

Governance Committee

From: Jim or Belinda <2jbhome@hawaiiantel.net>
Sent: Saturday, December 05, 2015 5:39 PM
To: Governance Committee
Subject: Testimony: specific to agenda

Aloha,

Who will be the Chair of this Committee? I address the Chair and Members: The words integrity and dignity cannot be separated from deliberation whether in an executive, legislative or advisory capacity when it comes to governance in our beloved political system. This system is at issue in your service.

Our Charter recognizes that the separation of power in the form of separate branches. The factual basis for this resolve misrepresents this point in that it parses the relevant second for the purpose of advancing a particular option should one be needed.

mahalo for your service

Jim Smith
12_05_15

Governance Committee

From: Jim or Belinda <2jbhome@hawaiiantel.net>
Sent: Tuesday, December 08, 2015 4:44 PM
To: Governance Committee
Subject: testimony related to agenda items: 4 amd 6
Attachments: testimony 12_08_15.odt; Tom Hogen- PREDATOR COUNCIL- MANAGER - EXAMPL.pdf

Aloha

I am transmitting to you a testimony for the 12_10 mtg of the special committee on county governance. It includes an attachment. Any problems please respond or call at 572-0218

Jim Smith
99 Kapuai Road
Haiku, Maui, Hawaii 96708

December 08, 2015

Special Committee on County Governance
Council of the County of Maui

TESTIMONY

Members of this Committee,

Aloha,

I have two concerns regarding items you will deliberate upon today: The first is regarding Item 4, that is identified as review of the Council resolution establishing this Special Committee: The preamble in our Charter is not a formality. It expresses the peoples approval of our form of governance and the idea that it is the best possible form of government. Secondly, this Committee should recommend that the current form of government is superior to the manager-council in its method of applying and exercising power that affects all and not some of us. (In support of this idea please consider the Study I have attached and made part of this testimony and submitted by email).

Mahalo for your service.

Jim Smith
12_08_15

Predator State: Corruption in a Council-Manager System – The Case of Bell, California

Tom Hogen-Esch
California State University Northridge

Prepared for delivery at City of Bell Scandal Revisited Conference
Chapman University
February 19, 2015

Abstract

This article¹ seeks to explain recent patterns of corruption in the City of Bell, California. After reviewing the literature on municipal corruption, Progressive reform, and political participation in immigrant communities, the article examines the Bell case study. It argues that the council-manager form of government contributes to civic disengagement in California's high-immigration cities. Insulated from civic accountability, Bell became effectively a 'predator state' as local officials exploited governmental power and resources for personal gain. Implications for political reform and local state-building in high immigration cities are discussed.

¹ I would like to thank Shauna Clark, City Manager of La Habra Heights, California and Steve Graves and David Deis in the Department of Geography at CSU Northridge for their assistance in the preparation of this article. I would also like to thank Paul Lewis at Arizona State University for a number of helpful suggestions. I would also like to thank the College of Social and Behavioral Sciences at CSU-Northridge for its research support.

Introduction

In July 2010 reports of systemic political corruption began to emerge from the tiny Los Angeles suburb of Bell, California. Located in an industrial corridor south and east of downtown Los Angeles, the ‘Gateway Cities’ region had already developed a reputation for municipal corruption. In recent years, the cities of Maywood, Vernon, Bell Gardens, Compton, and South Gate have been plagued by rash of corruption scandals (Saltzstein 2004, Fulton 1997). The initial allegations in Bell focused on extraordinary salaries for city officials. City Manager Robert Rizzo was found to be earning \$1.5 million annually in combined pay and benefits, and was set to become California’s highest-paid future retiree at \$600,000 per year. Assistant City Manager Angela Spaccia and Police Chief Randy Adams and four of Bell’s five city council members also were found to be earning salaries in the range of \$500,000 per year. Additional corrupt practices included illegal taxes and fees assessed to fund city employee pensions, illegal loans to city employees, and charges that Bell’s police department had targeted illegal immigrant drivers to generate exorbitant impound fees.

In March 2011 voters recalled all of the indicted council members and elected a new city council. But for nearly nine months, Bell languished as an interim city administrator, interim assistant city administrator, and interim city attorney—each appointed by the besieged City Council—ran day-to-day operations. In March 2013 five of six former council-members were convicted of misappropriation of public funds. Sentences ranged from home confinement for George Cole, to two years in prison for Teresa Jacobo. Rizzo, who had recently plead guilty to federal tax evasion charges, pleaded no contest to the corruption charges and was sentenced to 12 years in state prison and ordered to pay nearly \$9 million in restitution to the city. His assistant, Angela Spaccia, was sentenced to nearly 12 years in state prison and ordered to pay \$8 million in restitution (Knoll and Mather 2014).

Recent scandals in Bell and other Gateway Cities raise a number of important questions about the health of democracy in California’s high-immigration cities. The principal question for this paper is: How did such pervasive corruption emerge in a political system specifically designed to prevent corruption and produce good government? It is argued that reform structures intended to distance policymakers from corrupting influences instead insulated city officials from traditional forms of political accountability. In the context of the city’s rapid demographic and political transformation

during the late 1990s and 2000s, Bell effectively became a ‘predator state’ as officials exploited political power and community resources for personal gain. Implications for the practice and reform of municipal government in high immigration cities are explored.

Municipal Corruption and Progressive Reform

The topic of municipal corruption harkens back to an older political science literature examining corrupt Machine Era governments and Progressive attempts to reform them. As the account goes, late 19th century southern and eastern Europeans used their organizational skills and growing numbers to create urban political “machines” in a number of important immigration portal cities. Using a variety of tactics, immigrants filled a power void in American municipal government to assemble and perpetuate political machines. According to Judd and Swanstrom (2002), “the major types of graft in American cities involved handing out lucrative franchises, setting highly profitable utility rates, authority over the city’s police power . . . , and the control of public works” (61). Neighborhoods that turned out to support the machine typically received the best services, jobs and contracts, while opponents were either ignored or punished. So-called ‘spoils systems’ operated in cities such as Boston, Chicago, Kansas City, and Philadelphia. Probably the most infamous was New York’s Tammany Hall – led by William M. “Boss” Tweed – that helped Irish immigrants consolidate political and economic power through the city’s powerful Democratic Party.

By the early 20th century urban middle-class Protestants mounted a counter-offensive, labeling machine rule as inherently corrupt and a threat to American democratic traditions. Organized under the general banner of Progressivism, this reform movement mobilized to change the rules of the game of American politics.² At the municipal level, the Progressive Movement sought to rein in machine corruption and institute businesslike efficiency to city government. Early 20th century Progressive reformers were animated by a belief in the new science of public administration, drawing heavily from recently devised principles of business administration popularized by management theorists such as Frederick Taylor.

² Progressive reformers operated at the national and state levels as well, ushering in a greater role for government in the areas of social and economic policy.

Their main rhetorical pitch was to take politics out of the governance of cities and the saying, “There is no Democratic or Republican way to pave a street,” became their mantra. Operating mostly at the level of their state governments where the influence of Progressives was greatest, reformers passed a number of state laws that undermined machine rule. For example, instead of strong elected mayors, cities in Progressive-reformed states would be run by professional, non-partisan bureaucrats known as city managers whose only ostensible goal would be to deliver the highest quality municipal services impartially and at the lowest cost. Under the theory that elected officials should look out for the good of the entire city rather than particular neighborhoods, Progressives also advocated for replacing district-based elections with at-large council elections. In practice, at-large council elections undermined immigrant political representation by denying immigrant communities a geographic power base, a charge that still resonates in California municipal politics today.³

In many parts of the country, Progressives also succeeded in establishing nonpartisan local elections, again, under the aegis that politics should be removed from the science of day-to-day service delivery. A principle effect of this reform was to deprive immigrant voters of the partisan cue that many relied upon to vote for the machine’s preferred candidate. Other reforms, such as the initiative, referendum, and recall, were intended to place decision-making authority directly in the hands of voters. Coupled with new Progressive-inspired residency and voter registration requirements, the new rules disproportionately empowered urban middle-class WASPs. Add to the list off-cycle elections, in which local elections were isolated from national and state elections, and civil service bureaucracies employing merit systems that favored educated WASPs, the Progressive movement fundamentally restructured the political game of American local government. Collectively known as the council-manager form of government, the new institutional arrangements were largely intended to release the Machines power grip on major American cities (Judd and Swanstrom 2002). Like many states during the early 20th century, particularly in the West and South, California’s state and local political institutions were heavily influenced by Progressive reforms (Debow and Syer 2009). In place for more than 100 years, these rules of Progressive municipal governance are now so well-entrenched that most of us are unaware that they were birthed primarily as a result of ethnic and religious conflict.

³ In recent years, numerous California Cities, including Palmdale, Anaheim, Escondito, Merced, Whittier, Compton, among others, have switched from at-large elections to district elections following challenges that the at-large system discriminates against immigrant communities in violation of the California Voting Rights Act.

What are the impacts of Progressive reforms today? Scholars debating the Progressive legacy generally agree that, collectively, Progressive reforms tend to depress immigrant turnout in municipal elections and shift political power toward native-born WASPs (Hajnal and Lewis 2003, Bridges 1997, Erie 1988). Nonpartisan elections are thought to deprive immigrants and low-information voters of partisan cues and depress turnout. At-large elections are thought to disenfranchise poor minorities and immigrants by limiting opportunities for representation. Off-cycle elections are thought to negatively impact immigrants and minorities by placing additional burdens on voter time and information gathering. Finally, civil service systems and city manager-run governments are said to favor educated Whites who can pass rigorous professional exams (Caren 2007, Hajnal and Lewis 2002, Elazar 1972, Bridges and Kronick 1999).

How then, in a system specifically designed to mitigate corruption and produce good governance, can widespread corruption take hold and flourish? Trounstine's *Political Monopolies in American Cities* (2008) offers some clues. Her study of machine Chicago and reformed San Jose questions the conventional machine (corrupt) vs. reform (not corrupt) dichotomy, essentially finding both to be alternative systems for "building political monopolies" (p. 217). Trounstine shows that political monopolies – defined as coordinated systems of bias that control resources necessary to maintain power – can emerge in both systems of government. Whether machine or reform, Trounstine writes, political "monopolies shape who is elected and appointed to office and when power is likely to be shared. They influence which residents are likely to participate in elections and whether or not participation affects political outcomes" (p. 5). For Trounstine, both machine and reform monopolies employ similar strategies and institutions that serve to maintain a regime's hold on power. "When politicians cease to worry about reelection," she writes, "they become free to pursue government policy that does not reflect constituent preferences. They acquire the ability to enrich themselves and their supporters" (p. 3).

Trounstine's study helps us understand how corruption could have emerged in Bell as it exposes the myth of the council manager system as an inherent bulwark against corruption. In the case of Bell, monopoly control over city government was enabled by a confluence of factors that began to take shape in the 1990s: declining voter participation, lack of media scrutiny, and community organization disengagement. Combined with a system originally designed to disenfranchise immigrants, these underlying factors allowed a predatory state to emerge. However, unlike Trounstine's political

monopolies, which over time served relatively narrow private interests within a city, corruption in Bell flourished in a city that was lacking in active and organized constituencies, and faced little or no outside scrutiny. As a result, a handful of corrupt Bell officials effectively became the city's only constituency.

Voter Participation: The Rules of the Game

Most studies of the impact of Progressive reforms on voter turnout support the contention that Progressive governments produce comparatively low turnout. Wood's (2002) analysis of municipal turnout found no significant differences between voter participation in reformed and non-reformed cities. Wood found that the initiative, referendum, and recall in particular tend to increase voter turnout by giving voters direct decision-making authority over city policies. However, Wood's study did not independently examine high-immigration cities like Bell. Although more study is needed, the general scholarly consensus is that Progressive reforms reduce the slice of the electorate who regularly vote, disproportionately limiting voter participation among immigrants and minorities (Caren 2007, Hajnal and Lewis 2002, 2003, Alford and Lee 1968).

In one of the few studies of voter turnout in California municipal elections, Hajnal, Lewis, and Louch (2002) emphasized the importance of election timing. The authors found that, on average, presidential elections produced 36 percent higher turnout than off-cycle, "local only" elections typically held in the spring. As with previous studies, turnout in local elections was linked in part to higher socioeconomic status and ethnicity. "Even after controlling for socio-economic status," the authors wrote, "the Asian American and Latino share of the population are both tied to lower turnout among [voting age] adult residents" (Hajnal, Lewis, and Louch 2002, 45). However, they noted that, controlling for socio-economic factors *and citizenship*, Hispanics are not associated with lower than average turnout in California municipal elections. Hajnal and Trounstine (2005) found that lower turnout at the local level leads to political underrepresentation, particularly for Asian Americans and Latinos. Finally, Caren's (2007) study of electoral turnout in 38 large American cities linked higher turnout to election timing, political party activity, closeness of a race, and non-reformed political structures.⁴

⁴ Overall, Caren found that between 1978 and 2003 average turnout among registered voters was 27 percent.

Scholarship examining the impact of other factors such as city size is more mixed. Kelleher and Lowry (2004, 2008) found that political participation was substantially similar—even slightly higher—in larger cities, raising questions about “presumed social, economic, and political advantages of smaller towns” (p. 721). In contrast, Oliver found that rates of voter participation tend to decline relative to an increase in a city’s population. However, for Oliver, more robust democracy in suburbs often comes at the expense of the greater social good: “suburbanization, by segregating the population is suppressing citizen involvement in community affairs, is depriving many localities and metropolitan areas other civic capacity and thus their ability to solve many contemporary social problems” (p. 7).

Finally, the voter participation literature also examines individual-level factors that motivate electoral participation. Over the years research has focused on salient *causes* of low voter turnout including incumbency, competitive elections, age, race, socio-economic status, and education (Jacobson 1983, Cox and Munger 1989). Scholars have also studied the *consequences* of low voter turnout, including distrust of government (Bobo and Gilliam 1990), lack of political efficacy (Finkel 1985), and the undermining of democratic legitimacy (Verba, Scholzman, and Brady 1995, Guinier 1994). On the positive side, Bennett and Resnick (1990) found that higher turnout tends to create a self-reinforcing dynamic that serves to engage residents in local politics.

As an important indicator of civic engagement, voter participation is a critical component in helping to hold elected officials accountable. Presumably, higher rates of voter participation can safeguard against corruption as active and engaged citizens watchdog the actions of local officials. In the case of Bell, although the city’s small size might in theory lend itself to political participation, the combination of Bell’s Progressive reformed structures, lack of media scrutiny, and rapid demographic change during the 1980s and 1990s together appear to have created a dynamic of civic disengagement in the city.

Southeast Los Angeles County: Corridor of Corruption

Allegations of municipal corruption go back decades long the industrial corridor south of downtown Los Angeles between the 110 Freeway and 710 Long Beach Freeway. Quinones (2007) examined the political implications of economic, demographic, and political shifts in the city of South Gate during the 1990s and 2000s. Quinones’s tells the story of Albert Robles who, using “Mexican-style Institutional Revolutionary Party (PRI) tactics,” emerged as something of a Boss-like figure in the city in 2001.

Charged with threatening rival politicians in 2002, the South Gate City Council created for Robles the job of deputy city manager, leaving the city on the hook for his more than \$100,000 per year salary and substantial legal fees. Additional practices such as firing city department heads and – after doing away with civil service exams and replacing them with highly paid loyalists – left the city on the edge of bankruptcy. Serving as city treasurer, Robles was recalled by voters and convicted in 2005 of 30 federal counts of bribery, money laundering, and public corruption (Quinones 2007).

Quinones cited a number of factors to explain corruption in South Gate. For Quinones, “economic and demographic change, like a hurricane, had razed the traditions and institutions that maintain community life. These had not had time to grow back” (Quinones, 91). Quinones also cited expectations among recent immigrants that they would return to their home country and Mexican cultural biases that “all politics are corrupt” as reason for low rates of community participation. In addition, because of the lack of media coverage, negative political mailers and attack phone calls made up most of the information available to many voters. However, for Quinones, the scandal served to spark greater community awareness and engagement in city politics (Quinones 2007).

<<<Insert Figure 1: Map of LA County ‘Gateway Cities’>>>

Victor Valle’s (2009) history of the City of Industry tells the story of a municipality conceived in corruption. Seeking to circumvent a state law requiring incorporating communities to have 500 resident voters, Valle describes how city founders conspired to count 169 patients and 31 employees of a local mental hospital as resident voters, allowing the city’s 1957 incorporation to proceed. Armed with the requisite planning, financial, and police power, Valle labels Industry a “microstate” where capital interests “completely swallow the functions of citizenship” (74). During the 1980s Industry, which straddles the 60 Freeway east of downtown Los Angeles, witnessed a number of high-profile convictions for municipal corruption.

More recently, allegations of corruption have again emerged in the industrial city of Vernon. Incorporated in 1905, Vernon has operated as a quasi-fiefdom run by a handful of family members and cronies. In 2010, the *Los Angeles Times* reported that the city had been paying unusually high annual salaries—in some cases more than \$1 million—to city employees and outside consultants. The city was also found to have paid its part-time city council members—three of whom have been in office since 1981—an annual salary of nearly \$70,000, far above state averages. Prior to 2006, the city had not had a

contested election in 25 years.

In recent years, numerous Vernon officials have been fined or charged with corruption. Former Mayor Leonis Malburg, grandson of Vernon's founder who served on the city council for five decades, was ordered to pay more than \$500,000 in fines to the city after being convicted of voter fraud and conspiracy.⁵ In 2011 former Vernon City Administrator Bruce Malkenhorst plead guilty to misappropriation of public funds. Subsequently, the pension giant CalPERS slashed his \$500,000 per year state pension by one-fifth, an action Malkenhorst is currently fighting in court.

Corruption in Vernon has flourished amid some rather unique circumstances. As of 2008, the 5.2 square mile city had 1,800 businesses employing a daytime population of more than 60,000, but only 91 permanent residents, and 70 registered voters (Los Angeles County Registrar of Voters). In a 2000 special election, voters passed a measure extending council-members terms from four to five years. Critics note that this prevents the possibility of an opposition slate by ensuring that no more than one official would come up for re-election each year. All of Vernon's residents, many of whom are city employees, live in 23 city-owned and administered housing units, most of which are heavily subsidized by the city. For Valle (2009), the city's "indentured" voters are expected to vote for the city's preferred candidates and ballot measures in municipal elections. Critics point out that because of Vernon's housing monopoly, Vernon is a city where officials effectively select the voters, casting further doubt on Vernon's legitimacy as a democratic entity (Becerra, Allen, and Christensen 2010, Valle 2009).

In early 2011, California State Assembly Speaker John Perez joined a chorus of Vernon critics to sponsor a bill to forcibly disincorporate the city. In response, Vernon went on a lobbying offensive and media blitz to highlight the prospect of thousands of jobs fleeing the region if Vernon was shut down. It also hired former State Attorney General John Van De Kamp and longtime good-government reformer Robert Stern to examine the city's questionable practices and recommend ethics reforms, most of which have not yet been implemented. With help from the League of California Cities and the powerful business group Vernon Property Association, the city successfully beat back the proposal.

City of Bell: A Demographic and Political History

The 2.6 square mile city of Bell is a swan-shaped municipality located several miles southeast of

⁵ A Los Angeles Superior Court judge cited Malburg's age and medical history as a reason not to incarcerate him.

downtown Los Angeles. As seen in Figure 2, the 710 freeway and the Los Angeles River form the city's eastern boundary with the exception of an industrial area in the northeastern portion of the city that is bisected by the freeway. Most of the city's residential neighborhoods lie between Randolph Street to the north and Florence Avenue to the south. Gage Avenue and Florence Avenue, both major east-west commercial thoroughfares, are lined by small mom-and-pop ethnic stores and markets, while national retail chain stores such as Starbucks and CVS anchor north-south Atlantic Avenue.

The city's 2010 population was 35,477, 91 percent of whom identified as Hispanic. Seventy-five percent of Hispanics in Bell reported Mexican descent. According to the 2013 American Community Survey, 48 percent of Bell residents identified themselves as foreign-born, 34 percent were noncitizens, and 89 percent spoke a language other than English at home. As seen in Figure 3, the White population in Bell declined dramatically from 76 percent in 1970, to 13 percent in 1980. By the 2010 Census, Whites made up roughly six percent of residents, with a sizeable number of Whites (37 percent) reporting Arab descent.⁶ Those identifying with "two or more races" on the 2010 Census make up the next largest group, followed by small numbers of blacks, American Indians, and Asians/ Pacific Islanders.

<<<Insert Figure 2: Map of the City of Bell and Surrounding Cities>>>

In 2010, only 29 percent of the city's housing was classified as owner-occupied. Only four percent of Bell residents had a bachelor's degree or higher, and only 30 percent had a high school degree. Of adults 25 years and over, 35 percent reported less than a ninth-grade education. Most Bell residents were employed either in manufacturing, transportation, sales and office, or service-related professions. The 2013 per capita income in Bell was estimated to be \$12,076, making it one of the poorest communities in southern California (Census 2010, American Community Survey 2013).

During most of the 19th century, the area that would become the City of Bell was part of a former Spanish land-grant known as Rancho San Antonio. Following Anglo conquest, the area remained an important part of a large ranching and agricultural industry in southern California. By the 1920s, population growth brought a new economy: real estate speculation. Like much of southern California, Southeast Los Angeles became a preferred destination for white immigrants from the South and Midwest hoping to join the region's expanding industrial economy and suburban good life (Havener 1936, Nicolaides 2002). During the 1950s and 1960s, the nearby communities of Bell Gardens, Cudahy,

⁶ Bell has a relatively large Lebanese population, including its current mayor Ali Saleh.

and Commerce incorporated cheaply as Lakewood Plan cities, helping to complete the existing political patchwork of southeast Los Angeles.

<<<Insert Figure 3: Ethnic Change in Bell, 1970-2010>>>

In his incisive analysis of Southeast Los Angeles County, William Fulton (1997) traced the region's economic and political transformation from blue-collar Anglo to blue-collar Latino. Fulton describes the bifurcation of the region's 1950s economy into industrial cities such as Vernon, Industry, and Commerce to the north, and working-and-middle-class residential communities of Huntington Park, South Gate, Bell, Bell Gardens, Maywood, and Cudahy, to the south. By virtue of its strategic location between important rail yards and the ports of Long Beach and Los Angeles, the region emerged as an important hub of industrial production in the pre-and-post-World War II period. General Motors, Bethlehem Steel, Firestone, Sampson Tire and Rubber, and a number of other large manufacturing companies formed the backbone of the region's employment. As early as 1935 Los Angeles was the largest industrial area west of Chicago, in part due to the region's well-known hostility to unionization.⁷ By 1940, there were 900 factories within a two-mile radius of South Gate (Nicolaidis 2002).

During the 1970s, the strong industrial base that had supported the region's economy began to rapidly de-industrialize, earning the region the moniker "Los Angeles's Rust Belt."⁸ In its place emerged a post-industrial economy that Fulton describes as primarily "extractive." In the new predatory economic order, wealth became concentrated in the hands of a relatively small number of apartment owners, gambling operators, and recycling companies "designed to suck from a community whatever economic vitality might remain" (Fulton, 77).

As a result of deindustrialization, many longtime white Bell residents fled to retirement communities in Arizona and other parts of California (Fuetsch and Griego 1991). Simultaneously, the area attracted an influx of upwardly mobile Chicanos and new Latin American and Middle Eastern immigrants to fill jobs in the expanding service and transportation sectors. By 1990, the populations of Maywood, Huntington Park, Commerce, Cudahy, Bell Gardens, Bell, Pico Rivera, and South Gate were each at least 83 percent Latino. In the 1990 Census, 79 percent of Bell residents reported having

⁷ Nicolaidis describes the not-so-coincidental opening of General Motors' South Gate plant in 1936, the year autoworkers in Flint Michigan organized the "great sitdown strike."

⁸ The best illustration of the region's economic restructuring is "The Citadel," a former tire plant located in the city of Commerce. During the 1990s, The Citadel was turned into an outlet shopping mall.

moved to the city since 1980—only 7 percent reported having lived in the city since 1960 (1990 U.S. Census).

Politically, Fulton described southeast Los Angeles as a laboratory for studying “how smoothly suburban political power can be transferred from one race to another” (Fulton 1997, 70). The pattern that emerged in most cities during the 1980s and 1990s saw city governments remaining in the hands of Whites by virtue of their regular participation in municipal elections. By the mid-1990s, the political mobilization of relatively modest numbers of Latinos began to overturn the region’s Anglo regimes in favor of a new generation of primarily Hispanic leadership. In a number of instances, the transition was anything but smooth. Fulton chronicled ethnic political succession in the City of Bell Gardens, where Latino activism led to the 1991 recall of four longtime white council members, only to see the national media descend on the town to cover high-profile scandals and infighting that ensued (Fulton 1997).

Nicolaides (2002) examined the cultural history of the “Hub Cities” region between 1920 and 1965, focusing on the blue-collar community of South Gate. Nicolaides described the emergence of South Gate as a quintessential “working class suburbia” where residents sought to create enclaves of economic security from the vagaries of industrial life. During the golden years of the 1950s and ’60s, the region’s industrial expansion bolstered family incomes and housing values such that aggregate wealth in cities such as Huntington Park, South Gate, Lynnwood, and Bell rivaled, and in some cases exceeded, more high status cities such as Santa Monica, Pasadena, Redondo Beach, and Torrance.

The Midwestern and Southern immigrants who settled Los Angeles’s working class suburbias brought conservative political and social traditions, particularly with respect to religion and race. During the 1940s and ’50s, the encroachment by black communities to the city’s west became an ever present threat. Nicolaides describes political support for the use of racial covenants to help create a nearly all-white South Gate in the 1930s, with Alameda Street, a north-south thoroughfare then known as the “cotton corridor,” serving as the unofficial social barrier separating overwhelmingly White cities from growing Black populations in Watts and South Central (Davis 1990). Nicolaides describes how conflicts over housing and school integration⁹ were perceived by Whites as battles for “working-class survival.” By the late 1960s, the combination of civil rights, the 1965 Watts riot, and de-industrialization triggered massive white flight from the region (Nicolaides 2002).

The City of Bell closely followed this general economic and social pattern. Compared to some of its

⁹ Nicolaides describes that, in the early 1960s, South Gate high school was 97 percent White, while Jordan high school, a few miles away, was 99 percent Black. Currently, South Gate High School is more than 95 percent Latino.

more industrial neighbors, Bell boasted relatively large retail and small business sectors as well as quintessential single-family neighborhoods (Nicolaidis 2002). The city's 1960s annexation of 313 acres that included the former Cheli Air Force Base allowed it to expand manufacturing and warehousing in the northeastern section of the city (Romo 1987). Currently, Bell's northeastern portion includes a railroad yard, a large homeless shelter, a number of large warehouses and manufacturing operations, and a number of parcels owned by the Los Angeles Unified School District (Interview, Carlos Chacon). De-industrialization and the 1993 closure of California Bell Club, a large poker parlor that had contributed roughly \$2 million in annual revenue, dealt a severe blow to the city's fortunes. In addition, the local newspaper, the *Industrial Post*, which had covered local politics since 1924 also folded. And by the mid-1990s, membership in longstanding community organizations such as Chamber of Commerce, Qantas Club, Rotary Club, and the Masonic and Moose lodges had significantly declined or was nonexistent (Goffard 2010).

Amid the sweeping economic and demographic changes, Robert Rizzo was hired in 1993 as Bell's city manager, reportedly for the modest annual sum of \$78,000. During the 1990s, Rizzo earned a reputation both for competence and thrift, initiating layoffs and contracting services to private firms in order to save money (Goffard 2010). In the 1994 general municipal election, two Hispanics, City Clerk George Mirabal¹⁰ and Alfonso Rios were elected to the city council. But by 1997, Mirabal was again the only Latino on the city council. In March 2003 a critical power shift took place as two members who had served on the city council since the 1980s, George Bass and Rolf Janssen, retired. In an uncontested election, Victor Bello, Oscar Hernandez, and George Mirabal were appointed by Rizzo, forming the first Hispanic majority on the city council in Bell's history.

In 2005, an important but little-noticed structural reform was made to Bell city government. Amid almost no public discussion, the city council called a special election for November 29, 2005 to transform Bell, which had operated as a general law city since 1927, into a home rule city.¹¹ Measure A,¹² as it was called, passed with 84 percent approval but only 336 yes votes, and a turnout rate of 4 percent of registered voters and .02 percent of voting age adults (see Figure 5). In addition, the election resulted

¹⁰ Mirabal was appointed by the Bell City Council as city clerk in 1992 in an uncontested election.

¹¹ Cities in California fall into two types: general law and home rule charter cities. Although California cities have witnessed an erosion of their home rule authority in recent decades (see Hogen- Esch 2011; Saxton, Hoene, and Erie 2002), home rule offer cities greater autonomy with respect to elections, governmental structure, and employee salaries.

¹² The text of Measure A curiously read: "Shall the voters of the City of Bell approve a City Charter, which allows The People of Bell to manage the business of the City of Bell?"

in an unusually high number of absentee ballots (61 percent), leading to speculation that city officials had orchestrated the result from behind the scenes. It is thought that Bell officials sought to use its home rule status to circumvent recently passed state laws limiting compensation for councilmember service on city boards and commissions. Within a year, city officials' salaries again began to dramatically climb.

A Scandal Erupts

In the summer of 2010, two *Los Angeles Times* reporters began examining allegations of corruption in the nearby City of Maywood. Their initial investigation then led the *Times* to track down reports of salary irregularities in Bell, including nearly \$800,000 in annual salary for City Manager Robert Rizzo and unusually high salaries for Police Chief Randy Adams (\$457,000), and Assistant City Manager Angela Spaccia (\$376,000). The *Times* also revealed that Rizzo was the highest paid future retiree in California's pension system, set to earn \$600,000 annually for life. In addition, four of Bell's five city council members were earning nearly \$100,000 per year, mostly to sit on obscure city boards and commissions that seldom or never met. The compensation was far above the typical \$8,000 annual salary for part-time city council members in California¹³ (Knoll 2010).

Within days, Rizzo, Spaccia, and Adams resigned. Over the ensuing weeks and months, the embattled city council appointed an interim city manager, an interim city attorney, and a new assistant city manager. However, with its besieged city council, Bell became stuck in political limbo, unable to conduct regular business in the 5 months between October 2010 and April 2011 (Becerra, Gottlieb, and Winton, 2010).¹⁴

Over the ensuing weeks, more allegations emerged. The *Times* reported that, in addition to his nearly \$800,000 per year salary, City Manager Rizzo had negotiated a lucrative benefits agreement, making his total yearly compensation package greater than \$1.5 million. Rizzo reportedly also arranged for nearly \$900,000 in loans to various city employees over the last several years. And an agreement between Rizzo and new Bell Police Chief Randy Adams surfaced declaring Adams to be officially disabled, a designation that would allow him to avoid paying taxes on half of his anticipated \$400,000

¹³ One Bell council member, Lorenzo Velez, who had been earning the normal salary of \$8,000, was reportedly unaware of his colleagues' higher levels of compensation.

¹⁴ In an attempt to avoid total paralysis, the idea of having the scandal-tinged city council members appoint their own replacements was actually considered.

annual retirement pension (Pringle 2010).¹⁵

By August 2010, allegations in Bell had ignited a media firestorm and the city emerged as a national poster child for government corruption. Four separate investigations unfolded. The U.S. Department of Justice began investigating civil rights allegations that Bell officials had orchestrated a scheme to boost city revenues by aggressively towing the cars of unlicensed immigrants, and charging triple the going rate to retrieve their automobiles. In recent years the city had been impounding between 2,000 and 2,500 cars per year, a scheme that netted roughly \$800,000 in annual revenues. The Justice Department also began investigating complaints of illegal code enforcement and parking violations in order to generate exorbitant fees for the city (Winton, Esquivel, and Vives 2010).

California State Controller John Chiang produced three reports alleging that the city had illegally collected more than \$5.6 million in local taxes. According to one of the Controller's reports, Bell had illegally increased assessments¹⁶ on sewer fees and raised its business license taxes by more than 50 percent during the previous decade. Bell's property tax rate of 1.55 percent was found to be significantly higher than the countywide average of 1.16 percent. Chiang also discovered that monies were being collected specifically as a "retirement tax" to fund city employee pensions (State Controller 2010). And Los Angeles County District Attorney Steve Cooley opened a separate investigation into allegations of misappropriation of public funds, falsification of documents, and voter fraud by six former city council members and the city manager and assistant city manager.

In late summer, a community group known as Bell Association to Stop the Abus, or BASTA, (Spanish for "Enough") formed to raise funds and collect signatures to trigger a recall of the city council. At the March 8 Special Election, four members of the tainted council were formally recalled and replaced by new council members. Lorenzo Velez, the only member of the city council not charged with a crime or targeted for recall, lost his reelection bid.

Voter Participation in Bell

The recent corruption scandal in Bell raises a number of important issues with respect to political participation, government structure, and democratic accountability. In an attempt to explain the

¹⁵ Adams had never claimed to be disabled when serving previously as police chief for the much larger City of Glendale, where he reportedly earned \$225,000 per year.

¹⁶ Under Proposition 13, property in California is taxed statewide at 1 percent of assessed value. Any additional taxes or special assessments levied by local governments require two-thirds voter approval.

emergence of institutional corruption in Bell, this section compares voter participation rates in Bell, Los Angeles County, and the State of California from 1980-2014.

Following Hajnal, Lewis, and Louch (2002), this section measures voter turnout using *percent registered voters* and *percent voting age adults* to analyze voter participation in national, state, and local elections in Bell since 1980. Voter turnout in Bell is then compared to voter turnout in Los Angeles County and statewide among both *registered voters* and *voting age adults* since 1980. The figures for percent registered voters were obtained from the Los Angeles County Registrar, the California Secretary of State, and the Bell City Clerk. Voting age population data from the previous census was used instead of the number of eligible voters (see Caren 2007) in order to highlight obstacles to participation for noncitizens in Bell.

General and Primary Elections, 1980–2010

Data from state and national general and primary elections in Bell between 1980-2010 – when the scandal hit – reveal voter participation rates that were significantly, though not dramatically, lower than voter participation figures from Los Angeles County and statewide. As seen in Figure 4, the overall average rate of participation in state primary and general elections among Bell registered voters between 1980 and 2010 was 41 percent, compared to 52 percent in Los Angeles County and 55 percent statewide. Between 1980 and 1990, average participation in primary and general elections in Bell was 49 percent, compared to 58 percent in Los Angeles County and 59 percent statewide. Between 1997 and 2010, the major period of ethnic political succession in Bell, average voter turnout among registered voters was 37 percent—a 4 percent decline. Turnout among registered voters over the same period in Los Angeles County remained the same, 49 percent, while turnout of registered voters statewide declined 5 percent to 54 percent.

Comparison of voter turnout in the City of Bell from 1980–2010 among voting age adults reveals an overall 13 percent average turnout, compared to 31 percent in Los Angeles County and 37 percent statewide. Between 1980 and 1990, average turnout among voting age adults in Bell was 18 percent, compared to 36 percent in Los Angeles County and 43 percent statewide. From 1997–2010, again, the major period of ethnic political succession, average voter turnout in Bell dropped six percentage points to 12 percent. In Los Angeles County, average turnout among voting age residents between 1997 and 2010 was 28 percent, a drop of 8 percentage points, and 34 percent statewide, a 9 percent decline.

<<<Insert Figure 4: Turnout Registered Voters (RV) and Voting Age (VA) Population Bell, LA County, and California, 1980-2014>>>

On average, turnout among voting age Bell residents between 1980 and 2010 in state and national elections was roughly half that of Los Angeles County, and one-third participation rates statewide. Though significant, relatively lower voter participation in Bell between 1980 and 2010 can be substantially explained by the city's large population of noncitizens, low income, highly transient population, among many other factors (Jacobson 1983, Cox and Munger 1989). And recent declines in participation rates in Bell, Los Angeles County, and statewide are all consistent with a general trend toward a decline in voter participation nationally. Though comparatively low, adjusting for demographic factors, participation rates in Bell since 1980 were not abnormally low, at least with respect to turnout in state and national elections.

Turnout in Bell Municipal Elections, 1980–2010

Data from Bell municipal elections from 1980–2010 suggest a different conclusion. Between 1980 and 2010, average turnout among registered voters was 29 percent. Among voting age adults, the average was 9 percent. Between 1980 and 1990, no municipal election in Bell received less than 20 percent turnout among registered voters, and all elections were contested. During that timeframe, the average turnout in city elections among registered voters was 40 percent, including a particularly spirited 1982 election that attracted 88 percent turnout.

Between 1980 and 2010, average turnout in Bell elections among voting age adults was 9 percent. Between 1980 and 1990 no election received more than 28 percent turnout and average turnout was 12 percent. The large gap between the average turnout among registered voters (40 percent) and voting age adults (12 percent) is almost certainly due to the demographic transformation that took place in Bell during the 1980s. Between 1980 and 1990, it appears that a relatively small portion of relatively active residents (older and white) made up a disproportionately large share of the city electorate.

<<<Insert Figure 5: Turnout in Bell Municipal Elections, 1980-2010>>>

Between 1997 and 2010, however, there was a marked decline in participation in Bell municipal elections. As seen in Figure 5, no municipal election between 1997 and 2010 received more than 24 percent turnout among registered voters. Average turnout over that timeframe was 16 percent. Among voting age adults over the same time period, no municipal election in the city received more than 10 percent participation, while average turnout was 4 percent. In particular, the November 29, 2005 Special Election stands out with only 4 percent of registered voters and .02 percent of voting age adults casting ballots on a measure to create a home rule charter. Over that time, three of the city's seven municipal elections were uncontested, resulting in appointments to vacant seats on the council. It is likely that the lack of competitive elections was both a cause as well as an effect of a climate of political apathy in the city. As Hajnal, Lewis, and Louch note, "uncontested elections are bad news for voter participation in city elections" (2000, 42).

Linking Corruption and Civic Engagement in Bell

How and why did egregious corruption emerge in a council-manager system, a structure of government specifically designed by reformers to prevent corruption? In a prior article (Hogen-Esch 2011) I argued that, by the early 2000s, the combination of declining voter participation, inadequate media coverage, and interest group disengagement caused Bell to devolve into the municipal equivalent of a 'failed state.' The central elements of that argument remain valid. However, my previous analysis of the scandal seemed to place insufficient responsibility on the individuals involved in perpetrating the corruption, and on the system itself. In this paper I have highlighted the role of the council-manager system in hindering civic engagement and insulating officials from accountability.

As a product of ethnic conflict between native-born WASPs and late 19th and early 20th century immigrants, the council-manager system retains in its political DNA biases against participation that negatively impact immigrant communities. In the early 20th century, Progressive reformers dismantled corrupt machine institutions and created nonpartisan, professionally administered city government. Still today, the vast majority of California city governments employ council-manager government. Although scholars have examined the effect of reform structures on political participation generally (Caren 2007, Hajnal and Lewis 2002, 2003, Alford and Lee 1968), surprisingly little attention has been paid to issues of participation and corruption specifically in high immigration cities. In conceptualizing reform regimes as substantially similar to machine systems—as "political monopolies"—Trounstine (2008)

offers insight as to how and why a political system designed to prevent corruption could itself become so corrupt. In Bell, reform structures intended to distance policymakers from politics instead insulated officials from traditional forms of political accountability. At the very least, recent patterns of corruption in Bell and other southeast Los Angeles cities serve to undermine the council-manager government's purported benefits in preventing corruption. As Trounstein (2008) implies, under the right circumstances, corruption can flourish in any political structure.

Additional factors contributed to the corruption in Bell. Global economic restructuring helps explain the area's rapid transformation from blue-collar White in the 1960s to post-industrial immigrant Latino by the 1980s, creating conditions that allowed "extractive" (Fulton 1997) industries and politicians to prey upon recent arrivals. Community complacency was also a contributor. According to former Bell City Councilman Rolf Janssen, during the late 1990s a rising economy, lower crime rates, and improvements in the city's physical infrastructure led to a collective apathy about city politics: "Things were going well in the late '90s and early 2000s. People just stopped asking questions" (Interview, April 8, 2011). And a veteran reporter with the *Los Angeles Wave* commented that the ethnic homogeneity of the city council also contributed to the complacency: "there was a certain level of trust in having an all-Latino City Council. Now people feel a sense of betrayal" (Interview, Arnold Adler, April 14, 2011). Finally, Bell's large numbers of undocumented residents and recent arrivals clearly played a role in the lack of engagement in city affairs. Lewis, Ramakrishnan, and Patel (2004) note that all "immigrants occupy a somewhat uncertain role in local civic affairs . . . they are often recent arrivals; a high proportion either cannot or do not vote; and they are often not well connected to associations and interest groups that are important in local affairs" (iii).

