

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM C.3
MAY 12, 2020**

Ms. McLean: Moving right along. This is the last public hearing item today. Another proposed, this time it's a rule change that the Department initiated at the Commission's request and this is to amend your rules relating to attendance and once again, I'll pass it along to Jacky to give the overview.

C. PUBLIC HEARINGS

3. **MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting proposed amendments to the Planning Commission's Rules of Practice and Procedure regarding commission member attendance. (J. Takakura)**

The proposed rule amendments are summarized as follows:

§12-01-28 Attendance. No member shall be absent for the service of the commission, unless the member is sick or otherwise unable to attend and has so advised the chairperson prior to the meeting. In accordance with Subsection 13-2.5 of the Revised Charter of the County of Maui, the chairperson shall request that the Mayor recommend to the Council the removal of any member who is absent and misses 50 percent or more of the commission's regular meetings over any 180-day period.

(Item C.2 begins at 00:51:10 of Part 1 of the audio recording.)

Ms. Jacky Takakura: Thank you. Okay, so now we're moving from Title 19 to the Maui Planning Commission's Chapter 201, Rules of Practice and Procedure, and it's only to make one change and this is regarding attendance. And this change is consistent with Ordinance 5070, 5-0-7-0, which was passed in March.

So right now the rules state that no member shall be absent for the service of the commission unless the member is sick or otherwise unable to attend and has so advised the Chairperson prior to the meeting. And what we're proposing to add is, in accordance with Subsection 13-2.5 of the Revised Charter of the County of Maui, the Chairperson shall request that the Mayor recommend to the Council the removal of any member who is absent and misses 50 percent or more of the commission's regular meetings over any 180-day period. So that would just be the addition, and it's, like I mentioned it's consistent with the recent ordinance that was passed. So I think you all received that portion of the rules that are proposed to be changed. Everybody get that? By the way, you know we used to always have the rules kind of piecemeal on the website, you'd have to go and look at one thing for electronic documents in another, now the rules are all in one document so mahalo to Carolyn and Corporation Counsel for getting the rules...all the revisions to the rules incorporated into one thing and that's all on your Maui Planning Commission homepage. That's all for the attendance revision proposal. Do you have any questions on this one?

Mr. Carnicelli: Let's go ahead and, Director I'll see if you have anything else to add and then we can go to public testimony.

Ms. McLean: I don't have anything to add, thank you, Chair.

Mr. Carnicelli: Okay, did anybody direct message you to testify on this item.

Ms. McLean: I have no direct chats about testimony. Thank you.

Mr. Carnicelli: Okay. Is there anybody that would like to come forward and testify on this particular item? Going once, going twice. Okay, if there are no objections we'll go ahead and close public testimony. Discussion? Commissioners, as Jacky said this is a change to our rules, so this is binding on us. Commissioner La Costa.

Ms. La Costa: Thank you, Chair. Can you hear me? Okay, I took my headset off. I testified when this came out in writing because I think it is not fair to the community or for the other commissioners if people aren't in attendance when they have been appointed to the commission whether it's ours or whether it's anybody else's. There have been times when critical votes have been taken and unless it was unanimous something failed, so I am in strong support of the new wording on this bill. Thank you.

Mr. Carnicelli: Thank you, Commissioner La Costa. Commissioner Freitas.

Mr. Freitas: I just wanted to ask the 180-day period will that begin should this be approved today or is there a possibility to look back any 180-day period?

Ms. McLean: That's a good question. I think it would be helpful to get Mr. Hopper's take on that.

Mr. Hopper: Thank you, Mr. Chair. I think that applying this specific rule retroactively would not be advisable. However, if there's a member that's had attendance issues and under your existing rules there would be a justification for requesting removal because of that under rules as they existed prior to this. That's still an option. So if the Council and the Mayor have the authority to remove that member in that situation they may not have as clear of a justification as you would here, but again, all this rule is doing is sending a letter to the Mayor requesting action. If Mayor and Council could take action under the current rules as they are for something that happened prior to today that could be an option, but applying this particular rule retroactively I don't think would work because that rule wasn't in place before that. But again, if you have a...there's a situation right now that you have an issue with you can take action under the rules as they are, currently I think you'd need it's less of sort of a universal thing. This is sort of more universal and based on numbers only. So it says if you fail to meet a criteria this shall be done and a letter shall be sent, but again, under the current rules you may have the ability to request action from the Mayor and Council and they may consider that action if you believe there's an attendance issue.

