomas Walter Kolbe, Deputy Corporation Counsel, Department of the Corporation Counsel  
Stewart O. Stant, Director, Department of Environmental Management  
Michael M. Miyamoto, Deputy Director, Department of Environmental Management

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

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CHAIR GUZMAN: . . .(*gavel*). . . Good afternoon. I'm Don Guzman. Welcome to Committee of the Whole. Before I begin I would like to introduce our Members for today's meeting. We have our Vice-Chair of the Committee Stacy Crivello.

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VICE-CHAIR CRIVELLO: Good afternoon, Chair.

CHAIR GUZMAN: Good afternoon. We have Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha. Good afternoon, Chair.

CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Aloha and good afternoon, Chair.

CHAIR GUZMAN: And Riki Hokama.

COUNCILMEMBER HOKAMA: Mr. Chairman.

CHAIR GUZMAN: Thank you. We also have for our Staff our Secretary, Clarita Balala, as well as our Legislative Attorney, Carla Nakata. Before we begin I'd like to ask everyone to turn off their cell phones or put it in silence mode. I'll check into our District Offices. In Hana District Office, are you there?

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

CHAIR GUZMAN: Hi, Ms. Lono. Is there anyone wishing to testify?

MS. LONO: There's no one waiting to testify.

CHAIR GUZMAN: Thank you. In Lanai District office, are you there?

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

CHAIR GUZMAN: Thank you. On Molokai District Office, are you there?

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

CHAIR GUZMAN: Thank you. We'll turn our attention to the Chambers. Is there anyone wishing to testify?

MS. NAKATA: No, Mr. Chair. No one has signed up.

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

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Thank you.

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**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-2014-009) (CC 15-6)**

CHAIR GUZMAN: Members, I'm going to start the agenda out of order starting with Item No. 2 and this is the 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-2014-009. The Department of Corporation Counsel is requesting consideration of the proposed resolution to authorize settlement in this matter. The Council has previously authorized settlement of this case by Resolutions 15-138 and 16-12. We have here today Deputy Corporation Counsel Moana Lutey to advise the Committee on this matter. Ms. Lutey, you may have the floor to present in open session.

MS. LUTEY: Thank you. This is our third time here to discuss resolution of the termination of Clinton Gouveia. The termination occurred in 2013 and we are here to present a counteroffer to Council's last authorization. Because this matter is in active arbitration this is something we will need to take up in executive session to convey that offer to you and so I will be requesting executive session.

CHAIR GUZMAN: Members, do you need any further brief factual background? Why don't you give us a brief summary just to refresh everyone's memory?

MS. LUTEY: The allegation against Mr. Gouveia was that he was...used excessive force against an arrestee. He was charged criminally for that abuse and he was not convicted of it. He was acquitted. He had been terminated as a result of the investigation by the Department and it is now in grievance proceedings where Mr. Gouveia is seeking reinstatement.

CHAIR GUZMAN: Okay. Thank you, Ms. Lutey. Any further questions or follow-ups in open session? Seeing none, we have a request to enter into executive session pursuant to Section 92-5(a)(4) of the HRS to consult with our legal counsel on questions in powers, and duties, and privileges, and immunities, and liabilities pertaining to this Council, County, and this Committee.

VICE-CHAIR CRIVELLO: So moved, Chair.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Couch. Also, this will also incorporate Section 92-5(a)(8) of the HRS for deliberations concerning confidential matters that require a court order or via Federal law as well. Is there any further discussion? Seeing none, all those in favor say aye.

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COUNCILMEMBERS: Aye.

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

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

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

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

**MOTION CARRIED.**

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

CHAIR GUZMAN: Thank you, Members.

**COW-1(40) LITIGATION MATTERS (INDEMNIFICATION AUTHORIZATION AND SETTLEMENT AUTHORIZATION: TRACY N. TAKAMINE V. COUNTY OF MAUI, ET AL., CIVIL 14-00335 JMS-KSC) (CC 15-6)**

CHAIR GUZMAN: Moving on to the next item on today's agenda. We have COW-1(40), Litigation Matter, Indemnification Authorization and Settlement Authorization of Tracy N. Takamine v. County of Maui, et al., Civil No. 14-00335 JMS-KSC. The Department of Corporation Counsel is requesting consideration of two proposed resolutions in the case of Tracy N. Takamine v. County of Maui. And one, to indemnify Kyle K. Ginoza, former Director of Environmental Management, who has been named in his individual capacity as a Defendant in this case; and one, to authorize settlement of this case. We have here today Deputy Corporation Counsel Thomas Kolbe to advise the Committee on this matter. Mr. Kolbe, this is your case and you do have the floor. You may present in open session.