Above all, cases of political corruption in Bell and other high immigration cities underscore the pressing need for political reform to invigorate local democracy in communities with large numbers of recent immigrants. Even in the highly charged aftermath of Bell's political corruption scandal, only 34 percent of registered voters turned out for the March, 2011 recall election. Only 18 percent of registered voters showed up for the March 2013 election. Moreover, the scandal has not significantly increased voter registration in the city. As of June 2010, a month before the scandal broke, registration in Bell stood at 9,929 voters. At the March 2011 recall election, registration had increased by 10 percent. At the November 2014 election, the number of registered voters had increased to 11,306. Turnout in state and federal elections since the 2010 scandal has generally lagged slightly behind county and statewide turnout rates (see Figure 4). Although an improvement, these figures suggest that the corruption scandal will not be

sufficient to jumpstart community participation in the city, particularly as residents become further removed from the crisis with the passage of time.

Reform Alternatives in Bell and Beyond

Recent scandals in Bell and other cities highlight the need for political reforms that strengthen the fabric of local democracy to better incorporate longtime residents and newcomers into the political process. Since the election of a new city council in 2011, a number of reforms have been made. In 2005, City Administrator Rizzo instituted a five-year budget cycle which many observers believe was done to further discourage outside scrutiny on the city's revenue and spending practices. In 2011 Bell returned to producing an annual budget. As any city's most important policy document, regular discussion about budgetary matters is critical in promoting public participation. The new city council has also sought to add greater transparency by devoting more resources to providing relevant and user-friendly information concerning expenditures, revenues, meetings, and links to election results and other documents relating to elections on the city's website. Certainly, increasing "sunlight" can go a long way toward deterring public corruption and restoring faith in city government.

This section highlights reform alternatives available to cities confronting municipal corruption:

1. Increase Voter Participation. In order to increase voter participation and democratic accountability, cities facing corruption should consider aligning its municipal elections with higher turnout state primary and general elections in March and June. Based on average turnout among Bell voters in state elections from 1995–2010, an increase of about 10 percent turnout among registered voters (from 16 percent to 25 percent) can be expected. Although the anticipated benefit appears relatively small, a 9-point increase would amount to a 56 percent upswing—probably the single most effective way to increase local voter turnout (Hajnal and Lewis 2003).

The downsides of adding municipal elections to the state ballot include the potential for voter confusion, fatigue, and higher rates of incumbency (Hajnal, Lewis, and Louch, 2002). However, what cities may lose in voter fatigue, confusion, and incumbency could be made up in greater political participation and civic legitimacy. In addition, because of space limitations, cities in California are not always guaranteed a place on primary and general election ballots. Finally, to the extent that the scandal in Bell increases interest by prospective candidates in running for city office, interest and participation in

local affairs is likely to increase.

2. State and Professional Oversight. The auditing authority of California State Controller should be expanded to include greater oversight over municipal finances. State laws limiting compensation for service on city boards and commissions in California's charter cities should also be instituted. In addition, improved oversight from professional organizations such as ICMA and Municipal Finance Associates should be exercised to ensure that established accounting practices and standards are followed by city administrators and staff. Members of the Bell city council are now expected to sign a 'personal code of conduct' statement, an attempt to change the culture of city government.

3. Media Coverage. Improving media coverage of local politics is a critical element in rebuilding democracy in Bell and similar cities. Because of recent media consolidation and cutbacks in local reporting among established media outlets, voters simply do not have access to the same breadth and depth of political coverage of local politics as in past decades. Improved communication over the Internet by city government, citizen journalists and bloggers, and traditional and ethnic media may hold promise for improved coverage of local affairs. Above all, the Bell case underscores the critical importance of local media presence, both in uncovering political corruption after the fact as well as in deterring future corruption.

4. Community Engagement. If corruption is to be prevented, all residents, including recent immigrants, need to participate in politics. New organizations that are indigenous to and appropriate for each community must be created and integrated into the local political system. Local 'Hometown Associations,' typically created for the purposes of assisting family members and friends in the home country, are one example. Broadening the function of Hometown Associations, common throughout Southern California, to foster participation in California local governments could help fill the institutional gap that currently exists between policymakers and local residents.

5. Disincorporation. Residents of chronically corrupt municipalities may also consider disincorporation of their municipality in favor of county governance. Although this reform might seem drastic, it holds promise for preventing corruption by creating Madisonian-style competition among various factions in a larger political entity. Unlike the scandal-plagued the City of Vernon, where state lawmakers briefly considered a unilateral disincorporation, state statutes permit community residents to petition for a citywide vote on disincorporation. Following a series of corruption scandals, residents of the City of Cabazon voted in 1972 for disincorporation (see Knox and Hutchinson, 2009).

The Need for Municipal State-Building in California

Despite recent media hoopla surround the corruption scandal, Bell remains a fairly unremarkable city. Its streets are relatively safe, and many of its quiet, tree-lined neighborhoods and commercial thoroughfares look much like suburbs elsewhere in Southern California. This paper has examined the link between corruption in Bell and another seemingly unremarkable part of the story: the council-manager system of government. How did corruption emerge in a system intentionally designed to produce good government and prevent corruption? Trounstein (2008) reminds us that council-manager government is less about preventing corruption than it is simply an alternate power arrangement – its own form of “political monopoly.” As a system whose *raison d’être* was to limit political power and participation of early 20th century immigrants, the system seems particularly ill-suited to the governance of 21st century municipalities with large numbers of recent immigrants.

In the late 19th and early 20th century, active political parties and competition among ethnic groups drew new immigrants into American local politics. In contrast, most new immigrants to California’s Progressive reformed cities land in a political dead-zone nearly devoid of political parties, media, or community organizations designed to help assimilate newcomers into the local body politic. And due to ethnic clustering, economic segregation, and political geography—Latinos make up more than 90 percent of the population in many of the small cities of southeast Los Angeles—there is little of the kind of conflict and cooperation among ethnic groups characteristic of American urban politics at the turn of the 20th century.

And yet in the effort to build local civic capacity, a small city’s size may also be one of its primary strengths. One of the long-standing ironies of California local democracy is that although relatively few groups participate in local affairs, those that do receive a disproportionate share of the benefits. Compared to larger cities, small towns do offer a scale and familiarity that lend easily to democratic participation (Oliver 2000). In Southeast Los Angeles and elsewhere, small-scale politics may yet offer avenues for building local political institutions that both deter corruption and focus on the core service needs of residents. Among the many questions the case of Bell raises is whether local democracy can be considered legitimate when half or more of the voting age population in a city are not able to register their policy preferences at the ballot box. Although this article does not address federal immigration reform initiatives, it is clear that the presence of large numbers of residents in American cities unable to

select their local representatives is a factor that undermines public trust in local democracy.

Political scientists Ron Hayduk (2006) has argued that noncitizens should be once again allowed to vote in American elections, noting that citizenship was not tied to voting in most American states until Progressive reforms made citizenship a prerequisite for voting. He argues that voting systems in the United States has always been politicized in ways that benefit powerful groups at the expense of the less powerful, citing the historical exclusion of non-propertied White men, African-Americans and women. And recent efforts by numerous state governments to pass voter ID laws following the U.S. Supreme Court's *Shelby* (2012) decision – which invalidated portions of the 1965 Voting Right Act¹⁷ – underscore the larger point that political institutions can be crafted in ways to make voting more or less difficult. Although a full consideration of these arguments is not possible here, it is nonetheless important to note the long history of systemic attempts to limit voter enfranchisement in the U.S.

Hayduk notes that noncitizens have recently been allowed to vote in six cities in Maryland, in school district elections in Chicago, and in so-called “parent trigger” elections to create charter schools in California. Other jurisdictions, such as New York City, Washington DC, and Burlington, Vermont are all seriously considering allowing noncitizens to voting local elections (Hayduk 2014). Perhaps it is time to consider a similar approach in California. Certainly, if one were to design a system of local government to intentionally produce consistently low civic engagement – particularly in high immigration cities like Bell – one could hardly do better than the council-manager form of government.

Fortunately, awareness of the problems of civic engagement is on the rise. Following one of the lowest turnouts for a mayoral election (23% of registered voters in May 2013) in the city's history, the City of Los Angeles convened a special commission to examine ways to increase turnout. The committee's recommendations resulted in the City Council placing Charter Amendments 1 and 2 on the March 5, 2015 municipal ballot. Starting in 2020, the amendments would consolidate LA City and Los Angeles Unified School District elections with state and federal elections in the hope of increasing interest and turnout. And although there are clear potential downsides in terms of further crowding an already long ballot and increased campaign costs, supporters argue the potential benefits make this change a worthwhile experiment in election reform.¹⁸ And in recent years, numerous California cities – notably Anaheim and Palmdale – have scrapped citywide elections for Council in favor of district

¹⁷ The provisions that were struck down had previously required nine southern states with histories of voter discrimination to ‘pre-clear’ changes to their elections laws with the U.S. Justice Department.

¹⁸ Politically, it might be a tough sell to some voters as current officials' terms in office would be extended by roughly 1 1/2 years to accommodate the new system.

elections under pressure from civil rights and immigrant advocacy groups. What has been often lost in the conversation over these issues, however, is the larger historical picture about biases inherent to the council-manager system that disproportionately impact immigrant communities.

The case of the Bell scandal represents far more than another spectacle of government corruption in southeast Los Angeles. Above all, abuses in Bell and other California cities should be viewed as a larger failure of local political systems to incorporate new immigrants. As the political consequences of recent immigration continue to unfold in the coming decades, it is likely that the conditions that led to predatory politics in Bell either currently exist or will emerge in cities across California and the United States. Failure to recognize and reform the underlying conditions that perpetuate corruption risks a further erosion of civic engagement and legitimacy in local government.

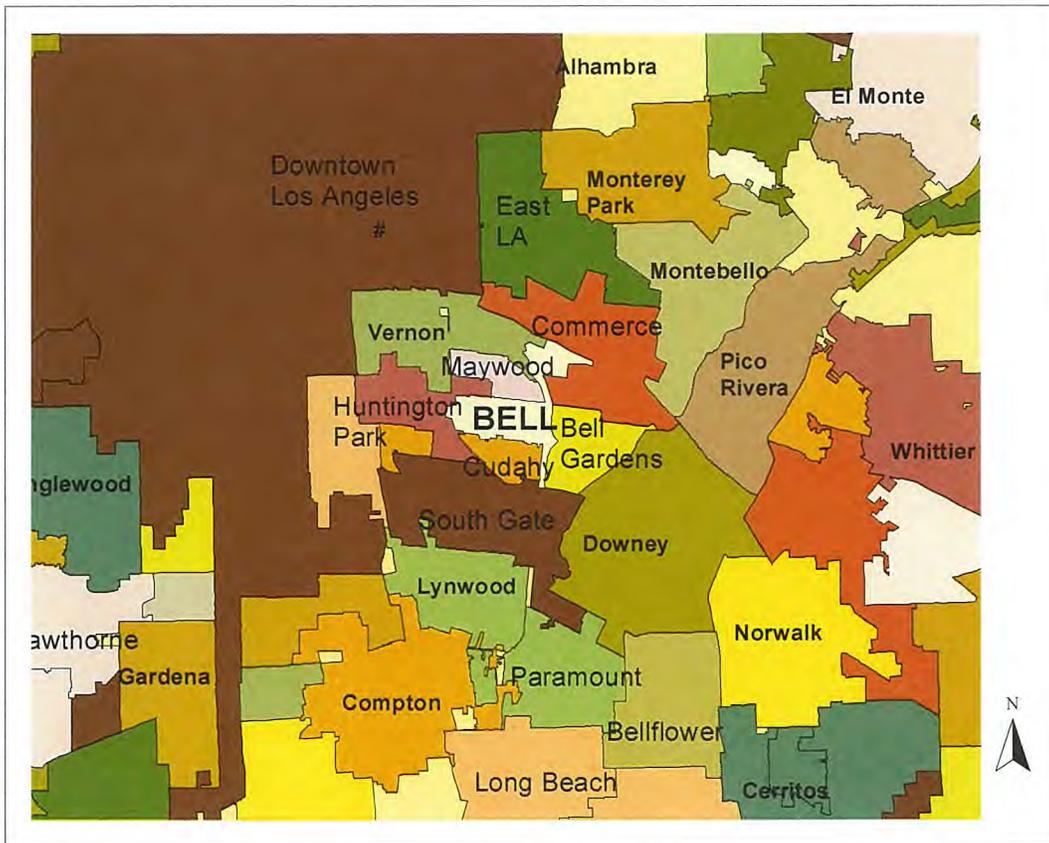
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Figure 1:
Los Angeles Gateway Cities, Including City of Bell



**Figure 2:
City of Bell and Surrounding Cities**

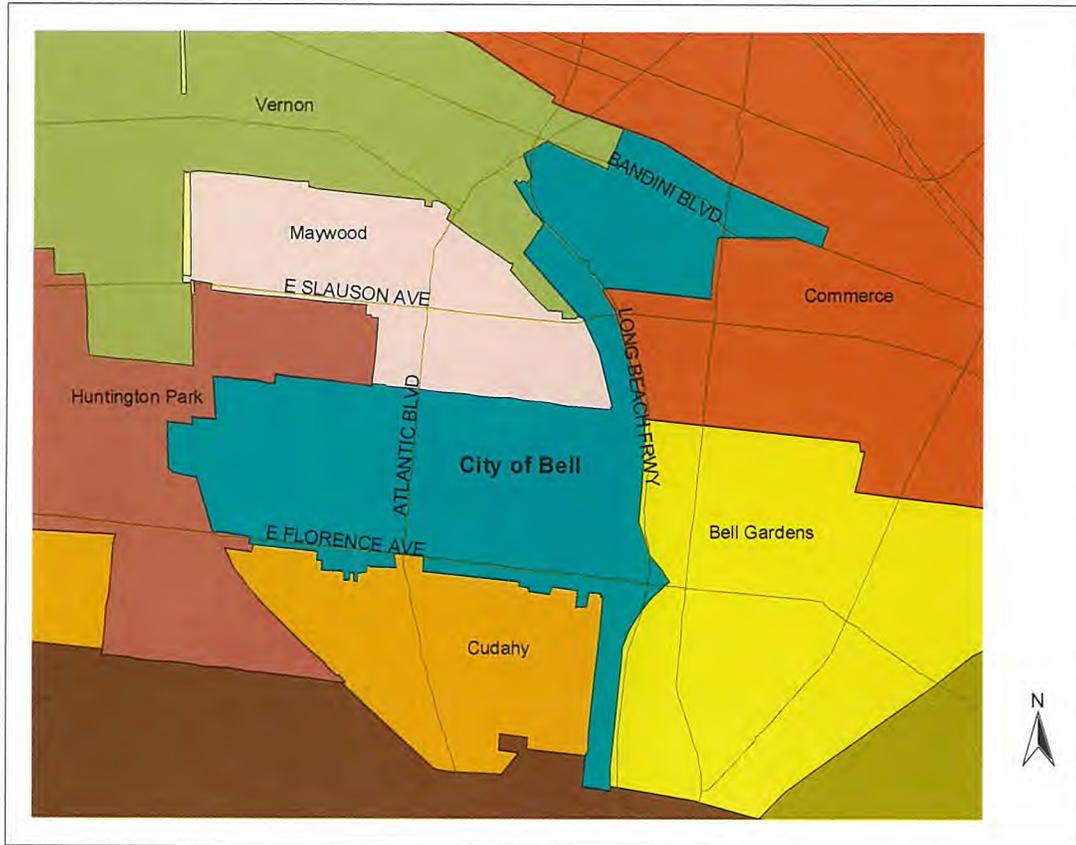


Figure 3: Ethnic Change in Bell, 1970-2010

Ethnic Group	1970	1980	1990	2000	2010
White	16,669 (76%)	3,345 (13%)	3,663 (11%)	2,132 (6%)	1,728 (5%)
Hispanic	4,476* (21%)	16,028 (63%)	29,483 (86%)	33,328 (91%)	33,028 (93%)
Black	28 (.01%)	91 (.03%)	274 (.08%)	468 (1.5%)	214 (.6%)
Asian/PI	394 (.02%)	410 (.02%)	470 (1.4%)	533 (1.5%)	231 (.7%)
Native American	263 (.01%)	335 (.01%)	287 (.08%)	604 (1.6%)	64 (.06%)
Two or More Races**	NA	NA	NA	1,751 (4.8%)	143 (.4%)
Total	21,830	25,449	34,221	36,664	35,477

Source: 1970, 1980, 1990, 2000, 2010 U.S. Census.

* The 1970 Census used the term "Spanish" to denote individuals from Latin America.

**This category applies only to 2000 and 2010.

**Figure 4:
Turnout Registered Voters (RV)
and Voting Age (VA) Population,
Bell, LA County, and California, 1980-2014**

Election	Bell		LA County		CA	
	RV	VA	RV	VA	RV	VA
11/14 GG	21%	10%	31%	20%	42%	27%
6/14 GP	17%	8%	17%	11%	25%	16%
11/12 PG	62%	28%	68%	44%	77%	16%
6/12 PP	47%	21%	22%	13%	31%	19%
11/10 GG	47%	20%	54%	35%	60%	42%
6/10 GP	16%	6%	23%	15%	33%	23%
11/08 PG	75%	29%	82%	49%	79%	56%
6/08 GP	9%	3%	20%	12%	28%	18%
2/08 PP	16%	8%	55%	32%	58%	37%
11/06 GG	41%	14%	52%	30%	56%	36%
6/06 GP	19%	6%	27%	15%	34%	21%
11/04 PG	61%	20%	79%	45%	76%	51%
3/04 PP	23%	7%	38%	20%	44%	31%
11/02 GG	38%	13%	45%	26%	51%	31%
3/02 GP	17%	6%	26%	16%	35%	21%
11/00 PG	56%	19%	68%	40%	71%	45%
3/00 PP	40%	8%	48%	27%	54%	32%
11/98 GG	42%	13%	53%	32%	58%	39%
6/98 GP	34%	11%	38%	23%	42%	28%
11/96 PG	56%	16%	65%	39%	66%	47%
3/96 PP	25%	6%	37%	21%	42%	28%
11/94 GG	47%	11%	59%	43%	61%	40%
6/94 GP	24%	5%	32%	18%	35%	23%
11/92 PG	55%	13%	76%	44%	75%	52%
6/92 PP	33%	7%	48%	20%	47%	29%
11/90 GG	38%	8%	55%	35%	59%	36%
6/90 GP	27%	6%	38%	24%	41%	24%
11/88 PG	58%	21%	73%	50%	73%	59%
6/88 PP	40%	12%	46%	29%	48%	35%
11/86 GG	49%	17%	60%	39%	59%	44%
6/86 GP	31%	10%	39%	24%	40%	29%
11/84 PG	62%	24%	74%	50%	75%	57%
6/84 PP	46%	15%	49%	29%	49%	32%
11/82 GG	62%	21%	70%	42%	70%	47%
6/82 GP	49%	16%	53%	30%	53%	34%
11/80 PG	69%	25%	77%	46%	77%	51%
6/80 PP	58%	20%	64%	35%	63%	39%
Ave.						
Turnout	41%	14%	50%	30%	54%	35%

Source: Los Angeles County Registrar of Voters; California Secretary of State; 1980, 1990, 2000, 2010 U.S. Census

PP=Presidential Primary; GP=Gubernatorial Primary; PG=Presidential General; GG=Gubernatorial General

**Figure 5:
Turnout Municipal Elections
City of Bell, 1980-2013**

Election Date	Reg. Voters	Voting-age Adults
March 5, 2013	18%	8%
March 8, 2011**	34%	12%
March 3, 2009	24%	6%
March 6, 2007	6%	2%
November 29, 2005	4%	.02%
March 8, 2005*	--	--
November 4, 2003	10%	4%
March 4, 2003*	--	--
March 6, 2001*	--	--
August 26, 1997	13%	4%
March 4, 1997	36%	10%
April 12, 1994	51%	11%
April 14, 1992*	--	--
April 10, 1990	20%	4%
April 12, 1988	39%	12%
April 8, 1986	26%	9%
April 10, 1984	34%	11%
April 13, 1982	88%	28%
April 8, 1980	30%	10%
Ave. Turnout	29%	9%

Source: City Clerk, City of Bell; LA County Registrar
*Uncontested Election; **Recall Election

Governance Committee

From: Arianna Feinberg <ariannafeinberg@gmail.com>
Sent: Tuesday, December 08, 2015 6:09 PM
To: Governance Committee
Subject: Jonathan Starr for Chair of Special Governance Commission

Aloha Councilors,

Please make Jonathan Starr the chair of the Special Governance Commission. Jonathan's experience on the Planning Commission completing the Maui Island Plan make him the best option as chair. Jonathan Starr has the experience and skills to lead this important Commission and get them to efficiently and effectively make recommendations of whether the Council should initiate a Charter amendment and how the amendment should be structured.

Thanks,
Arianna

Arianna Feinberg
Aloha Natural Brokers, Inc.
VP of Sales - Natural Division
anb@maui.net
808-280-0988

Governance Committee

From: Douglas Ward Mardfin <mardfin@gmail.com>
Sent: Wednesday, December 09, 2015 3:19 PM
To: Governance Committee
Subject: Testimony for Jonathan Starr for Chair
Attachments: Jonathan Starr letter.doc

Aloha,

I am submitting the attached WORD document as testimony for the meeting of December 10, 2015, of the Special Committee on Governance. I would appreciate it if you could distribute it to all members at the very beginning of the meeting.

I will also try to give live testimony from the Council Services office in Hana tomorrow.

Mahalo, Ward Mardfin

December 9, 2015

Special Committee on County Governance
Council of the County of Maui
200 South High Street
Wailuku, HI 96793

Aloha Special Committee on County Governance,

I see on your agenda item 3 that you will be electing the Chair of the Special Committee. I am writing this testimony to recommend that you elect **Jonathan Starr** as your **Chair**.

I have known Jonathan Starr for several decades and I served with him on the Maui Planning Commission (MPC) from 2008 to 2011. During his last year on the MPC, Jonathan was the Chair and I was the Vice Chair. For the entire time I observed Jonathan, I was extremely impressed with his professionalism, objectivity, and fairness to all. And it was during this time period that the MPC worked through much of its review of the Maui Island Plan that was full of complexity and nuance.

Jonathan sees both the “big picture” of an issue and has the diligence to pay very careful attention to the details, both substantively and procedurally. Jonathan treated every applicant, public testifier, and Commissioner with dignity and respect. He made sure that everyone with business before the MPC had a fair chance to make their views known. After other Commissioners had their chance, Chair Starr would frequently ask penetrating questions that others had missed. He was able to do this because he did his homework to understand all of the underlying issues of an application.

In running the meeting, Jonathan gave every Commissioner a full chance (and many chances) to make their points. To the best of my knowledge, no one ever felt that they had been “cut off” or shortchanged in fulfilling our own responsibilities. Whenever necessary, Jonathan would consult with our Corp. Council, James Giroux, to ensure that the MPC followed all legal procedures (especially the Sunshine Law) to protect the Commission from having its work undone by after-the-fact litigation.

In short, I give my highest recommendation for the election of Jonathan Starr as Chair of the Special Committee on County Governance. As Chair, Jonathan will ensure that the work of the Committee goes forward both efficiently and effectively. And the work of the Committee will be of the highest possible quality.

Sincerely,

Ward Mardfin

Douglas Ward Mardfin, Ph.D.
Ph: 808-248-4061
Box 547, Hana, HI 96713

Governance Committee

From: Penny Wakida <pwakida@hawaii.rr.com>
Sent: Wednesday, December 09, 2015 9:41 AM
To: Governance Committee
Cc: Jonathan Starr
Subject: Recommendation for Starr
Attachments: Jonathan Starr letter of rec.doc

Please see attached letter of recommendation for Jonathan Starr.

thank you,
Penny Wakida

December 9, 2015

To the Special Committee on Governance:

I am writing in support Jonathan Starr as Chairperson of the Special Committee on Governance.

I served on the Maui Planning Commission from July 1910 to April 2015. Mr. Starr served as chairperson of the commission during my first year and brought many commendable attributes to the position. He was fair and respectful to all participants, which included testifiers as well as commissioners. He was able, through his position, to move agenda items along in a timely manner while still allowing all voices to be heard. In addition, Mr. Starr brought a wide background of knowledge and understanding to the commission and was able to make pertinent and insightful queries of various presenters regarding their projects before the commission.

I was extremely pleased when I read in the Maui News that Mr. Starr had been chosen to work on the Governance Committee and know that he would serve as an excellent choice for chairperson. The work before this committee will have profound effect on the County of Maui and must be concluded in a relatively short period of time. Mr. Starr will be able to lead this committee to a wise and thorough conclusion.

Respectfully,
Penny Wakida
285 Puapihi St.
Lahaina, HI 96761
808-667-6718

Governance Committee

From: David B. Fisher <dfisherhi@gmail.com>
Sent: Thursday, December 10, 2015 9:30 AM
To: Governance Committee
Subject: Letter of Support for Jonathan Starr as Committee Chair
Attachments: Jonathan Starr - Governance Committee.pdf

I am unfortunately not going to make this afternoon's meeting, but wanted to submit the attached letter of support for Jonathan Star for the role of chair.

Mahalo

--

David B. Fisher
Maui Venture Consulting LLC
808-269-1031 cell

<http://MauiVenture.net>

<http://www.linkedin.com/in/dbfisher>



PO Box 81515 Haiku, HI 96708
808-269-1031
df@mauiventure.net
<http://mauiventure.net>

December 10, 2015

Maui County Governance Committee

Re: In Support of Jonathan Starr as Committee Chair

Mahalo for taking on the task of evaluating whether or not Maui should adopt a "Manager" model over the current "Mayor" model for County governance. The County Council has appointed a diverse and capable group of Maui citizens. I have been asked to speak to whether Jonathan Starr would make a good chair for this committee, and I think he would.

I have known Jonathan for over 15 years in multiple capacities starting in my role as director of the Small Business Development Center at the Maui Tech Park. Jonathan was a popular guest speaker in the NxLevel Entrepreneurship Planning series bringing both experience as an entrepreneur who was able to successfully turn around a major failing family business in the heart of a highly competitive environment, and experience in public service via his various roles in the Maui community.

These public service roles, including serving as the chair of the County Water Board, Maui Planning Commission and now serving as a member of the State Water Resource Commission, have been highly visible and highly challenging and Jonathan has shown the ability to help move decision making forward in a thoughtful and respectful manner.

I have always observed Jonathan to be an independent thinker who can be counted on to speak truth to those in power, look out for the greater good, champion diversity, and understand economic realities. He is also willing to listen and when appropriate change his mind.

And so it is with enthusiasm that I can say he would make a great chair for your committee.

A handwritten signature in black ink that reads "David B. Fisher". The signature is written in a cursive, flowing style.

David B. Fisher
Principal

Governance Committee

From: CML Wildberger <tina@kiheiice.com>
Sent: Thursday, December 10, 2015 10:42 AM
To: Governance Committee
Cc: Jonathan Starr
Subject: Testimony for governance committee meeting

Aloha,

Please accept this email as testimony to support Jonathan Starr as chair for the governance committee. Jonathan brings a wealth of knowledge and experience to the table. With his tenure in planning and the water commission, combined with his passion to make Maui the best it can be, Jonathan will work tirelessly with the committee team to offer Maui a better governance solution.

Mahalo,
Tina Wildberger
Kihei Resident & business owner.
808-870-1739
Tina@kiheiice.com

Sent from my iPad

Governance Committee

From: Jim or Belinda <2jbhome@hawaiiantel.net>
Sent: Monday, December 21, 2015 10:19 AM
To: Governance Committee
Subject: Testimony for December 23, 2015 meeting
Attachments: 12_21_15 TESTIMONY re Dept Corp. Counsel.odt; COUCH transmittal CC 15-291-1 - AND reso 12_04_15 MAUI COUNCIL.pdf

Kim

Please find attached to this email a copy of my testimony for the Committee's December 23, 2015 meeting and an attachment referenced in it's content. If you have trouble opening the file please contact me by email or call me at 572-0218. Thank You

Jim

Jim Smith
99 Kapuai Road
Haiku, Maui, Hawaii 96708

December 21, 2015

Chairperson Anthony Takitani and
Members of the Select Committee on County Governance
200 S. High Street
Wailuku, Maui, Hawaii 96732

SUBJECT: Testimony specific to organizational structure (CG-1(4))

Aloha, Chairperson Takitani and Members,

A great American, Cesar Chavez, advised that before a problem can be solved it must be accurately defined. And so I implore you to consider that the problem may not be structural but dysfunction based upon organization or performance of a Department. Specifically, I ask that you investigate the function and performance of the Department of Corporation Counsel for the following reasons:

1. The Maui News on December 19, 2015 published an article titled **Special Counsel resolution advances**. This article informs citizens that the Council seeks to amend our Charter to address dysfunction in that Office.
2. On December 4, the same day this Committee was empaneled, the Council approved by Resolution the funding for a private high school in Kihei. Our Constitution is clear at Article IX Section 1 that public funds may only be used to finance public schools. The Resolution was not a product of Legislative deliberation; the Council did not publish notice of public hearing in compliance with Federal Law. (See attached County Communication 15-291 from Member Don Couch, that contains the referenced Resolution)

The money to finance this funding was received from a political subdivision of the State of Wisconsin.

The Council adopted the Resolution that stated it was approved as to legality and form on November 20, 2015 when no legislative decision was made to request approval. This dysfunction is not structural and the impact needs to be considered if only to aid the Council in formation of proposed changes to our Charter made and considered in the context of your work.

Thank you

Signed: Jim Smith
12_20_15

Council Chair
Mike White

Vice-Chair
Don S. Guzman

Presiding Officer Pro Tempore
Michael P. Victorino

Councilmembers
Gladys C. Baisa
Robert Carroll
Elle Cochran
Don Couch
Stacy Crivello
Riki Hokama



Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

November 20, 2015

RECEIVED
2015 NOV 20 PM 4:17
OFFICE OF THE
COUNTY CLERK

The Honorable Mike White
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair White:

**SUBJECT: APPROVING THE ISSUANCE BY THE PUBLIC
FINANCE AUTHORITY OF REVENUE BONDS FOR
SOUTH MAUI LEARNING OHANA FOR THE
BENEFIT OF KIHEI CHARTER SCHOOL**

May I request the attached proposed resolution, entitled "APPROVING THE ISSUANCE BY THE PUBLIC FINANCE AUTHORITY OF REVENUE BONDS FOR SOUTH MAUI LEARNING OHANA FOR THE BENEFIT OF KIHEI CHARTER SCHOOL", be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Couch".

DON COUCH
Councilmember

COUNTY COMMUNICATION NO. 15-291

Resolution

No. _____

APPROVING THE ISSUANCE BY THE
PUBLIC FINANCE AUTHORITY OF REVENUE BONDS FOR SOUTH
MAUI LEARNING OHANA FOR THE BENEFIT OF KIHEI CHARTER SCHOOL

WHEREAS, the Public Finance Authority (the “Authority”) is authorized pursuant to the provisions of Sections 66.0301, 66.0303 and 66.0304 of the Wisconsin Statutes, commonly known as the “Joint Exercise of Powers Law” (the “Act”), and the terms of an Amended and Restated Joint Exercise of Powers Agreement Relating to the Public Finance Authority, dated as of September 28, 2010 (the “Joint Exercise Agreement”), to issue revenue bonds in accordance with the Act for the purpose of financing school facilities; and

WHEREAS, the Authority has adopted a plan of financing providing for the issuance of revenue bonds (the “Bonds”) in one or more series, and at no time to exceed \$19,000,000 in outstanding aggregate principal amount, to finance the acquisition and construction by South Maui Learning Ohana of school facilities located in the County of Maui (the “County”) at or near 640 Lipoa Parkway, Maui Research and Technology Park, Kihei, Maui, Hawaii (the “Project”) to be leased to Kihei Charter School; and

WHEREAS, the Bonds or a portion thereof will be “private activity bonds” for purposes of the Internal Revenue Code of 1986 (the “Code”); and

Resolution No. _____

WHEREAS, pursuant to Section 147(f) of the Code, prior to their issuance, private activity bonds are required to be approved by the “applicable elected representative” of a governmental unit having jurisdiction over the entire area in which any facility financed by such bonds is to be located, after a public hearing held following reasonable public notice; and

WHEREAS, the members of this Council (this “Council”) are the applicable elected representatives of the County; and

WHEREAS, there has been published, at least 14 days prior to the date hereof, in a newspaper of general circulation within the County, a notice that a public hearing regarding the Bonds would be held on a date specified in such notice; and

WHEREAS, such public hearing was conducted on such date, at which time an opportunity was provided to interested parties to present arguments both for and against the issuance of the Bonds; and

WHEREAS, it is intended that this Resolution shall constitute the approval of the issuance of the Bonds required by Section 147(f) of the Code; and

WHEREAS, pursuant to the Section 66.0304(11)(a) of the Act, prior to their issuance, bonds issued by the Authority must be approved by the governing body or highest ranking executive or administrator of the political jurisdiction within whose boundaries the project is to be located; and

Resolution No. _____

WHEREAS, this Council has been requested to approve the financing of the Project and the issuance of the Bonds in order to satisfy the requirements of Section 66.0304(11)(a) of the Act; and

WHEREAS, neither approval for purposes of Section 147(f) of the Code nor approval for purposes of Section 66.0304(11)(a) of the Act constitutes an endorsement by the County of the Bonds or the Project, or a commitment by the County to provide any other approvals that may be required in connection with the Project or any further responsibility of any kind with respect to the Bonds; and

WHEREAS, the Revised Charter of the County of Maui (1983), as amended, authorizes the Council to act by Resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. The above recitals are true and correct.
2. The Council hereby approves the issuance of the Bonds by the Authority for financing the Project. It is the purpose and intent of the Council that this Resolution constitute approval by the County, which is the governmental unit having jurisdiction over the area in which the Project is located, solely for the purposes of Section 147(f) of the Code and Section 66.0304(11)(a) of the Act. This approval shall not otherwise be referred to in connection with marketing and sale of the Bonds, and the County shall have no responsibility or liability of any kind, direct or indirect, with respect to the terms, sale, issuance, security or payment of the Bonds, which shall be the sole

Resolution No. _____

responsibility of the Authority, South Maui Learning Ohana and Kihei Charter School.

3. The officers of the County are hereby authorized to do any and all things and to execute and deliver any and all documents that they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution and the financing approved hereby.

4. The County Clerk shall forward a certified copy of this Resolution and a copy of the affidavit of publication of the hearing notice to:

Philip C. Morgan, Esq.
Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, California 94105

5. This Resolution shall take effect immediately upon its passage.

6. That certified copies of this resolution be transmitted to the Mayor and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY JEOKA

Deputy Corporation Counsel
County of Maui

S:\ALL\JTU\RESOS\2015-09-29 Kihei Charter Reso.docx
2015-5113

Governance Committee

From: Mark Hyde <hydem001@hawaii.rr.com>
Sent: Wednesday, December 23, 2015 7:32 AM
To: Governance Committee
Cc: David M. Raatz
Subject: 12/23/15 Special Committee Testimony
Attachments: Document1.docx

I submit the attached testimony to the Special Committee for its consideration.

Mark Hyde

Special Committee Testimony
December 23, 2015

I recommend considering 5 key charter changes to transform county operations into a more efficient, effective, transparent and accountable government for the people:

1. Separate the mayor's current combined Executive and Administrative roles into two positions,
 - move the operational duties of the mayor's office under a professional manager and
 - retain the chief executive role in an elected mayor.
2. Enlarge the managing director's role - retitling it "county manager," and have directors report to the manager.
3. Disengage manager and director terms of office from the mayoral election cycle to de-politicize the roles.
4. Create standard job descriptions and minimum criteria for hiring the manager and directors.
5. Define a manager and director selection process that results in the best candidates being hired based on job-needs.

When Maui County adopted the current form of government 50 years ago, our population was 38,000 and Hawaii's statehood was less than 10 years old.

Now the county has over 160,000 residents and a *defacto* population over 200,000 taking visitors into account.

The county now employs 2,700 with a 2017 budget over \$700 million.

Our local government is responsible for many critical services. The future will not be simpler as the world globalizes and digitizes, climate changes our population continues to grow and service needs become more complex and difficult.

Things have changed over the past 50 years but the core structure of county government has not. By making the simple charter changes I've outlined, the county will be best positioned to serve the people's interests now and in the future.

Mark Hyde
4320 E. Waiola Loop
Kihei, HI 96753

TESTIMONY FOR 12/23/15 SPECIAL COMMITTEE ON COUNTY
GOVERNANCE MEETING

Aloha & Season's Greetings Chairman Takatani and Committee members,

My name is Nell Woods and I was a member of the West Maui Charter Working Group whose task was to review the existing Maui County Charter to determine if there were areas that needed changes or updates. We issued our final report in late 2010, posted it online at westmauicharter.org and sent it to the Charter Commission formed in 2011. Our proposal No. 2 was to change the structure of Maui County government to that of a Council/County Manager with a Ceremonial Mayor as a non-voting Chairman of the County Council.

The formation of your committee is a long-delayed result of the recommendation by that Charter Commission "that a task force be established to thoroughly review the structure of Maui County government, research other models of county governments and prepare a report."

The First Charter Commission in 1964 considered proposing a change of governance structure to that of a council/manager/mayor as did the Third Charter Commission in 1975 when the change was supported by Mayor Elmer Cravalho who stated "the adoption of the City Manager form of government would ensure high quality talent for the chief executive position within the County as well as removing the position from undue political influence." Mayor Cravalho stands in history as the only Maui County Mayor to support this change.

This concept has been a topic of discussion for more than 50 years now and it has always been the people of Maui County who have continued to push for better government and who are still waiting for those they have elected to provide it to them. That time is now.

Per the current Maui County Charter, the goal for government services is to be "transparent, effective, efficient and responsive to the needs of the residents." I would encourage the members of this Committee to schedule additional evening meetings out in the various communities in the weeks you are not meeting in these chambers, to provide as many residents as possible the opportunity to share with you their frustrations with the current governance structure.

RECEIVED AT CG MEETING ON 12/23/15

Each and every year more of our best & brightest are forced into the realization that to achieve their dreams for the future they must leave Maui for better opportunities elsewhere. The current and future children of Maui deserve to grow up knowing that Maui County can and will provide them with the future that will fulfill their dreams right here on Maui because a more efficient and responsive governance structure will create better jobs and affordable homes for the future.

Mahalo to you all for taking this time to carefully consider what the future of Maui County can & should be and I hope the legacy of this Committee will be that you were the ones to take the first step to give Maui County residents the best future possible!

Governance Committee

From: Mark Hyde <hydem001@hawaii.rr.com>
Sent: Thursday, December 24, 2015 4:49 AM
To: Governance Committee
Subject: List of Various Appointed Positions Contained In the Charter and on the County Website
Attachments: Charter and Non Charter Based Appointments, Board and Commissions.docx

The subject of appointments was raised during the 12/23/15 Governance Committee meeting.

For your information, the attached list identifies charter and non charter-based appointments to positions, boards, commissions, agencies, council, etc., referenced in the charter and on the county's web site.

Mark Hyde

I. List of Charter-Based Appointed Positions (references are to charter sections):

A. Appointed by Council

1. Auditor - (3-9.1)
2. County Clerk - (5-2)

B. Appointed by Mayor with Council Approval

3. Corporation Counsel (6-2.5 and 8-2.2)
4. Prosecuting Attorney (6-2.5 and 8-3.2)
5. Cost of Government Commission (3-9.3)
6. Fire and Public Safety Commission (8-7.2)
7. Maui Planning Commission (8-8.4)
8. Molokai Planning Commission (8-8.4)
9. Lanai Planning Commission (8-8.4)
10. Board of Variances and Appeals - (8-8.7)
11. Civil Service Commission (8-9.4)
12. Board of Water Supply (8-11.3)
13. Police Commission - (8-12.2)
14. Liquor Control Commission - (8-13.2)
15. Salary Commission - (8-17.1)
16. Board of Ethics - (10-2.1)
17. Liquor Control Adjudication Board - (8-13.3)

C. Appointed by Civil Service Commission

18. Department of Personnel Services - (8-9.2)

D. Appointed by Police Commission

19. Chief of Police - (8-12.3)

E. Appointed by Liquor Control Commission

20. Director of Department of Liquor Control - (8-13.4)

F. Appointment not Specified

21. Civil Defense Agency

II. Other Boards and Commissions Not Charter Based (From County website)

Affirmative Action Council

Animal Control Board

Commission of Children and Youth

Commission on Culture and the Arts
Commission on Persons with Disabilities
Committee on the Status of Women
Council on Aging
Hana Advisory Committee to Planning Commission
Lanai Advisory Committee to Planning Commission
Arborist Committee
Cultural Resources Commission
Redevelopment Agency
Public Works Commission
Solid Waste Resource and Advisory Committee
Urban Design Review Board
Volunteer Advisory Board
Wastewater Community Working Group
Workforce Investment Board

Governance Committee

From: Mark Hyde <hydem001@icloud.com>
Sent: Wednesday, January 06, 2016 9:45 AM
To: Governance Committee
Subject: Agenda Setting
Attachments: Special Committee Letter 1 6 16.docx

Please share the attached letter regarding agenda setting with members of the Special Committee on County Government.