Mr. Carnicelli: Thank you, Mr. Hopper.

Mr. Freitas: Thank you.

Mr. Carnicelli: Any other questions, comments? Commissioner Pali.

Ms. Pali: Hi there. So just clarification here, I really do like that we're starting to be specific on attendance and in writing putting an expectation of the members who decide to volunteer and serve their county in this way, but also as we push forward to be a little bit more transparent so that we're fair to the members who have a heart to volunteer, they understand what they are committing to upfront. We probably at some point whether it's today or another day circle back and really dial in on excused absence and unexcused absence because I think there's massive room to grow in really defining excused absence.

Typically when you work for a larger company maybe let's say as a hotel as an example, they have a very strict policy that if you have to call in sick or you have to report your absence you have to do it four hours prior to the shift. Other companies have little bit more strict policies that you have to do it a day in advance, but as you know if you go to sleep and you're feeling really sick, you may not realize that until maybe you wake up and you're really sick. And so four hours prior to shift is advance notice enough to let the other members know what's going on and for us to scramble to make sure we have quorum. So whether it's addressed today or in the future, I really think the key is honing in on what is an excused absence and what is an unexcused absence and so that's just my take on it and I think that this is a start and I don't think it's just so we can be strict with people who want to volunteer although that that's helpful but I think it also lets the person who is volunteering if they find themselves in a position where emergencies come up with your family or your children or your parents, it's also letting them know that hey we understand that there...you know life happens so go take care of your family, we support you, but let us fill the position so we can continue to serve the community in the way that they deserve and in the way that we commit to you when we take the chair, so anyway that's all I gotta say.

Mr. Carnicelli: Thank you, Commissioner Pali, well said. Would anybody else like to add, questions, comments? I actually have a proposed change to the amendment, and that is, who is absent and misses 50 percent and it kind of addresses what Commissioner Pali is talking about. Because there is a difference between excused and absent. So now suddenly if we're using the word, absent, you know 'cause again if I...you know as the Chair if I get a text two minutes before the meeting then technically that person by our rules right now, and again, as you know, Commissioner Pali said, we can deal with that another day, but if I get a text two minutes before the meeting then technically that person is excused and not absent, so we're kind of saying misses 50 percent but we're also saying, absent. So my proposal would say, is to take, "is absent and" remove those three words so it just says, recommend to the Council removal of any member who misses 50 percent or more of the commission's regular meetings. Any, any thoughts on that Commissioners? Commissioner Pali and then Commissioner La Costa.

Ms. Pali: I agree with you. I do like that because again as I mentioned, you might have a valid reason why you have to miss, but the reality is if you don't show up, you're not doing what you vowed to do when you took the position. So whether it's really excused or not, if it's so...if the absentee is so, so many of them, then yes, I agree, so I agree with that language to read, member who misses and deleting those three words.

The other thing is this is still really generous. That means that if we have two meetings a month you could just show up once a month and still sorta get through you know on the radar. I think this is still a very generous and start of an attendance policy.

Mr. Carnicelli: Thank you. Commissioner La Costa.

Ms. La Costa: Thank you, Chair. I concur with the deletion of those three words, and I have thought all along that a 180-day period is too generous as Commissioner Pali said. You know this is a volunteer position but when we are appointed we say, yes I will do my best and I will be there to help the community because that's what we're here just to volunteer and have free lunch once in a while. So I think that it should be more stringent to let people know that this is a serious commitment. This is the planning commission, this isn't the you know, play in the park day commission, so I really think that we need to be more stringent and let people know this is what you signed up for and if you don't want to do it, then please just decline the appointment.

Mr. Carnicelli: Thank you, Commissioner. Anybody else? Commissioner Freitas.

Mr. Freitas: I would like to recommend a 120-day period instead of 180. I, as well, kinda prefer it to be 90-day, but to compromise how's about 100-day, and I agree with you on removing those three words, "is absent and".