MR. KOLBE: Good afternoon, Chair. Tracy Takamine filed a lawsuit in the U.S. District Court alleging, among other things, a First Amendment violation regarding his speaking as a private citizen about matters of public concern. In addition to that there are several other claims that he has made against the Department which ultimately affects whether or not we terminated him correctly. This is a matter which is in active litigation both before the Civil Service Commission and also in the Federal Court and so what I would ask is that we go into executive session so that I can provide this

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Committee with an analysis regarding the strengths and weaknesses of Mr. Takamine's case.

CHAIR GUZMAN: Thank you, Mr. Kolbe. Any questions or follow-ups in open session, Members? Seeing none, we have a request to enter into executive meeting pursuant to Section 92-5(a)(4) of the HRS to consult with our legal counsel on questions pertaining to powers, duties, immunities, and liabilities to this County, this Council, and this Committee.

VICE-CHAIR CRIVELLO: So moved, 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.

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 Cochran, Couch, and Hokama.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

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

**MOTION CARRIED.**

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

CHAIR GUZMAN: Thank you, Members. Moving on to the next item...oh, there is no next item. . . .(laughter). . . Sorry. That's it. So we will take a recess so that we can set the Chamber for executive session. . . .(gavel). . .

**RECESS:       1:41 p.m.**

**RECONVENE:   3:38 p.m.**

CHAIR GUZMAN: . . .(gavel). . . Committee of the Whole shall now come to order.

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**COW-1(40) LITIGATION MATTERS (INDEMNIFICATION AUTHORIZATION AND SETTLEMENT AUTHORIZATION: TRACY N. TAKAMINE V. COUNTY OF MAUI, ET AL., CIVIL 14-00335 JMS-KSC) (CC 15-6)**

CHAIR GUZMAN: Pursuant to our executive session we will call COW-1(40), Litigation Matter, Indemnification Authorization and Settlement Authorization of Tracy N. Takamine v. County of Maui, et al., Civil No. 14-00335 JMS-KSC. The Chair will entertain a motion to recommend adoption of the proposed resolution entitled "INDEMNIFYING KYLE GINOZA IN TRACY N. TAKAMINE V. COUNTY OF MAUI, ET AL., CIVIL NO. 14-00335 JMS-KSC."

VICE-CHAIR CRIVELLO: So moved, 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.

COUNCILMEMBERS: Aye.

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

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

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

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

**MOTION CARRIED.**

**ACTION: Recommending ADOPTION of resolution.**

CHAIR GUZMAN: Moving on the Chair will entertain a motion to recommend adoption of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF TRACY N. TAKAMINE V. COUNTY OF MAUI, ET AL., CIVIL NO. 14-00335 JMS-KSC."

VICE-CHAIR CRIVELLO: So moved, Chair.

COUNCILMEMBER COUCH: Second.

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CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Couch. Any further discussion?  
Seeing. . .

COUNCILMEMBER HOKAMA: Chairman?

CHAIR GUZMAN: Oh, yes, Mr. Hokama?

COUNCILMEMBER HOKAMA: Just with reservations.

CHAIR GUZMAN: Okay. Thank you. Ms. Cochran.

COUNCILMEMBER COCHRAN: And as much as it's gonna pain me, I will support you,  
Chair.

CHAIR GUZMAN: Thank you.

COUNCILMEMBER COUCH: Again, with reservations.

CHAIR GUZMAN: Okay. Thank you. So noted. 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.

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

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

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

**MOTION CARRIED.**

**ACTION:     Recommending ADOPTION of resolution.**

CHAIR GUZMAN: Thank you, Members.





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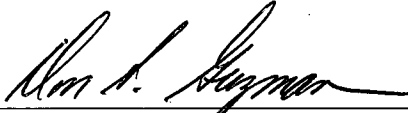
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CHAIR GUZMAN: Thank you, Members. Thank you very much for today's meeting. I'd also like to thank the attorneys and also the Administration. The Committee of the Whole is now adjourned. . . .(gavel). . .

**ADJOURN:** 3:40 p.m.

APPROVED:



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DON S. GUZMAN, CHAIR  
Committee of the Whole

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Transcribed by: Clarita Balala