Mark Hyde

Mark Hyde
4320 E. Waiola Loop
Kihei, Hawaii 96753
(808) 874-3839
hydem001@hawaii.rr.com

January 6, 2016

To: Members of the Special Committee on County Government

The committee's charge is: "Consider whether establishing a county manager form of government for the County of Maui would improve management and operations of county government."

To make this assessment I believe committee members need agendas that include speakers who can provide insight into how cities and counties with county/city managers function.

Here are a few topics you might explore through experts in the field, both in the trenches and through consultation with ICMA and other professional organizations with depth in the area. I have included a number of questions that come to mind that may assist your thinking.

1. Role of an Elected Mayor in a County Manager Form of Government

What is an elected mayor's range of functions in a council-manager form of government? What are the pros and cons of each? How does an elected mayor best relate to and interact with a professional manager? To a legislative council? What lessons can be learned from other jurisdictions? What are the pitfalls to be avoided? Do elected mayors in professionally managed cities and counties usually retain veto power?

What is a collaborative form of government? How does it work? Does it produce better outcomes? How does it contrast with the "balance of power" model? Does the balance of power structure influence the working relationship between the executive and legislative branches of government? For better or worse? How has it played out in Maui County?

Who should appoint citizens to boards and commissions? How is that handled in other jurisdictions? Should the mayor and manager collaborate in the process so their work is aligned and collaborative?

Is an elected mayor in a county manager form of government the "chief executive officer" (CEO) of the county and the manager the "chief administrative officer"

(CAO). What do these terms mean? Are they separate concepts and roles requiring different skills? How so?

2. Hiring a manager.

A representative from a recruitment firm specializing in this field could make an interesting presentation.

What do recruiters do? What do they charge? What is a best practice process? What does a good job description for a manager look like? How does that compare with the job description for the managing director in Maui's charter? Are minimum requirements typical? If so, what is customary? Relevant experience in a similarly sized city or county? Years of service? Educational background? Training? Experience with quality management systems? Knowledge of technology and how it can improve "customer" service and reduce operational costs. Do most managers have MBA or MPA degrees? What are these degrees anyway? Why do they exist? With a population of over 160,000, a budget of over \$700,000 and 2,700 employees, should we care whether the person managing the operations of the county is trained in management? Why?

Is it conceivable that only a manager from Maui County could be successful here? If not, what steps could be taken to introduce a manager from outside the county to our local culture? Are our operations (planning, water, public works, police, fire, etc.) that different from those in other cities and counties?

Can citizens be effectively involved in the process of manager selection? Should they be? How are final hiring decisions best made and by whom?

What sort of contractual terms and conditions are common? What do typical total compensation packages look like? How long does it usually take to hire a manager? Fire a manager? How are managers removed? Do they usually serve "at will"? For a specified term?

How are goals and objectives set for a manager? How often should a manager's performance be reviewed? How is that best done? What is a good process for measurement and assessment of performance? What is Maui's current process. How does it compare to best practice. What are the current managing director's goals? Is his performance reviewed periodically? In writing? Subject to measurable assessment? Made public?

Would it be beneficial to hire a manager who is a member of ICMA? What is ICMA's code of ethics and how would it benefit the people served by Maui County government, if at all. Should a hired manager be prevented from participating in mayoral or council elections? Does the managing director in Maui's current structure become involved in the election process? Is that desirable? Do Maui citizens and businesses fear that by not engaging in or contributing to local political

campaigns their affairs may be negatively affected? Would a professional manager who is removed from political campaigning help address this? Can this subject - no campaigning for elected officials - be written into a manager's contract?

3. Accountability and Transparency

Beyond the hiring process, how do cities and counties with professional managers create and sustain accountability for performance? What are some examples of cities and counties with best practice accountability systems?

What is government transparency? Does it drive better performance? Transparency is a stated goal in the Maui's Countywide Policy Plan adopted in 2010. Has this goal been implemented over the past 5 years since adoption of the Plan? How do professionally managed local governments achieve transparency?

Are key county administration goals clear, visible and measureable? What are they and where can we find them? Is the county administration managing to the implementation chapter of the general plan? How? Is there a yardstick? Are there periodic and regular progress reports? Are the reports public? Is the process adequately staffed? Is the implementation plan readily available on the county's web site? Can you find it?

How is a mayor held accountable in a second term of office? Does the county manager model offer the opportunity for greater and more frequent accountability?

Are the charter-required annual written reports by directors, filed with the clerk's office, helpful, insightful, standardized, fact and data driven, useful, available and posted to the county's web site? Does anyone read them? Do they drive performance? Increase local government accountability? Is this a best practice?

4. Organization

What does a typical organizational chart look like in a professionally managed city or county? Who hires and fires departmental directors and deputy directors?

What processes and procedures are in place to ensure that only highly qualified, experienced directors are hired into key leadership positions? How do professionally managed jurisdictions handle this?

What does a typical, similarly sized city/county manager's administrative staff include (number and positions)? How does this compare to that of the staff of current and past Maui County mayors? Is there a political component in the current executive staff? If so, is it productive? Does it inspire citizen confidence in and respect for local government?

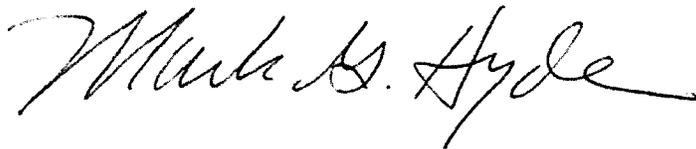
Is it prudent to insulate operational leaders from undue political influence? Should director terms of service be tied to mayoral election cycles? Can careers be built and the pool of interested candidates increased and enhanced if disengaged from politics? Are director and deputy director jobs harder to fill in the current model because employment is politically based and time bound? How does this affect the quality and timeliness of service delivery to citizens? Is simultaneous turnover of directors and deputies (tied to mayoral elections) a good thing, allowing each elected mayor to "clean house" and bring in his or her new team to chart a new direction? Is there a downside? Are there real and operational costs? Is employee morale and productivity affected? Does it produce a politically-charged management culture?

Are director level job descriptions contained in the charter adequate and in keeping with the times? If not, have other internally generated job descriptions been developed to address this gap? What do director level job descriptions in other jurisdictions look like? What is a best practice? Is there a gap between Maui county practice and best practice?

Conclusion

I hope these top-of-mind thoughts will help the committee focus on how it might organize future meetings and agenda to yield good information to enable fulfillment of its mission.

Sincerely,

A handwritten signature in black ink that reads "Mark A. Hyde". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Mark Hyde

Governance Committee

From: Mark Hyde <hydem001@hawaii.rr.com>
Sent: Saturday, January 09, 2016 4:00 PM
To: Governance Committee
Subject: Situational Analysis Prepared for the Special Committee on Governance
Attachments: Special Committee - Situational Analysis.docx

Please distribute the attached situational analysis to members of the Special Committee on Governance for their consideration.

Mark Hyde

To: Special Committee on Governance
From: Mark Hyde
Date: January 9, 2016

The following observations and insights are offered to the Special Committee in furtherance of its responsibility to explore “county manager” government.

Table of Contents and Key Ideas

Introduction - page 2

I. Leadership and Leader Selection - page 3

The roles of Chief Executive and Chief Administrative Officer require different skill sets and should be separated into that of a mayor on the one hand and a manager on the other.

II. Maui County Government Performance Needs Significant Improvement - page 9

Based on limited but key metrics, the county is not performing at a high level.

III. Role of Maui County’s Managing Director Is Inadequate - page 14

The role of managing director should be eliminated and a fully-fledged manager position created and made part of the executive branch, with the manager hired by and reporting to the council.

IV. Need for a Management System: Management Matters - page 14

Quality management is predicated on plans, measurement, assessment and action, in a continuous cycle of activity. None exist currently.

V. Cost of Turnover - page 18

Forced turnover of directors and other upper level administrators based on the election cycle is unproductive on many levels, including the ability to attract and retain quality directors and deputies.

VI. Departmental Director Selection - page 23

A CAO/manager, as opposed to an elected mayor, should select directors based on skills, knowledge, education and experience in management.

VII. Balance of Power or Simply Unproductive Infighting? - page 23

“Balance of power” in Maui County plays out as infighting. There are better ways to achieve good results.

VIII. Transparency and Accountability in Government - page 24

There is little transparency in government in Maui County, to our detriment. Transparency plays an important role in a democracy and leads to public accountability, better performance and greater citizen satisfaction.

Summation - page 29

Introduction

On December 23, 2015, I proposed five core charter changes to the Special Committee on Governance, all designed to transform county operations into a more efficient, effective, transparent and accountable government - for the benefit of the people. They are:

1. Separate the mayor's currently combined Executive (CEO) and Administrative (CAO) roles¹ into two positions. Move the operational functions currently under the mayor and place them under the direction of a professional manager who reports to the council, but retain an elected mayor with veto power for "balance of power."
2. Have directors report to the CAO, who shall hire and fire them based on performance, except those currently hired by the stand-alone police, fire and liquor commissions.
3. Disengage CAO and director terms of office from the mayoral election cycle to depoliticize the roles; director employment should be based on performance. This will reduce unwanted turnover, increase the pool of people interested in these positions and result in continuity of management and career development, all positive.
4. Create standard job descriptions and define minimum criteria for hiring the CAO and directors. Put the right people in the right places.
5. Imbed a CAO selection process in the charter that will insulate manager selection from politics and nepotism, one that will result in selection of the best professional for the position, i.e., requiring engagement of an independent recruiter, formation of a citizens' advisory committee, etc.

Our local government is responsible for many critical services. The future will not be simpler as the world globalizes and digitizes, the climate changes, our population continues to grow, service needs become greater and more complex, and regulation intensifies.

¹ This is a function of the 1960s charter when Maui County had a population of 38,000 residents and the state was less than 10 years old. Now the county has over 160,000 residents with a *defacto* population of 200,000 counting tourists. The county budget is over \$700,000,000 today with over 2,700 employees who must deliver "need to have," versus "nice to have," services to the people.

Things have changed over the past 50 years but the core structure of county government has not. By making the simple charter changes outlined above, the county will be better positioned to serve the people's interests now and in the future.

I. Leadership and Leadership Selection

A. What Kind of Leader is Best Suited to Manage Maui County?

A goal of those responsible for husbandry and oversight of an enterprise is to “get the right people in the right places.” Boards of directors face this challenge when selecting a chief executive to assume legal, ethical and operational responsibility for an enterprise. Understanding the complexity of the enterprise, the degree to which the business is subject to regulatory oversight, assessing current challenges and opportunities, and the nature of the business itself (i.e., equipment manufacturing, retail sales, medical services provider, etc.) all determine the ideal type of leader needed to take the helm. Once the business and its needs are understood, then a board can begin to identify skill sets, knowledge, and personal qualities that are most likely to produce an effective manager. This usually takes the form of a job description that (a) defines the work and (b) is accompanied by a description of minimum and desired requirements, such as education and training in management, experience managing similarly sized organizations, accomplishments, etc. A statement of minimum/desired requirements is extremely helpful, particularly in the candidate sifting process. Those whose applications meet the requirements are put into one pile and those who don't are placed in another. Once this critical spadework is done, interviewing the most plausible and attractive candidates can begin.

The majority of cities and counties with resident populations comparable to Maui's have migrated to the professional manager form of government and away from the elected mayor model. This trend has occurred, in part, because cities and counties, once they reach a particular degree of complexity, recognize that the kind of leader and manager needed is best selected through the process described above.

When Maui County adopted the elected mayor model of government in the late 1960s, the county was significantly different and less complex than it is today. Then, the county's population was around 38,000, tourism was limited, the county's operating budget was far less and the islands' primary activity was farming. Now, the county is a highly regulated major enterprise, responsible for critical services. Consider the following:

- County management oversees a \$700,000,000 annual budget (operating and CIP);
- It employs a 2,700+ workforce, including civil service and union contracts (it is the largest employer in the county);

- It has primary responsibility for public safety by providing police, fire, EMS, hazardous material, liquor control and emergency preparedness services;
- It must assure, manage and supply adequate water resources and provide environmentally sound and legally compliant wastewater disposal systems;
- It operates solid waste management facilities, another highly regulated activity;
- It plans, repairs and installs roads, walkways, bikeways, paths and other means of transportation, including public bus transit;
- It develops and maintains an extensive parks and recreation system;
- It is responsible for planning, implementing and maintaining information technology systems supporting numerous county functions and responding to resident and business needs;
- It is responsible for land use planning and development, including updating general and community plans, as well as enforcement;
- It must protect the environment, including near-shore waters;
- It is responsible for development and implementation of affordable housing plans and other human services;
- It nurtures the Hawaiian culture;
- It provides legal and regulatory services to local government and is responsible for compliance with a complex network of federal, state and county laws, rules and regulations;
- And it must do all these things, and more, on three islands.

It's a big job. Given this, what are Maui County's job requirements for the chief executive officer, who also serves as the county's chief operating officer? They are:

“Any citizen of the United States who is a voter of the county and a resident of the county for a period of at least one (1) year next preceding the filing of nomination papers shall be eligible to be mayor.” (Maui County Charter section 7-3.)

Compare this to the requirements specified by the City of Del Mar², California, a town of only 4,300 residents.

(<http://www.delmar.ca.us/documentcenter/home/view/103>):

“DESIRED MINIMUM QUALIFICATIONS Knowledge of:

Theory, principles, practices and techniques of organization design and development, long-range planning, public administration, public financing, municipal budgeting, financial administration, program and policy formulation, purchasing and maintenance of public records; applicable state and federal laws and regulations governing the administration and operations of a municipal agency; City functions and associated management,

² There are many other examples that can easily be found on the Internet.

financial and public policy issues; organization and functions of an elected City Council; the Brown Act and other regulations governing the conduct of public meetings; principles and practices of public personnel management and labor management relations; the City's personnel rules and policies; social, political and environmental issues influencing program development and administration in a California coastal community; principles and practices of effective leadership and management; principals and practices of sound business communications; techniques of effective public relations.

Ability to:

Plan, integrate and direct a broad range of complex municipal services and programs; define complex public policy, management and operational issues; perform complex analyses and research, evaluate alternatives and develop sound conclusions and recommendations; present proposals and recommendations clearly and logically in public meetings; understand, interpret, explain and apply city, state and federal laws and regulations governing the conduct of City operations; evaluate, develop and implement management systems, policies and controls; exercise expert, independent judgment within general policy guidelines; prepare clear, concise and comprehensive correspondence, reports and other written materials; establish and maintain effective working relationships with the City Council, all levels of City management, other governmental officials, community and civic organizations, employee organizations, employees, the media and the public; exercise tact and diplomacy in dealing with highly sensitive political, public policy, community and employee issues and situations.

Training and Experience:

A typical way of obtaining the knowledge, skills and abilities outlined above is graduation from a four-year college or university with a major in public or business administration, or a closely related field; and at least ten years of progressively responsible experience in the management and administration of a municipal government; or an equivalent combination of training and experience."

The difference between the two is stark. The City of Del Mar hires its manager. Maui County elects its. Which is more likely to put "the right people in the right places?" Isn't it more likely a professional manager will perform at a higher level and thereby deliver greater value to the county than an elected mayor for whom no background, experience, training or education in management and leadership is required?

Many job descriptions for managers of cities with populations over 100,000 also require (or at least list as "desirable") candidates to possess either a masters degree in business administration (MBA) or a masters in public administration (MPA) in

addition to having requisite experience in a similarly sized community. After all, leadership and management of complex enterprises are art and science. Recognition of this is a central reason cited for the trend to professionally managed cities and counties.

The International Cities/Counties Management Association (ICMA) takes management one step further by requiring credentialed government executives to agree to a code of ethics worth repeating here:

“Tenet 1: Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.

Tenet 2: Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.

Tenet 3: Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.

Tenet 4: Recognize that the chief function of local government at all times is to serve the best interests of all people.

Tenet 5: Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.

Tenet 6: Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.

Tenet 7: Refrain from all political activities, which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

Tenet 8: Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

Tenet 9: Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to

improve the quality and image of public service.

Tenet 10: Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

Tenet 11: Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

Tenet 12: Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.”

These standards can be incorporated into a CAO's employment contract. Additionally, cities and counties can require candidates to agree to these principles as a precursor to consideration for an open executive position.

It is difficult, however, to apply modern executive selection principles and procedures to Maui's mayor selection process. Additionally, county elections are often determined by name recognition and voter turnout is notoriously low. Of 163,000 county residents in Maui County in 2014, only 46,000 actually voted, 25,000 for Mayor Arakawa, about 1/6th of the population.

Furthermore, several commentators have remarked, correctly, that political skills are different from management skills. Some residents have suggested that what Maui needs is, simply, better candidates. While there may be some truth to this, leaving executive selection (particularly when he or she is to be responsible both for leadership and operations) to popular vote is fraught with risk. Besides, most professional managers will avoid a selection process that requires them to mount a political campaign, raise campaign funds, make multiple appearances at public events/potlucks, etc., to apply for a job. Election campaigning is not easy and is not for everyone. It takes money too, which is irrelevant to the job.

Maui County mayoral elections have become huge enterprises in themselves. State records show that Mayor Arakawa raised almost \$900,000³ between 2010 and 2014 in support of his re-election campaign. (<https://data.hawaii.gov/apps/campaignspending/contributions-by-source?regNo=CC10283&electionStart=2010-11-03T00:00:00&electionEnd=2014-11-04T00:00:00>.)

This brings up the concern many have with the role money plays in county governance, real and perceived. It plays no role in the professional manager form of government where managers are selected based on career match to job duties and

³ Counting contributions of \$100 or more, per the Campaign Spending Commission.

position requirements.

Mixing money and governance can be problematic. The Maui News recently published two front-page articles showing how money can, at the very least, create the appearance of political favoritism. The first article focused on the mayor's Kokua Fund and the blurred line between charity and politics. The second explored the relationship between Ryan Kavanaugh, a supporter and financial backer of the mayor, and influence he may have had on the demise of the Maui Film Studio and the sacking of the film commissioner.

Public trust in government is critically important. While a dollar amount can't be easily assigned to it, it's the currency of our democracy. The professional manager model is not completely free from taint, but taking money out of CAO selection goes a long way toward building public trust and identifying people who are best positioned to lead and manage.

B. What is Leadership?

Enterprise leaders today must be forward thinking innovators in addition to possessing management tool chests. World recognized management authority Tom Peters put it this way in his breakthrough best selling book entitled Thriving on Chaos: Handbook for Management Revolution (1991):

“We must learn – individually and as organizations – to welcome change and innovation as vigorously as we have fought it in the past The corporate capacity for change must be dramatically increased.”

The “If it ain't broke, don't fix it” approach⁴ advocated by Maui's managing director at the September 9, 2015, Cost of Government meeting falls well short of this. Additionally, the Council resolution calling for exploration of other forms of government, including council-manager, compels us to be curious. That's what effective leaders do.

Management “thought-leaders” refer to the need to be dynamic, not stale, in order to survive, much less, succeed, in today's fast paced and ever changing world. Creating a “good place to do business” is a concept local governments must embrace in addition to meeting the daily service needs of residents.

“The Dynamic Enterprise is actually not a “thing” at all, not a static structure or end point that can be named and categorized. Instead, the Dynamic Enterprise goes on creating and re-creating itself. It is the description of how an enterprise *acts* to integrate rapidly the dynamism in the environment into products and service-responsiveness to that dynamism.

⁴ Modern life would not exist if this were society's mantra.

“What a Dynamic Enterprise is Not

“[M]any enterprises close themselves off to feedback and the discomfort it may cause. They represent the opposite of the Dynamic Enterprise - a closed or stagnant enterprise with no capacity to integrate and act on new data.”
(The Dynamic Enterprise, Friedman and Gyr, 1998, pp. 19-20.)

Consulting firm Zenger Miller, known for leadership coaching and training, has identified five key behaviors (“Basic Principles”) predictive of effective leadership. One of the five is “Take the initiative to make things better.” That’s what the county council and this Special Committee is doing by inquiring whether Maui County government can be more effective through professional management.

We need 21st century governance to meet 21st century challenges.

II. Maui County Government Performance Needs Significant Improvement

Many disagree with the managing director’s assessment that local government is doing just fine (implying we shouldn’t even look). Below are a few examples of deficits in county government performance (unfortunately the county does not maintain a “dashboard of indicators”):

1. The County is operating with seriously outdated plans. Timely developing, following and monitoring plans is key to achieving smart and efficient growth. Plans done right also support government accountability for performance. Because the county significantly lags behind in planning, there are no good yardsticks for accountability.

a. The county general plan is to be updated every 10 years. The most recent plan was updated in 2012, 22 years after the last plan was approved in 1990. Even when it was approved, it lacked an implementation chapter and contained no milestones.

b. Community plans are targeted to be updated every 10 years. The average age of existing community plans is now 17.8 years, with Hana’s being 21 years old. Only Lanai’s and Molokai’s plans are currently in the process of being updated. In the November 7, 2015, edition of the Maui News, Council member Baisa is quoted as labeling the community plan update process “dysfunctional” while council member Hokama lamented that the process may take an additional 10 years to be completed.⁵ The update process for South Maui, one of the fastest growing regions in the state, hasn’t even begun

⁵ Despite this, there is no visible effort underway to review the process or instigate change to improve performance.

(the council adopted the “current” plan in the last century - 1998; even so, it is disregarded by the Planning Department. See item 5 below.)⁶

c. The most recent state-approved water plan for Maui County is 25 years old. Things have changed dramatically since then, in fact so much that before the current draft, decades in gestation, could even see the light of day, it is totally obsolete with the pending closure of HC&S. “I don’t know if there is enough data to even begin writing,’ Taylor said of the draft plan. ‘I can’t even comment on a timeline at this point.’” (1/09/16 Maui News, p. A-4.)

2. While the County Charter requires the planning director to deliver annual progress reports to the county council and mayor (i.e., here’s where we are and here is where we are supposed to be), no reports have been delivered for years.

“The planning director shall issue a report annually providing a detailed explanation of the implementation and enforcement of the general plan and the community plans to the mayor and the council.” (Charter section 8-8.3, subsection 3.)

Again there is no accountability for performance, or consequence for nonperformance, even though this is designed to be the primary way for the mayor and council to assess compliance with the general and community plans. The public is left with nothing. Failure to deliver key management reports is a red flag, often associated with missed opportunities and other costs.

3. The general plan was adopted without milestones even though the county code requires them. Absent milestones, there is no yardstick for accountability. The implementation chapter, finally adopted in 2014, is invisible and can’t be found on the web. Try to find it on your own.

4. County wastewater systems fall short of the law. A federal court recently found the County’s Lahaina Waste Water treatment plant in violation of the federal Clean Water Act while the county continues to pump partially treated sewage into injection wells, allowing wastewater to leak into near-shore waters. This has been going on for years. Only legal action by concerned citizens and the EPA brought this to a head. This is not progressive or responsible management.

⁶ If Maui had a professional manager, fixing the planning process would begin with the council simply directing the manager to develop an improvement plan and to periodically report on progress. In the current structure, however, operations are the province of the mayor, who serves as both CEO and CAO, and given the strained relationship between the two branches of government, addressing this is unlikely to happen, and in fact has not happened, even though the managing director, described in the charter as aide to the mayor, is to review and presumably improve operations.

5. There is an aroma/perception of politically fueled cronyism driving county decision-making and alliances.

“Let’s be frank. We [directors in the Arakawa administration] are all political.” (Keith Regan, on tape, quoted in the Maui News, “Damage Control,” 10/11/15, p. A4.)

A vivid example of politics influencing executive decision-making is found in the south Maui “Mega Mall” case. Despite unambiguous violation of both a state Land Use Commission order and the Kihei-Makena Community Plan, county-backed developers of the Kihei “Mega Mall” persisted in attempting to develop land set aside for a 123-lot light industrial park into what they proposed to be the largest retail shopping center in Maui County, to the total surprise of the community. The county and developers lost in a contested case hearing brought by community leaders to protect Kihei from illegal sprawl. Throughout the proceedings, county attorneys sat at the counsel table with the developers and argued for the blatantly unpermitted development. While there is no clear link between monetary contributions made to the mayor’s reelection campaign and his executive branch decision to support development favoring donor/development interests, even the appearance of undue influence should be avoided .

6. An independent assessment of county information technology capability undertaken by a respected third-party consultant finds it falling well below average in 14 of 15 categories. Six functions are rated in the lowest tier of performance, deemed inadequate/poses risk, and “fails to meet business needs.” Yet technology is commonly seen as a major way to advance productivity and customer service. (See, Gartner report, March 2013, at <http://www.mauicounty.gov/DocumentCenter/View/83935>.)

7. The relationship between the mayor and council has often been unproductive to the point of hostility, devolving to name-calling (the mayor submitted, apparently voluntarily and in the exercise of poor executive/leadership judgment⁷, articles to local newspapers calling two county council members “snollygosters” [Maui Time, May 12, 2015]). Frankly, there is no excuse for name-calling. However, conflict between executive and legislative branches of government in the elected mayor model is not unknown. See, for instance, the short video posted on the City of Nogales, Arizona, web site explaining why it adopted the council-manager form of government. (<http://www.nogalesaz.gov/index.cfm?fuseaction=content.faq&faqTypeID=34>.) It will sound a familiar chord.

⁷ No school of management supports name-calling as a means to achieve great ends. What cost effect should be assigned to name-calling management?

8. Citizens have no visibility into executive performance, defeating accountability. “Best practice” cities post key objectives on-line for all to see. Maui County does not. The county doesn’t even have a dashboard of critical indicators. The only clear goal the mayor has is to get reelected. But even this blunt tool is absent in a mayor’s second term of office.

9. The Hawaii Tourism Authority estimates Maui County has over 8,000 unpermitted vacation rentals, more than in any other county in the state, yet there is no effective enforcement plan.

10. County administration is organized vertically into silos of activities. No thought is being given to reorganizing horizontally to improve operating performance. One of Zenger Miller’s Basic Principles of leadership is “Manage work horizontally.” Whole books are written on the subject.

“[I]t is increasingly apparent that the long-favored vertical model is, by itself, no longer capable of meeting all the different needs of business. It has been rendered inadequate for today’s demanding competitive, technological, and workforce environment by its inherent shortfalls.”

“By dividing large operations into functional departments, the vertical design guarantees fragmented tasks, overspecialization, fiefdoms, turf wars, the urge to control from the top - all negatives that foster organizational paralysis.”

(The Horizontal Organization, Ostroff, 1999, pp.6-7.)

Professional managers know these things.

11. Delivering delightful customer service to government users is not an overarching goal of county management. Directors may even view the mayor as their key customer: “We are very connected to the mayor. If he loses, we lose.” (Keith Regan, “Damage Control,” Maui News, 10/11/15, p. A3.) High performing organizations spend time identifying customers and stakeholders, then designing specific, measurable, transparent action plans to improve results.

12. The role of “managing director” defined in the county charter is limited and ill defined. His or her role depends on the scope of duties assigned by each elected mayor. In any event, the managing director does not hire or fire department heads, rendering the position toothless and poorly aligned.

13. No customer support systems are in place or under construction to serve the needs of citizens. Most service enterprises and many local governments use well-known IT customer support systems and software to manage telephone calls, emails and in-person service requests. These tools include performance standards, measure service response and turnaround times, thereby creating accountability

and inspiring better performance. The county has none. Each department does its own thing.

14. Most enterprises manage day-to-day operations by means of goals and objectives coupled with clear lines of authority and accountability for results. The county does not, even at the director level. While directors are required by the charter to file annual reports with the county clerk, there is no consistency to them, they include lots of pictures, but provide no real window into performance. It is doubtful anyone reads them. Please review them in your quest to assess the effectiveness of Maui County's current form of government. A professional manager would adhere to a significantly higher standard of reporting and accountability - in part because his or her tenure and compensation is typically tied to achieving specific goals and outcomes.

15. Job descriptions for directors are weak, at best. For instance, the county housing director need only have 5 years of "administrative experience." There isn't any requirement that he/she possess knowledge, training or experience in housing, affordable or otherwise. "Administrative experience" isn't defined and could potentially be satisfied by one who has been a Boy Scout pack leader. By contrast, professional managers are incentivized to select highly qualified directors to help them achieve contracted goals.

16. Maui County is about 3 years behind deadline for formation of a Metropolitan Planning Organization (MPO) for the Kahului-Wailuku-Paia urban zone, an entity required by law in order to receive federal funding for transportation projects. Once an urban region reaches a population of 50,000 or more, an MPO must exist to participate. This threshold was reached in 2010, according to the Maui News - five years ago - and still no MPO.

"It's essential that we move this process along because we're about three years behind deadline to do this." And, "It could have very detrimental consequences with our funding if we don't move forward." (Don Medeiros, newly appointed county Department of Transportation Director, quoted in the 1/8/16 edition of the Maui News, page A1.)

According to the Maui News, Maui County could receive \$186,000,000 in federal transportation funding over the next five years plus another \$400,000 per year for planning and studies in the region, all of which will be lost if the county doesn't get its act together.

Why are we "about three years behind deadline"? Who is accountable for this? The recently departed Transportation Director? The Managing Director? The Mayor? It's all three. Yet, how does the current model provide accountability when the only way the public learns of these things is through the newspaper and the next election is three years away, plus the mayor will not be running again?

The list could go on, but the above should provide a sense that there are major things not working well in Maui County government that could be better handled by a professional manager. Whether the current situation can be attributed to mismanagement or simply to unenlightened management is for you to decide. Either way, there are costs associated with poor performance, lack of transparency and little or no accountability due largely to the absence of effective management personnel, systems and oversight.

III. Role of Maui County's Managing Director Is Inadequate

Regardless of the knowledge, background, skills and training of the county managing director, the current structure does not support good execution and results.

For one thing, the managing director doesn't hire and fire department directors. They report to the mayor. (Charter section 8-1.3.1.) So he/she lacks a core tool to influence and direct their performance, individually and collectively as a team. He/she is a mere aide to a politically elected mayor.

Second, the managing director can only manage functions and tasks assigned by the mayor (County Charter section 8-1.3.2), making his or her role vague.

In a county-manager model, the manager, by contrast, has authority over, and responsibility for, the entirety of county administrative functions; can hire and fire department heads; give them explicit direction, goals and objectives; can reorganize management hierarchy into a cross-functional structure aligned with citizen/customer needs; and can introduce quality management tools and training to boost efficiency and output.

IV. Need for a Management System: Management Matters

After almost 50 years of elected mayors, Maui County has no comprehensive, coherent management system in place.

Although the county manages to a budget, has an organizational chart and a general plan, these, even in combination, do not constitute a management system.

Management systems are variously defined, but generally contain a handful of basic elements.⁸ The Chartered Quality Institute (CQI) identifies six:

- Policy

⁸ A good discussion of management system can be found on the Chartered Quality Institute's website, as well as many others. (See, for instance, <http://www.thecqi.org/Knowledge-Hub/Knowledge-portal/Corporate-strategy/Management-systems/>.)

- Planning
- Implementation and operation
- Performance assessment
- Improvement
- Management review

Maui County has a policy (Countywide Policy Plan) and a plan (General Plan⁹), but it lacks a credible implementation and operations plan, conducts no visible performance assessment¹⁰, and has no improvement mechanism or management review process tied to achievement of the plan.

A. Gathering and Monitoring Data is Critical to Effective Management

Identifying data points needed to monitor and assess performance is central to any management system. “Using data to evaluate what is working and what isn’t is a very valuable management practice. And it is still a practice that is used far too little (even though it is used much more than it was 30 or 50 years ago.)” (The W. Edwards Deming Institute, <http://blog.deming.org/2015/08/myth-if-you-cant-measure-it-you-cant-manage-it/>.)

B. Progress Assessment: Milestones = Yardstick

Maui County doesn’t have a “dashboard” of critical indicators, but it does have a General Plan, which according to the County Code must include milestones:

“2.80B.030 - General plan.

G. Maui Island Plan. The Maui island plan *shall include*:

5. Milestones. The Maui island plan *shall contain specific milestones* designed to measure progress in the implementation of the Maui island plan's vision, principles, goals, and policies. In assessing each milestone, due consideration shall be given to federal, state, and County economic, demographic, and other significant quality-of-life indicators.”

(Emphasis added.)

Despite this clear language, the General Plan was adopted in 2012 without milestones. An implementation plan was promised to be presented later. Thereafter a “Long Range Implementation Program” (LRIP) was enacted in 2014 but again without milestones. To the extent the LRIP contains timing frameworks for

⁹ Creation and adoption of Maui County general and community plans significantly lags timelines for amendment specified in the County Code.

¹⁰ Charter-mandated annual reports by directors on file with the county clerk are superficial, useless, non-standard and disconnected from the General Plan and the Long Range Implementation Plan discussed below.

the multitude of actions to be undertaken, many simply read “ongoing” or speak to broad ranges of time, such as “2016-2022” or “2016-2030.” Accountability is elusive at best and, so far, no interim progress reports have been developed or presented, at least not available to public view¹¹.

C. The Long Range Implementation Plan is Invisible

The LRIP can't readily be found on the county's web site. Since it is a belated chapter to the earlier adopted General Plan, one would assume it could be found by reference to the General Plan on the county's web site. It can't be.

To find the LRIP, first you have to have insider knowledge that one exists. An ordinary citizen seeking it would never find it. I doubt Special Committee members can find it, unassisted. Here's how: sort through a laundry list of ordinances adopted by the county over the past three years to locate the document. Go to <http://www.co.maui.hi.us/index.aspx?NID=165>.

Even the Planning Department's own web page makes no reference to the implementation plan nor does it contain a link to it. While you can navigate from the Department's main page to a separate page for “Division - Plan Implementation,” there is no reference or link to the LRIP.¹²

One might reasonably conclude that a hard to find LRIP serves current political interests, by obscuring an administration's actual performance.

D. Good Management is Supported by a Good Management System (And the Opposite is True Too)

Enterprises led by experienced management typically have a comprehensive management system in place, usually (1) predicated on the organization's vision, mission, values and strategic plan that are (2) translated into key goals and objectives, (3) supported by action plans, (4) anchored by milestones and metrics that are (5) regularly monitored, all of which are designed to create a coherent web of activity making achievement of results more likely.

Cities with professional managers use these same techniques to improve and drive performance, increase citizen trust in government, and foster professionalism. The International City/County Management Association includes information sharing and continuous monitoring and evaluation as key to a municipality's or county's success:

¹¹ The Special Committee may wish to inquire whether comprehensive, regular assessment activities exist.

¹² I am told only one staff person currently works in this division. Compare this to the mayor's staff. Yet implementation of the general plan is critical to our future.

“ICMA has developed an approach and methodology based on five elements that are critical to success:

- ☐ Political will at the highest levels of leadership
- ☐ Integrity in local government systems
- ☐ *A culture of information sharing*
- ☐ *Continuous monitoring and evaluation*
- ☐ The promotion of an ethic of public service”

(Emphasis added;

[http://icma.org/en/international/services/expertise/anti_corruption_transparency?mobile=false.](http://icma.org/en/international/services/expertise/anti_corruption_transparency?mobile=false))

E. What Professionally Managed Cities Are Doing

It is instructive to see what professionally managed cities and counties are measuring. A quick Internet search yields many examples. Websites maintained by the cities of Livermore, California (population 85,000), Williamsburg, Virginia (population 15,000), and Rock Hill, South Carolina (population 69,000), all with city managers, are particularly rich.

Livermore posts its goals and strategic priorities on the web. (See <http://www.cityoflivermore.net/citygov/council/priorities.asp>.) It also regularly polls its citizens using the National Citizen Survey to capture resident opinion about the community and the services it provides. Results are recorded and trended over time for all to see. Results are also compared to other communities across the nation using the same tool, putting assessment of satisfaction into context of a greater universe of data, making it more powerful and revealing. (<http://www.cityoflivermore.net/about/survey/default.asp>.) Cities and counties assessing citizen satisfaction apparently understand who their “customers” are. Compare this to the elected mayor model, which directs management’s attention internally to the mayor and his or her re-election campaign as the central customer. (See, October 11, 2015, edition of the Maui News, “Damage Control” referenced earlier.)

Rock Hill displays a variety of data, entitled “Accountability Updates,” on its website, including the budget, a comprehensive performance dashboard, a separate financial dashboard, and its strategic plan. (<http://www.cityoflivermore.net/about/survey/default.asp>.)

Williamsburg’s website dedicates a page to “Performance Management Dashboards” to display a host of data arranged in concert with the city’s stated goals, initiatives and desired outcomes. (<https://www.williamsburgva.gov/index.aspx?page=1127>.)

F. Conclusion

Plans hidden from view are nearly worthless. Ones that are both hidden and not monitored or measured are even more so.

Hidden plans may serve political interests, intentionally or unintentionally, by depriving citizens of the ability to gauge performance, relegating election campaigning to name recognition and popularity contests.

Good management requires good management systems. Knowledgeable, trained and experienced city and county managers understand this.

Maui County has no comprehensive management system in place.

V. Cost of Turnover

Employee turnover is widely recognized as a cost of doing business affecting the bottom line. While all businesses experience a baseline of unavoidable employee turnover (employees retire, become disabled, move, die, change lifestyles, etc.), avoidable turnover can and should be monitored and reduced, if not eliminated. High performing businesses do just that - monitor turnover carefully and implement human resource strategies to increase employee satisfaction and employee retention.

“What many businesspeople fail to realize is that employee turnover can represent a very substantial cost and lead to erosion of the bottom line.”
 (“The Business Cost and Impact of Employee Turnover,” Bliss & Associates, Inc.,
http://www.blissassociates.com/html/articles/employee_turnover01.html).

A. Employee Turnover Comes at a Cost

According to Bliss, it costs “at least 150% of a person’s base salary to replace him or her.” “The cost will be significantly higher (200% to 250% of annual compensation) for managerial and sales positions.” (“The Cost of Employee Turnover”, The Advisor, William Bliss, 2015, <http://www.isquare.com/turnover.cfm>.) While this estimation of the extent of turnover cost may be surprising, when you consider all the factors affecting the measure, the calculation appears reasonable. They include:

1. Cost of a person leaving:

- Lost productivity commencing when the employee decides to exit and continuing until the position is filled.
- Cost of exit-interviewing and the totality of the employee separation process
- Cost of time needed to cover the departing employee’s function, including that of those who must fill in until a new employee is hired to do the work
- Loss of training, internal and external, invested in the departing employee

- Impact on departmental productivity, including morale and interruption of workflow
- Cost of lost knowledge, skills, contacts, and relationships
- Unemployment insurance and related costs, sometimes including attorneys' fees

2. Recruitment Costs:

- Cost of advertisements and employee referral costs
- Cost of internal recruitment time
- Cost of time and expense incurred to prepare for and interview multiple candidates
- Administrative costs to process new hires
- Cost of drug screens, educational and criminal background checks
- Pre-employment testing

3. Training Costs:

- New employee orientation
- Departmental training
- Cost of trainers and co-employee integration
- Training material and employee handbook costs, in addition to time to offer employee benefits and enrollment expenses
- Training in business operating manuals, human resources policies and procedures, information technology training, etc.
- Time spent by others to bring the new hire up to speed in his/her department

4. Lost Productivity Costs:

- Cost of new employee productivity ramp-up as the job is learned and the employee begins to produce work, estimated at 25% in the first month; 50% the next two months; 75% in months 3-5.
- Cost of loss of co-worker productivity due to relationship building
- New employee mistakes and rework, particularly when, at the director level, a new hire has no background or experience in the field which he or she is to direct¹³
- Loss of management oversight (if the departing employee is a director)
- Lost time on key projects where the departing employee is a participant, particularly evident when the departing employee is a director

¹³ Some recent Maui County directors have been hired to lead areas in which they have no background, experience or education (e.g., Parks, Housing and Transportation directors).