Mr. Carnicelli: So, I mean, I'll go ahead and speak to this is you know the Director and I talked about this a long time, actually and some of us other members we've talked about this 180 days. I think 90 is too short. I mean as much as it would be like hey, listen if you haven't been here half the time in 90 days, I don't know let's say that my pops gets ill, knock on wood, right or whatever happens and I gotta fly to the mainland for two months. You know, now suddenly I'm just booted, right or potentially booted because again it's nothing more than a letter to the Mayor to then send a letter to Council to then please take action. So this is still a whole loop that's gotta happen. So 90 I think over the course of five years you might have a window in there that you just gotta take care of business. If you gotta take care of business for you know 180 days, technically if you miss three months straight, you're now triggered. So if it's a 120 it would be 60 days it would be four meetings in a row, you miss four meetings in a row and now suddenly you're gone. So that's the one part of this that I think you know we gotta balance is... 'cause again if it's 180 days that's three months so that six meetings in a row. You miss six meetings in a row and suddenly you're triggered. So I mean, I'm open to whatever you guys want to do, but I just think like as we're looking at this think about okay, if you miss a bunch of meeting in a row because you got family stuff to take care, so I'm okay with a 180, 120 I'm okay with, but you know if that's what you guys want to do, but I also you know I'm just trying to look at this from how would it play out going forward, 'cause again this is gonna be in place ten years from now when none of us are on the commission ever again, you know any more, so thoughts? Commissioner La Costa.

Ms. La Costa: Thank you, Chair. Yeah, 120 days would work, but everyone knows that if you have a family issue, if you have a severe illness and you are going to be gone, that is excusable to me, you know like you said, somebody in your family gets sick and you have to go to the mainland, but I don't think being gone just because is acceptable irrespective of what, you know

what the excuse is. I think it's a very big disservice to the community and to the other commission members, so I'm good with a 120 days, but I think 180 is far too generous.

Mr. Carnicelli: Okay, and the other part is too is just let's say that you know you miss six meetings in a row, eight meetings in the row and the letter goes to the Mayor and then it goes to the Council, you can go to the Council and say, excuse me but you know it's like I had a family thing and I was on the mainland for three months and you know my attendance record other than that was...so you know you still can go "plead your case". You might be able to talk to the Mayor and the Mayor doesn't transmit anything to the Council, you know so anyways I get it, I mean that's why I could be okay with a 120 if that's the way it goes. Director.

Ms. McLean: Thank you, Chair. Yeah, I agree with that line of thinking because the letter that the Chair writes can also explain the absence if it was that kind of reason, you can say the rules say I need to write you this letter but these...I understand these were the circumstances why this member missed and I'm obligated to tell you this but you know, those reasons were legitimate or something like that. What was clear to me was that the members wanted this to be absolute and not put any kind of judgment call on the Chair for writing the letter, that you shall do this if it happens so that the Chair doesn't end up having to be the bad guy in saying, oh that was a legitimate absence, that wasn't...it's you miss, I have to write this letter, but then the content of the letter I think the Chair has discretion and then of course, the member as you said can approach the Mayor or approach the Council if it goes that far.

Mr. Carnicelli: Thank you for that. Any other...Commissioner Pali.

Ms. Pali: So just keeping in mind we're all kind of using the example that maybe we have a family emergency and we are called to maybe take care of that one family emergency. I think the struggle potentially could be is that we all might deem the emergency differently than maybe the person having the emergency and the other challenge I think that we've been potentially when I...I also went and testified at Council floor when this came up and what I heard from the other testifiers as well is that well, maybe it was grandma, then it was aunty, then it was kid, then it was this, you know, and so all of a sudden this emergency in this person's mind was maybe you know eight emergencies in the family which has caused maybe a longer extension, but the point is, I like going back to well, go take care of your emergencies then because it's clear that your family needs you and instead of trying to, you know, work within the guidelines of retaining a chair that you don't show up to, let's support you and go take of the emergencies so, although I do like the 120 days and if you guys are open to changing that, I'd be happy to take, you know to do that, but I still think we're missing on everyone sees their emergency differently than someone else and that's the gray area. I also like maybe even putting a, sort of an emergency line of consecutiveness. I think missed here, show up, show up, missed here, you know that's...there's an effort, you know, you're doing your part, but then when you go so many consistently that's when, that's when it gets difficult so sometimes you know having an overarching policy, okay, 50 percent of the meeting that's the overarching but like if you were to work at a hotel again as an example, if you do a do not call or do not show, three is consider...in a row is considered voluntary resignation when you do three no call, no shows, it's called a voluntary resignation. It means that you've not shown up for three times in a row, you forgot to call and you have now voluntarily

resigned. We don't need a letter, we don't need to go Council so even something as a secondary level we could consider today or another time, but I think we're all on the same page. It's clear that we're all committed to being here so again, if you guys wanna do the 120, I'm okay with that as well.