- Costs associated with directional change if newly hired managers/leaders change culture, controls, plans, directions, philosophies, etc., adding costs up and down the chain of command, inter-departmentally as well as externally¹⁴

5. New Hire Costs

- Cost of putting the new hire on the payroll, issuing security passwords, identification cards, business cards, keys, internal and external publicity announcements, telephone hookups, email account establishment, credit card issuance, cell phones, automobiles, updating employee rolls, organization charts, etc.
- Time spent by a new director building trust and confidence in the workplace; getting to know “the territory” and culture

B. Under the Elected-Mayor Model, Turnover of Maui’s Executive Branch Is Total and Simultaneous

With every mayoral election, every director appointed by the mayor loses his or her job (deputies go too, along with many others)¹⁵. (Maui County Charter Section 6-2.3.) This happens every 4 or 8 years, depending on whether a mayor is reelected to a second term. This forced turnover has nothing to do with performance or competence, affecting 12+ key positions (not to mention deputies and administrative support staff) in county government, all tied to critical operations:

- Director of Finance
- Director of Housing & Human Concerns
- Managing Director
- Director of Parks & Recreation
- Planning Director
- Public Works Director
- Director of Transportation
- Director of Water Supply
- Deputy Director of Water Supply
- Corporation Counsel
- Prosecuting Attorney
- The Mayor

Given time spent on the job by the individuals occupying these positions, it’s likely they are at the peak of their game and understanding of their jobs, their

¹⁴ This has occurred in Maui County with rotating Planning Directors, each with a different vision for the future and each responding to a different mayor.

¹⁵ Exceptions: Fire and Police Chiefs, Liquor Control Director and Personnel Director who are hired and fired by others

departments, colleagues, etc. just as they as shown the door. Efficient enterprises strive to retain quality leaders, not toss them.

As the Special Committee heard at its initial meeting in December, automatic job loss among directors is avoided in the professional manager form of government where termination of the chief executive's job does not lead to termination of department director employment. This promotes business continuity, retention of key employees, and enables talented and knowledgeable personnel to build a solid career independent of politics and political concerns. In addition, as discussed below, the wholesale termination of directors based on political fortunes works like acid on county culture, with negative effect on employee morale (on the entire pool of county employees), distorting and diverting the focus of their work.

**C. The Cost of Wholesale Turnover of the Executive Team is Significant:
Estimates Range from \$2.5 - \$4.2 Million Per Episode**

For purposes of ease of calculation, and assigning an assumed/estimated average base salary of \$105,000 and benefits of \$35,000 for each of the twelve individuals referenced above, then applying the more conservative formula advanced by Bliss - 150% - the forced turnover costs associated with the elected mayor model at each election cycle (when a new mayor takes office) is \$2,520,000 in additional and avoidable cost to taxpayers. The 200% formula produces an avoidable cost calculation of \$3,360,000, while the most aggressive percentage, 250%, pegs the avoidable turnover cost at \$4,200,000.

Of course, if the county migrated to the "Council-Manager" model of government, a professional manager would turnover as well at the end of his or her contract, but not with the blunt regularity of an election cycle and, more importantly, his or her departure would not trigger job termination of an entire set of directors, their deputies and administrative staff.

**D. Culture Affects Employee Satisfaction, Employee Turnover,
Productivity and Efficiency**

People working in a professional environment, one that is goal oriented, respectful, collaborative and productive, and where job retention is based on the quality of work, report greater job satisfaction. In turn, satisfied employees are known to be more productive and stay longer in their positions than those who are disgruntled.

This is born out in many studies on workplace culture. For instance, in an article entitled "Job Satisfaction and Employee Turnover Intention: What Does Organizational Culture Have to Do With It?" (Columbia University, Academic Commons, Elizabeth Medina, 2012, <http://academiccommons.columbia.edu/catalog/ac%3A156625>), the author writes:

“While organizational culture varies by industry, employer and even by department, it is important in all working environments. Organizational culture influences employee’s job satisfaction, and in prior studies, high job satisfaction has been associated with better job performance. High performing cultures have also been shown to produce excellent results, attract, motivate, and retain talented employees, and adapt readily to change. Job satisfaction is inversely related to turnover intention and low turnover has been shown to increase organizational productivity and performance.”

Unfortunately, a byproduct of the elected mayor model of government is the intrusion of politics into the work place, particularly at the appointed director level. Maui’s current Managing Director put it succinctly:

“Ultimately, what Rod [Antone] is saying is that our primary goal above all else is to get the mayor [Arakawa] reelected. Nothing else really matters because if the mayor is not reelected none of us have jobs. Let’s be frank, we are all political. We are very connected to the mayor. If he loses, we lose. Our families lose. Those who depend on us lose.”

(Maui News 10/11/15, quoting Keith Regan, Maui County Managing Director, in a conversation with three other key county employees: Rod Antone, county Communications Director, the mayor’s Chief of Staff, Herman Andaya, Jr., and then Maui Film Commissioner, Harry Doenfeld.)

These words indicate a highly politicized county culture of fear, cynicism and cronyism. The interests of citizens and good government are wholly absent. The impact this attitude must have on employee morale can only be imagined as negative and depressing. No good effect on county productivity, employee retention or employee satisfaction can come of it. Employees embarrassed by ineffectual and/or misguided management are uninspired and low producing. Many look for an exit, particularly those with high professional standards and career goals. Poor performers often remain in this kind of environment.

The primary goal of all county employees, particularly directors who are charged with leadership, should be to serve the people to the best of their ability and with great integrity, not working devotionally to keep a mayor, their boss, in his/her job. Several current Maui County directors have publically stated that their job is to support their boss. While that is partially true (good teams work together), the real customer is the people.

At a minimum, county employees focusing on getting a mayor reelected necessarily are taken away from the peoples’ work. How much time is spent in the executive suite on this is not known. However we do know that politics in the work place creates a toxic culture that is suboptimal and tends to favor cronyism over public service. In stark contrast, in the professional manager form of government, performance determines whether a director will retain his or her job.

In summary, toxic work cultures affect productivity negatively, increase employee turnover, result in higher cost due to diversion and suppression of energy, and produce poor results overall.

VI. Departmental Director Selection

A front page article in the December 17, 2015, edition of the Maui News points out the inability of a mayor to hire qualified directors in “lame duck” administrations. Rod Antone, communications director for the mayor, put it this way:

“When asked about the difficulty in hiring department heads in the middle of a lame-duck term, county spokesman Rod Antone conceded that the list of candidates is shorter.

‘It’s a limited shelf life for these jobs,’ he said.

“Arakawa has three years left on his term, and there is no guarantee the new mayor would hire candidates back.”
(Maui News, 12/17/15, p. A-4.)

The charter ties the term of office of directors and deputy directors to that of the elected mayor:

“The term of office of any administrative head of a department who is appointed by the mayor, including corporation counsel and the prosecuting attorney, shall end with the term of office of the mayor” (Charter, Article 6, Executive Branch, Section 6-2, Appointment and Removal of Officers and Employees.)

It would be difficult to calculate the actual cost to the county from appointment of directors who do not possess what one wants and expects to see in an executive leadership team. Avoidance of leadership position mismatches is why enterprises develop job descriptions, minimum candidate criteria and desired attributes - to increase the probability of assembling a great team and to accomplish superior results.

Recognizing the need to address several recent weak department leadership appointments by the mayor, on December 18, 2015, council member Hokama presented the county council with a proposed charter amendment that would require every department head appointment to be reviewed and approved by the council. While this may be necessary in the current environment, it’s a “workaround” that will (1) likely further exacerbate the already poor working relationship between the executive and legislative branches of government, (2) take the council away from its role as policy maker and (3) turn it into that of a policeman.

VII. Balance of Power or Simply Unproductive Infighting?

Speaking of friction between the executive and legislative branches of government, the front page of the December 19, 2015, edition of the Maui News contains an article captioned “Special Council Resolution Advances,” reporting that the county council is proposing a bill authorizing the expenditure of up to \$75,000 dollars a year on special legal counsel fees because the corporation counsel reports to the mayor in the executive branch and therefore has “structural bias.” The article can be found at <http://www.mauinews.com/page/content.detail/id/605115/>.

“Hokama said the disputes between the council and mayor’s administration have led him to distrust those within the county administration.

‘I cannot trust them,’ he said. ‘They don’t have integrity. And there’s no consistency in the application of law within this county from the administration. And that’s a sad legacy for this county. That’s the kind of administration we have.’”

(Maui News, December 19, 2015, page a-4.)

There are countless instances of unproductive friction between the mayor’s office and the council, resulting in unnecessary cost and waste. See, for instance a June 27, 2014, Maui News article outlining the mayor’s directive to administrative departments to limit channels of communication between the executive and legislative branches. Poor communication in any organization is costly; when it becomes toxic, organizations are considerably less effective as employee morale erodes and workflow is stymied. Treatises have been written on the importance and benefits of enterprise cultures supportive of open communication, trust and respect. <http://www.mauinews.com/page/content.detail/id/586992/Mayor-s-directive-will-alter-the-flow-of-communication.html?nav=10>.

Of course, one must expect some level of worthy debate between legislative and executive branches of government, particularly those founded on “balance of power” theory. However, when it devolves to boorish behavior there is no added value: a lose/lose situation where citizens literally pay for the dysfunction and get nothing but discontent and lack of confidence in government in return.

“[S]tructure matters. One can either work within the push-and-pull trade-offs in separation-of-powers settings or choose an alternative constitutional model based on a different conception of the governance process. In the council-manager form, elected officials and administrators are more likely to work together to advance democracy and professionalism.” (James Svava, School of Public Affairs and Director, Center for Urban Innovation, Arizona State University.)

VIII. Transparency and Accountability in Government

A. Transparency

Transparency of county government is a specific goal expressed in Maui's Countywide Policy Plan, a guiding document enacted into law in 2010 as part of the general plan update process (see p. 78 of the CPC):

"K. Strive for Good Governance

Goal: Government services will be transparent, effective, efficient, and responsive to the needs of residents."

President Obama¹⁶ applauded the need for transparency in government in an Executive Order made early in his administration:

"Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing."
(https://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment)

The International City/County Management Association (ICMA) describes the benefits of transparency as follows:

"Here are 10 reasons why you should shape your best local government practices around transparency:

- ② **Build Trust within Your Community** Making more information publicly available is an empowering act that will help rebuild trust between citizens and government. Read about a recent Gallup poll that indicates how favorably local government compares to state and federal government on the trust issue, and find out what you can do to build high trust in your community.
- ② **Gain New Ideas** Create an online forum for your local government where residents are encouraged to participate by providing alternative ideas. Brush up on new ways in which communities interact with their governments online.
- ② **Increase Community Engagement** Learn to use internal and external communication skills to build a more engaging community. ICMA University workshops offer professional development skills that teach your local government leaders how to engage your community.
- ② **Understand Your Community's Needs Better** By measuring your effectiveness and performance, you are better able to gauge what your citizens and community need. Read more here about how measurements can evoke transparency within your community.
- ② **Empower Citizens** When local governments are transparent, levels

¹⁶ Regardless of political affiliation, the concept remains valid.

of trust increase. When the trust level is high, citizens begin to feel empowered to take responsibility. Read here about the open city concept.

- ⑦ **Showcase Reform** By highlighting growth and change, you are able to give your citizens a sense of what you have done and what else there is to do. Research about and statistical analysis of your functions are key to showing your citizens how you're working for them. ICMA offers research activities and surveys for your community.
- ⑦ **Attract Citizens to Your Government** Use social media and GIS technology to build map data and increase operational efficiency. Read about creating your community network with GIS social media apps from ICMA Strategic Partner Esri.
- ⑦ **Boost Your Economy** By adding a new set of marketing tools and design, bring the focus back to the strengths of your community. Read about Richmond's local government and its transformation to rebrand and market its city.
- ⑦ **Foster a Local Government with Professionalism** The more effectively a local government works with members of its community, the more business will be drawn to that area. Practice transparency and bring business to your community.
- ⑦ **Educate Your Citizens** Through social media, stay connected and educate your constituents. Knowledge is the first step in making change. Read more about the advantages of social media and its use in local government practices." ([http://icma.org/en/icma/newsroom/highlights/Article/103512/Top_10_Benefits_of_Transparency.](http://icma.org/en/icma/newsroom/highlights/Article/103512/Top_10_Benefits_of_Transparency))

One can see from above how government transparency could be transformative for a community. Despite this, and despite the county's adoption of the Countywide Policy Plan 5 years ago, no steps have been taken to implement transparency, efficiency and accountability here.

The need for local government transparency was raised with Mayor Arakawa a few months ago, prompting him to argue that his administration is completely transparent, pointing to two three ring binders on his desk, each about 3 inches thick, containing the most recent county budget. All citizens have to do, he said, is read the 700 or so pages to understand what he's doing. Furthermore, he claimed, his work is so complex it could not possibly be distilled it into a few key indicators to be published, tracked, measured and reported on the county's website for all to see.

Juxtaposed against this backdrop, many professionally managed cities use "dashboards" to display key goals and objectives as well as to track and report progress made toward achieving them. Several examples of civic dashboards can be found on the web. See for instance the City of Williamsburg, Virginia,

(<https://www.williamsburgva.gov/index.aspx?page=1127>), and the City of Rock Hill, South Carolina (<http://www.cityofrockhill.com/departments/office-of-management-budget/more/office-of-management-budget-omb-/accountability-updates>). Both employ city managers to carry out operational functions.

B. Accountability

Accountability is a well-established way to improve organizational and employee performance:

“The positive results of practicing a constructive approach to accountability include:

- ② improved performance,
- ② more employee participation and involvement,
- ② increased feelings of competency,
- ② increased employee commitment to the work,
- ② more creativity and innovation, and
- ② higher employee morale and satisfaction with the work.

These positive results occur when employees view accountability programs as helpful and progressive methods of assigning and completing work. For example, managers who involve employees in setting goals and expectations find that employees understand expectations better, are more confident that they can achieve those expectations, and perform at a higher level.” (<https://www.opm.gov/policy-data-oversight/performance-management/reference-materials/more-topics/accountability-can-have-positive-results/>; federal Office of Personnel Management memorandum entitled “Accountability Can Have Positive Results.”)

According to the Government Performance and Results Act (GPRA) (<https://www.whitehouse.gov/omb/mgmt-gpra/gplaw2m>, 1993) all federal agencies are required to

Develop five-year strategic plans that must contain a mission statement for the agency as well as long-term, results-oriented goals covering each of its major functions,

Prepare annual performance plans that establish the performance goals for the applicable fiscal year, a brief description of how these goals are to be met, and a description of how these performance goals can be verified, and

Prepare annual performance reports that review the agency's success or failure in meeting its targeted performance goals.

Also see, "A Stakeholder Approach to Strategic Performance Measurement," by Atkinson, Waterhouse and Wells, published in Sloan Management Review, Spring 1997, pp. 25-37.)

Neither the Maui County mayor nor any executive department employs this discipline. As mentioned earlier, while annual reports are required of each department per the county charter, the reports are paper-bound and filed in the county clerk's office where they go unread. None contain any of the things mentioned in the GPRA and contain heavy doses of photographs of staff. In general they are devoid of goals and objectives, milestones and measurement data.

Timely updating of our community plans is a critical activity that should be emphasized in a community dashboard for all to see. If highlighted, one would expect to see a yellow light appear at least a year before an update is due, which in the case of our average plan, would have been nine years ago. A red light should appear at the 10-year threshold, 8 years ago. Yet, no mention of it is even made in the Planning Department's annual report.

This lack of accountability comes at a cost. According to one business journal article:

"It is estimated that a lack of systemic accountability costs Corporate America tens of billions of dollars a year in terms of employee theft, re-work, return of defective products, inefficiency, workplace conflicts and misunderstandings.

This, in turn, leads to ineffective work practices, quality control issues and differentials in work practices, as well as leadership and supervisory behaviors and loss of valuable employees because of disillusionment, discouragement and cynicism.

Billions more in income is lost by companies who lose formerly loyal customers because of a lack of accountability that results in substandard to poor customer- service norms, resulting in customer- service experiences that "turn off" the customer."
(<http://www.bizjournals.com/triad/stories/2005/01/17/smallb3.html>.)

The turned off customer, in our case, is the citizenry.

Some argue that the elected mayor model has accountability in the form of periodic elections. After all, this is what democracy is all about. But in the absence of information to gage a mayor's performance, mayoral selection is largely relegated to a popularity contest or name recognition. Furthermore, in a mayor's second term there is no accountability other than impeachment for malfeasance in office.

C. Conclusion

It is difficult to measure the cost of inefficient, opaque and unaccountable government, particularly in the absence of good financial indicators of which there are few in Maui County (adherence to budget is about it). Transparent and accountable government, on the other hand, exposes inefficient and poorly performing executives and department heads, forcing them to either step up or step out. This is the “secret sauce” of quality management identified in the 2011 IBM study entitled “Smarter, Faster, Cheaper” where it found that council-manager government is 10% more efficient than the elected mayor model as a result of better civic management.

Summation

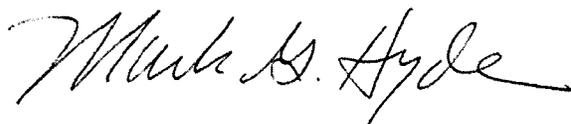
Maui County government structure is not working effectively or efficiently. Change is needed. **“Cities with city manager forms of government are nearly 10% more efficient than cities with strong mayor forms of government.”** (IBM Global Studies Report, <http://www.sterling-il.gov/docs/IBMReportSmarterFasterCheaper.pdf>.)

This does not mean we cannot have an elected mayor. It’s time, however, to recast structure so that

- an elected mayor is a leader, representative and consensus builder,
- the council develops policy, and
- a manager professionally administers operations while reporting to the county council.

Let **the people decide** whether to keep the current form of government or adopt a more modern organizational structure better suited to the 21st century and the demands of the job.

Placing the matter before the people in November 2016 will achieve ultimate accountability. It’s called democracy. Those currently vested in the system should have nothing to fear from the voice of the people because we are a nation founded on government of the people, by the people and for the people, not for a political class.



Mark G. Hyde
4320 E. Waiola Loop
Kihei, HI 96753
(808) 874-3839
hydem001@hawaii.rr.com

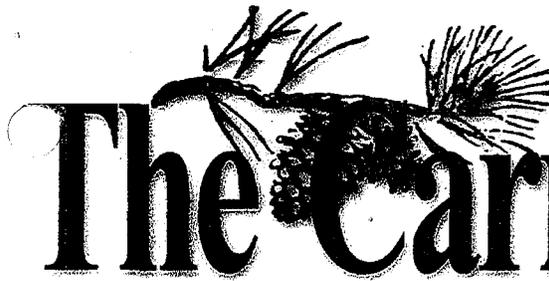
MAYOR VS COUNTY EXECUTIVE

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Still no charges against McInchak

By MARY SCHLEY

Published: July 12, 2013

MORE THAN a month after Carmel police spent three hours searching city IT manager Steve McInchak's Carmel Valley home — seizing computers, an iPhone and thumb drives — the city has not asked the Monterey County District Attorney's Office to prosecute him.

McInchak, who may have illegally accessed computer files of city employees, council members and management, according to the warrant filed in Monterey County Superior Court June 13, remains on paid administrative leave, pending the outcome of the investigation.

Monterey County Chief Assistant District Attorney Terry Spitz said he hasn't been asked to file charges against McInchak, but he knows Carmel P.D. has employed a computer forensics expert to examine the equipment seized from his home.

"That's extremely time consuming," he said. "It can take days, if not longer."

"All I can offer at the moment is that we are diligently working on the case and want to make sure a thorough investigation is conducted," said Carmel P.D. detective Rachele Lightfoot. "I wish I could give you a tighter timeline, but I don't even know myself. The DA's office has been given the same information. Rest assured, it is a top priority for our department."

According to the warrant prepared by Lightfoot and signed by Monterey County Superior Court Judge Robert O'Farrell before it was served the evening of June 5, city officials were suspicious of McInchak earlier this year and hired a computer investigator, Mark Alcock, to track his activities. City administrator Jason Stilwell signed a \$25,000 contract with Alcock Feb. 25, and Alcock began investigating McInchak while pretending to be auditing the city's computer systems, according to the warrant.

The Pine Cone asked for a copy of Alcock's contract, which is supposed to be a public document under the California Public Records Act. City officials responded by providing a copy with almost all of the meaningful portions deleted. It shows he is being paid \$200 per hour, plus expenses. Otherwise, the part of the six-page agreement provided to The Pine Cone contains only generic information common to most

contracts.

Even Alcock's work address was removed. Administrative services director Susan Paul said it "appears to be the home office contact for the contractor." She cited his personal safety as the reason, although no provision for keeping a government consultant's address secret exists in state law.

Also deleted was any information about what Alcock's qualifications are, what he is being paid to do, who owns the product of his work, and when it is supposed to be finished.

His first two invoices, dated April 22 and May 22, were similarly redacted. The invoices show that he billed taxpayers for his services in the amount of \$10,000 for April and \$8,800 for May, but information about what he did was withheld. He was also reimbursed \$465 for airfare, \$96 for hotel, \$137 for car rental, \$60 for airport parking and \$200 for two hard drives in April, and \$196 for hotel, \$120 for two days of food, \$140 for rental car, \$60 for airport parking, and \$1,000 for two airline tickets in May. The city refused to say where Alcock traveled or why.

His April invoice totaled \$10,958, and his May invoice totaled \$10,316. Stilwell said both have been paid, though no checks for those amounts, or any checks written to Alcock, appeared in the check registers for April 1 to June 15 provided to the city council for approval in its monthly meeting packets.

Some records are exempt

California law and a series of unequivocal court decisions require city officials to disclose all official documents to the public, with a few specific exemptions, but city officials would not explain why so much information about Alcock is being withheld.

According to the California Public Records Act, "Personnel, medical and similar files are exempt only if disclosure would reveal intimate, private details." Employment contracts are not exempt.

Information can also be withheld if it disclosing it would interfere with a police investigation, but Stilwell refused to say how describing Alcock's qualifications or revealing where he traveled could compromise the investigation into McInchak's alleged misdeeds.

"Mr. Alcock's contract was approved in accordance with the city's municipal code, and his invoices have been paid to date," Stilwell said. "As you are aware, Mr. Alcock's services are in connection with an ongoing investigation. Therefore, while we have done our best to be forthcoming in responding to your questions, we cannot comment further at this time."

Pine Cone publisher Paul Miller said the secrecy surrounding the investigation of McInchak is "hard to fathom," and he called on city officials to be more forthcoming.

"Since Stilwell and his group came on board, a lot has changed, and it's not good," he said.



[Previous](#) [Home](#) [Next](#)

Expert to get \$103K for McInchak, audit of city computers

By MARY SCHLEY

Published: September 13, 2013

THE FORENSIC computer expert whose name became public in a search warrant served at IT manager McInchak's Carmel Valley home in July will be paid \$103,500 for helping the City of Carmel with its computer network and the ongoing criminal investigation, the city council unanimously decided Tuesday. Council members approved the contracts without seeing them.

According to amendments to two existing contracts with computer consultant Mark Alcock, he will receive \$43,500 for assessing the city's computer network and \$60,000 for the criminal investigation.

The proposal by city administrator Jason Stilwell to increase the amounts of two existing contracts — when previously only a single \$25,000 contract with Alcock had been revealed — further muddies the issues surrounding the investigation of McInchak, whom city officials accuse of accessing city computer files while working as IT manager, a position he has held for 17 years. McInchak and his assistant, Rose Franzen, were placed on administrative leave months ago, and a warrant was served at his home June 5, when police seized computers, thumb drives and other electronics. They both continue to receive their full salaries.

At that time, The Pine Cone requested a copy of the contract with Alcock and received a heavily redacted agreement dated Feb. 25 that contained nothing more than generic language present in all city contracts. Even the “work product” he was to provide was redacted by public officials and attorneys.

But Stilwell said this week that contract was for Alcock's “risk assessment” of the city's system, not for his investigation into McInchak's alleged wrongdoing. For that forensic work, Stilwell said, a second \$25,000 contract was drawn.

“We originally brought Alcock on to survey our system, and we needed someone expert on technology to be able to do a risk assessment of our computer system and the network and applications, hardware, software and user support,” he said. “That was originally why he came in.”

According to Stilwell, a second contract was drafted later, after Alcock uncovered McInchak's alleged nefarious computer activity. "We also needed his forensic services to support the investigation," he said. "So we hired him to do that, too," because the district attorney's office did not have anyone available to do the work.

But in the search warrant served at McInchak's home, Carmel Police detective Rachelle Lightfoot said Alcock told her he was hired by the city on Feb. 27 "to do an examination of McInchak's work computer," and that his investigation began on March 6, when he went to McInchak's office to examine his desktop computer while administrative services director Susan Paul and Carmel Police Chief Mike Calhoun stood by.

"Alcock told me that he had been working with McInchak under the ruse that he was conducting an audit of the city's computer system and servers," she wrote in the warrant, which was served June 5 and returned to the court, with the list of confiscated items, June 13.

More than three months later, McInchak remains on paid leave, with no charges filed against him, and the district attorney's office has yet to receive any documents from Carmel P.D. pertaining to the investigation, according to Monterey County Chief Assistant District Attorney Terry Spitz.

"It's ongoing," Stilwell confirmed. "The one thing is there are a lot of files to go through — thousands of computer files to go through."

Spending upped

At the Sept. 10 council meeting, the council OK'd increasing Alcock's two contracts — which were originally approved outside the public eye — to \$43,000 and \$63,000, respectively. He has already received three payments totaling \$43,984, though they did not appear in the city's check register until months later.

Stilwell could offer no explanation for their delay, nor could he explain why only one contract was provided to The Pine Cone when two had been signed.

While the contracts were not included in the council's packet for the Sept. 10 meeting, the first amendment council members approved was to "continue support services and IT consulting to continue the ongoing examination of the city's IT infrastructure and related technology needs." Alcock will be paid up to \$43,500 for "information technology consulting services," including "infrastructure, network security, documentation and meeting support; assistance as needed with the implementation of the strategic technology plan; and additional IT consulting as needed."

The second amendment refers to a contract for "ongoing IT professional examiner services" and simply notes Alcock will be paid up to \$60,000 for those services.

No members of the council or the public requested further information on the contracts or questioned the spending.

The Pine Cone has requested copies of all agreements with Alcock.



The Carmel Pine Cone

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[Previous](#) [Home](#) [Next](#)

Editorial: The secret resume

Published: September 20, 2013

WHEN YOU apply for a job, you usually submit a summary of your education and experience that you believe make you qualified. Do you expect this document, which is called a “resume,” to be secret from the people you hope to be working for?

The answer is so obvious that the question hardly bears asking. Yet, we must ask it, because Carmel’s city manager, the Sphinx-like Jason Stilwell, and one of his personal army of secrecy-addicted lawyers, decided that the resume of Carmel’s new planning director, Rob Mullane, could not be released to Pine Cone reporter Mary Schley, who asked for it several weeks ago to help her prepare a thorough profile of Mullane for the people of the city to read.

Mullane himself was very cooperative, and the profile was printed Aug. 30. But Schley still wanted the resume itself, to help her understand why the city decided to hire him, and also to check out the resume’s truthfulness.

Why did she want do that?

Because planning director is one of Carmel’s most important, and most public, positions. Indeed, it would be no exaggeration to say that the town’s future hangs on the planning director’s expertise, intellect and personality. Will he drive permit applicants crazy by nitpicking their plans for remodels and new construction, second-guessing their use permits and signage, and enforcing CEQA with the zealotry of diehard member of the Sierra Club? Or will he let the town become another Orange County by opening the door to well heeled property owners and politically connected developers? Will he see his job as helping applicants navigate the permit process, or making it harder for them? Like everybody on the seven continents, Mullane has surely heard of Clint Eastwood and the Hog’s Breath, but does he have a clue about the importance of names such as Junipero Serra and Frank Devendorf? Will he be an adept and accessible spokesman for the town’s planning commission, or someone who hides from questions and criticisms? Etc., etc.

These are not idle questions, but go to the very heart of Carmel’s past, present and future, and here at The Pine Cone we take them quite seriously. And nobody is better at addressing them than our city hall reporter, Mary Schley, who not only regularly writes comprehensive, insightful and objective articles

about Carmel politics, she is also the source of 90 percent of the news from Carmel that's absorbed by 90 percent of the people who live in, care about or are just curious about the town and its goings on. She is also a vast source of knowledge about Carmel's recent history and current controversies, because she's attended, or viewed online, almost all of the town's city council and planning commission meetings for the last 15 years. If you read this newspaper regularly, you know the byline "By Mary Schley" (formerly, "By Mary Brownfield") is like an old friend, and indicates that the story that follows will be interesting and trustworthy. Need we also add that Ms. Schley's great-grandfather, S.F.B. Morse, founded the Pebble Beach Company, and that her family has been in the Monterey Peninsula for four generations?

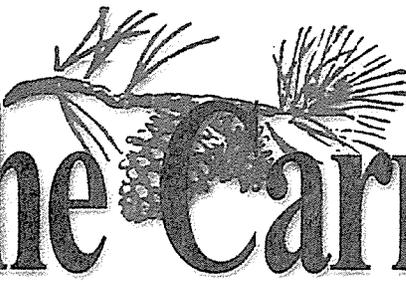
Given the weight of her credentials and the importance of her reporting, you'd think it would be a very simple matter for her to be given Mullane's resume. Instead, she was given a flat, "No."

Jason Stilwell is responsible for this decision, but he hid behind a lawyer when he made it. The lawyer who provided him with cover works for a formidable Los Angeles law firm, and while she "only" bills \$210 an hour to decide what The Pine Cone can have, she presumably has some experience in the field and is aware of the laws giving the public access to government records so the public can understand what its government is up to.

Defying not only the law but all common sense, and displaying an astonishing ignorance of how things work in Carmel, however, this lawyer decided Mullane's resume could not be given to Schley because (a) it was not a "public record," and (b) because Mullane was entitled to privacy where his resume was concerned.

These conclusions are both utterly, totally, completely, absolutely, overwhelmingly and unmistakably wrong, not only as matters of law, but also of everyday expectations and experience. Only someone who's biased or stupid could reach them. The planning director works for the people, and therefore, they are entitled to know who he is and why he was hired. Secrecy in government leads to corruption and abuses of power, and it must not be tolerated (except for matters of foreign intelligence and national security; presumably, the Carmel planning director will not be involved in either of those). Numerous California laws and decisions of its Supreme Court are unequivocal on all these points. While Mayor Jason Burnett and other members of the city council are always helpful and accessible to the media and the public, other people at city hall definitely aren't.

We will not bother asking again for the resume to be released, because doing so would be futile. Instead, we will only sound a warning: The uncooperative and unfriendly attitude which has taken hold in the administration of Carmel City Hall will lead to something bad, if not disastrous, for this precious city. When it happens, we will cover it, if we're allowed to.



The Carmel Pine Cone

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[Previous](#) [Home](#) [Next](#)

Contracts with IT investigator raise questions

By MARY SCHLEY

Published: September 27, 2013

CITY ADMINISTRATOR Jason Stilwell signed three separate work agreements with computer expert Mark Alcock over a period of less than four months, at a total cost of \$128,500 to taxpayers. Stilwell has said he hired the Southern California specialist to evaluate the city's vast computer network, as well as to investigate alleged hacking and misuse of computers by IT manager Steve McInchak, whose home was searched by police in June.

McInchak, who has overseen the city's information technology department for 17 years, has been on paid administrative leave for the past several months and has not yet been charged with committing any crime. The Monterey County District Attorney's Office is waiting for the police department to submit a file containing the criminal allegations, if any.

Meanwhile, the city has agreed to spend more than \$128,500 in taxpayers' funds for Alcock's services, according to the agreements provided to the Pine Cone by the city.

The first contract that Alcock and Stilwell signed Feb. 25 — and which was provided to The Pine Cone in June after a search warrant was served at McInchak's Carmel Valley home — is so heavily redacted that even the very basic declarations stating the city's needs and that Alcock is qualified to perform the services are whited out, as are the scope of work, the completion date, the ownership of work product and Alcock's address. The signatures of Alcock and Stilwell, however, are visible. This contract stipulates Alcock will receive \$200 per hour, up to \$25,000, "and reasonable expenses."

A second contract with Alcock, dated May 5, also for "an amount not to exceed \$25,000," received by The Pine Cone Friday states the city is "interested in information technology consulting and assessment services," and needs qualified consultants to "assist in the installation and configuration of network routers and security devices and other general information technology services." Its scope of work is described as, "installing and configuring network routers and security devices," "provide security guidance," and "additional information technology services as necessary." Alcock's address, as well as the signatures of the people who signed the contract, are redacted.

Amounts increased

Finally, a third agreement, dated June 19 — two weeks after Alcock accompanied Carmel Police Chief Mike Calhoun, administrative services director Susan Paul and police officers to serve the search warrant — also in “an amount not to exceed \$25,000,” indicates the “city is interested in appointing a computer forensic examiner,” who will “assist in the coordination of the investigation related to information technology.” The first two items listed in the “scope of work” are hidden, and the signatures are redacted.

And while the city clerk used to be required to attest to contracts, none of the agreements with Alcock includes a space for her signature.

This month, council members decided to increase the amounts of the second and third contracts, though they didn't discuss how the money would be spent or their decision to approve the added expenses, which call for increasing the contract for consulting and assessment to \$43,500, and the contract covering the McInchak investigation to \$60,000.

Stilwell and his lawyer, Heather Coffman, have said the information in the contracts was removed in order to protect Alcock's privacy and because they involve an active criminal investigation. He said the existence of three separate contracts with the same consultant — which is very unusual — is due to the fact the projects Stilwell asked of Alcock are all different.

With the information redacted, the extent of those differences is difficult to determine.

It's legal, but is it right?

While the Carmel Municipal Code has strict rules about how contracts are approved, and the checks and balances designed to ensure public funds are being used reasonably, contracts for “professional services” — such as attorneys and consultants — are specifically exempted, according to attorney and former Carmel City Councilman Gerard Rose.

“All purchases of and contracts for supplies, services, with the exception of professional services, materials, or equipment by the city, or by an officer or employee thereof, shall be made only in accordance with and pursuant to the provisions of this chapter,” reads CMC section 3.12.030. The provision is a bit difficult to understand, due to the vagaries of its punctuation, but it basically exempts contracts for “professional services,” from the rules for purchasing.

“This is how they get around the requirements when hiring lawyers and other professional services,” Rose explained.

Therefore, not only did Stilwell not need to obtain council approval for the contracts with Alcock or put the work out to bid, they were not subject to the section that prohibits dividing contracts into amounts less than \$25,000 to avoid the higher scrutiny required by the code for more expensive agreements. That section explicitly states, “No undertaking involving amounts in excess of \$25,000 shall be split into parts to produce amounts of \$25,000 or less for the purpose of avoiding the provisions and restrictions of this article.”

Carmel attorney Stephen Beals reads the code differently, however, and said it applies to professional services, too, though the city administrator is authorized to enter agreements with contractors for amounts up to \$25,000 without council approval. As for whether Stilwell violated the code section regarding splitting contracts, he said, that distinction lies in the details.

“The issue hinges upon the following: Did they intentionally split them? They can't divide the contracts

to avoid city council approval, and if they did, it clearly violates that provision," he said. "Looking at the specifics of the contracts is what's going to tell you."

But with the crucial points redacted in the name of the ongoing investigation, it's difficult to know.

As far as Rose is concerned, regardless of whether the Alcock contracts are covered by the CMC, he said, "I don't think that's the end of the inquiry."

"The reason why we have a 3.12 chapter in the municipal code and a California Public Contract code is because we want accountability, we want fairness, and the public has a right to know," he said. "That's obviously the policy not only of the California Legislature, but of the Carmel City Council."

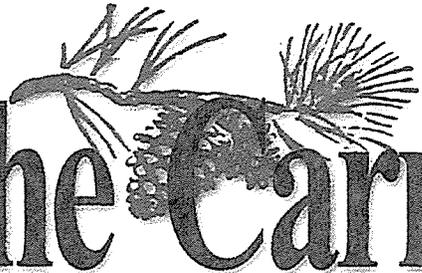
And this particular council, Rose noted, "was swept into office with a claim of transparency."

"So why are they inclined to hide the details of these contracts?" he asked. "Are they legally correct in keeping it from you? Yes. But is it wise? No. And is there a defense for keeping it from the public? If there's a reasonable defense, I'd like to hear it."

Keeping information about the approval and details of such contracts secret is "an affront to the people of the state and of the city," since it's their dollars being used to pay them, according to Rose.

"Frankly, I find this whole tenor where we try to keep things from the public very troubling," he said.

"You can argue that Steve McInchak, whatever the merits of the claims against him, he's entitled to know what's going on — and so is the public, especially when they're paying close to \$100,000 to investigate him."



The Carmel Pine Cone

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[Previous](#) [Home](#) [Next](#)

Secrecy at city hall reaches new heights

- CRA president exchanges hidden messages with mayor, city administrator

By MARY SCHLEY

Published: October 25, 2013

A REQUEST from The Pine Cone for emails between Carmel Residents Association President Barbara Livingston, city administrator Jason Stilwell and Carmel Mayor Jason Burnett was refused last week because the city considers much of their correspondence too sensitive or inflammatory to allow the public to read it.

The Pine Cone asked for the emails in September, under the provisions of the California Public Records Act, which clearly requires that government officials release emails, letters, documents and other written records that are about official business.

But the city responded to The Pine Cone's requests by providing heavily redacted copies of approximately 75 emails dated between early July and the end of September. Many of them had their entire contents redacted. The coverups were made in white, so it's impossible to tell how much writing was hidden.

In her Oct. 15 cover letter explaining the city's refusal to provide the documents, San Francisco attorney Heather Coffman said the people who wrote and received the emails had a "privacy right" that outweighed the public's right to see them.

"Please note that personal identifying information contained in response to the PRA requests has been redacted in order to protect the privacy interests at issue. For example, correspondence of members of the public detailing their concerns as citizens have been redacted because the public interest in disclosure of this correspondence is clearly outweighed by the interest in nondisclosure to avoid a chilling effect on the public."

She cites several legal decisions that she believes authorize her redactions.

In other words, if a member of the public — even one who served as a city councilwoman for 12 years and is president of a well established and outspoken residents group — says anything to the mayor or city

administrator about a code violation, a neighbor problem, a businessman with whom she disagrees, a person she believes should be appointed to one of the decision-making bodies or practically any other matter, no member of the public is entitled to know about it. The citizen — even though she's acting as a lobbyist for a special interest group — could even make secret agreements with city officials.

An Aug. 27 email from Livingston to Stilwell, for instance, contains no subject heading and has all of its contents, except the salutation and sign-off, blocked out. In response, Stilwell wrote, "I'm familiar with the issues you raise."

A Sept. 6 email from Livingston to Burnett, entitled, "Meeting with you," has its entire contents blanked out.

On Sept. 12, Livingston wrote to Stilwell, "Someone forwarded this message to me about <redacted>." On Sept. 15, Stilwell wrote, "Also, to follow up on the subject of the original email <redacted>. He was provided a copy of our ordinance."

On July 29, Stilwell wrote to Livingston, "Thanks Barbara, this is very helpful. I'll let you know where we are on the code compliance <redacted>." The email to which he was responding had a blank subject head and all but "Hi Jason," and "Barbara," blanked out.

Partially redacted emails from Sept. 3 and Aug. 30 involve names and contact information for candidates for the historic resources board and forest and beach commission.

Some of the information taken out of the emails is cryptic. On Sept. 3, Burnett wrote to Livingston, "Barbara, I was not at the city council meeting when this was discussed, so I don't know exactly what was discussed (I'm reviewing the tape but haven't made it through yet.) It isn't clear what the mention of <redacted> in the opening means, but I'll look into it. Thanks, Jason." He was responding to a Sept. 2 email from Livingston in which all of the text is blocked, so it's impossible to know what is being referenced, but the statement she is asking about was made in an open meeting that was also broadcast on TV and online.

The city also redacted trivial items and information everybody already knows. For example, in an Aug. 21 email, Burnett asks Livingston if he can attend the CRA's Fiesta in the Forest along with two other people, whose names are blanked out. He refers to his mom, so evidently one of those names is Nancy, and the other is perhaps his wife, Mel.

"Do you know who I should contact regarding tickets to tomorrow's Fiesta in the Forest? I believe/hope that <redacted> and I have RSVP'd already, and I'd like to add my mom <redacted> to the list," he wrote. "We can bring cash or a check to the door."

Messages The Pine Cone was allowed to see involved Livingston's suggestion to add page numbers to the table of contents in the agenda packet, the CRA's offer to host an Oktoberfest party for city employees, and conversations about the Centennial 2016 committee, on which Livingston sits with former Mayor Sue McCloud and former Nielsen Bros. Market owner Merv Sutton.

Emails between Livingston and Burnett and her and Stilwell also focus on Covered California and a health reform call center, the city's decision to create a traffic committee comprising staff rather than citizens, the status of two lease proposals for Flanders Mansion, the possible existence of a time capsule to be opened in 2016 and a report about 2016 created when Jean Grace was mayor, and how the council would handle an event proposed by restaurateur and former mayoral candidate Rich Pepe.

But even within those emails are eliminations, including names and email addresses of senders and

recipients. In one, councilman Ken Talmage's name and email address are blocked out in the "to" field, but the email is signed by him.

When asked if she would provide the copies herself, Livingston said she deletes every email as soon as she is done reading it. When asked if she would give permission to the city to release full copies of the messages, she simply replied, "No, thanks."

The city's refusal to release the full emails came just five days after the council "reaffirmed" the city's policy "that the Public Records Act be construed in favor of public disclosure."

That agreement came after the city would not provide planning director Rob Mullane's resume. It has also refused to convey details of the investigation of IT manager Steve McInchak and his assistant, Rose Franzen; any information about why former deputy city clerk Molly Laughlin, former building official John Hanson and former children's library employee Linda MacDonald were fired (or whether they were fired); what McInchak and Franzen have been paid while they're on leave; and other matters.

"The people of Carmel and the whole Monterey Peninsula depend on us for news about what's happening at city hall," Pine Cone publisher Paul Miller said. "After all these years, it's extremely weird for the city to start hiding so many things."



The Carmel Pine Cone

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[Previous](#) [Home](#) [Next](#)

Two more city hall employees placed on leave; assistant city admin resigns

- Quits over secrecy at city hall

By MARY SCHLEY

Published: Nov. 1, 2013

ASSISTANT CITY administrator Heidi Burch resigned and cleaned out her office in Carmel City Hall this week, and city administrator Jason Stilwell placed two more longtime employees on paid leave, apparently pending investigation into alleged misconduct.

Burch, who became city clerk in 2005 and took over assistant city administrator duties a few years later, told The Pine Cone Thursday she decided to leave the post after city officials redacted dozens of emails requested by the newspaper and said they were being provided under her authority.

“I have been informed that city officials are reporting that I left my position as a result of my recent marriage. That is categorically untrue,” Burch said. “There are many reasons for my resignation. The final determination to leave was after I became aware that documents sent in response to a Public Records Act request had been redacted and sent out under my name, without my review, approval or my ability to send them to the city attorney for legal review, as is current city policy.”

She was speaking of the more than 75 emails between former city councilwoman and Carmel Residents Association President Barbara Livingston and Stilwell, as well as emails between Livingston and Mayor Jason Burnett.

She declined to say more but urged The Pine Cone “to request a copy of my letter of resignation from the city.” The request has been submitted but generated no response from city hall.

Burch, whose exit interview was conducted by Stilwell and Police Chief Mike Calhoun Oct. 29, is on vacation and will then be on call to assist with city business as needed.

Former city councilwoman Paula Hazdovac noted Burch was named the city’s Employee of the Year a few years back and also observed that the City of Carmel won the Golden Pine Cone for the Best Place t

Work in 2010. Stilwell became city administrator the next year.

Since his arrival in September 2011, at least a dozen employees have either retired, quit, been fired or been placed on paid administrative leave. The latest to join that last group are administrative coordinators Leslie Fenton and Margi Perotti, both longtime city employees, who on Tuesday were placed on paid leave pending investigations into alleged misconduct. Other recently ousted workers quickly heard about and disseminated the news.

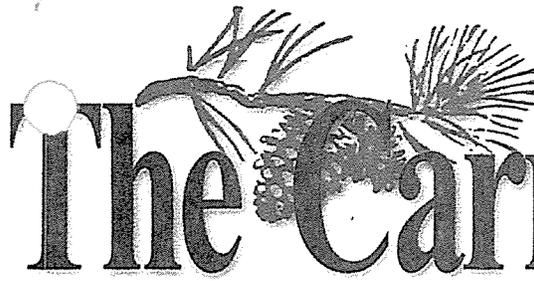
Neither Fenton nor Perotti is an at-will employee, and they can seek help from a lawyer via their union.

Their removal from city hall puts them in a growing group that includes former building official John Hanson, who was fired this summer for unknown reasons, and IT manager Steve McInchak and his assistant, Rose Franzen, who were placed on leave in June.

Police also searched McInchak's home in Carmel Valley on allegations of computer hacking, but so far no reports have been submitted to the Monterey County District Attorney's Office for possible filing of criminal charges.

Well known longtime builder Chris Tescher lamented the changes in a city hall with which he deals on almost a daily basis.

"Carmel used to be a small town where you knew the cop on the street, where when public servants left there was always a celebration at city hall, and there was a sense of familiarity between city government and the citizens," he said. "Now the long-term employees of an entire department have been removed without a word and have been replaced by a service from another town. This reflects the working of corporate America, not a quaint village by the sea as Barbara Livingston so often calls Carmel. If the 'bottom line' is the 'only line,' then life as we know it in Carmel will never be the same."



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[Previous](#) [Home](#) [Next](#)

Little controversy in Livingston emails

By MARY SCHLEY

Published: Nov. 8, 2013

THE CONTENTS of dozens of emails which the City of Carmel fought to hide — but which were released to The Pine Cone Tuesday after the attorney who heavily redacted earlier versions was taken off the job — revealed the concerns of a woman heavily involved in the operation and preservation of her city but little else.

The correspondence between former councilwoman and Carmel Residents Association President Barbara Livingston and city administrator Jason Stilwell, as well as with Mayor Jason Burnett, focused on code enforcement, planning issues, recommendations of candidates to serve on city boards, and some of the chatter around town regarding recent hires and investigations into longtime employees, leaving wonder about why they had been hidden in the first place.

Livingston, who at first also refused to let The Pine Cone see her emails, changed her mind at the same time the city did.

"I am in agreement that the City of Carmel, in consultation with the city attorney and myself, will release the emails exchanged between me and city officials," Livingston said in an email to The Pine Cone this week. "Newspaper editors and readers will see that these messages are nothing more than the observations and thoughts of a private citizen who deeply loves her beloved village of Carmel-by-the-Sea. I will, of course, continue to communicate with the city and urge fellow citizens to do the same."

Different attorney, different results

The change of heart came after Burnett said last week that attorney Heather Coffman, who works for the San Francisco law firm of Liebert Cassidy Whitmore, had failed to uphold the council's promise to interpret the California Public Records Act broadly, in favor of the public's right to observe the city's business. Stilwell began submitting all requests for public documents to Coffman several months ago, instead of running them past city attorney Don Freeman. The result was that much was hidden — including all sorts of things that shouldn't have been.

Released Tuesday, with very few redactions (such as private email addresses and the like), the emails between Stilwell and Livingston address issues such as sign regulations, fairy lights lit year-round, houses being used as illegal short-term rentals, right-of-way encroachments, negotiations about the future of Flanders Mansion, and the possibility of selling unused city art to help pay for renovation of the Forest Theater and the city's 2016 centennial celebration.

Her emails to Burnett were more personal and articulated her worries about the current state of the city. In early September, she encouraged him to introduce all the new directors to the community at a meeting that "should be very schmoozy, very fuzzy, very warm" — which was eventually done at Sunset Center in mid-October.

"Put a human face on these people. Tell everyone how to contact the city with concerns — everything through Jason Stilwell? Is that really a good idea? Looks very controlled," she wrote. "I'd invite [Pine Cone publisher] Paul Miller too. You might even address the commute of <redacted> and <redacted>. Explain why they don't move here, live here." (She was likely referring to administrative services director Sue Paul and public services director Sharon Friedrichsen, both of whom were hired this year by Stilwell and lived in Southern California.)

"I don't know how you will explain the employees on administrative leave, but that is a problem that needs addressing," she said, adding that he should also say that "you will be using local legal firms from now on."

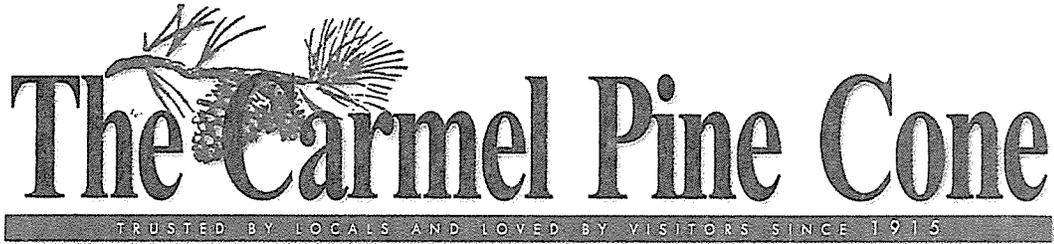
In an email entitled, "Confidential," she began, "Hi Jason. This email is just for you. I'm deleting after sending." In it, she articulates some of the personality conflicts in the centennial committee that includes former Mayor Sue McCloud and retired businessman Merv Sutton, "rumors and disquiet about the <redacted>," chatter about the city paying for commute costs, employees living outside the area "not being vested in the village" and being friends of Stilwell's, and the lack of transparency in the monthly check register — an issue that has since been addressed by the addition of a very basic column indicating what the expenses are for. She also suggested the city hire a PR person "to anticipate controversial things, to meet with the press, to issue press releases about what is happening in the city." (Former longtime journalist Lewis Leader has been hired to fill this role.)

"I am maintaining a strong defense for the city but feel I am losing the battle," she concluded.

Other correspondence with Burnett included an inquiry whether he had considered joining a campaign called "Mayors Against Illegal Guns," and suggestions about candidates to serve on the city's boards and commissions, with the idea that they might eventually run for city council.

"For my part, I would like to congratulate Barbara for being quite a conscientious citizen," said Pine Cone publisher Paul Miller. "Her advice is certainly being taken seriously at city hall, but there isn't really anything in her emails to raise eyebrows, and they obviously should never have been hidden in the first place."

"Thank you to our staff for straightening out the situation, following city council policy, and releasing what our outside law firm should have released a month ago," Burnett told The Pine Cone Thursday. "It is pretty clear why this law firm will no longer work on our public record requests."



The Carmel Pine Cone

TRUSTED BY LOCALS AND LOVED BY VISITORS SINCE 1915

January 2 - 8, 2015

Dear Readers,

The seemingly unstoppable and much hyped partnership behind Pebble Beach Food and Wine, Los Angeles Food and Wine, and restaurants in Monterey, Los Angeles and Las Vegas, has devolved into a series of nasty lawsuits packed with allegations of fraud, conspiracy and theft. Kelly Nix has our exclusive report.

After yet another closed session of the city council, two more municipal employees fired during the infamous tenure of city administrator Jason Stilwell have been rehired. Mary Schley has that one.

Homes in Carmel have become very popular as bait in online scams. Mary Schley tells how the scams are usually done -- but you'll be left wondering why anybody would fall for them.

Palo Corona park offers perhaps the most stunning scenery in Monterey County, and after just a few more years it may even offer a place to park your car. Chris Counts has the story.

The plan to make some of the water from Clint Eastwood's property at the Mouth of the Valley available for development, while also putting some of it back into the Carmel River, is starting its trek through the permit process. The new Monterey County sheriff has announced his top appointments while also undoing some of the personnel moves of his predecessor. The search is over for the source of the unending stream of water flowing beneath a home on Torres Street, but the result isn't very satisfactory to the homeowner. And, after saying "thank you" to the CIA in an editorial two weeks ago, this week I thank yet another much vilified group of public officials dedicated to keeping this country safe.

To get this week's [complete Pine Cone](#), please [click here](#). If you have an informed opinion about one of our stories and would like to submit a letter to the editor, please [click here](#). And please don't hesitate to contact me if you have questions, comments or concerns.

Paul Miller, Publisher
paul@carmelpinecone.com

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By Brittany Nielsen

Carmel City Manager resigns

City Council hoping to replace Jason Stilwell by Thursday

Published 11:25 PM PDT Oct 01, 2014

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8 KSBW

CARMEL, Calif. — Carmel City Manager Jason Stilwell has resigned from his position, city officials announced Wednesday night.

The decision is being called a mutual agreement, reached after five hours of behind-closed-doors negotiations.

Stilwell said he believes it will help Carmel move forward.

The announcement was scheduled for 7 p.m., but came an hour-and-a-half later.

JASON STILWELL OUT AS CARMEL CITY ADMINISTRATOR

Immediately following the announcement, Stilwell's nameplate was removed.



After months as a lightning rod of

Mayor Jason Burnett said Stilwell will be compensated for 60 days as stipulated in his contract. Stilwell will also be compensated for unused vacation and compensation time, and for two months of on-call work to help the interim city manager.

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The Carmel Pine Cone

Volume 102 No. 1

On the Internet: www.carmelpinecone.com

January 1-7, 2016

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DALLAS

From page 1A

came about, change might have come a lot sooner than it did," Dallas remarked.

He decided to throw his hat in for the mayor's race after business owners, residents and former employees — none of whom he wished to name — urged him to run, he said, though residents Merv Sutton and Elinor Laiolo are co-treasurers of his campaign.

"People who know me know how passionately committed I am to Carmel. This is where I grew up, where I live full-time, and where my heart and soul belong," he said.

Often seen walking through town, frequenting local businesses and establishments, and attending numerous events inside and outside the city, Dallas is more visible to the public and his constituents than any other council member.

'People who know me know how passionately committed I am to Carmel'

"I spend a lot of time on the streets of our village, talking to residents and business owners, and they turn to me when they have problems," he said. "They know

that I am open and attentive to their concerns and will get involved wherever I can to help them find solutions."

Dallas said he's in the best position to do that as mayor, and his priorities would include hiring more city employees to help decrease the workload and reduce burnout for those already on the payroll, repairing and upgrading city buildings that are long overdue for improvements, getting the city's boards and commissions to work more closely with the council and with staff, protecting public safety to ensure ongoing quick response times and top quality care, and continuing to work with the other Peninsula mayors toward a solution to the Peninsula's water-supply issues.

And, he said, he'd make sure the council meetings, which have run famously long during the past few years, would be shorter and move more quickly, though he wouldn't stifle people who want to speak.

"Long, lengthy meetings into the late hour of the night do not serve the public well and actually discourage public participation," he said.

Dallas pointed to his years building homes in town, as well as his time on the commission, as evidence he knows the

Dallas says he's the one to move city past Stilwell era

By MARY SCHLEY

"I BELIEVE I am the best candidate running for mayor to move us beyond the past failures and continue healing and rebuilding our community and our government, because I will put Carmel first," city councilman Steve Dallas said this week, as he made official his bid for the mayor's seat in the April 2016 election.

Dallas, a lifelong city resident who served on the planning commission and was elected to the council in 2014, joined the council right in the middle of the tur-

moil wrought by former city administrator Jason Stilwell and his second-in-command, Susan Paul. He likened it to walk-

ing into a disaster and acknowledged that, while everyone would like to forget the whole thing and move on, voters should think back on that era at city hall when deciding whom to vote for.



Steve Dallas

"When I think of the employees who were hurt, the costly investigations that went nowhere, the legal matters over wrongful terminations, the wasted taxpayer dollars on contracts, the citizens' march on city hall, I am still shocked at the weird, strange, dark time we went through as a community," he said. "I don't want to repeat that past."

Dallas' opponent, Ken Talmage, was a member of the council that hired Stilwell in September 2011 and was vice mayor for part of his tenure. But he was also there, alongside Dallas, when the council fired Paul, negotiated Stilwell's departure, and brought back former city administrator Doug Schmitz, who took over in October 2014 and began the process of smoothing things out before abruptly leaving the post a year later due to health concerns.

"If the council members had listened to the people expressing their concerns and to The Pine Cone raising serious questions for a full year before change

Burnett to return \$25K to contributors

By MARY SCHLEY

SINCE HE is not running for reelection next April, Mayor Jason Burnett is offering to give the roughly \$25,294 sitting in his campaign war chest back to the people who donated it to him.

And if they don't want it back, he said he'll find something else good to do with it.

The law doesn't require candidates to return unused campaign funds to the contributors, and Burnett said he conferred with a Sacramento law firm specializing in campaign finances, just to make sure he was following the rules.

"They said it was unusual to offer, but I thought it was the right thing to do," he said. "People contributed to my candidacy, and if I'm not going to be a candidate, I should give them the opportunity to take that back. And whatever is left, we'll

See BURNETT page 16A

See DALLAS page 17A

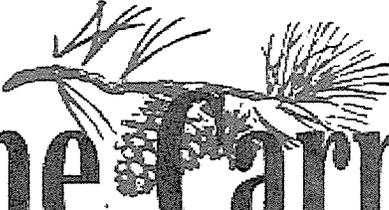
city rules well and is good at reaching compromises. He also said he's an independent thinker — proved by some of the split votes on the council over beach fires and other issues — and "can disagree without being disagreeable."

"I always bring an attitude of enthusiasm and commitment to my work. I come well prepared, know the issues, and exercise plain common sense," he said.

Finally, he said, people recognize his "youthful spirit, my energy and my honesty."

"They know when I commit to a job, I get it done, because I give it 110 percent effort," he said.

The city's election will take place April 12, and so far, Talmage and Dallas, with the latter running from a safe seat, have pledged to run for mayor, while planning commissioner Jan Reimers and resident Dave Mosley have announced they are running for council. With no incumbents seeking reelection, the filing period for the mayoral and council races is open until Jan. 20.



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[Previous](#) [Home](#) [Next](#)

City pays Miller \$600K to drop suit

By MARY BROWNFIELD

Published: July 16, 2010

HUMAN RESOURCES manager Jane Miller and her attorney, Michael Stamp, received \$600,000 to drop her sexual-harassment lawsuit against Carmel and city administrator Rich Guillen, the city council announced after a special closed session Tuesday night. Without explicitly defending themselves, city officials approved a settlement that implied their belief Guillen and the city did nothing wrong.

The agreement also gives Miller four months' accrued leave, so she can earn more money for retirement, take advantage of medical insurance and enjoy some other employee benefits. She has not been at work since 2008 and received her last paycheck in December of that year, after exhausting her sick leave and vacation time. She will not return to work, according to Stamp.

Last June, Miller filed suit against the city in Monterey County Superior Court accusing Guillen of sexual harassment, age-based discrimination, retaliation and other malfeasance. She alleged he had inappropriate relationships with employees and bestowed unfair pay raises on them while discriminating against others, driving them to quit. Miller also said he acted inappropriately toward her, both affectionately and in wielding his power over her as her boss.

After mediation efforts failed, the case had been set to go to trial in September, but under the guidance of the city's insurance agency and attorneys from both sides, the council agreed to the settlement July 13.

"We are pleased," Stamp said the following day, adding that the settlement resulted from "months of discussions that were very protracted and very difficult," but "always professional."

Much of the discussion focused on benefits and retirement, and the amount of compensation, which is always a sticking point in negotiations.

Stamp said he and Miller have already been paid the \$600,000, though he declined to say how much of it he received.

The money was paid by the city's insurance agency, attorney Rick Harray explained later. The insurance agency, which the city pays almost \$228,000 per year, examines claims and recommends how they should be resolved, "and any city that doesn't follow its advice is nuts," he said. If the city council had decided to fight the allegations in court, it would have done so on its own dime.

"This settlement means all parties avoid the further burden and expense of litigation and the uncertainty of a jury trial. By resolving this matter and avoiding months of litigation and expenses, we can look forward to redirecting more energy and resources to the many challenges facing the city in these uncertain economic times," the city council said in a statement Tuesday night.

According to the agreement, Miller is barred from pursuing further legal action against the city, and she agreed to indemnify it from any demands "resulting from or relating to the claims raised in this complaint."

Each side is covering its own legal expenses — which are extensive — and as is typical when cases are settled, neither side admitted any wrongdoing or liability. They also agreed the settlement should not be construed as being "strictly for or against any party."

Nonetheless, Miller is the one who got paid.

"Everyone reading the agreement knows you don't pay \$600,000 on a whim," Stamp said. "You pay \$600,000 on a very serious case, and that's what happened here."

After receiving the money, Stamp said he and Miller provided documents to the city to file for the dismissal of the case in Monterey County Superior Court.

"There are no further court appearances," he said. "There's nothing left to do."

As for whether Guillen will keep his job as city administrator, neither Harray nor Mayor Sue McCloud would comment.

(Jane Miller's husband, Scott Miller, a candidate for county sheriff, sued the City of Pacific Grove in 2004 for unlawful termination after being removed as police chief. He received a cash settlement in that case.)



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[Previous](#) [Home](#) [Next](#)

Jane Miller releases Guillen's emails, but not her replies

By MARY BROWNFIELD

Published: July 30, 2010

AFTER RECEIVING a \$600,000 settlement from the City of Carmel and apparently agreeing not to publicly discuss the case, former human resources manager Jane Miller went on a public relations offensive this week, supplying two Monterey County newspapers with emails she claims demonstrate that city administrator Rich Guillen had an inappropriate relationship with her.

But the messages supplied by Miller to Monterey County Weekly and the Monterey County Herald, in which Guillen compliments Miller and tells her he “adores” her, do not include any statements that go to the heart of Miller’s claim that she was harassed at work and retaliated against when she rebuffed Guillen’s advances. And they pointedly do not include any of Miller’s emails to Guillen.

Miller and her lawyer, Michael Stamp, ignored repeated requests from The Pine Cone for the complete email exchanges. Without them, there is no way to judge the propriety of Guillen’s behavior or the validity of her lawsuit.

“These emails seem inappropriate, but they could also be innocent, especially if she responded in kind,” said a source close to city hall who did not want to be identified. “Did she tell him to stop, or that she liked him, too?”

The absence of Miller’s statements to Guillen in extensive email conversations — reportedly carried on in the evenings and over weekends — apparently did not trouble either the Herald or the Weekly. The Herald, while acknowledging that the emails contained no “overt sexual overtures or direct sexual language,” gave them front-page exposure and said they “shed more light” on Miller’s suit.

And Monterey County Weekly, which earlier erroneously reported that Guillen had been suspended and the city “fined” as a result of Miller’s suit, quoted Miller’s attorney as claiming that the emails demonstrated Guillen sabotaged a city investigation of Miller’s complaints by “not telling the truth.”

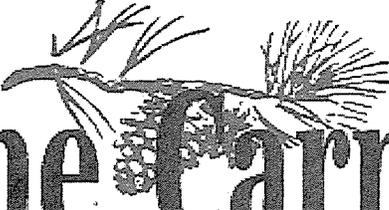
The investigation Stamp referred to, undertaken by the city after Miller first made her complaints in 2008, and which concluded her complaints were baseless, was also kept secret until Miller apparently gave it to the Monterey County Weekly.

The settlement does not include any admission of guilt or liability by the city or any of its employees, and Guillen remains city administrator. Miller and Stamp have received the \$600,000; all but a \$10,000 deductible was paid by the city's insurance carrier, which recommended the settlement rather than a long court fight.

State law prohibits cities from releasing employment records or employee evaluations, and city officials responded to this week's controversy with silence, except to reiterate a statement confirming the city council agreed to the \$600,000 settlement and saying they "looked forward to redirecting more energy and resources" to the city's challenges in these "uncertain economic times."

But a lawyer for the city complained that Miller's media strategy was a betrayal of an agreement the case would no longer be discussed in public. "The settlement was concluded with the mutual understanding that all parties and counsel would not reveal the kind of information which has since been released," said Jon Giffen of Kennedy, Archer & Harray.

And while Stamp and Miller took their claim of inappropriate emails to the Herald and the Weekly, and Miller even posed for a MCW photographer, neither responded to numerous requests from The Pine Cone for comment.



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[Previous](#) [Home](#) [Next](#)

City grapples with Miller suit aftermath

- Councilman calls for closed session to 'discuss Guillen's performance'

By MARY BROWNFIELD

Published: August 6, 2010

AS SOME residents pleaded with the Carmel City Council to publicly defend itself in the sexual-harassment case filed by former human resources manager Jane Miller — which was settled for \$600,000 last month — and others called for the firing of city administrator Rich Guillen, city attorney Don Freeman said the city has already hired a consultant to examine its policies on sexual harassment and other issues. The topic arose during the public comment period at Tuesday's council meeting.

"City hall, please defend yourself to your citizens," said resident Kathy Fredrickson. "Help us to understand why any former employee has received a settlement and how to solve the problem.... For the first time in my life, I'm embarrassed to tell people where I live."

Barbara Livingston asked the council whether it wants the status quo or change when it comes to Guillen's place as a manager.

"The people of Carmel have spoken loud and clear they want change," she said, adding praise for councilman Jason Burnett's call for a closed session to discuss Guillen's possibly firing. "I urge Mayor [Sue] McCloud to set a date certain for this meeting, so that this issue will not continue to fester."

"Our small town has experienced enough shame over this — it is time to make a change at city hall," resident Carolyn Hardy said. "It is time for Rich Guillen to leave, either by departure or removal. Without a clean start, this community and city hall cannot forget and cannot heal."

Allison Schilling said Guillen should be held responsible for the situations in city hall that led to the lawsuit and settlement. "The person in power is always the person incumbent upon to do the right thing," she said. "It doesn't matter if the person who works for the person in power walks into the office naked." Barbara Brooks asked, "Please, would this council do something — do something to repair the terrible damage that has happened to our city?"

Attorney Skip Lloyd urged the council not to ignore the allegations. "Insurance companies do not pay that kind of money if there is no merit to a claim," he said of the \$600,000 paid Miller by the city's insurance carrier as part of the settlement.

Their comments reflected the information vacuum that has existed since Miller first complained to the council via a letter from her attorney, Michael Stamp, in May 2008. Since then, Guillen and the city have remained silent, allowing Miller and her supporters to dominate the public debate. While the details of Miller's allegations are well known, the evidence supporting the city's conclusion that her charges were baseless has remained secret.

Employee privacy rights

City attorney Don Freeman told those gathered at the standing-room-only meeting that the city can not violate employee privacy rights by discussing the details of Miller's allegations and Guillen's job in public.

But he said the city has already hired someone to review sexual harassment policies, as well as those relating to email communications by city employees. (Some of Miller's allegations of inappropriate conduct involve after-hours emails Guillen sent her, and last week she released a few excerpts from those emails.) Freeman also said all city employees undergo sexual-harassment training every year, and that training could be expanded.

After the meeting, Burnett reiterated his desire for a closed council meeting to "discuss Guillen's performance" on the job and an open session to review general employment policies. But he has not called for Guillen's resignation.

"Would I like to be able to say more? Yes. But do I ultimately believe I should play by the rules? Yes," he said. "I think action needs to be taken. We owe it to ourselves, we owe it to the employees, and we owe it to the community to take action in such a way that we can say we looked at what happened, we have learned from that, and we have put in place improved policies to the extent they need to be improved."

Hundreds of pages

Burnett also posted on his website, www.burnettforcarmel.com, more than 500 pages of documents filed with Monterey County Superior Court in connection with Miller's suit. Many of the documents had not previously been widely available.

In one of the documents, dated May 20, 2008, Stamp advised the mayor and city council of Miller's complaints. He demanded Miller be placed on paid administrative leave with full benefits and that Guillen be "removed from his role as supervisor of city employees." He also told the mayor and council Guillen favored certain employees, had turned against Miller and was trying to eliminate her job, was a profligate spender of city funds, and had "unchecked power over the lives, salaries and personal lives of city employees." He said Guillen's actions constituted retaliation, gender-based discrimination and harassment, as well as age-based discrimination.

Three days later, in response, Guillen sent a letter to Miller's Pacific Grove residence saying he would not place her on paid leave. She had taken sick leave for what Stamp said was "work-related stress and depression," on May 21, but he demanded she return to work.

Two months later, Stamp sent a letter reiterating the allegations and the noting the city's apparent lack of response. He included a statement from Miller describing Guillen's alleged behavior, including his hugging her when she was on the phone in her office and tousling her hair, as well as calling her "beautiful" or "Hottie," and sending after-hours emails deriding the council and mayor, and soliciting personal information.

An 'intimidated' HR manager

"I regret not directly confronting him about his inappropriate behavior, but I did not because I was intimidated, afraid to lose my job, and well aware of the absolute power in the work place and in city government," Miller wrote in her October 2008 statement. While the alleged discriminatory and abusive behavior was under way, she did not contact any other city officials about them, according to sources familiar with the case. Miller was human resources manager at the time.

She also declined to participate in an investigation the city launched into her complaints in 2008. Danville-based investigator Karen Kramer was hired by the Liebert, Cassidy, Whitmore law firm on behalf of the city, and after Stamp asked a litany of questions about the goals, mission, planned handling and confidentiality of the investigation, and did not receive the responses he wanted, Miller decided not to consent to Kramer's interview.

In February 2009, Kramer concluded her investigation, which involved interviewing a dozen city workers. While most of the five-page letter on Burnett's website is redacted, because it deals with private employee matters, it stated, "Based on Ms. Kramer's findings and conclusions, the city has determined that Ms. Miller's allegations are not substantiated. Accordingly, this investigation is now closed and deemed complete."

Four months later, she filed her lawsuit.

The Carmel Pine Cone

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On the Internet: www.carmelpinecone.com

September 24-30, 2010

YOUR SOURCE FOR LOCAL NEWS, ARTS AND OPINION SINCE 1915

High-powered brain trust lined up for authors fest

By MARY BROWNFIELD

A SECRETARY of State, musicians, comedians, actors, economists, historians and other accomplished writers and thinkers will speak during the fourth annual Carmel Authors and Ideas Festival Sept. 24-26 at Sunset Center.

And the event warmup has a record 3,000 students from all over Monterey County meeting authors and attending talks Thursday and Friday, organizer Jim McGillen said. Julia Bolz, a lawyer who sidelined her career to build schools for girls in Afghanistan and has so far completed 18, is their keynote speaker, but the kids will also hear from other literary stars, such as Eric Schlosser ("Fast Food Nation.")

McGillen and his wife, Cindy, always try to line up different award-winning authors and speakers, including New York Times best-selling writers, and Pulitzer and Nobel Prize winners, each year, and the fourth year of the festival is no exception.

"There will be book signings and opportunities to meet the well known speakers. Attendees can even expect casual conversations and informal exchanges with the speakers," the McGillens tell prospective attendees. "We promise the weekend will exceed your every expectation."

The biggest name in the lineup is Condoleezza Rice, the 6th United States Secretary of State under President George W. Bush and also the first woman to serve as National Security Adviser. Throughout the weekend, she will discuss "Extraordinary, Ordinary People: A Memoir



Condoleezza Rice and Eric Schlosser are two of the big names appearing at Sunset.



of Family," described as the story "of a little girl trying to find her place in a hostile world and of two remarkable parents, and an extended family and community, that made all the difference."

Schlosser, a Monterey Peninsula resident and investigative journalist who is author of the seminal "Fast Food Nation" and producer of the film, "Food, Inc.," agreed to take part this year and is speaking to students as well as adults, according to McGillen.

"You talk about something that's timely," he observed, considering the recent food contamination scare involving

See AUTHORS page 17A

No decision on Guillen's future

PINE CONE STAFF REPORT

DESPITE WIDESPREAD expectations of an announcement Thursday afternoon from the Carmel City Council regarding the future of city administrator Rich Guillen — accused of sexual harassment and age discrimination in a lawsuit the city settled in July for \$600,000 — the latest of several closed-session meetings netted no decision late Thursday.

After two hours, Mayor Sue McCloud and city attorney Don Freeman reported the council took no action, and there was no mention of any future meeting when the issue might be taken up again.

The Sept. 23 closed session had been a continuation of a meeting Tuesday night that had media and community members waiting several hours in council chambers, and reporters and a handful of vocal residents again flocked to city hall Thursday, hoping to learn the fate of a man several of them have said should be fired.

But again, city officials had nothing to report about the Guillen, who was named in a suit against the city by former human resources manager Jane Miller in June of 2009 for allegedly making sexual advances, engaging in inappropriate behavior, favoring two particular employees and driving others to quit.

Sparks fly over wildfire prevention plan

By PAUL MILLER

WHEN A major wildfire breaks out, it costs taxpayers plenty to put it out. And that's why federal and state agencies offer generous grants of taxpayer funds for fire prevention — money that Monterey County officials want to help avoid a repetition of 2008's disastrous Basin Complex Fire in Big Sur.

But when a fire prevention plan tailored to obtain grant money was presented to the Monterey County Board of Supervisors Tuesday, environmentalists from around the state

See WILDFIRES page 12A

Sierra Club sues to stop Sand City resort

Cal Am, water district, developer listed as defendants

By KELLY NIX

THE SIERRA Club has filed a lawsuit against the Monterey Peninsula Water Management District and California American Water over a proposed \$300 million oceanfront resort in Sand City.

The suit, which also lists as a defendant National Security Guaranty — the developer behind the Monterey Bay Shores Ecoresort in Sand City — seeks to overturn a water permit for the resort approved by the water district in August.

The Sierra Club alleges the water district violated the California Environmental Quality Act by not examining the environmental impacts of the water permit on the Carmel River and its steelhead fish population before issuing the per-

mit, which allows Cal Am to deliver 90-acre feet of water per year to the resort.

"Our suit does not contend that SNG does not have water rights" for the resort, Sierra Club attorney Larry Silver told The Pine Cone Wednesday. "It just says that if the resort is going to get water, it shouldn't be at the expense of the Carmel River."

The 39-acre Monterey Bay Shores Ecoresort, proposed on a degraded site formerly used for sand mining, includes a 161-room hotel, 138 condominiums, and conference and spa facilities, and a dunes restoration habitat project. It would be located across Highway 1 from Seaside High School.

The project has the potential "through cumulative considerable impacts associated with the delivery of water to adversely affect the threatened steelhead and its designated habitat," according to the Sierra Club's 13-page lawsuit.

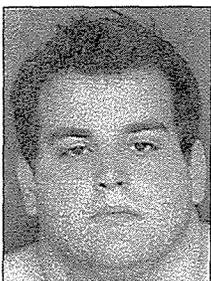
See RESORT page 23A

DUO SUSPECTED OF PILFERING FROM GRANDMA

By MARY BROWNFIELD

OVER THE course of nearly a month, a Pebble Beach man and his female accomplice allegedly stole more than \$12,000 from his step-grandmother, who lives in Texas.

They used her personal information to obtain credit cards and access to her bank accounts, according to Monterey County Sheriff's Cmdr. Tracy Brown.



Theodore Lopez



Amanda Spears

Theodore Lopez and Pacific Grove resident Amanda Spears, both 22, were arrested Sunday on charges of elder abuse, identity theft, burglary, grand theft and conspiracy, and taken to Monterey County Jail.

The crimes came to light after Lopez' father and stepmother, with whom he lives on Forest Lodge Road, began receiving statements for credit cards in the name of the grandmother, 85-year-old Nita Fallis, Brown said. They also noticed numerous withdrawals from Fallis' checking and savings accounts.

But Fallis "is in an extended care home in Texas," Brown said, while Lopez and his parents live in the home she owns in Pebble Beach. After receiving the suspicious credit-card and bank statements, the suspect's parents notified authorities the afternoon of Sept. 13.

Lopez and Spears, who lives on 19th Street in Pacific Grove, are both unemployed, according to the sheriff's office, and Brown said they used Fallis' personal information to obtain three credit cards, with which they purchased telephones, videogame players and games, and laptop computers from local businesses.

He said they also used Fallis' stolen personal information to gain access to her checking and savings accounts.

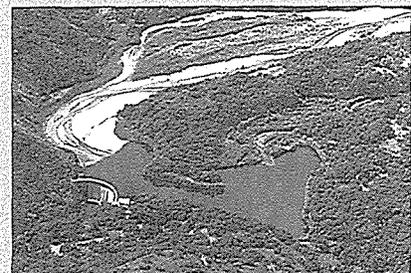
See GRANDMA page 17A

Dam removal to cost ratepayers \$49M

By KELLY NIX

CALIFORNIA AMERICAN Water has filed an application with the state so it can begin the extensive and costly process of removing the San Clemente Dam on the Carmel River to improve habitat for the river's

See DAM page 7A



PHOTO/PAUL MILLER

San Clemente Dam (lower left) will be removed because its reservoir is filled with sediment; it could collapse in an earthquake, and it's in the way of fish trying to spawn.

The Carmel Pine Cone

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July 30-August 5, 2010

YOUR SOURCE FOR LOCAL NEWS, ARTS AND OPINION SINCE 1915

Disputed Ansel Adams plates include Mission, Lone Cypress

By CHRIS COUNTS

A DEBATE is raging over the authenticity of 60 glass negatives purchased for \$45 by a Fresno man who believes they were created by the late photographer, longtime Carmel Highlands resident Ansel Adams.

Beverly Hills appraiser David Streets — who grabbed headlines this week when he valued the negatives at more than \$200 million — shared 17 of the controversial photographs with The Pine Cone. The photos will no doubt be of interest to many residents since they include striking images of the Carmel Mission and the Lone Cypress. Streets said the collection contains a total of eight Monterey Peninsula images.

But an Oakland woman threw cold water on the claim of authenticity — and the \$200 million valuation — Thursday when she told KTVU-TV one of the images supposedly taken by Adams in Yosemite National Park was actually taken in 1923 by her uncle, Earl Brooks.

"I thought, 'Oh my God, that's exactly the same picture,'" as one she knew well, said Mariam Walton.

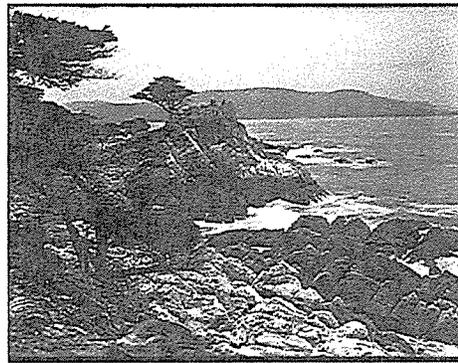
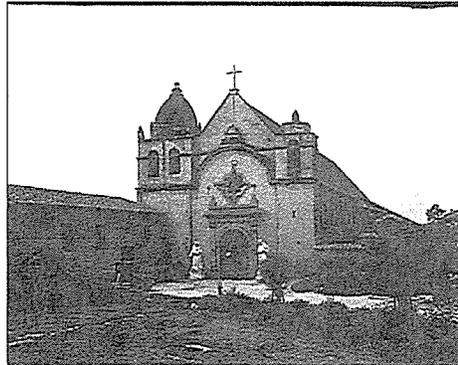
Streets raised more than a few eyebrows Tuesday when he suggested the "Ansel Adams" negatives were worth so much. But he told The Pine Cone his estimate was actually "very conservative."

'The real McCoy'

Matthew Adams, who runs the Ansel Adams Gallery in Yosemite, was widely quoted this week as saying the negatives could not possibly be worth as much as Streets claims, even if it could be proved that they belonged to his grandfather, which he said was unlikely.

Streets, though, said he's convinced the negatives did belong to Adams.

See ADAMS page 27A



These striking images of the Carmel Mission and the Lone Cypress are claimed to be by Ansel Adams and worth millions. But they could be by an Oakland man and worth a bit less.

Jane Miller releases Guillen's emails, but not her replies

By PAUL MILLER

AFTER RECEIVING a \$600,000 settlement from the City of Carmel and apparently agreeing not to publicly discuss the case, former human resources manager Jane Miller went on a public relations offensive this week, supplying two Monterey County newspapers with emails she claims demonstrate that city administrator Rich Guillen had an inappropriate relationship with her.

But the messages supplied by Miller to Monterey County Weekly and the Monterey County Herald, in which Guillen compliments Miller and tells her he "adores" her, do not include any statements that go to the heart of Miller's claim that she was harassed at work and retaliated against when she rebuffed Guillen's advances. And they pointedly do not include any of Miller's emails to Guillen.

Miller and her lawyer, Michael Stamp, ignored repeated requests from The Pine Cone for the complete email exchanges. Without them, there is no way to judge the propriety of Guillen's behavior or the validity of her lawsuit.

"These emails seem inappropriate, but they could also be innocent, especially if she responded in kind," said a source close to city hall who did not want to be identified. "Did she tell him to stop, or that she liked him, too?"

See MILLER page 26A

Requests to see both ends of a conversation are repeatedly ignored

COURT SIDES WITH CITY IN MANDURRAGO CASE

By MARY BROWNFIELD

THE CITY of Carmel has won a round in court against developer John Mandurrigo, who for the past nine years has been trying to demolish an old downtown bank building at Dolores and Seventh and replace it with apartments, condos, shops and a garage.

In a decision released July 22, Monterey County Superior Court Judge Lidia Villareal concluded the city didn't break the law or violate Mandurrigo's rights during a convoluted decision-making process that ended in the project's denial late last year.

The decision came only a few weeks after an appeals court ruled that another Superior Court judge erroneously dismissed one of Mandurrigo's lawsuits over the project.