Mr. Carnicelli: Thank you, Commissioner. Jacky, if we changed this, I mean I know it's our rules, but if we change it to 120 days are we now inconsistent with Subsection 13-2.5?

Ms. Takakura: Right, because the ordinance does specifically say in a six-month period so I would have to defer to the Director or Corporation Counsel about having a different number of days.

Mr. Carnicelli: Mr. Hopper.

Mr. Hopper: Yeah, to be honest I'm not aware of that specific language in the Charter. I can take a look at it and see. I mean, I think if...the Charter would be for all Charter boards and commissions not just you and I generally don't think that the...that would prevent you from having you from having a more restrictive set of requirements, but I'd want to get a copy of that and take a look. I just have to get that before me, so...

Mr. Carnicelli: Okay, is we're gonna take action on this so if you could that would be fantastic.

Ms. McLean: Chair, I have the Charter in front of me.

Mr. Carnicelli: Okay, Director.

Ms. McLean: 13-2.5 reads, the members of boards and commissions appointed by the Mayor with approval of the Council may be removed for cause upon recommendation of such removal by the Mayor and the approval of two-thirds of the entire membership of the Council. So there's ...(inaudible)...

Mr. Hopper: Oh, I thought you were saying that there was a different...there was something passed recently, I had not been aware of anything like that passing, but I have that same language here.

Ms. Takakura: That's Ordinance 5070.

Mr. Hopper: Yeah.

Ms. Takakura: That was passed in March.

Mr. Hopper: Yeah, so the Charter, I don't think there's any problem with the Charter in fact this would initiate...to attempt to initiate the process under the Charter. This is also in reference to the retroactivity. This is existing language in the Charter. So the Mayor could remove a member

for...could recommend a removal of a member for cause to the Council right now even without your rule change so that's something to note.

Mr. Carnicelli: Right.

Mr. Hopper: I'd want to check out the ordinance that you were talking about to make sure there's no conflict.

Mr. Carnicelli: 2.401....(inaudible)...

Mr. Hopper: Yeah, I can get onto the Council's website and take a look real quick.

Mr. Carnicelli: Okay. If you have it's part of the transmittal as well.

Ms. McLean: It's in the Commission packet.

Mr. Carnicelli: Yeah.

Mr. Hopper: Oh good. Okay, that's the quickest way to get to it then.

Mr. Carnicelli: Yeah. It's is E, says in a six-month period, but that's...yeah, I mean, it's just overarching. I think that in mind, I mean I'm not the attorney here but it seems as though for more restrictive that's our... we want to do that, that's fine. So I guess before we take a motion or maybe what we'll do is we'll...I don't know, you guys want to...is everybody in consensus with a 120? You guys want a 120, you want a 180? Christian, Mr. Tackett, you got—

Mr. Tackett: I had to unmute, it's my opinion that we're here to do a job and I'm okay with the most stringent of the rules as I...if there's things in your life that are busy and take precedence over this position then it should be given up to somebody that has the ability to do it. So I'm okay with either way. I would be in favor of the more stringent of the two or if those of you feel like the least stringent of the two is a better route I would be in favor of that as well, but it is my opinion that we're here to do a job and if we cannot do the job that we should out of the best interest of everybody involved, give the job to somebody that can.

Mr. Carnicelli: Great. Thank you, Commissioner. Mr. Hopper.

Mr. Hopper: Yeah, I think in reading it you still would be complying with that section. That requires that you...that if someone is absent for the specified period the Chair shall send a notice. You'll be doing that, you'll just be doing it earlier and in a shorter period of time. So I think you can comply with that that language and still you know do it earlier. I mean I suppose if the person continues to be absent technically under the ordinance you would need to send another notice within that time to show that you've complied with that. Someone's potential objection would be you're sending this earlier than the Council ordinance requires and I haven't breached with the Council ordinance requires and I think you'd still be in compliance with that provided you send that notice if the person misses the 50 percent with a 180-day period but I don't think that this

would prevent you from being more, more restrictive. So I think that's necessarily a problem to do that and as long as you are still going to send a notice if they're absent for 50 percent of the meetings within a 180 period.