Mandurrigo told The Pine Cone Tuesday he's not sure

See MANDURRAGO page 12A

Suspected DUI teen rolls car after Pasadera party

By MARY BROWNFIELD

A PEBBLE Beach teenager lost control of his speeding car while driving drunk, hit a boulder and flipped the 2007 Mercedes E350 into the front yard of a Pasadera home early Saturday morning, according to California Highway Patrol officer Bob Lehman. The



Edward O'Shea

driver, 19-year-old Edward O'Shea, and one passenger, 18-year-old Christopher Schmidt of Monterey, were hospitalized after the crash, while the third passenger, 20-year-old Salinas resident Julian Cornel Dela Cruz Sillano, was treated at the scene. Lehman said unconfirmed reports indicate the teens had been at a party in the upscale housing development off of Highway 68.

While speeding down the curving, downhill stretch of Estrella d'Oro, O'Shea "hit some kind of boulder in the front yard and rolled the vehicle over," at a home in the 400 block, Lehman said. "There were injuries to all three parties."

Schmidt suffered a head injury and was taken by AMR ambulance to Salinas Valley Memorial Hospital, while Sillano complained of bruising to his forehead and received treatment from medics but was not hospitalized.

O'Shea also went to SVMH via ambulance for care of

scrapes to his arms, legs, face and other areas of his body, according to Lehman. CHP investigators concluded O'Shea was drunk and driving at an excessive speed when he

See DUI page 26A

Stargazer makes pitch to save Big Sur tracking station

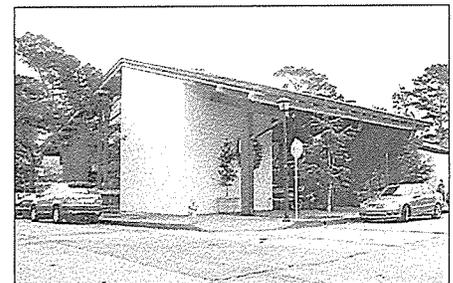
By CHRIS COUNTS

SINCE THE late 1970s, the U.S. Air Force has operated a missile tracking facility near the top of Anderson Peak, a 4,000-foot mountain that looms above the Big Sur coast just north of the Esalen Institute.

But according to Patrick Barthelow of Auburn, the U.S. Dept. of Defense has plans to remove the facility and its 36-inch telescope — and he's not happy about it.

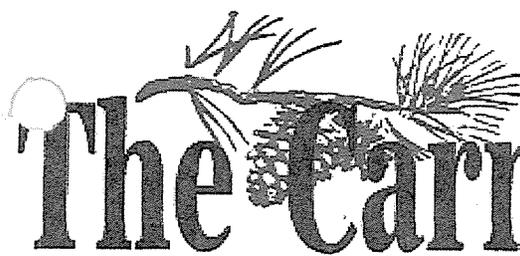
Barthelow said he believes the facility has provided a great benefit to the public and will continue to do so, if it is permitted to remain in place. In an effort to gain

See PEAK page 12A



PHOTO/PINE CONE FILE

A plan to tear down this former bank building was dealt a serious blow by a Monterey County judge last week.



The Carmel Pine Cone

YOUR SOURCE FOR LOCAL NEWS, ARTS AND OPINION SINCE 1915

[Previous](#) [Home](#) [Next](#)

Guillen affair ends

- City council unanimously approves retirement agreement

By PAUL MILLER

Published: February 18, 2011

OVER MONTHS of wrangling and controversy, the end came rather quietly.

At the conclusion of a brief closed session of the Carmel City Council Tuesday night, and with no more than 25 people in attendance, city attorney Don Freeman announced that city administrator Rich Guillen — whose tenure was marred by allegations of sexual harassment and workplace discrimination — would be fired.

According to the agreement, Guillen will stay in office until March 31, or until a successor is named, whichever is earlier, and he'll receive six months' severance and health benefits from the date of his departure.

Guillen and the city also promised not to sue each other. And they agreed not to make any statements to the news media beyond the few words released Tuesday night.

The settlement, negotiated between city officials and Guillen over a period of several months, was approved unanimously after a motion by council members Ken Talmage and Paula Hazdovac, Freeman said. Both steps were seen as clear signs that even council members who had been on opposite sides of the Guillen controversy wanted to stand together to see it ended and start working on more pressing issues.

"I think a lot of people are looking forward to moving on," said councilman Jason Burnett. "And I think we have an opportunity now to bring the community together — a community that has been somewhat divided."

"We needed to get this over with so we can deal with important things that are right in front of us — things like the fire merger, the budget shortfall and the water shortage," said Talmage.

Former councilmember Barbara Livingston, who unsuccessfully challenged Sue McCloud for mayor in 2004, was also conciliatory. "It's time to put this whole sordid episode behind us and move on," she told *The Pine Cone*.

Carolyn Hardy, a member of the board of directors of the Carmel Residents Association and a longtime political opponent of McCloud, said in a TV interview that "we all feel relieved" that the Guillen controversy is over. "It's been hard to see this happening to our community."

Former Mayor Charlotte Townsend also said she was "pleased that there's finally been closure." But she was one of the few who also took the opportunity to criticize the city's handling of the Guillen controversy, calling it "incomprehensible that it had gone on so long."

McCloud said she couldn't comment on Guillen's retirement beyond what was in the agreement with him and in the official press release announcing his departure. But she praised Guillen for his acumen in handling the city's budget during tough economic times. "He's kept us in an enviable position while he's been here," McCloud said. "Not only by managing things such as the refinancing of the Sunset Center bond, but by conservatively handling the taxpayers' money."

Hazdovac also said she couldn't comment on the settlement or how it was reached. But she thanked Guillen for having an "open door" policy as city administrator and for "always being available to councilmembers as well as the public" and for being "quite visible at public events around town." And she said he "saved the city hundreds of thousands of dollars annually through thoughtful reorganization within our city government, which has been instrumental in getting our city through the recent tough economic times."

Choosing a successor

Almost as soon as Guillen's retirement was announced, city officials began discussing the best way to pick the city's next administrator — a process which takes on some urgency, since a new budget has to be approved by the end of June.

According to McCloud, a special council session to get things moving will probably be held Tuesday or Wednesday.

"We want to make sure everything is done as quickly and smoothly as possible," McCloud said. "We're right in the middle of the budget process, which makes it urgent that we have a team that works together."

"There are many important issues facing our city at this time, and I feel confident that the city council and staff will work diligently to move forward during this time of transition," Hazdovac said. Carmel Chamber of Commerce CEO Monta Potter said she was "looking forward to working with whoever is selected as the new city administrator."

And Livingston said she wanted the council to "begin the search for the right person, man or woman, who can bring our village back to the golden age it achieved under [former] city administrator Doug Schmitz and assistant administrator Greg D'Ambrosio."

But Burnett said that could take awhile.

"My preference is that we find someone on a temporary or interim basis," he said. "A search for a city administrator could take four or even six months," he said, including soliciting public input, hiring a

consulting firm to identify candidates, having them meet with various interested groups within the city, and then having the council make the final selection.

“The city needs to make decisions on things that have long-term consequences,” Talmage offered, explaining the urgency of having a city administrator who isn’t distracted by controversy.

In addition to the future of the fire department, the ongoing water shortage and various other issues, “the ‘new normal’ shows that we’re running a deficit of \$1 million to \$1.5 million when you include the money we should be spending on capital projects, and we need to deal with that,” Talmage said.

Long career in public sector

Guillen began his government career as a land development supervisor with Placer County, where he worked nine years. Later, he was public works director for Auburn, and then public works director and interim city administrator for Seaside.

After the departure of Jere Kersnar, Carmel hired Guillen as city administrator on an interim basis in October 2000 and then gave the job permanently in December 2000 amid glowing reviews of his job performance and easy-going style.

But in early 2008, Pine Cone reporter Mary Brownfield began to hear rumblings that Guillen was about to be the subject of a sexual harassment complaint by someone who worked at city hall. Later, a source identified the complainant as Jane Miller — a surprise since, as human resources manager, she would be the official in charge of preventing sexual harassment and making sure anyone who was victimized by it had a readily available path for getting the harassment to stop.

But Miller didn’t say a word publicly or even raise the issue of Guillen’s behavior with other city officials before hiring Monterey attorney Michael Stamp and filing a formal complaint with the city in May 2008, claiming that Guillen had flirted with her for years and tried to eliminate her job when she didn’t return the attention. Meanwhile, he promoted employees he was attracted to and got rid of those he didn’t like, Miller claimed. The alleged harassment and hostile workplace environment caused her so much “work-related stress and depression” she was forced to go on medical leave, she alleged.

Soon after it received her complaint, the city hired the law firm Liebert Cassidy Whitmore to investigate it — an investigation Miller refused to cooperate with. In February 2009, after interviewing numerous city employees, the law firm concluded Miller’s allegations were “not substantiated.”

Four months later, Miller sued the city (but not Guillen), asking for compensation for lost wages, physical and emotional injuries and attorney’s fees.

“Guillen intimidated the plaintiff at work, and she believed she had no adequate or effective remedy to address Guillen’s conduct,” the suit said. “The plaintiff reasonably believed that if she challenged Guillen for his conduct and statements, her position and professional status would be injured, her career would be jeopardized, and she would lose all or part of her salary and benefits.”

The city was barred from discussing the case, due to state laws protecting the privacy of municipal employees. But behind the scenes, what Stamp called “months of discussions that were very protracted and very difficult” were under way, resulting in the city and Miller settling her suit in July 2010. Without admitting any wrongdoing, Carmel and its insurance company paid Miller \$600,000 in exchange for her dropping all further legal action against the city.

But the city, apparently satisfied with the results of the law firm's investigation clearing him of any wrongdoing, let Guillen keep his job. Perhaps wanting to see him fired, just a few weeks after receiving her \$600,000 settlement, Miller went on a public relations offensive, releasing numerous emails to the Monterey County Herald and Monterey County Weekly that Guillen had sent her while she worked at city hall, including ones in which he told her he adored her and complimented her appearance.

"I know it embarrasses you to know this, but I liked you from the day I met you, always have and always will," Guillen emailed Miller in July 2006. "I think about you all the time and I'm always hopeful that you're happy every waking moment."

Guillen said nothing about the release of the embarrassing emails, and the city continued to maintain its legally required silence about the entire situation. That left Miller and Stamp alone to comment to the public. Based on their version of the events, the news media began to refer to Carmel as "Peyton Place."

In August 2010, citing the distraction which the city administrator's problems posed for the city, but also raising serious questions about Miller's credibility, The Carmel Pine Cone printed an editorial calling for Guillen's resignation.

In September 2010, the city council held a closed session to discuss terminating him, but that idea reportedly failed on a 3-2 vote.

In November 2010, Burnett and Talmage published a commentary in the Herald calling on Guillen to resign. But still he stayed in his job.

Then, at a city council meeting Feb. 1, Burnett pressured Freeman to release the results of the September 2010 closed session. And he asked for another closed session to try to resolve the Guillen controversy once and for all.

That closed session was scheduled for Feb. 15 in a downstairs conference room at city hall. When it happened, it concluded with the announcement that Guillen would soon be gone. Businessman Chris Tescher said he would miss Guillen. "He was always amiable and sincere, and being from the area, he understood the culture of Carmel, which is important for any city manager."

Tescher said. "I had a lot of dealings with him, and he was always accessible and attentive, and he liked to solve problems. Even when we disagreed, he was never disagreeable."

MAYOR VS COUNTY EXECUTIVE

BOOK 3

PAUL LAUB

MAUILAUB@AOL.COM

RECEIVED AT CG MEETING ON 1/14/16

IN THIS ISSUE:

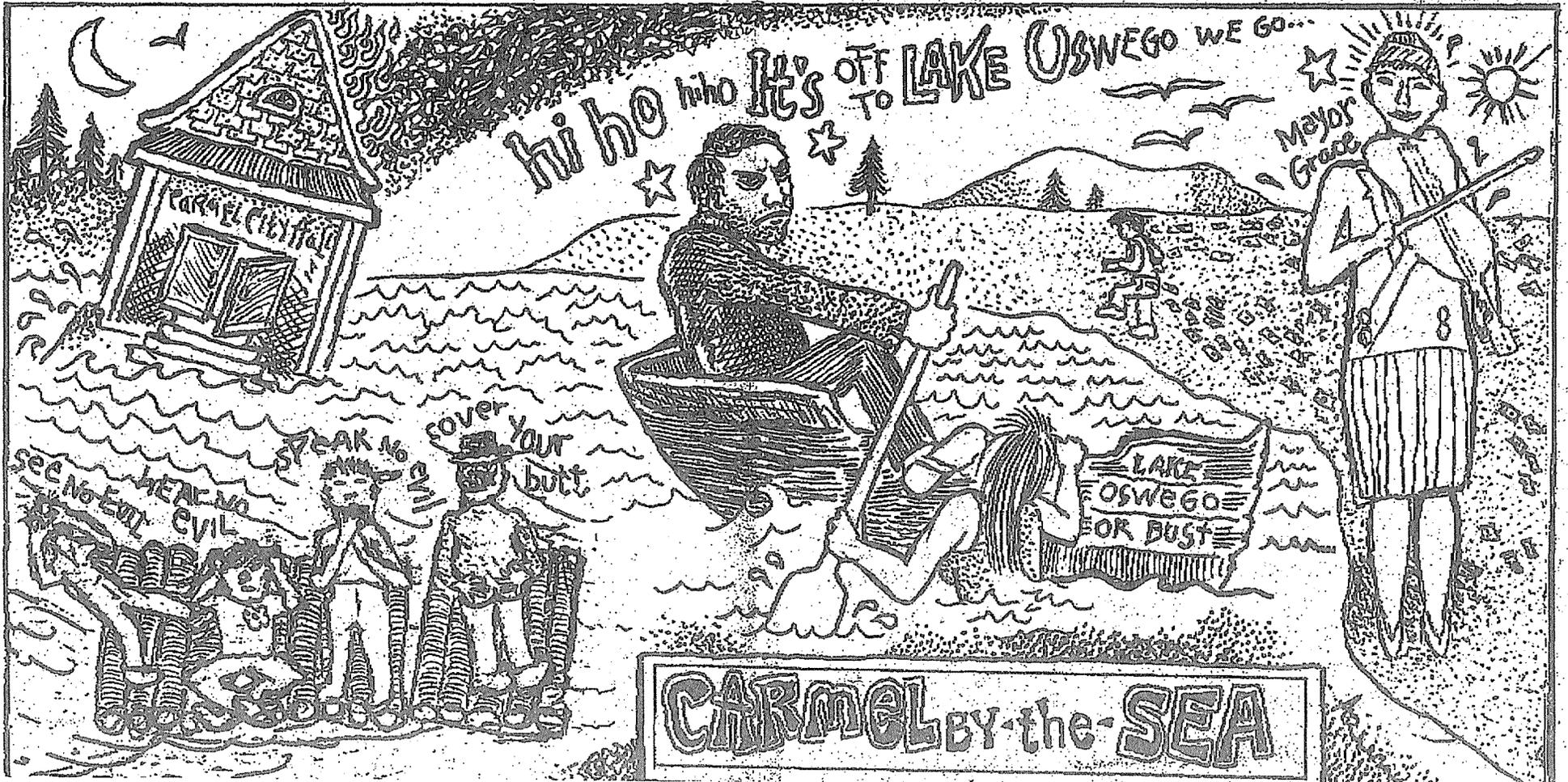
ANOTHER SIDE OF DOUG SCHMITZ
ANTHONY LUCIDO SPEAKS OUT
YOUR TAX DOLLARS AT PLAY
ON ISRAEL: COMMENTARY
EBEN WHITTLESEY REVIEW
OZONE ACTION UPDATE
INSIDE PETERS GATE
CHARM WARS
MORE BIKE CONTRIBUTORS

FREEDOM SPEECH

VOL 2 NO. 2 1992

Printed On Recycled Paper

"Rebellion to Tyranny is obedience to God." Ben Franklin



Caution: This article is not for everyone. It is not a pretty article but it is an accurate article. The people named in this article have had an opportunity to respond as to the correctness of what is being stated. If you are looking for a nice white washed pat on the back kind of article you will not find it here.

"and you will know the truth and the truth shall set you free" John 8:32

Doug Schmitz came to Carmel as City Administrator in 1983, at the age of 30. He brought with him a clean slate. This was Schmitz' most important job as City Administrator. It was a position that he took very seriously and felt it to be necessary to build a staff that was oriented along the lines of his directions. Let's hear about him from his subordinates.

JIM BAJARI - Schmitz' first problem with a staff member was with the Assistant Administrator and Finance Director Jim Bajari, who had been in Carmel government for two years. Almost immediately he fell out of favor and was put in charge of "special projects". Within six months Bajari was gone. When questioned, Bajari stated he "recalls the two wonderful years in government and does not wish to recall the one negative one."

BOB GRIGGS - Bob Griggs worked for the City of Carmel from 1966 until 1984, a period of 18 years. His last position was City Director Of Planning. When asked about working with Doug Schmitz, Griggs said "Doug was a different person in public than he was behind closed doors. Behind closed doors he displayed a violent temper, swearing and using four letter words. He was very abusive and wouldn't let me do an effective job. He shunted me off to "special projects", working on business not related to the Planning Department. He brought down Diane White from Washington and installed her as my replacement. His abusiveness culminated in a confrontation where Schmitz threatened my integrity to the point where I just couldn't work for the City of Carmel any longer. I resigned in December of 1984. I felt it was also very clear that he did not like anyone over 40.
(Please see box at bottom of page 5) Please turn to page 6

①

He attempted to undermine all of the department heads by going to the subordinates. In the case of Bill Askew, Director of Public Works, Schmitz wouldn't even talk to him. Schmitz wanted to manage all the departments himself or to put in people who would be his puppets. At the time I was there the Planning and Building Department had three employees and the maximum time to get anything processed was one month. We always tried to be helpful in getting people's plans submitted and in getting what they wanted. That was our attitude then."

In bringing down Diane White from Bellevue, Washington. Schmitz bypassed the standard procedure of advertising and interviewing prospective applicants. It is also worth noting that Diane White was not a planner and that her position in Bellevue was that of Environmental Coordinator. His method of hiring his old friend and crony whom he had worked with for four years violated City policy of advertising and interview.

GINNIE CHARLAND - Ginnie Charland worked in the bookkeeping department from 1979 to 1984, a period of 5 1/2 years. She said the following, "I really enjoyed my job and did my very best to help the City. When Doug arrived this changed. Doug was very abusive. He cornered me, verbally abused and swore at me. This happened twice. Greg D'Ambrosio was there but didn't stop him. I felt he should have as he was my supervisor. My husband was extremely angry and wanted to knock his block off. If this happened today, I would have brought charges against him. After the second incident I decided I would never let it happen again and took the first job offer I got, to get out of there. If it had not been for his personal verbal abuse I wouldn't have left as I really enjoyed working for the City. I would still be there. The employee's representative, Mary Jahr-Purvis was of no help."

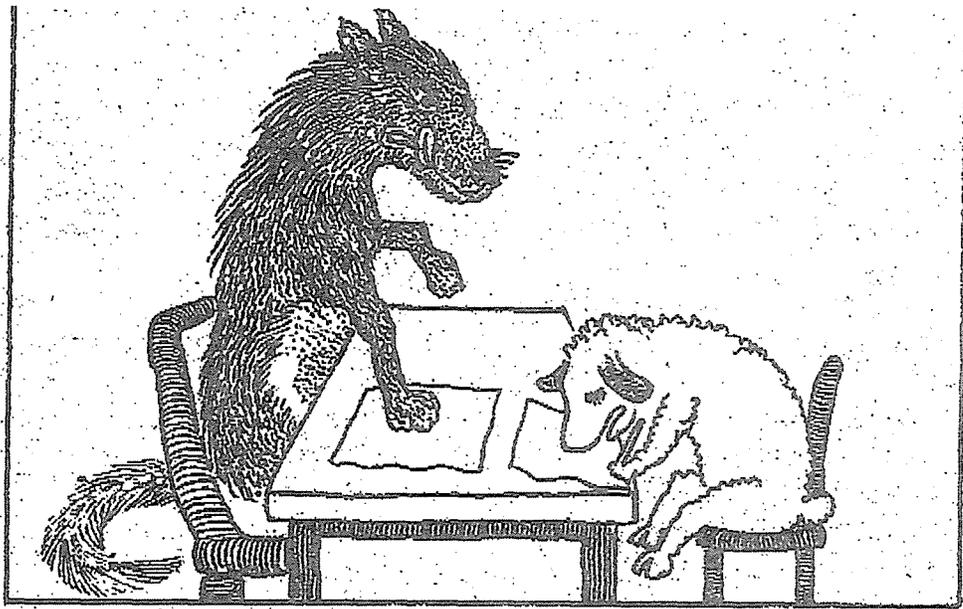
VERN ALLRED - Schmitz next singled out City Fire Marshall and Assistant Fire Chief Vern Allred. Allred was removed from the Fire Station and put at City Hall for "special projects" and his retirement was facilitated. Vern Allred was in his 50's. Fire Chief Bobby Updike retired and was replaced by the hand picked current Fire Chief, life long Carmelite Bill Hill, a young man in his 30's.

Vern Allred currently has a claim for injury with the City, who will determine its outcome. Allred declines from further current comment. Discretion being the better part of valor (Carmel is notorious for its punitive stance against any dissent).

PATRICIA KELLY - In the City Hall offices themselves Schmitz' executive secretary, Patricia Kelly, was shortly released from her position after a very difficult emotional confrontation with Schmitz. Kelly received a substantial settlement which included the provision that she could not discuss the nature of the settlement but it was at substantial cost to the City.

HOLLY WILSON - Holly Wilson was a secretary to the Planning Department. It is alleged that she too fell out of favor with Schmitz, that he coerced her to resign from her full time job and accept a temporary job with the City. This had to be done on a certain day and if she didn't do so by the date mandated she would be fired. If the deadline was met she would be able to maintain the temporary job, which she needed. The catch being that if she did resign on that date she would lose her one week vacation as she would be one day short of vesting. When asked about the situation Holly Wilson did not deny that it occurred and said she had nothing to add, was very happy in her new life and did not want to get involved in the negativity of the past. "I wish him well in Lake Oswego."

HELGA FELLAY - Helga Fellay worked for the City of Carmel from 1985 until 1987 as a part-time "floater". The majority of her work was done for Diane White. Helga stated the following, "I think he (Doug Schmitz) is an arrogant yuppie type who would sell his own grandmother if it would further his own career. He is an arch manipulator, using humiliation, ridicule, fear and terror to control people. The slightest irritation would provoke his wrath. On many occasions I saw staff members come out of his office trembling and white as sheets. His nickname among staff was "Dog Schmitz" (Schmitz is the German word for dirt). He could change instantly from the smiling, congenial Doug persona that he presented to the public, to the fascist Schmitz we, the staff, had to work under. I think he was a more accomplished actor than our then mayor."



HRESANTHY "CHRIS" GIBSON - Another secretary, Chris Gibson, passed the testing exam for Patricia Kelly's position but was not allowed to take the position. She too had a very difficult time with Mr. Schmitz and gave the following statement.

"I worked for the City from February 1976 until June 1988, a period of 12 1/2 years. At the time I left my position I was 58 years old. I was hired as a Clerk/Typist but they put me into the position of Secretary for over 8 years. However, I was not paid at that rate. Nevertheless I very much enjoyed working for the City with the very nice people in the office. When Doug arrived in 1983 the pleasant atmosphere of the office ceased. Doug was very abusive verbally and would yell and berate myself as well as others. This included Patricia Kelly, his executive secretary, in the presence of Greg D'Ambrosio. D'Ambrosio did not stand up for us. I also heard him yell at Richard Tyler. He belittled and harassed me to the point where I could no longer emotionally cope and had to leave due to the nervous condition that I developed. This harassment was so bad that the City had to pay me for 1 1/2 years after my departure. I saw him verbally abusing others and one time he almost hit Jeanne Bismar, City Clerk, in the face as he was slamming a door. His temper was beyond control. At one point when he first arrived he used to keep Silva Mind Control books in his office. It was very clear that he didn't like older people as they were too independent. He wanted a younger staff that he could control and would serve him blindly. One of the problems we had was that we did not have a strong employees association, so there was no one we could turn to for help. Many of us were afraid for our jobs. It is terrible to have to live and work in fear. The reason we never came forward before now is that there are still people working for the City that we care about. We were afraid that by speaking out these people might become the victims of any backlash due to our comments. Now that he is leaving he will not be able to terrorize them."

5
"As I was approached I would like to take this opportunity to suggest to the City Council the need to immediately establish firm controls over the management tactics of the City Administrator. I also feel that employee grievance and appeal procedures require attention.

My hope is that the new City Administrator is selected with great care. This selection and regular monitoring process is very important as the "mood" or "feeling" of the whole Village is set by our leaders."

BILL ASKEW - Bill Askew, head of Public Works, had been with the City for 42 years and his father had been with Public Works for 25 years. It is widely known that Mr. Askew was very poorly treated by the City Administrator and finally decided that it was time to retire. When asked about this Askew stated he "wanted to leave the negativity behind him". His position was filled by a young gentleman, also brought from the State of Washington.

RICHARD TYLER - Richard Tyler was the distinguished Cultural Director of Sunset Center for 13 years. When he left this position in December 1990, he was in his late 50's. Tyler was harassed by Doug Schmitz to the point where he could no longer effectively maintain leadership as Cultural Director of Sunset Center. A friend of his stated that "to maintain his dignity Tyler had no choice but to retire from what had become a very high stress position." When confronted with this maintain his dignity Tyler had no choice but to retire from what had become a very high stress position." When confronted with this statement, Tyler said "I didn't say that but I don't deny it." His position was also filled by a younger man.

5

EDITORIAL TO ANOTHER SIDE OF DOUG SCHMITZ

With the removal of Tyler from the Sunset Center Schmitz accomplished the elimination of each and every department head from a mature, experienced person to a new and younger people (mostly under the age of 40) who were directly beholding to Schmitz for their job (this does not include the Police Chief who came aboard under the previous administrator). The Public Works Department was split into two divisions, one for streets the other for forestry and beaches.

Numerous other positions were created and filled by people hand picked by Schmitz, thereby creating his own bureaucratic empire with all important positions held by those beholding to him. Over the ten years Schmitz administrated Carmel the expenditure budget went from \$4 million to \$8 million per year. Of this \$8 million per year approximately \$5 millions goes to salaries. One of the new policies established by Schmitz was to charge the public for any information requested of the City. So even the \$8 million was not enough for Schmitz to maintain the level of services that existed before he arrived. The Planning & Building department went from a very efficient three person department to an extremely inefficient nine person department. City staff went from 86 people to 102 people. An increase of 16%, with no growth in the City population.

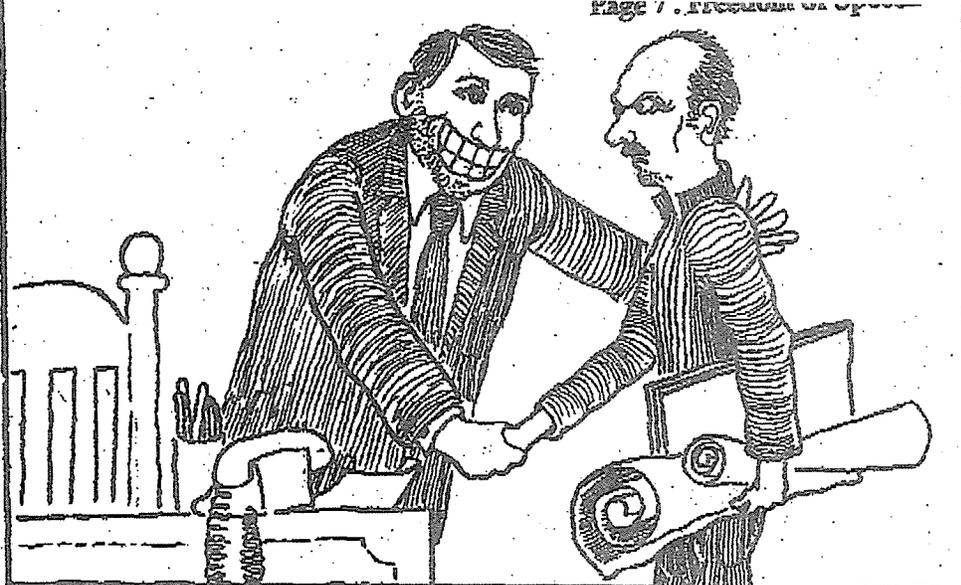
The position of Code Compliance Officer was invented and held by numerous people. This position is comprised of going into stores and seeing who was and was not in compliance with various City laws. Since it is such an onerous position very few people could stomach the job for any substantial length of time. Mayor Eastwood called this a "gestapo" position and eliminated it during his two year tenure. The position was resurrected by Schmitz upon Eastwood leaving his office.

During Schmitz' tenure the City engaged in and spent more in lawsuits than was spent during its entire history from 1916-1981. Also during his tenure the City has been called "Grinchville", "Scrooge City" and numerous disparaging names by various media reflecting Carmel's new image of pettiness, bureaucratic nightmares and lack of care for its visitors and residents.

The hard working Councils of the tenured time had scant experience in real life business and administration and relied heavily upon Schmitz and his staff for the data upon which to base their important governmental decisions. Schmitz, skilled in the presentation of data and in his personal out going style, continuously provided the Council with data they believed to be accurate and unbiased. In ~~the past~~ it is felt by many that a separate agenda of empire building, done with an iron fist, was the prevailing doctrine of his administration. Since he developed such a strong structure that was so heavily relied upon by the all believing but not seeking Council he became the proverbial tail that wagged the dog.

It has become clear that too many recommended changes in zoning by his staff has been an abject failure and has created the highest number of vacancies this village has ever seen and which continue to this very day. These vacancies existed from 1983 until 1986, when Mayor Eastwood was elected, and were eliminated during his tenure. Once Mayor Eastwood left office the vacancies again increased. Many feel that the planning and building process has become absolutely inefficient and extremely subjective during this administration. An increasing tone of nastiness between "residential" and "commercial" interests seem to have been exacerbated to an extreme height during this administration. The recommended zoning changes effectively brought in a flood of chain stores and kept out small retailers.





This administration has suffered from substantially poor advice as to the cost and values of important parklands that were purchased and developed both inside and outside the City of Carmel. Picadilly Park on Dolores, near Ocean Avenue, cost over \$490,000. This greatly increased the property values around the park thereby increasing rents. This effect was wrongfully blamed on "greedy landlords" by members of the City Council. Another example is the extremely high price paid for the Hodges property, substantially above the highest estimate. At the time Schmitz and Mayor Grace claimed the property connected to the City. This claim was proven wrong by Eleanor Laiolo, who at the time was a member of the City Council, as it was not directly adjacent to Carmel. The mini parks built in town, although very pretty, added to and exacerbated the parking problem, which although in existence before this administration have continued without rectification. It could be said that had Schmitz solved the parking problem itself his would have been a positive administration. The abject failure to address a top tourist and residential problem in Carmel relegates his administration to abject failure. The over time parking fines went from \$5 to \$15 during his tenure.

Schmitz does in fact have some very powerful talents. Perhaps the most meaningful is his outgoing personal style which tends to placate both friend and foe alike. It was interesting to note that when an editorial in the Carmel Pine Cone complained of the stonewalling of information by Schmitz a few local citizens complained to the Pine Cone asking how they could possibly chastise this wonderful man. These people were not at all able to understand that personableness, competence, and sincerity are not necessarily hand maidens. If we were to judge Schmitz by his personableness he would absolutely get an A+. If we were to judge him by his capability in forming a bureaucratic empire, he would also receive an A+. If we were to judge him by the purchase of parks, at any price, without economics being a consideration, he would receive an A+. If we were to judge him in terms of justice, equity or efficiency he would not do well.

9
What is clear is that his abusive actions, as reported by his former employees, brought a politics of fear into the work place. The employees said that his actions caused employees to take sides against other employees. Snitching, back biting, and non cooperation reigned as each struggled to protect his own job. The work place became a very high stress area, as evidenced by a former Carmel building inspector who, to this day after having left the employ of the City a few years ago, still gets violent intestinal reactions by merely coming to town. Part of the problem also seems to stem from the over crowding in the work place which is directly related to the renovation of City Hall rather than building one on the public works area property, originally designated for a new City Hall. The Council chambers themselves have proven to be woefully inadequate all during the Eastwood administration and as recently as the current zoning hearings where the public spilled out and were standing in the streets. Now that the Administration is over staffed the building is overcrowded, creating inefficiencies which no doubt will be addressed by hiring additional employees.

SUMMARY

Doug Schnitz: Personable, political, petty, despotic and tyrannical?

WHAT WE WOULD LIKE TO SEE

1) A very careful selection for the new Administrator, including him/her having a perception of the needs of the entire community, 2) Hands on supervision of what is really going on in the City by the Mayor and Council rather than just leaving it in someone else's hands, 3) A new policy of grievances procedure so that the City Administrator is not the ultimate arbitrator, and 4) Justice for Holly Wilson.

Prior to the current City Manager system each Council person was Commissioner over a specific department, giving the Commissioners intimate knowledge of that Department. Carmel Village is small - perhaps each Council person should once again oversee a department thus having first hand knowledge of "their" City staff.

MAYOR VS COUNTY EXECUTIVE

BOOK 1

PAUL LAUB

MAUILAUB@AOL.COM

RECEIVED AT CG MEETING ON 1/14/16

THE TAIL THAT WAGGED THE DOG

A THREE PART COMPILATION:

Notebook #1 (Green) A current compilation of News stories from various news sources regarding current struggles in obtaining and maintaining City executives in Monterey County California. This is NOT in depth but is current;

Notebook #2 (Yellow) An in depth look at Executives Stilwell and Guillen both former executives of the City of Carmel-by-the- Sea California. These are not exhaustive studies but are clear enough as to some of the problems. They also are compilations from the local newspaper. I do know both of these individuals;

Notebook #3 (Purple) A photocopy of an article I wrote about Douglas Schmitz, a former, executive of the City of Carmel-by- the Sea. I personally know all of the information submitting individuals involved and have been given their permission to write their story. I was the publisher of this newspaper Freedom of Speech.

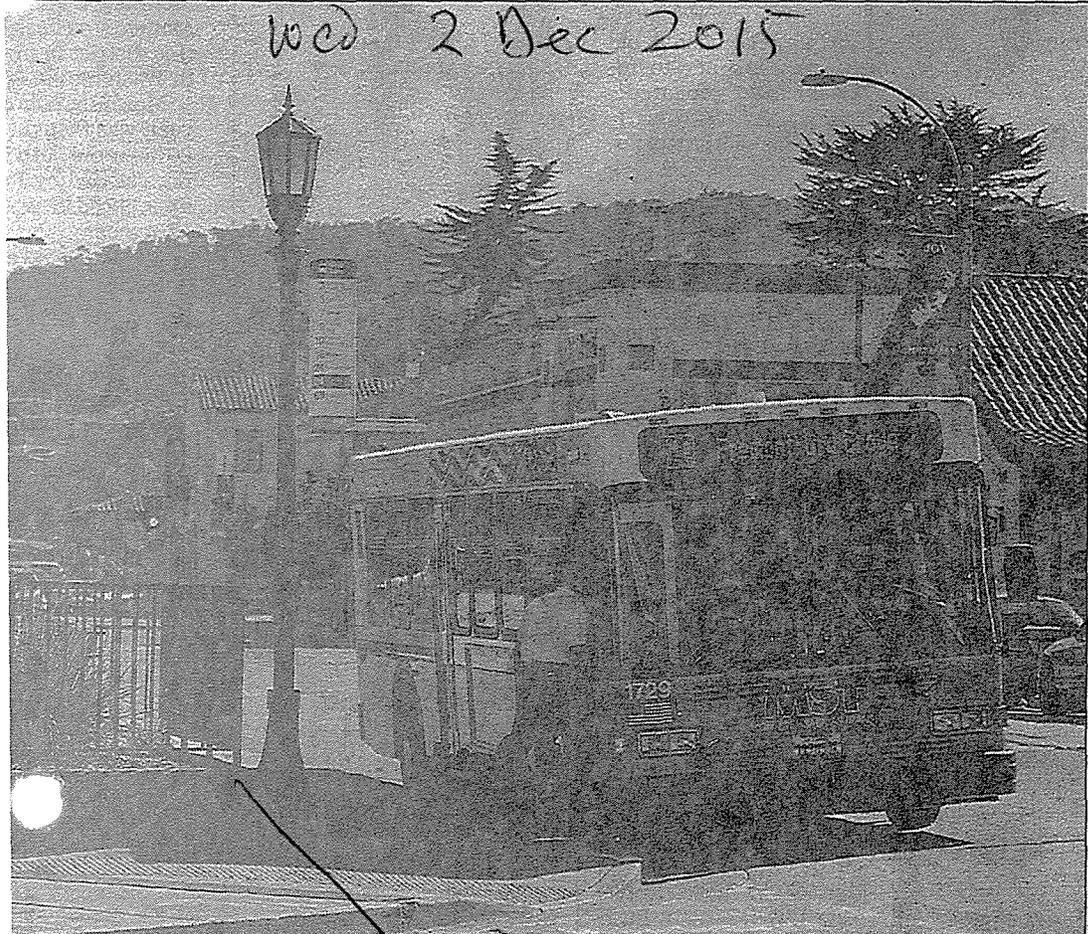
Interestingly, Stilwell was considered to be so bad that he made Schmitz look good, decades old malfeasance was forgotten and he was hired back. He bailed after only one year.

Some obvious "takeouts" from these stories:

- 1) Cities struggle in obtaining and keeping Executives. They move often and seem to leave jurisdictions "in the lurch". There seems to be much pressure for the Executives to try to get into other bigger, perhaps better paying and more prestigious Jurisdictions.
- 2) There is an absence of transparency as to why they left previous positions. Often lawsuits follow and rarely are all of the true reasons stated. Confidentiality is cited. One gets the impression that the new Jurisdictions are painted a perhaps rosier picture so that they will take away the problem of the old jurisdiction. It seems that it is somewhat like giving a bad tenant a good recommendation so that they will move.
- 3) Some of the executives have been seen as "pulling the wool" over the eyes of the council" and the Councils, not being experts logically rely on their hired executive that gives them incorrect data. Invariably the Councils are held responsible, by the people, for the failings of the Executive.
- 4) The loyalty of the executive is to their boss who is the "Council", and not the people.
- 5) The new hires often seem to not be familiar with the culture (s) of the new Jurisdiction.

ount for veterans

wed 2 Dec 2015



VERN FISHER — MONTEREY HERALD FILE

ering a new discount fare for veterans.

or initiative as result of Measure Q

ers in November 2014.

“We’re grateful voters passed Measure Q helping to preserve bus service,” Harvath said. The veterans discount represents the intent of the measure in action, he said.

Harvath said an additional service for veterans is in the early planning stages. It would involve a veterans shuttle to get them to services they need, like health care and job training. He stressed that although it would be targeted to veterans, it would be available to others.

Harvath said MST was also looking at a veteran mentorship program, where they would reach one another about navigating and accessing the bus system.

“They’re more responsive to others who have served as they have,” Harvath said.

A number of minor fare adjustments are also being imple-

compliance with the federal Americans with Disabilities Act. These include a fare reduction to \$2.50 that will be applied to Line 20 (Monterey-Salinas) and Line 43 (South Salinas-Salinas).

Lines 7 (Del Rey Oaks-Monterey), 8 (Ryan Ranch-Sand City) and 47 (Hartnell-Alisal Campus) will see a fare increase to \$2.50; however, those eligible for MST’s discount fare — seniors 65 and older, youth 18 and under, people with disabilities, Medicare card holders and veterans — will continue to pay 75 cents on those “senior shuttle” routes with funds provided by Measure Q.

For more information, see the revised bus fare table brochure aboard MST buses, call MST customer service at 1-888-MST-BUS1 or visit www.mst.org.

James Herrera can be reached

WHAT TO DO

To receive an MST photo courtesy card, veterans can visit any of MST’s three customer service locations:

- MST Bus Stop Shop, 201 Pearl St., Monterey
- Salinas Transit Center customer service window, 110 Salinas St., Salinas
- Marina Transit Exchange customer service window, 280 Reservation Road, Marina

Veterans are required to have one of the following proofs of identification:

- DD Form 214
- U.S. Department of Veterans Affairs ID card
- Veterans of Foreign Wars ID card
- Membership card from the American Legion
- Disabled American Veterans ID card
- California driver’s license or ID card with “veteran” designa-

manager search begins

Interim expected to be named by Dec. 16

By Tommy Wright
twright@montereyherald.com
[@wrightscribe on Twitter](#)

PACIFIC GROVE » Mayor Bill Kampe says the Pacific Grove City Council hopes to make a decision on an interim city manager at its next meeting Dec. 16.

Current City Manager Tom Frutchey was recently selected to become Paso Robles’ new city manager. The Pacific Grove City Council held a special meeting Monday night to discuss the city’s options for selecting an interim and permanent city manager while also focusing on continuity plans for projects like the Project Bella hotel and the local water project.

Kampe said the search for a new permanent city manager will likely take four to six months.

“The iterations go about one month at a time to go through the major steps of the process,” Kampe said by phone Tuesday. “Ultimately, it also depends on availability and scheduling of folks.”

In addition to a new city manager, Pacific Grove is also searching for a new police chief. Kampe said the city isn’t ready to announce an interim police chief quite yet, but said the search is going well.

The city will likely have to wait until after finding a new permanent city manager before it can bring in a new permanent police chief to replace Vicki Myers.

“Recruitment for a full-time police chief is a little more challenging because ultimately that police chief is going to want to know who their boss is,” Kampe said. “Until we have a full-time city manager, we’re probably not going to be able to recruit a police chief.”

The city will ask two search firms to find candidates for the permanent city manager position, and will try to have an interim starting by early January. Frutchey is expected to leave in mid-January.

“That was the stated goal, to have some overlap (between Frutchey and an interim city manager),” Kampe said.

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...passed the plan to the California Coastal Commission,

Commission. She called it a "drastic measure."

has run into science. ... I understand how painful this is to everyone." He pointed out that most beaches in California ban beach fires.

"I think it's time to act," Talmage said. "We can't sit here and do nothing. It's

The council also adopted a housing element with amendments; established a Carmel Hospitality Improvement District; and approved the first reading of an ordinance amending the appeals hearing process of the city's Personnel Ordinance.

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Manager

FROM PAGE 2

Kampe said the council would like to find an interim candidate with past experience as a city manager, as well as somebody with knowledge of the area. While Kampe said he's hopeful the council will choose an interim city manager

Dec. 16, he acknowledged it could take a few weeks before they officially start.

"It could take a few days to really go through the process of reaching an agreement and they may need some transition time and we'll be in the middle of the Christmas holidays," Kampe said.

Tommy Wright can be reached at 726-4375.

CALHOUN SIGNS CONTRACT TO BE TEMP CITY ADMINISTRATOR

By MARY SCHLEY

TWO DAYS after Doug Schmitz abruptly resigned his post as city administrator on Halloween, the Carmel City Council decided in closed session to ask Police Chief Mike Calhoun to take on the role — for now. This week, the council approved a \$175,000 contract with Calhoun for his dual jobs.

His previous contract as police chief gave him a base salary of about \$154,700, and the new salary is the same Schmitz was receiving.

According to the contract signed by Calhoun and Mayor Jason Burnett, and approved by the city council Nov. 30, he is responsible for both jobs until the city finds a new city administrator, at which point his role will revert to that of police chief.

The contract includes Calhoun's promise "to remain in the exclusive employ of the city," and says he can't do any "teaching, writing or consulting" without first obtaining permission from the council. (It does not address what activities Calhoun is allowed to engage in while operating his painting business, Finishes by Michael Calhoun, though he always lists the business on his required forms showing potential conflicts of interest.)

The contract also acknowledges he can take time off during regular business hours to compensate for after-hours work, though it's his intent to maintain regular business hours.

In addition to his base salary, Calhoun is entitled to a city vehicle 24 hours a day (which he already has), 85 percent of the medical premiums for him and any dependents, dental and vision coverage, retirement contributions, almost four-and-a-half weeks of vacation time, 80 hours of management leave, tuition reimbursement, \$1,200 for uniforms, sick leave, \$500 per month in deferred compensation, and a cell phone for city business.

The agreement provides four months' salary as severance if the city terminates the agreement while Calhoun is still willing and able to do the jobs.

Two jobs, too many

While he can serve as both police chief and interim city administrator, it's unlikely Calhoun could permanently hold both jobs — not only because each is a full-time position in itself, but because the state has considered them "incompatible public offices," as the police chief usually reports to and serves at the will of the city administrator.

The council has been meeting in closed session to decide how to go about finding its next city administrator. Former Mayor Sue McCloud has suggested hiring a headhunter to find the right person for the job.

The council has been meeting in closed session to decide how to go about finding its next city administrator. Former Mayor Sue McCloud has suggested hiring a headhunter to find the right person for the job.

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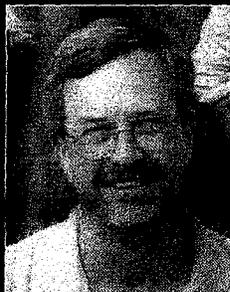
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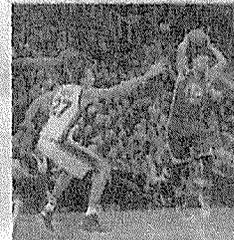
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SEASIDE

Previous job dogs city manager pick

Malin denies wrongdoing; appointment expected Thursday

By James Herrera

jherrera@montereyherald.com
[@jamerra1 on Twitter](https://twitter.com/jamerra1)

SEASIDE » Craig Malin says he left his job as city administrator in Davenport, Iowa, in June because he had accomplished what he set out to do and then some.

Yet, the reason for his depart-

ure has become a point of contention as he travels to Seaside to become the new city manager. His employment agreement is expected to be approved at Thursday's City Council meeting.

According to news reports from Iowa, Davenport Mayor Bill Gluba called for Malin and the city attorney to step down be-

cause the two had "overstepped their authority" in connection with a contract for extending a road that would lead to a future casino project.

"The paper (Quad City Times in Davenport) published information which was false," said Malin in a phone conversation Monday. "We're working on a resolution."

Malin said the resolution could involve litigation if his request for a retraction is not met.

"I expect the Times will get the retraction demand next week," said Malin.

Dan Bowerman, the interim executive editor at the Quad City Times, declined to comment on the matter.

According to the news reports, Mayor Gluba said Malin and the city attorney made the decision to

spend funds without city consent.

In late June it was announced that Malin had agreed to a deal to leave his role with the city.

Malin contends there was no wrongdoing and says the city attorney "signed off on the final draft."

"I wasn't fired, I left on my own," Malin said.

Pointing to his nearly 14 years in Davenport, Malin said he

MANAGER » PAGE 4

GROUNDBREAKING

ECONOMY

ing back later and allowing marijuana cultivation.

Also on the agenda:

▪ The council will consider a policy for Monterey to prefer unique businesses over chain restaurants and stores at Fisherman's Wharf.

▪ The council will vote on an electronic cigarette ban, which would prohibit vaping in places where smoking is banned.

Monterey currently bans smoking on the Recreational Trail, city beaches and covered parking lots, among other locations. The state prohibits smoking in places of employment, playgrounds, daycare facilities, schools, public transit systems and public buildings. The new ordinance would also ban smoking on Monterey Municipal Wharf No. 2.

▪ The council will consider extending free parking for Monterey County residents at the city-owned Cannery Row garage during the holiday season.

While the garage is free to all locals after 4 p.m., the Cannery Row Business Association would like to extend the free parking for Monterey County residents to all day until after Christ-

OR EXAMPLES OF LESSONS FROM THE BIBLE.

He is preceded in death by his wife, Harriet Jeffries.

A memorial service will be held at Bayside Community Mortuary on Friday, December 4th at 12pm.



Community Mortuary

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1610 Noche Buena Street, Seaside
www.baysidecommunitymortuary.com

mas. The proposal would also make parking in the Cannery Row garage free in 2016 from Nov. 25 to Dec. 26. The garage was free to locals during the holiday season the past three years.

Carmel

The Carmel City Council will hold a public hearing Tuesday on the first reading of its ordinance declaring beach fires a public nuisance.

Last month the council, on a 3-2 vote, declared beach fires a nuisance because of excessive smoke, which has affected air quality in the Scenic Road area. This month the California Coastal Commission will hear the city's request for an amended coastal development plan when it meets in Monterey.

Also on Tuesday's agenda:

▪ A public hearing on

IF YOU GO

What: Monterey City Council meeting

When: 4 p.m. Tuesday

Where: Council Chambers, 580 Pacific St., Monterey

What: Carmel City Council meeting

When: 4:30 p.m. Tuesday

Where: City Hall, Monte Verde Street between Ocean and Seventh avenues, Carmel

adoption of a 2015-2023 Housing Element.

▪ A hearing on establishing a Carmel Hospitality Improvement District.

▪ Consideration of an ordinance regarding the prohibition of marijuana dispensaries.

Herald correspondent Tom Leyde contributed to this report. Tommy Wright can be reached at 726-4375.

Manager

FROM PAGE 1

achieved his personal goal of getting his kids through school. He said he exceeded what he set out to accomplish for the city.

"It was my plan all along because I committed to 13 to 14 years" with the city, he said.

During his tenure, the city of 100,000 saw crime cut by

more than half and was recognized by CNN Money as one of the country's Top 10 most affordable cities.

Malin holds three master's degrees, is a certified planner and has been recognized three times as the leading local government practitioner by the International City/County Management Association.

"I have had a blessed career so far," said Malin. "I'm not embarrassed about any of the success that Davenport

has achieved and am very proud of the work I've done."

Seaside used Bob Murray and Associates to assist in the recruitment process. Malin was selected as the unanimous finalist among 49 applicants for the city manager position.

Malin said his wife has family scattered up and down the California coast and they have vacationed in the area before.

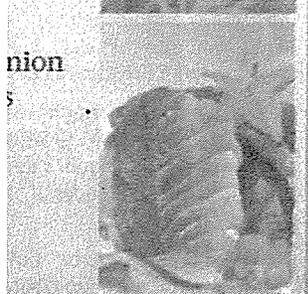
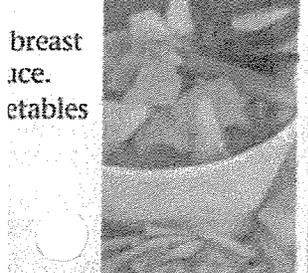
He said it may take some time to find a home here because it is not the best time weather-wise to be selling a home in the Midwest.

Malin takes the reins from city manager John Dunn on Jan. 19 but will be in Seaside from Friday through Dec. 16. He encourages anyone with questions to email him at craighthomasmalin@gmail.com.

James Herrera can be reached at 726-4344.

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SPECTRE (PG-13):
12:30, 4:00, 7:30

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JAY PART 2 (PG-13):**
11:00, 2:00, 5:00, 8:00

GOOD DINOSAUR (PG):
11:30, 2:15, 4:45, 7:15

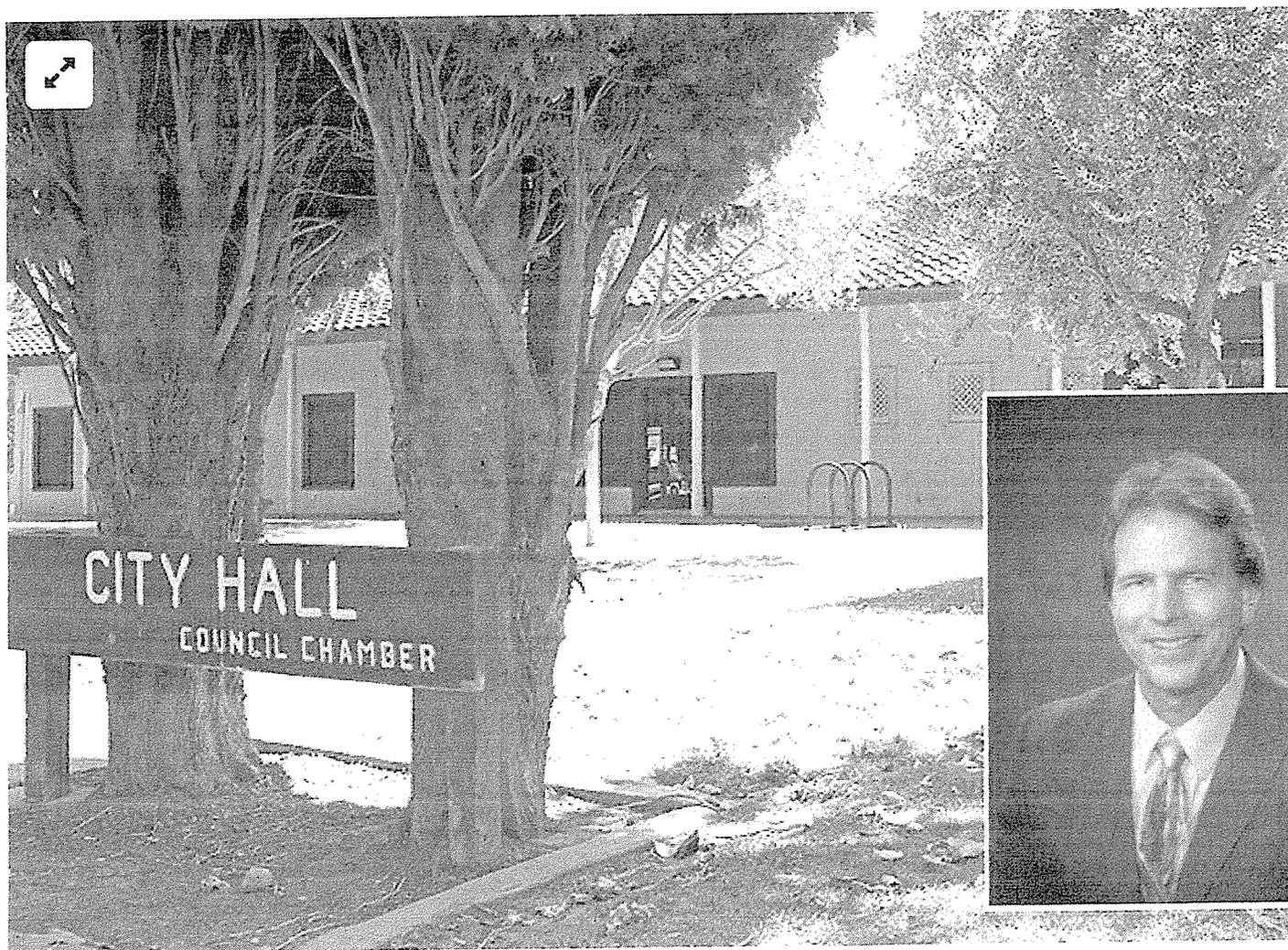
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http://www.montereycountyweekly.com/blogs/news_blog/king-city-selects-new-city-manager-with-checkered-past/article_edfa597c-79ae-11e5-9df2-0b3e610e85f3.html

King City selects new city manager with checkered past.

Ana Ceballos Oct 23, 2015



For months, King City officials scoured for a candidate to replace City Manager Michael Powers, who announced his retirement several months ago.

After extensive background checks were done on all the candidates, city officials announced on Oct. 22 that Steve Adams, who has 32 years of experience in local government administration—and a checkered past—was picked to lead a city that has been beset with controversy since February 2014.

Adams left his city manager position in Arroyo Grande under a cloud of controversy in October 2014. He told King City officials he decided to “resign and look for other opportunities,” after he was accused of having an inappropriate relationship with a city employee.

Adams was found at Arroyo Grande City Hall with Community Development Director Teresa McClish, with messy hair and his shirt partly untucked, by police. McClish's husband had called police when she didn't arrive home by 11pm and asked them to check for her car at City Hall.

“They told me that they were sitting in his office, talking and killing time to make sure they were OK to drive,” Arroyo Grande Deputy City Attorney Michael McMahon told the *San Luis Obispo Tribune*.

Arroyo Grande officials later determined no city personnel rules were broken. But in January, Adams claimed the city terminated him and threatened to sue if he did not get his severance package.

Knowing this, King City's City Council unanimously concluded Adams was the best person for the job, as he has had a consistent track record of success with several cities.

“Based on the results of the interview process and our reference calls, it became evident that we are fortunate to have attracted someone with Steve's experience and character,” Mayor Rob Cullen said in a press release.

During his 14 years at Arroyo Grande, Adams fought through a recession and upgraded the city's streets, infrastructure and facilities; financial reserves increased; and affordable housing projects were constructed.

The King City community panel appointed to help select the new city manager reviewed the accusations as well, and determined Adams was "highly-qualified" and described him as someone who is "capable of building trust," "approachable," and someone who "clearly cared about his staff."

"I know there are significant challenges to be addressed, but I look forward to working together with such a dedicated City Council, hard-working staff, and proud community to make the quality of life the best possible to everyone that lives, works and visits here," Adams said in a press release.

City Council will consider Adams' contract at the Oct. 27 meeting, and a potential start date for him would be on Nov. 9.

Ana Ceballos



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Council fires city manager

Charles M. Kelly  Fri November 20, 2015 05:49pm



The Avalon City Council fired City Manager Ben Harvey this week, following a performance evaluation Tuesday that was closed to the public. Harvey said he wasn't fired for cause and no reason was given. He said that basically, three council members decided they would rather have a different leader.

Council members Joe Sampson, Richard Hernandez and Mayor Anni Marshall voted to terminate Harvey. Council members Oley Olsen and Cinde MacGugan-Cassidy voted against firing Harvey.

Chief Administrative Officer/City Clerk Denise Radde is the interim city manager. Sampson referred questions on the matter to Radde.

Marshall said she wasn't at liberty to say why the council voted to terminate Harvey. "I personally believe we want to have a city manager who resides on the Island full time," Marshall said.

Marshall said the council was "kind of" estimating a four-month search for Harvey's successor.

Marshall said the council would meet this weekend to plan the city manager search.

"I really want the community to know that it is going to be business as usual," Marshall said.

Council member Oley Olsen, one of the dissenting voters, said, "I thought that he was doing a great job."

Olsen said he was worried that Harvey's dismissal would have a negative impact various city projects. He also said he was worried about the cost of looking for a new city manager.

Council member Cinde MacGugan-Cassidy expressed similar concerns in an email:

"Along with Mayor Pro Tem Olsen, I was in the minority of this decision where my vote was not to terminate his employment. In looking at the bigger picture and what is best for our community making this decision could dramatically and negatively effect the immense progress that has been made the past two years. Ultimately, I did not feel as though Mr. Harvey's flaws outweighed the progress he has led for our city," according to MacGugan-Cassidy.

She also raised concerns about the personnel resources and money required to find Harvey's successor.

"Our community should be aware that this decision could also require the City to have to retain additional consulting services to direct the daily operations during this time. I believe in the process of democracy however I am very sad for our community that this decision was made. My City of Avalon flag will be flying at half staff for some time to come," according to MacGugan-Cassidy.

Harvey was hired in September 2013. He was one of 40 individuals who applied for the job. Harvey and Radde were the two finalists.

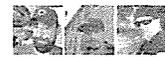
"I leave with my head held high," Harvey said. He said his accomplishments during his tenure as city manager included bringing the Whatever USA event to Catalina, improving water quality in Avalon Bay, and digging Avalon out of a "financial hole." As of 2012, the average tenure for a U.S. city manager was about seven years, according to the International City/County Management Association.

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Catalina Islander

Pacific Grove hires interim city admin

By KELLY NIX

THE FORMER city manager of Avalon on Catalina Island has been hired on an interim basis to manage the City of Pacific Grove.

On Dec. 19, 2015, acting in closed session, the P.G. City Council approved a contract for Ben Harvey to take the post this month, after city manager Tom Frutchey steps down to take a post in Paso Robles.

Meanwhile, the city has also retained a headhunting firm to start searching for a permanent replacement for Frutchey — a process that will take a minimum of four months, according to Mayor Bill Kampe.

Until that person is named, Harvey, who was city manager of Avalon for slightly more than two years before he was fired in November 2015, will be in charge.

"We all agreed Harvey was the right fit, based on his intellect and energy," councilwoman Casey Lucius told The Pine Cone. "His experiences in Avalon will also apply here in P.G. He also explained what happened in his last job, which put us all at ease."

Councilman Dan Miller, who at times has

been critical of Frutchey, said Pacific Grove is "lucky to have" Harvey.

"I liked him from the start," Miller said. "I think the citizens of Pacific Grove will be served well."

Before his job on Catalina Island, Harvey was a public affairs manager for Southern California Edison from December 2006 to August 2013, according to his LinkedIn page.

Council members Miller, Ken Cuneo, and Rudy Fischer were part of a city subcommittee tasked to help find an interim city manager.

Fischer said Harvey had "great references," and dealt with many of the same issues that Pacific Grove is facing.

Mayor Bill Kampe said Harvey and the council had a "very candid discussion" regarding Harvey's "Avalon situation, and felt very positively about what we learned." Kampe was prohibited from providing detail since the meeting was in closed session.

He said details of Harvey's salary are still being worked out.

"There are CalPERS constraints on salary and benefits, so we don't have a lot of latitude," Kampe said.

Central Ave. to get median, bump-outs

By KELLY NIX

2016 WILL not only bring New Year's resolutions, it will bring a new gateway to Pacific Grove.

Construction crews next week will start making improvements to Pacific Grove's Central Avenue entrance with landscaping, medians and other features to make it safer and more pleasing to the eye.

"Part of the Central Avenue project is not only to enhance the visual appearance of this important gateway, but also to improve pedestrian safety," according to a report that Pacific Grove Public Works Superintendent Daniel Gho provided to the city council.

Among the "traffic calming improvements" will be the installation of "bulb outs" or curb extensions, to slow traffic and to make it easier for pedestrians to cross the road, Gho told The Pine Cone.

Drivers regularly travel faster than the 25 mph speed limit on Central, and the city says there have been numerous accidents in the past few years, including a vehicle-versus-pedestrian accident in 2010.

Drivers traveling on Central often whiz by pedestrians trying to cross the road at the crosswalks in the area.

As part of the project, several median

islands and curb extensions will be built on Central between David and Dewey (where Happy Girl Kitchen is located), according to the plans. There will also be "expansive" curb extensions at First Street and Central to shorten the crosswalk across First, and a dedicated turn lane from Central to First. A center median island will be built at that intersection to make sure drivers go slower, and landscaping will be installed.

While the city considered stop signs, a traffic light and even a roundabout on that stretch, Gho said traffic studies showed that the area didn't warrant those measures.

The city got three construction bids and opted to select the Santa Clara-based Anderson Pacific Engineering, which said the project could be done for \$269,609 plus a 10 percent contingency. The construction will be paid for with money the city collects in gas taxes.

Construction will eliminate some of Central's parking spaces, but the spaces will be restored once the project is finished, Gho said.

"We anticipate this project being done by the end of February or the end of March, depending on the rain," he said. "Then we will finish up all the asphalt work [including sturry sealing the road] in early spring."

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Governance Committee

From: Jim or Belinda <2jbhome@hawaiiantel.net>
Sent: Thursday, January 14, 2016 7:44 AM
To: Governance Committee
Subject: Corrected version of Testimony - 01_14_16
Attachments: COM ON GOV TESTIMONY 01_14_16.odt

Dear Kim,

I enclose a corrected version of the testimony sent to you yesterday.
Please inform the Committee of my apologies and give to them the correction attached.

thank you so much

jim smith

Jim Smith
99 Kapuai Road
Haiku, Maui, Hawaii 96708

January 14, 2016

Special Committee on County Governance
Council of the County of Maui

TESTIMONY
Specific to A proposed Action Plan (CG-1(7))

Chair Person Tony Takitani and Members of this Committee,

Aloha,

Your staff has been so helpful. Monday, I requested to see a copy of the transmittal of the Chair of a proposed action plan, and received it the same day. From my perspective, Action cannot be the engine of this proceeding. Our Charter as a living document is losing its life.

In the early eighties the word paradigm entered the political environment and spread pollution throughout our political system at the national level. It reached here in the early 1990's. The term was original coined in a pop culture science creation titled the Structure of Scientific Revolution written by Thomas S Kuhn. Our Republican party was its first victim. It would take ten years for our Democratic Party to succumb.

This contamination is reflected in our Charter by demonizing of length of term, followed by term limits; demonizing political affiliation followed by non partisan elections. Then came the insertion of the ideal of Policy directives at Article 3, Section 9.

Through establishing a paradigm, that is a word picture, and foisting it upon a community, dysfunction is created and the user of words becomes the authority. Kuhn runs this through scientific discovery etc.

Our political system has been redefined. First, it developed as a political form; it was reinvented as an entrepreneurial form and now becomes a mercenary form without the help of our Charter. The promotion of a managerial form brings this sad progression to your attention.

The action plan merely diverts your attention from the reality that the Mayor is doing the best he can do; the best he can, without a structure to protect or adhere to. Instead he relies upon communication and hires communicators to manage Departments. The Council seeks to participate; and abandons its tedious responsibility to check the power of the Mayor when the spirit moves it. Then, it appears to exercise political power unchecked by our Charter or any provision of law, it finds restrictive and annoying.

This is the problem I hope you find time to define. I am pretty sure that once the problem is specific, time will take care of itself. For example, consider repealing Article 3 Section 9 Declaration of Policy on the basis that in our political system the legislative branch is charged to set policy because policies change; but a constitution is a different matter. The inclusion of this declaration already has created dysfunction, perhaps as intended. (Consider, the Budgetary process conducted last year and the Mayor's allegation that the Council fails to comply with this Declaration of Policy.)

Signed: Jim Smith

01_14_16

Governance Committee

From: Jim or Belinda <2jbhome@hawaiiantel.net>
Sent: Wednesday, January 27, 2016 3:44 PM
To: Governance Committee
Subject: TESTIMONY - 01_28_16
Attachments: COM ON GOV TESTIMONY 01_28_16.odt

Kim,

I just emailed a copy of the attached testimony through the committee's email address. I am sending this copy to you that contains a correction at the last sentence, restating Reso 15-155 that was mistakenly identified as 15-133

sorry and thank you

Jim Smith
01_28_16

Jim Smith
99 Kapuai Road
Haiku, Maui, Hawaii 96708

January 28, 2016
Special Committee on County Governance
Council of the County of Maui

TESTIMONY
Concerning Resolution 15-155 (CG-1(1))

Chair Person Tony Takitani and Members of this Committee,

Aloha,

This Committee is established by Resolution that is identified as the first item on the agenda for this meeting. In its first statement of fact, justifying establishment of this Committee, the Council asserts that the Preamble to the Charter states “the people of the County of Maui wish to “secure the benefits of the best possible form of government”. This statement is false.

The provision paraphrased is the second paragraph of the Preamble and it states in pertinent part: “*In order to secure the benefits* of the best possible form of county government.(emphasis added) In the election that adopted this phrase voters affirmed the current structure, as the best possible structure.

Please consider that on February 4, the Council's Planning Committee will take up a proposed ordinance that changes the words “shall be” to “are”, changing from future tense to present, this obscures the notion of “consent” in our code. (item PC - 10) This is the political reality of the constantly change world dogma, that focuses government upon results brought upon us in the 1990s.

I urge you to keep Resolution 15-155 on your active agenda and to seek to understand the nature of the dysfunction you are charged to consider.

Thank you.

Signed: Jim Smith
01_27_16

The mantra "If it ain't broke, don't fix it" has been evoked. Would you all like your manual typewriters back? They weren't broken, they functioned. Now you can do so much more, so much more efficiently with your word processing software. You are not looking at making the leap to totally new technology. You are investigating the use of an electric typewriter with correction or short memory capabilities. It is just a fairly small improvement that makes sense.

There has been so much misinformation, plain meanness and cover your backside rhetoric in the past few weeks that I know you are all getting doses of it. The idea is not to just look at the mayoral position, but at where the functions will be taken up or if they should have been laid on the mayor's desk at all. In addition to adding a professional manager for implementing policy set by council, the manager will be in a position, having the responsibility for oversight and accountability, to distribute work where it is best completed. Separate out any personal ambitions and biases from the issue at hand. Every part of the current system can use a tune-up.

The difficulty in getting effective action is a symptom of a jumble of overlapping or redundant duties. In some instances micromanagement has been felt necessary because the department directors are neither being held accountable for delivering reports nor efficiently running their departments. They may not even realize the requirement for these reports or what is to be included in them. Simply inserting a goals section in the budget is not fulfilling this charter requirement, nor does it create a method to evaluate implementation of those goals. It's fixing potholes while the road deteriorates. We have management by stamping out fires.

When a person appointed to head a department needs to seek out a consultant to explain the job and how to do it, we know the skills that person brought to the office are not those the position required. Portable management skills are necessary, but awareness and experience in a specific field is what the taxpayers think they are paying for. And those who may have knowledge of the functional parts may not have the management skills to create an accurate budget projection or a scheduling plan. Job descriptions need to incorporate the whole package.

I believe that council meetings would be half as long if AKAKU was not recording, but that very exposure creates transparency that does not currently exist in the administrative side. A

RECEIVED AT CG MEETING ON 1/28/16
Marjorie Bonar

professional manager will be accountable on a non-political level to the council and through them to the electorate. Systemic change is needed for doing a better job with what we have.

To me, the real challenge will be in deciding how to structure the realignment of duties. A mayor can be elected and serve with the council, appointed from the council, elected separately or be an appointed spokesperson, as the State statutes don't require any specific role for a mayor. It is adjusting all job descriptions to avoid any foreseeable future problems based on the abundance of prior experience around the county.

Governance Committee

From: Mark Hyde <hydem001@icloud.com>
Sent: Wednesday, February 03, 2016 8:43 AM
To: Governance Committee
Subject: HRS Poses No Barrier to Council-Manager Government
Attachments: HRS Statutes Referencing Mayor.docx

To: Special Committee on Governance
From: Mark Hyde
Re: HRS Impact on Form of Government
Date: February 3, 2016

On January 14, 2016, the Mayor and Managing Director appeared before the committee and represented that several state statutes pose a barrier to formation of council-manager government. This is a “red herring¹.”

Below is a brief analysis of scanned state statute referencing the word “mayor.”

THE HAWAII STATE CONSTITUTION AND THE H.R.S. DO NOT PRESENT A BARRIER TO COUNCIL-MANAGER FORM OF GOVERNMENT

I. Hawaii Constitution

Article VIII of the Hawaii Constitution gives counties full power to define local government as they see fit:

“LOCAL SELF-GOVERNMENT; CHARTER

Section 2. Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law. Such procedures, however, shall not require the approval of a charter by a legislative body.”

II. A Few HRS Statutes Make Reference to County Mayors; None Is A Barrier to Formation of Council-Manager Government

710-1014.5 - **Misuse of 911.** Defines a public safety agency to include county emergency management agencies. There is no mention of mayors directly, but mayors have special duties during emergencies, thus the reference. (See below).

Comment: No impact.

708-841 - **Robbery in the Second Degree.** There is no reference to mayors in the text, but mayor have special duties during emergencies, thus the reference. (See below.)

Comment: No impact.

¹ A **red herring** is something that misleads or distracts from a relevant or important issue.

708-833 - **Theft in the Fourth Degree.** Lots of notes after the text (not read) but nothing in the text refer to mayors, but mayor have special duties during emergencies, thus the reference. (See below.)

Comment: No impact.

708-823 - **Criminal Property Damage.** Lots of notes (not read), but nothing in the text of the statute refer to mayors, but mayors have special duties during emergencies, thus the reference. (See below.)

Comment: No impact.

708-818 - **Burglary During an Emergency.** A burglary during a mayor-declared emergency is a special crime.

Comment: No Impact.

707-712.7 - **Assault Against Emergency Worker.** Assaulting an emergency worker during an emergency declared by a mayor is a crime.

Comment: No Impact.

707-700 - **Criminal Offenses Against the Person.** Could find no reference to mayors, but mayors have special duties during emergencies, thus the reference. (See below.)

Comment: No impact.

634F - **Citizen Participation in Government.** Notes to the statute mention mayors, but notes have no legal effect. Nothing in the text.

Comment: No impact

353-29 - **State Correctional Facilities.** Mayors and councilmembers can visit any state correctional facility.

Comment: No impact.

346-382 - **Interagency Council on Homelessness.** The council is to include mayors of each county or his/her designee.

Comment: No impact. Can designate someone else if a mayor chooses.

343-5 - **Environmental Assessments.** A mayor or a mayor's authorized representative may accept a final statement.

Comment: No impact.

302L-1 0006 - **Early Learning Advisory Board.** The board is to consist of, among many others, two representatives from the Hawaii Council of Mayors.

Comment: Little impact. Not sure if the selected mayors can send a delegate.

290-1 - **Abandoned Vehicles.** Allows for disposition of abandoned vehicles; the term “agency” includes any office or department of the county. No mention of mayor directly.

Comment: No impact.

281-1 - **Intoxicating Liquors.** For purposes of the chapter on Intoxicating Liquors, the term “executive elected head” means the mayor of each county or the mayor’s duly appointed or elected successor.

Comment: No impact.

246-46 - **Tax Appeals.** The mayor or the county council of any county may appeal any assessment of real property tax.

Comment: No impact.

237D-6 005 - **Transient Accommodation Tax.** Transient accommodation taxes are to be remitted to county directors of finance. No mention of mayors is included except in notes that have no legal effect.

Comment: No impact.

237D - **Transient Accommodation Tax.** No mention of mayor except in the notes.

Comment: No impact.

226-55 - **State Plan Development.** The governor is to seek nominations from each mayor.

Comment: No impact. A mayor could request a manager to make a recommendation, if he or she so desires, which he/she could forward, if approved.

202-1 - **Advisory Commission on Employment and Human Resources.** The governor is to appoint two mayors to the 31-member council.

Comment: Little impact, and only if Maui County’s mayor is selected to serve.

200-41 - **Abandoned Vessels** - A county, through its mayor or designee, or chief of police, may make a determination that a vessel has been abandoned.

Comment: No impact. A mayor may designate another to do this, likely the chief of police.

128A-2 - **Homeland Security**. Defines “necessary” as in the opinion of a mayor or a mayor’s authorized representative.

Comment: No impact.

127A-25 - **Disasters and Disaster Proclamations**. A mayor can adopt rules in the event of an emergency or disaster.

Comment: Mayors have significant roles to play in emergencies, but county and state emergency management agencies exist along with approved emergency plans, so mayoral actions would fit into county and state plans. A mayor in a council-manager form of government would assume this responsibility, working in concert with others.

127A-12 - **Powers in an Emergency**. A mayor may take and exercise certain powers in an emergency.

Comment: See above.

127A-5 **Responsibilities in an Emergency**. The mayor of each county shall have direct responsibility for emergency management within the county, including organizing, administering and operating a county emergency management agency.

Comment: See above.

127A-2 - **Definitions of Emergency Management**. Emergency management includes the word “necessity” which is to be determined by a mayor or his/her authorized representative.

Comment: No impact. A mayor can delegate actions.

127A-1 - Policy and Purpose clause of the **Emergency Management** statute, confers power on mayors to prepare for and respond to emergencies and disasters.

Comment: No impact. This activity is ongoing in each county, in coordination with the state emergency plan.

125C-32 - **Biennial County Emergency Plan**. The mayor of each county, or his/her delegate, is to prepare a biennial county emergency preparedness plan.

Comment: No Impact. A mayor can delegate this function.

103D-1207 - **Annual Inventories of State Property.** Mayors are to file an annual inventory of all nonexpendable state property in the use, custody or possession of the county or any of its officers.

Comment: No impact. This task would be done by others, i.e., a fiscal officer.

103D - **Public Procurement** statute sections, listing the above section and referencing mayors.

Comment: No impact

96-1 - **Ombudsman** statute defines a state agency by excluding county mayors.

Comment: No impact

89C-1.5 - Excludes Officers from **Collective Bargaining**, including mayors.

Comment: No impact

89-6 Gives mayors one vote in **Collective Bargaining.**

Comment: Little impact. Most of the work would be by others, subject of final say

89-2 - **Collective Bargaining.** Defines "employer" to include mayors of the counties.

Comment: No impact

76-11 - For purposes of **Civil Service**, "employer" includes mayors.

Comment: No impact

49-6 - **Revenue Bonds** are to contain a mayor's signature, which may be by lithograph, engraving or an actual signature.

Comment: No impact

23 **Auditor.** Mayors mentioned in the notes as part of a repealed state-county working group.

Comment: No impact

Governance Committee

From: Nell <nellinmaui@hotmail.com>
Sent: Wednesday, February 10, 2016 2:00 PM
To: Governance Committee
Subject: Testimony for 2/11/16 meeting
Attachments: 16-2-11 Governance Testimony..docx

Aloha kakou,

Attached please find my testimony for tomorrow's meeting.

Mahalo, Nell Woods

SPECIAL COMMITTEE ON COUNTY GOVERNANCE
FEBRUARY 11, 2016 MEETING

TESTIMONY ON CG-1 (1)

Good Afternoon Chair Takitani and Commission members,

It was refreshing to hear Mayor Tavares acknowledge two weeks ago the shortcomings, both big and small, of the current governance structure.

I found it especially interesting that one of the major points she made was the major stutter in the function of County government that occurs each time there is a change in the Mayor's office. It was her contention that some kind of extended overlap of the outgoing department directors and deputies with their incoming counterparts was the solution.

I must respectfully challenge that contention. The only way to achieve an extended overlap is to provide the funding to do so. Neither the departing nor the incoming directors and deputies are likely to work any period of time for free. Any budget that was submitted with additional funding to pay both the departing and incoming directors and deputies for a specific period of time would summarily have that line item struck by the County Council on the first day of budget discussion.

I'd like to remind you that a change to a Council/Manager/Mayor form of government as described in the materials that have been provided to you by council staff eliminates the issue of turnover of the majority of the department directors and deputies that currently is the norm in Maui County.

A County Manager will be responsible for tightening up the director & deputy required qualifications to the specific department positions being filled and ensure that only people with those qualifications are eligible for consideration. Additionally, once positions are filled with qualified people, the only responsibility they will have is doing the job for which they were hired without political duties every 4 years. An even better by-product is that whenever a position is vacated, it opens up an opportunity for promotion within the department, which cannot help but make for better productivity and improved morale within the department.

For those of us who are vocal in our support of this change, the only mystery to us is how anyone can fail to grasp how much more smoothly government can work when the structure supports long-term continuity instead of revolving doors at the top every 4 years.

Respectfully submitted,

Nell Woods

Testimony to the Maui County Council Special Committee on
Governance

Kelly Takaya King
February 11, 2016

It was important to take time out of my busy schedule today to share with the committee that the county management issue is a concern to many Maui citizens. In fact, most of the people I know in this county are in favor of changing to a system that brings more professionalism and accountability to our administration. The idea for this committee actually was proposed at a meeting that started out at a resident's house as a gathering for about 10-15 concerned citizens but grew to over 45 in actual attendance.

Since becoming active in our beautiful community a few decades ago, I had experienced challenges and even roadblocks when dealing with county departments, but there did used to be a human quality and a measure of cooperation. A group of us parents were able to work with our administration to get the first public playground equipment erected in a public/private partnership. America's oldest biodiesel plant was built in our county landfill with the support of the Maui County Landfill Diversion office. When I served as Maui's BOE representative, I worked with the county on issues like traffic lights near schools and local school bus service. Even as chair of the non-profit Hui Malama, I felt there was access to and support from both the Council and administration.

Today, however, there is an obvious lack of transparency and professionalism in our Maui County governance, and the relationship between the Council and Mayor has devolved into a finger pointing, politicizing, inefficient tragedy. I apologize for the harsh words, but, as a business person, former policy maker and non-profit supporter, I feel the urgent need for change, and it's time to stop mincing words. The promise of the 2010 County Plan has slipped away due to a lack of benchmarks which were specifically required in county code. It feels like nothing important gets done in this county except by litigation, petition or protest. That's what it took to keep the current mayor from decimating the county recycling program, one of the areas where Maui County truly was a leader.

Now this committee has an opportunity, and at least some political will, to make a real change for the better. I urge the Special Committee on Governance to support a model that will bring more professionalism and transparency to Maui's county governance. I believe that developing an administrative system with a hired, qualified professional who would be accountable to performance benchmarks, should be a top priority for this committee and for our County Council. Thank you for your work on this important matter.

Kelly T. King

RECEIVED AT CG MEETING ON 2/11/16

Governance Committee

From: Nell <nellinmaui@hotmail.com>
Sent: Monday, February 15, 2016 9:26 AM
To: Governance Committee; Lori Teragawachi
Subject: Observation

Aloha kakou,

As a regular attendee at your Committee meetings, I was genuinely puzzled by the discussion that followed public testimony this past Thursday. It appeared that a "homework" project had been assigned. As I understood it, the members of the Committee were asked to individually decide whether they believed an elected or an appointed Chief Executive Officer would be better for the County and to be prepared to explain what led to their decision.