Mr. Carnicelli: Great. Thank you, Mr. Hopper. Does anybody else have any questions, comments at this time? Commissioner La Costa.

Ms. La Costa: Thank you, Chair. I liked what Commissioner Pali said about the concurrence you know, or consecutive absences because you can show up for one and then be miss five and then show up for another just so you keep your foot in the door so to speak and I just, I really think that we should as Commissioner Tackett said, we need to be stringent and let people know that you signed up for it, you need to commit or you need to go away.

Mr. Carnicelli: I think if you showed up...I mean, if you missed four, you showed up for one, you miss two more you still miss six, it just happened to be you know in a long band with the time, so that would still be covered here. Commissioner Thompson.

Mr. Thompson: The people that need to weigh on this are usually absent.

Mr. Carnicelli: Thank you for the levity, that's beautiful, that is beautiful. Any other questions or comments at this time? Commissioner Castro.

Mr. Castro: I'm okay with that 120-day change.

Mr. Carnicelli: Great. So, Commissioner Pali.

Ms. Pali: Would you like me to make a motion Chair?

Mr. Carnicelli: Yeah, let's do that.

Ms. Pali: Okay, I'd like to make a motion that we include the new rules with our Maui Planning Commission is it Charter, I'm not sure, and the language would be as such, we would recommend in accordance with Subsection 13-2.5 of the Revised Charter of Maui County, the Chairperson shall request that the Mayor recommend to the Council the removal of any member who misses 50 percent or more of the commission's regular meetings over any 120-day period.

Mr. Carnicelli: Great. So, we have a motion on the floor. Do I have a second? Seconded by Commissioner Thompson. He raised his hand first guys, we got a bunch of seconds there. Discussion on the motion? Commissioner Pali.

Ms. Pali: I'll just reconfirm all the...a summary of what everyone's feeling. I think it's just a little bit of transparency, we want accountability and we want to serve to the best of our abilities and we recognize that by doing that, by serving is to show up and to commit and so that's why we are moving forward eagerly to just clarify what that looks like and so as we look to fill the new chair

positions that person has a really good measurement of what's expected from them upfront and I think that would help with us moving forward together as a nine-person board.

Mr. Carnicelli: Would anybody else like to speak to the motion? I'll just chime in. This discussion has...I guess made me really proud to be on this commission, you know. I think that everyone, each one of us has really kind of doubled down and bowed on our commitment to our community. We've been told more than once that this is the heaviest lifting, you know board and commission in the County. I know we all take this very seriously. We commit to this. It is a big deal. You know, I mean Commissioner Pali showed up with pink eye just so we would have a you know, quorum. I know myself and others of you schedule vacations around off weeks for the Planning Commission, you know things like that. I just think that it is not only is this okay, the stick, but I think the carrot part is also important to, to just say that I am very grateful to be a commissioner with you guys and I'm you know just proud is a horrible word to use but it's just like I'm very proud to serve with you guys and so thank you for all of your commitment and duty and service to our community, so thank you. Anybody else like to speak to the motion?

Mr. Castro: Well said.

Mr. Carnicelli: Seeing none, Director. Thank you. Director.

Ms. McLean: Yes, very well said Chair. Thank you. The motion on the floor is to approve the amendment with two edits, one is to remove the words, "is absent and" and the other is to change 180 days to 120 days.

Mr. Carnicelli: All those in favor please raise your hand. Let the record show that it passed unanimously.

It was moved by Ms. Pali, seconded by Mr. Thompson, then

**VOTED: To Approve the Proposed Amendment to the Maui Planning Commission's Rules of Practice and Procedure as Amended by the Commission as follows: In accordance with Subsection 13-2.5 of the Revised Charter of the County of Maui, the chairperson shall request that the Mayor recommend to the Council the removal of any member who misses 50 percent or more of the commission's regular meetings over any 120-day period.
(Assenting – K. Pali, D. Thompson, K. Freitas, C. Tackett, S. Castro, P. D La Costa)
(Absent – T. Gomes)**

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II