The task before the Committee as stated in the Resolution is to determine "whether establishing a county manager form of government would improve management and operation of the County?" I would like to point out that a County Manager form of government DOES NOT PRECLUDE AN ELECTED MAYOR! There are many examples of Council/Manager/Mayor forms of government in the material that has been provided to you. To be asked to answer a question of EITHER/OR is an exercise in irrelevance.

It is well known that the electorate of Maui County have clearly voiced their desire to be able to vote for a Mayor. The question you all should be asking yourselves is: **"Would the management and operation of Maui County be improved by having an elected Chief Executive Officer (CEO/Mayor) and an appointed professional Chief Administrative Officer (CAO/County Manager)"?**

If you ask yourselves that question, I predict an entirely different result to your "straw vote".

Respectfully,

Nell Laird-Woods

Governance Committee

From: awilliewolf@gmail.com
Sent: Tuesday, February 23, 2016 1:37 PM
To: Governance Committee
Subject: County Governance

I am so happy that you are considering this upgraded form of county governance. Please do place it on the ballot.

It should

1. Make our county governance more efficient, 2. have better qualified people running our government avoiding unqualified political appointees, and 3. make a smoother transition between mayor when they change over.

Sincerely,
Alfred Wolf

Governance Committee

From: Dick Mayer <dickmayer@earthlink.net>
Sent: Tuesday, February 23, 2016 2:39 AM
To: Governance Committee
Cc: Kim Willenbrink
Subject: County Governance Committee Meetings

From: Dick Mayer cell 283-4376
dickmayer@earthlink.net
Sent: Tuesday, February 23, 2016
RE: County Governance Committee Meetings

Aloha,

It seems that the Special Committee on Governance has heard from only a few residents because all the meetings are held during the early afternoon.

I hope the committee will schedule in the evenings four public meetings: (1) west Maui; 2) south Maui; 3) upcountry; and 4) in Council Chambers so central Maui residents can testify plus allow residents on Lanai, Molokai and Hana to phone in.)

Dick Mayer cell 283-4376
dickmayer@earthlink.net

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TUESDAY, February 23, 2016

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Governance panel could vote Thursday

Committee considering county manager system

By COLLEEN UECHI, Staff Writer

A committee considering a new form of government for Maui County may take a vote Thursday on whether a County Council-county manager system would be an improvement over the current council-mayor system.

For the past two months, the Special Committee on County Governance has been discussing the merits of a county manager form of government, in which a professional manager would be hired to oversee the county's day-to-day administrative operations. Depending on its structure, the new system may or may not include a mayor, though legislative duties and selection of the manager would still fall to the council.

The 11-member panel, formed



Schaefer



Starr



Takitani

by council resolution, has been charged with answering the question of whether a county manager form of government would improve operations and management of the county and offering its recommendation to the council.

At its last meeting Feb. 11, the committee was almost evenly divided on the question. Five members opposed changing the current form of government and four supported changing it, while one was unsure and another was absent. Despite casting an informal vote, some members said they still were waver-

ing on the issue.

Those opposed felt it was too great of an overhaul and that improvements could be made to the current system.

"There's other avenues for addressing efficiency than necessarily tearing the whole government apart and starting over again," member Dave DeLeon said. "I don't think it's a concept that needs to be taken off the table, but I think we have other issues here."

Member Paula Friel said that she has "grave concerns over the legislative branch selecting the executive branch," since the council would be in charge of hiring a manager.

"I believe it's imperative to keep a separation of powers. That's my number one concern," she said,

adding that based on test reports, "there isn't an overwhelmingly clear conclusion that it will solve our problem."

Member Kay Okamoto research presented to the council that showed voter turnout for municipal elections in other manager governments.

"I'm not happy with the way it's going," she said.

However, Vice Chair Madge Schaefer said she "should give serious consideration to what a professional manager could offer the county."

"I find it is a very efficient way for the government to operate," she said, pointing out that elected officials do not have to campaign like the elected officials do. "It's an organizational manager that would manage the public because of their ability."

Member Tamara Paltin said she "is in favor of a manager system." See MANAGER on page 7.

Manager

Continued from Page A1
council-manager structure could work if it were held to strict standards that included preventing campaigning for the position.

"You're not just taking the money out of politics, you're taking the politics out of basic services," she said.

Even those who supported a county manager tended to support retaining a mayor.

"I feel we should keep a mayor's role but not an administrative role," member Jonathan Starr said. "Moving toward, professional management does not preclude having a strong elected mayor, which is an integral part of our system."

When Mayor Alan Arakawa attended a committee meeting Jan. 14, he said that he supports exploring different forms of government but also questioned whether a system switch was necessary.

"I don't want anyone to get the mistaken idea I'm trying to defend my job," he said. "But one of the major issues that needs to be examined is why are we doing this at this point? ... Is the government falling apart?"

Schaefer pointed out later that the county manager idea

was a suggestion of the Charter Commission and "isn't something new." She also said it's been "highlighted by the escalation" of growing tensions between the council and mayor.

Members have debated whether the committee should hold public hearings.

"Something I feel is needed is to take this out to the communities in a way that people can understand the issue, then we can hear their manao," Starr said. "Frankly, that doesn't happen here ... at midday."

Others said it should fall to the council to hold public hearings.

"The bottom line is that the council makes the decision on what they do with what we give them," Schaefer said. "Not to discount the importance of (this committee), but I think the public should weigh in at the time that the council is going to make the decision."

Council Chairman Mike White has not taken a position on the county manager form of government but said that he didn't feel the committee has had enough time to come to a solid conclusion.

"I brought this up because I felt it was worth having a discussion because there are things in our structure that I believe could be made stronger," he said Monday. "I would hate

to see them close it down this quickly."

If members vote Thursday in favor of the county manager form, they would continue to meet to discuss what structure a county manager government would take, Chairman Tony Takitani said Monday. However, if members decide against the manager form, they won't necessarily have to continue to hold meetings in order to create a final report.

Takitani added that even if the committee votes to keep the current structure, he'd like to see several improvements in the current form of government, including strengthening department head qualifications and allowing better communication between county officials.

"I think what should be looked at is to remove barriers to communication that prevent administration from speaking directly to the council and council speaking to members of the administration," he said.

Takitani said that one member may not be able to attend Thursday's meeting, which could possibly result in a tie.

The meeting takes place 1 p.m. Thursday in Council Chambers.

■ *Colleen Uechi*
can be reached at
cuechi@mauinews.com.

Governance Committee

From: Gerry Bagoyo <ebagoyo@gmail.com>
Sent: Tuesday, February 23, 2016 9:31 PM
To: Governance Committee
Subject: Special committee on county manager vs mayor form of governance

Thank you for the opportunity to add my comments to the discussion.

The supporters of this initiative would say that the objective of a County manager form of governance is so that the person in the County's top job is the one most qualified to hold that office. What a novel idea. Not.

This is where I remind the initiative's supporters of what happens in our community every four years. Every four years the vote for mayor comes up and we voters make the time and effort to cast our vote with all our best hope and intentions to do what it is you're trying to achieve, and that is to elect who we think is the best, most qualified person for the job.

So are you saying that the individual voter's judgment is somehow impaired and can't be trusted to make such an important decision? That we don't know what we're doing? That we're not qualified enough or not deserving enough to have a say in who we want as our leader? Rubbish.

A more honest re-phrasing of the question to the voter is: "Do you want to relinquish your direct vote for Maui's top job and have someone else make that choice for you instead?" (Or some similar phrasing). There's no ambiguity, this question would most certainly lead to either a yes or no answer. Ah, but that's not the kind of phrasing that supporters would support, would they? They want the question to be clear as mud, which works to their advantage.

The supporters would put it on the ballot today if they could. The public has not been provided enough information on the subject to come to an intelligent conclusion, nor has it been provided any or enough opportunity to give its input. But no matter, the supporters would want to roll the dice as is. And why not, when they have nothing to lose and everything to gain.

This is where those members with better judgments need to step in. Please look out for the people's best interests. Anything that takes away the voice of the people is never in people's best interest. This proposed idea is as anti-democratic as they come.

I say no to a County manager form of governance. Nothing wrong with our current Mayor form of government. It may need tweaking or small kind improvements, but is ok overall. If the supporters have a specific person in mind for the job, then have that person run in the Mayor's race like everyone else who wants to be Mayor. And let the people decide.

Sincerely,

Elsa Bagoyo
Pukalani

Governance Committee

From: Jeanne Duberstein <duberstem001@hawaii.rr.com>
Sent: Tuesday, February 23, 2016 10:21 PM
To: Governance Committee
Subject: In favor of change of county government structure -- GIVE US A VOTE

Please pursue the idea of a county manager form of government! Don't disband. At least give citizens a chance to hear more, perhaps on a special AKAKU program, and give us a chance to vote in the November ballot. There is cynicism regarding whether the county is working for us, especially with regard to the various departments which change personnel so often and don't need to be accountable. Don't fuel that cynicism by disbanding at this stage. We need a strong manager separate from the mayor to assure consistency in services and less political favoritism. Give the citizens a chance please. Jeanne Mosley Duberstein, Kihei

RECEIVED

2-24-16

2016 FEB 25 AM 10:01

County of Maui

OFFICE OF THE
COUNTY COUNCIL

Special Committee on County Governance

As much as I would be willing to testify at your meeting on Thursday, my work obligation prevents this. Perhaps your committee can find its way to have a couple of evening meetings where the community who works during the day can be available to voice their views.

Prior to moving permanently to Maui 16 years ago I lived in the City of Bend, County of Deschutes, in Oregon. Both the city and the county were each run by separate elected councils who hired and were responsible for the actions and conduct of the manager.

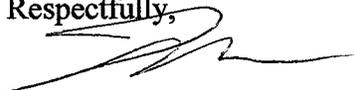
Each council chose from its respective elected members one person to serve as mayor to represent the council that calendar year. The appointed "mayor" was reimbursed for his/her extra expenses serving as the county's/city's representative at openings and meetings of government groups.

Professional managers are not politicians. They are educated and trained and have experience to be managers: managers of employees; managers of staffs; managers of the public funds; managers of labor negotiations, and so on. There is no evidence that any past or present mayor has had those attributes under our present form of government. And most importantly, they are employed at the will of the elected council and, unlike the current mayor system of government, can be removed immediately if proven unable or incompetent to fully do their job.

Professional managers hire department heads based on their experience and abilities, not as political rewards. It is time that Maui County becomes up-to-date and more efficient. Yes, there will be some time and expenses involved in the change over but, in the long run, the county will spend less money on mayor assistants both in wages and benefits and the professional manager and his/her assistants will spend their time and our monies working on the county's business and not on political issues.

Both my wife and I strongly encourage you to vote to send to the council the recommendation to change to the business manager form of government which includes the elimination of the elected mayor position.

Respectfully,



L David Taylor 283-7146
15 Huluhulu Place
Kahului, HI 96732

Governance Committee

From: Ray Phillips
Sent: Wednesday, February 24, 2016 12:13 PM
To: Governance Committee
Subject: Re: Attached: Special Committee on County Governance Agenda and Meeting Schedule for February 25, 2016 at 1:00 p.m. in Council Chamber

Aloha fellow Committee members

I understand that there is a possibility that a vote may be asked for as to whether we should have a County Manager for Maui County.

I believe that at this juncture we have NOT done several things that would be considered our duty and "due diligent" before making this decision.

1. We have not had enough discussion and exchanging ideas amongst the members of the committee.
2. We have not examined and reviewed the issues that face Maui County and the possibilities of a structure that would assist these issues with or without a County Manager. There are several possible structures including a Mayor and a County Council and a Managing Director /County Manager that is professionally trained and educated with proven experiences and credentials. There are so many possible structures that can assist Maui County as well as altering the present system . We, as a committee MUST discuss these possibilities BEFORE taking a vote of any sort.

3. The committee MUST make a better effort to involve the community. More outreach and more regional area meetings at times that are convenient to the citizens of Maui. Including weekends and evenings.

I am very concerned that the Committee HAS NOT done its job in the analysis and discussion of the issue. I for one am opposed to a vote at this time without doing a BETTER job of what we are there to do.

However, IF I WAS asked to vote I would vote that we DO need a professional administrator. Whether that professional administrator was a County Manager or expanded role/job description for the Managing Director. I would request that we have a Mayor and County Council that would guide that individual and that individual would be free of political aspirations. Of course, there are many details to be concerned with. However, I believe that ALL of the Committee members feel that a professional administrator would be of benefit to Maui County.

respectfully
Ray Phillips

From: Governance Committee
Sent: Friday, February 19, 2016 11:16 AM
To: Governance Committee
Subject: Attached: Special Committee on County Governance Agenda and Meeting Schedule for February 25, 2016 at 1:00 p.m. in Council Chamber

Governance Committee

From: Jim or Belinda <2jbhome@hawaiiantel.net>
Sent: Wednesday, February 24, 2016 8:33 PM
To: Governance Committee
Subject: Committee Decision making
Attachments: 02_26 mtg HHT comm. rpt 16-26 trans plan.pdf

02_24_16

SUBJECT: Proposed action on question of whether to approve change to our political structure.

Chairperson Tony Takitani and Members of the Governance Committee,

Aloha,

It appears that members have drawn conclusions and may vote on the question of whether to recommend to our Council that a change in political structure should or should not be proposed, I think a vote at this time would adversely affect public trust. The hard issues, the political issues need your attention

This Friday the Council will meet and take up HHT Committee Report 16-26 which establishes a metropolitan Planning Organization in our Code. This organization was approved by agreement between Mayor Arakawa and the Governor in 2013, without approval by our Council. Our Council is posed he agreement after the fact. (See Committee Report attached here.)

The engine that drives public concern appears to be a systematic dysfunction that will not be cured by changing structure. The problem appears to be an abuse of executive power and failure of the Council to hold the chief executive accountable. Clearly, now is not the time to close down your analysis.

This Committee can help by examining whether both executive and legislative branches struggle to understand the perspective duties and power. or simply don't care. Now is not the time to decide upon a solution.

I urge this Commission not to vote on the basis of deadline nor the idea that efficiency is even an issue. Time is not an issue; understanding and your demonstrated commitment to this process invigorates hope.

Mahalo for your service.

Jim Smith

COUNCIL OF THE COUNTY OF MAUI
HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE

February 26, 2016

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Housing, Human Services, and Transportation Committee, having met on January 7, 2016, January 21, 2016, and February 4, 2016, makes reference to County Communication 15-294, from the Director of Transportation, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 2, MAUI COUNTY CODE, TO ESTABLISH THE MAUI METROPOLITAN PLANNING ORGANIZATION" ("Title 2 bill"). The purpose of the proposed bill is to amend Title 2, Maui County Code ("MCC"), to establish the Maui Metropolitan Planning Organization ("MPO"), an organization whose purpose is to conduct transportation planning.

2. A proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII TO ESTABLISH THE MAUI METROPOLITAN PLANNING ORGANIZATION TO FULFILL FEDERAL AND STATE TRANSPORTATION PLANNING REQUIREMENTS" ("Intergovernmental Agreement bill"). The purpose of the proposed bill is to authorize the Mayor to enter into an agreement relating to the Maui MPO, in the form attached as Exhibit "A" to the proposed bill ("Agreement"), pursuant to Section 2.20.020, MCC.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted revised proposed bills, approved as to form and legality, incorporating nonsubstantive revisions, including a

COUNCIL OF THE COUNTY OF MAUI

**HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE**

Page 2

**Committee
Report No. _____**

revision to the title of the Intergovernmental Agreement bill to read, "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII TO FULFILL FEDERAL AND STATE TRANSPORTATION PLANNING REQUIREMENTS RELATING TO THE MAUI METROPOLITAN PLANNING ORGANIZATION."

Your Committee notes the 2010 United States Census found the geographic area encompassing Kahului, Wailuku, and Paia to have a population exceeding 50,000, thus constituting an "urbanized area," pursuant to 23 United States Code ("U.S.C.") Section 134(b)(7) and 49 U.S.C. Section 5303(b)(7). Federal laws governing metropolitan transportation planning and Chapter 279D, Hawaii Revised Statutes ("HRS"), require an MPO be designated for an urbanized area. The MPO would act as a decision-making agency and receive certain funds for transportation planning.

The Deputy Director of Public Works noted the deadline to create the MPO was in 2013. Your Committee notes it did not receive the proposed bills to provide for a Maui MPO until December 2015.

Your Committee further notes, although there is an Oahu MPO, this is the first such organization for Maui.

As a part of its due diligence, your Committee sought input on the revised proposed bills from representatives of the County Departments of Transportation, Public Works, Planning, and Finance; the State Department of Transportation, Highways Division, Planning Branch; and the U.S. Department of Transportation, Federal Highway Administration, Hawaii Division.

Your Committee questioned the impact of forming an MPO on anticipated funding for highways and transit projects, and associated funding and staff support to be requested of the County.

COUNCIL OF THE COUNTY OF MAUI
HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE

Page 3

Committee
Report No. _____

The County Director of Transportation provided a breakdown of Federal transportation planning funds the Department anticipates receiving for the Maui MPO for Federal Fiscal Years 2013 through 2015, totaling \$1,167,405. He noted an understanding, following initial discussions with the State Department of Transportation, that the State and the County would each provide a ten-percent match to access Federal funds available to the MPO. He said once the MPO is created, the Department will gain over \$5 million in Federal funds for those three Federal Fiscal Years. He also said the State Department of Transportation advised if the Maui MPO is not created, the County stands to lose over \$200 million in Federal funds for County projects.

In response to your Committee's questions, the Deputy Director of Public Works informed your Committee there is also a potential for reimbursement to the County for the South Maui Regional Traffic Master Plan if the Maui MPO is in place soon and its Policy Board supports the project.

The Deputy Director of Transportation noted once the Agreement is approved, the Department would prepare a financial supplemental agreement to be presented to the Council for review.

The Director of Transportation said the Maui MPO would receive about \$400,000 per year for its operation; costs for the Maui MPO Executive Director and staff would come from MPO Federal funding and from County matching funds of approximately \$50,000 per year. He said the Department would possibly house Maui MPO personnel in County facilities, which would be used as an in-kind contribution for a portion of the County's share of matching funds. He also said the County's matching funds of \$50,000 have already been approved in the Fiscal Year 2016 Budget. Your Committee requested a written response as to how the State's matching funds would be provided to the County for the Maui MPO.

COUNCIL OF THE COUNTY OF MAUI
HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE

Page 4

Committee
Report No. _____

Your Committee questioned whether the Agreement, which the Council is being requested to authorize under Section 2.20.020, MCC, should reference the financial obligations being imposed upon the County.

The Department revised the Agreement to state the Federal government's share of the cost of an activity funded using amounts made available under 49 U.S.C. Section 5305 may not exceed 80 percent of the cost of the activity.

At your Committee's request, the Department also revised the Agreement to require the annual reports submitted by the Maui MPO to the State Legislature also be submitted to the County.

Your Committee was informed the Maui MPO would be an independent board, not a County board. Your Committee, therefore, questioned the need to establish the Maui MPO in the Maui County Code. Your Committee also noted the Agreement provides the County may administratively support the Maui MPO through its Departments of Transportation, Public Works, and Planning.

A Deputy Corporation Counsel explained there is a Federal mandate to enter into this Agreement because an urbanized area exists, and advised Section 279D-3(c)(3), HRS, provides an MPO shall be placed within a state or county agency, as appropriate, for administrative purposes only.

Your Committee also questioned whether creation of the Maui MPO or designation of a Metropolitan Planning Area ("MPA") would impact the availability of other Federal funds such as Community Development Block Grant and U.S. Department of Agriculture funds. The Deputy Director of Public Works informed your Committee she had spoken with Mark Chandler, U.S. Department of Housing and Urban Development, and was advised "MPO status" would not impact the availability of Community Development Block Grant funds. Your Committee requested written confirmation from the appropriate Federal agencies that neither the

COUNCIL OF THE COUNTY OF MAUI
HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE

Page 5

Committee
Report No. _____

establishment of an MPO, nor the designation of the island of Maui as an MPA, would impact the County's receipt of other Federal funds.

Your Committee questioned the effect of the June 18, 2013, correspondence executed by the Governor, the State Director of Transportation, and the Mayor, a copy of which is attached to the revised proposed bills. Notably, the correspondence states, "At this time, it has been agreed to by the State Department of Transportation (DOT) and Maui County that to ensure a coordinated and integrated planning effort, the MPA is designated to encompass the entire island of Maui."

Your Committee notes 23 U.S.C. Section 134(b) and 49 U.S.C. Section 5303(b) define a "metropolitan planning area" to mean "the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor." Your Committee, therefore, asked how the MPA could have been designated when the MPO had not yet been created.

The Deputy Director of Transportation noted the MPO and the Governor would need to decide on the MPA, so there is no official designation of the MPA as yet. The Deputy Corporation Counsel advised, consistent with Federal law, the MPO would need to be involved in the designation of the MPA and it appeared the June 2013 correspondence expressed a desire for a certain outcome. Your Committee recommended the Title 2 bill be revised by deleting reference to the correspondence, to the island of Maui having been designated an MPA, and to the Maui MPO applying to the entire island of Maui. Your Committee also recommended the Agreement be revised by deleting reference to the entire island of Maui having been identified as an MPA.

Your Committee discussed the operation and structure of the Maui MPO, which would have a Policy Board, Executive Director, and staff. As initially proposed, the Maui MPO Policy Board would have five voting members – the State Director of Transportation or appropriate successor, a Councilmember, and the directors of the County Departments of

COUNCIL OF THE COUNTY OF MAUI

HOUSING, HUMAN SERVICES, AND TRANSPORTATION COMMITTEE

Page 6

**Committee
Report No.** _____

Planning, Public Works, and Transportation, with two Councilmembers serving as ex-officio members. Your Committee recommended the membership be changed to seven voting members, with three Councilmembers serving as voting members. Your Committee also recommended the membership of the Policy Board be incorporated in proposed Chapter 2.35 of the Title 2 bill.

In response to your Committee's concerns about Sunshine Law restrictions limiting Councilmember participation, the Deputy Corporation Counsel advised your Committee that Chapter 279D, HRS, allows for certain exceptions to the Sunshine Law, and the provisions on page 4 of the Agreement are consistent with those exceptions.

Your Committee recommended Section 2 of the Intergovernmental Agreement bill be revised to delete reference to the Council authorizing the Mayor to enter into other documents relating to the Agreement or any amendments to the Agreement without first obtaining Council approval.

Your Committee voted 5-0 to recommend passage of the revised proposed bills on first reading and filing of the communication. Committee Chair Crivello and members Carroll, Couch, Guzman, and Hokama voted "aye." Committee Vice-Chair Baisa and member Victorino were excused.

Your Committee is in receipt of revised proposed bills, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Housing, Human Services, and Transportation Committee RECOMMENDS the following:

1. That Bill _____ (2016), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 2, MAUI COUNTY CODE, TO ESTABLISH THE MAUI

COUNCIL OF THE COUNTY OF MAUI
**HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE**

Page 7

**Committee
Report No. _____**

METROPOLITAN PLANNING ORGANIZATION,” be PASSED
ON FIRST READING and be ORDERED TO PRINT;

2. That Bill _____ (2016), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII TO FULFILL FEDERAL AND STATE TRANSPORTATION PLANNING REQUIREMENTS RELATING TO THE MAUI METROPOLITAN PLANNING ORGANIZATION,” be PASSED ON FIRST READING and be ORDERED TO PRINT; and
3. That County Communication 15-294 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



STACY CRIVELLO, Chair

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AMENDING TITLE 2, MAUI COUNTY CODE, TO
ESTABLISH THE MAUI METROPOLITAN PLANNING ORGANIZATION

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The Council finds that 23 United States Code sections 134-135 and 49 United States Code sections 5303-5304, as amended, the implementing federal regulations, and Chapter 279D, Hawaii Revised Statutes, require that a metropolitan planning organization be designated for an “urbanized area” (a geographic area of more than fifty thousand people, as determined by the United States Bureau of the Census) to act as a decision-making agency and receive certain funds for the purposes of carrying out a continuing, cooperative, and comprehensive transportation planning process.

In the 2010 United States Census, the geographic area encompassing Kahului, Wailuku, and Paia was found to have a population exceeding the threshold of fifty thousand.

The purpose of this ordinance is to establish the Maui Metropolitan Planning Organization.

SECTION 2. Title 2, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 2.35

MAUI METROPOLITAN PLANNING ORGANIZATION

Sections:

- 2.35.010 Purpose and intent.
- 2.35.020 Establishment.
- 2.35.030 Organization, powers, duties, and functions.
- 2.35.040 Policy board membership.
- 2.35.050 Rules.

2.35.010 Purpose and intent. A. Federal law requires the designation of an entity known as a metropolitan planning organization, or MPO, for each urbanized area with a population of more than 50,000 individuals to qualify the area to receive federal funding for transportation planning, to act as a decision-making agency, and to carry out a continuing, cooperative, and comprehensive transportation planning process with governmental agencies.

B. The intent of this chapter is to establish the Maui MPO.

2.35.020 Establishment. The Maui metropolitan planning organization is hereby established as provided by law (23 U.S.C. sections 134-135 and 49 U.S.C. sections 5303-5304, as amended, the implementing federal regulations, and chapter 279D, Hawaii Revised Statutes).

2.35.030 Organization, powers, duties, and functions.

A. The Maui MPO shall operate according to executed comprehensive agreements between the State, County, other operators of public transportation receiving federal funds, and other entities as appropriate. The organization, powers, duties, and functions of the Maui MPO shall be as provided by law.

B. The Maui MPO shall have its own policy board, executive director, and staff, except the County department of transportation may provide administrative support pursuant to a supplemental administrative agreement.

C. Decisions by the Maui MPO policy board shall be the result of a continuing, cooperative, and comprehensive transportation planning process.

D. The Maui MPO may engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice.

E. The Maui MPO may contract for or accept revenues, compensation, proceeds, and gifts, donations, or grants in any form from any public agency.

F. The Maui MPO shall meet all requirements of 23 United States Code sections 134 and 135, 49 United States Code sections 5303 and 5304, and the implementing federal regulations; chapter 279D, Hawaii Revised Statutes; and any other relevant requirements.

2.35.040 Policy board membership. The policy board shall be composed of seven members. The policy board shall include:

A. The director of the State Department of Transportation or any successor department thereof with primary responsibility for statewide transportation project implementation.

B. Three members of the Maui County Council appointed by the council chair.

C. The director of the County department of planning.

D. The director of the County department of public works.

E. The director of the County department of transportation.

2.35.050 Rules. The Maui MPO may adopt administrative rules of practice and procedure pursuant to chapter 91, Hawaii Revised Statutes.”

SECTION 3. Chapter 2.40, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

“2.40.230 Maui metropolitan planning organization.
There is established a Maui metropolitan planning organization as provided by law. See 23 U.S.C. section 134(d), 49 U.S.C. section 5303(d), chapter 279D, Hawaii Revised Statutes, and chapter 2.35 of this title.”

SECTION 4. New material is underscored. In printing this bill the County Clerk need not include the underscoring.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JERRIE L. SHEPPARD
Deputy Corporation Counsel
(LF 2014-1954)

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII TO FULFILL FEDERAL AND STATE TRANSPORTATION PLANNING REQUIREMENTS RELATING TO THE MAUI METROPOLITAN PLANNING ORGANIZATION

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. Metropolitan planning organizations designated pursuant to 23 United States Code section 134(d) shall meet all requirements of 23 United States Code sections 134-135 and 49 United States Code sections 5303-5304, as amended, and any federal regulations adopted pursuant thereto. In the State, a metropolitan planning organization is also required to comply with Chapter 279D, Hawaii Revised Statutes. Section 279D-3, Hawaii Revised Statutes, provides that a metropolitan planning organization shall operate according to executed comprehensive agreements, including any supplemental agreements, between the State, County, and other operators of public transportation receiving federal funds.

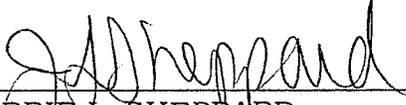
To enable the County to receive federal funding for transportation planning, the Maui Metropolitan Planning Organization has been designated as the agency to carry out the "continuing, cooperative and comprehensive" transportation planning process, in accordance with the terms set forth in the Maui Metropolitan Planning Organization Comprehensive Agreement, attached hereto and incorporated herein by reference as Exhibit "A."

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to enter into an intergovernmental agreement, in the form attached hereto as Exhibit "A."

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
(LF 2014-1954)

**MAUI METROPOLITAN PLANNING ORGANIZATION
COMPREHENSIVE AGREEMENT**

THIS COMPREHENSIVE AGREEMENT ("Comprehensive Agreement") is made and entered into on the ___ day of _____, 2016, between the County of Maui by its Mayor, and the State of Hawaii by its Governor. (Appendix A, attached hereto, provides a list of abbreviations for reference.)

WITNESSETH:

WHEREAS, 23 United States Code (U.S.C.) §§ 134-135, and 49 U.S.C. §§ 5303-5304, as amended, federal regulations adopted pursuant thereto, and other federal laws, require that a Metropolitan Planning Organization (MPO) be designated based on a qualifying population threshold, to act as a decision-making agency and receive certain funds to carry out a "continuing, cooperative, and comprehensive" transportation planning process (3-C Planning Process), including development of a Long Range Transportation Plan (LRTP) and a Transportation Improvement Program (TIP); and

WHEREAS, the federal transportation planning statutes noted above, and Chapter 279D, Hawaii Revised Statutes (HRS), require the State to coordinate the Statewide transportation planning process for metropolitan planning areas (MPAs); and

WHEREAS, in the 2010 United States Census, the geographic area encompassing Kahului, Wailuku, and Paia was found to have a population

EXHIBIT " A "

greater than 50,000 individuals, thus qualifying as an “urbanized area,” eligible for designation as an MPO; and

WHEREAS, on June 18, 2013, the Governor, the State Director of Transportation, and the Mayor of the County of Maui, sent to the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), a letter stating the urbanized area of Kahului, Wailuku, and Paia was “determined eligible for and shall be designated as a Metropolitan Planning Organization” (a copy of the letter is attached hereto as Exhibit “1”); and

WHEREAS, 23 U.S.C. § 134 and 49 U.S.C. § 5305(d), as amended, require federal funds be made available to the designated MPO to support the 3-C Planning Process, and provides that such funds not used by the MPO may be transferred to the State to fund activities under 23 U.S.C. § 135, only upon written concurrence by the MPO; and

WHEREAS, 23 C.F.R. § 450.314 requires the State, County, and MPO, by written agreement, to cooperatively determine their mutual responsibilities in carrying out the 3-C Planning Process; and

WHEREAS, Chapter 279D, HRS, recognizes the federal mandate that MPOs act as independent decision-making entities in order to receive and administer federal transportation planning funds, with an independent policy board, an Executive Director, and staff; and

WHEREAS, the County of Maui may administratively support the Maui MPO through its Departments of Transportation, Public Works, and Planning, even though the Maui MPO will have its own Policy Board, Executive Director,

and staff; and

WHEREAS, 23 C.F.R. § 450.310 permits an MPO to use the staff and resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the planning process, and allows such use by the MPO to be set forth in a supplemental administrative agreement; and

WHEREAS, projects to be implemented using federal aid transportation funds (other than Federal Lands Highway program projects) shall be selected by the State and the County, in cooperation with the Maui MPO, from the approved TIP pursuant to 23 C.F.R. § 450.330.

NOW THEREFORE, the parties hereto do mutually agree as follows:

I. ORGANIZATION OF THE MAUI MPO

A. Maui MPO Structure and Policy Board.

Pursuant to 23 U.S.C. § 134, the 3-C Planning Process for Maui shall be vested in the Maui MPO, which shall abide by all applicable federal, state, and county laws and requirements. The Maui MPO shall consist of a Policy Board, an Executive Director, and staff, as established in Chapter 2.35, Maui County Code, this Agreement, and any Maui MPO bylaws, administrative rules, and other governing documents.

B. Maui MPO Policy Board Responsibilities.

The Policy Board is responsible for developing the metropolitan transportation planning process and shall assure full compliance with the requirements of 23 U.S.C. §§ 134 and 135, 49 U.S.C. §§ 5303 and 5304, 23 C.F.R. Part 450 Subpart C, 2 C.F.R. Part 200, HRS Chapter 279D, and all other

applicable federal and State laws and regulations. The Policy Board shall be the decision-maker for use of federal-aid transportation funds provided under this Comprehensive Agreement.

C. Meetings of the Policy Board.

1. Meetings.

Meetings of the Policy Board, advisory committees, or subcommittees shall be subject to part I of Chapter 92, HRS, also known as the "Sunshine Law," provided that participation by members of the Maui County Council in a meeting of the Policy Board shall be a permitted interaction as provided in Section 279D-9(b), HRS.

2. Quorum.

A majority of the voting members of the Policy Board (i.e., five voting members) or an advisory committee or subcommittee shall constitute a quorum to do business.

3. Exception.

Less than a quorum of Policy Board members may discuss Maui MPO business, without limitation, outside of a duly noticed meeting of the Policy Board, pursuant to Section 279D-9(c), HRS.

D. Composition and Authority.

1. Members.

The Policy Board shall be composed of seven members. The Policy Board shall include:

- a) The director of the State Department of Transportation or any successor department thereof with primary responsibility for statewide transportation project implementation;
- b) Three members of the Maui County Council appointed by the Council Chair;
- c) The director of the County Department of Planning;
- d) The director of the County Department of Public Works; and
- e) The director of the County Department of Transportation.

2. Powers and Duties.

The Policy Board shall have overall responsibility for the implementation of this Comprehensive Agreement, including coordination of the Maui MPO's efforts and the responsibilities of the Technical Advisory Committee (TAC), the review and approval of the Maui LRTP (MLRTP) and TIP, and the development and adoption of the Maui MPO's Unified Planning Work Program (UPWP). Specifically, the Policy Board shall:

- a) Appoint and determine the powers and duties of the Executive Director. Maui MPO staff shall be hired by the Executive Director and be subject to the Executive Director's direction. Pursuant to

Section 279D-7(b), HRS, the Executive Director and Maui MPO staff shall be exempt from Chapter 76, HRS.

- b) Establish a TAC to advise the Policy Board and Executive Director on technical matters, including implementation of the 3-C Planning Process. The TAC shall keep the Policy Board informed as to the technical merits and issues of any plan, study, project, or other product or process of the Maui MPO. The TAC may recommend that the Policy Board take specific action. The Policy Board shall determine the members of the TAC, the chair of which may be a voting member of the Policy Board. The Policy Board shall identify the TAC's purpose. Support services for the TAC will be provided by Maui MPO staff.
- c) Provide policy direction to the TAC in its function of reviewing all Maui MPO-related transportation plans, programs, and funding requirements. The Policy Board shall provide input to the transportation planning efforts performed by the State or the County, which shall be reviewed by the TAC.
- d) Formulate transportation planning policy and objectives and monitor the implementation of MPA transportation activities and projects to ensure conformance with State and federal transportation and local land use guidelines and requirements.
- e) Direct, adopt, and update the UPWP in accordance with the guidelines set forth by the Metropolitan Planning and Programming

Regulations (23 C.F.R. Part 450 Subpart C) to the extent applicable to the Maui MPO, including major planning issues to be addressed, available resources, operating procedures, funding estimates, timetables, task status, and any subsequent amendments or revisions.

- f) Prepare and approve all financial and related operating agreements. Arrange for third-party financial participation in the planning process, including other funding sources.
- g) Provide overall direction to the TAC including guidance on project alternative plan formation, assessment, development of feasible strategies, and report preparation.
- h) Develop and implement the Public Participation Plan (PPP) during the Maui MPO transportation planning process. The Maui County Council's or Council committee's annual budget meetings for the Departments of Planning, Public Works, and Transportation may serve as citizen forums.
- i) Identify and publicize issues, and generate findings, periodic progress reports, conclusions, other pertinent planning process information, and all federally required MPO work products.
- j) Ensure the preparation and approval of a TIP and an MLRTP conforming to federal law. The Policy Board shall annually review its transportation plans and programs and certify that the Maui MPO planning process is being carried out in conformance with all

applicable requirements of federal law (including 49 U.S.C. §§ 5303–5306 and 23 U.S.C. §§ 134-135, 23 C.F.R. Part 450, Subpart C, and 40 C.F.R. Part 93). The MLRTP formulation shall be consistent with the County’s long-range transportation planning process.

- k) Establish other advisory committees, at its discretion and upon the approval of a majority of its voting members. The purpose of an advisory committee is to evaluate and advise the Policy Board as to the merits and issues of any plan, study, project, or process of the Maui MPO. The Policy Board shall determine the members of any advisory committee, the chair of which may be a voting member of the Policy Board. An advisory committee may recommend the Policy Board take specific action. An advisory committee may form, upon approval by a majority of its members, one or more subcommittees. Support services for advisory committees will be provided by Maui MPO staff.
- l) Be authorized to designate a substitute as detailed in paragraph 3 below.

3. Delegation.

In the event that a Policy Board member is unavailable to attend a Policy Board meeting, written notice of their unavailability shall be provided to the Maui MPO Executive Director in advance of the meeting. The unavailable Policy Board member may designate a substitute for that meeting as follows:

- a) The State Department of Transportation member may designate a substitute from the State Department of Transportation at their discretion, provided the designee is not serving on the TAC or other subcommittee of the MPO.
- b) The Department Directors may designate their Deputy Director.

4. Elections.

The Chair and Vice-Chair of the Policy Board shall be elected annually by its members and shall serve until their respective successors are appointed.

II. ADMINISTRATION OF THE MAUI MPO

A. Supplemental Agreements for Administrative Assistance.

The Maui MPO may enter into supplemental agreements with the County Department of Transportation (MDOT), assigning responsibility for administrative tasks between the MDOT and the Maui MPO. The Maui MPO may also enter into other supplemental agreements regarding use of staff or resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the metropolitan planning process.

B. Fiscal and Funding Responsibilities.

Funding for the Maui MPO shall be identified in the UPWP, which shall be developed by the Maui MPO in accordance with federal regulations and shall be submitted by the Chair of the Policy Board for FHWA and FTA approval. Pursuant to 49 U.S.C. §5305(f) the Federal government's share of the cost of an activity funded using amounts made available under 49 U.S.C. §5305 may not exceed 80 percent of the cost of the activity.

III. 3-C PLANNING PROCESS

The 3-C Planning Process is a “continuing, cooperative and comprehensive” transportation planning process which encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight, including accessible pedestrian walkways and bicycle transportation facilities, and financial plans that support the TIP and the MLRTP (23 C.F.R. Part 450, § 314(a).) The early and ongoing involvement of the public is a key part of this process, and shall be integrated throughout the development of all Maui MPO activities and work products. The Policy Board will adopt a PPP in support of this policy.

IV. MAUI MPO WORK PRODUCTS

The Maui MPO is responsible for developing four primary planning and programming work products, pursuant to 23 C.F.R. Part 450 and 49 C.F.R. Part 613, as follows:

- a) The Maui Long Range Transportation Plan (MLRTP)
- b) The Transportation Improvement Plan (TIP)
- c) The Unified Planning Work Program (UPWP)
- d) The Public Participation Plan (PPP)

V. MANAGEMENT OF THIS AGREEMENT

A. Revisions, Additions, or Modifications.

Any revisions, additions, or modifications to this Comprehensive Agreement are subject to the written approval of all parties. This Comprehensive Agreement will be reviewed and reevaluated periodically by the parties to this agreement to ensure the Maui MPO is meeting the needs of the parties.

B. Disputes.

The parties hereto shall make a good-faith effort to resolve any disputes related to the Maui MPO Comprehensive Agreement.

VI. CERTIFICATION OF PLANNING PROCESS

Federal laws and regulations require the State and the Maui MPO certify compliance with all applicable requirements for MPAs concurrent with the submission of the entire proposed TIP to the FHWA and the FTA as part of the Statewide Transportation Improvement Program approval, and at least every four years during the metropolitan planning process.

VII. ANNUAL REPORTS

All annual reports submitted to the legislature pursuant to Section 279D-11, HRS, shall also be submitted to the Maui County Council no later than two business days after submission to the legislature.

VIII. ALL OTHER PROCEDURES, POLICIES, AND REPORTING REQUIREMENTS

Details of other procedures, policies, and reporting requirements will be developed as needed and in compliance with applicable Federal and State laws and regulations.

STATE OF HAWAII:

By _____
DAVID IGE
Its Governor

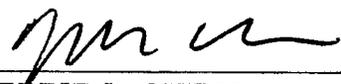
APPROVED AS TO FORM:

Deputy Attorney General

COUNTY OF MAUI:

By _____
ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM AND LEGALITY:

for 

JERRIE L. SHEPPARD
Deputy Corporation Counsel
(LF 2014-1954)

Appendix A

Defined Terms

As used in this Comprehensive Agreement, unless the context clearly indicates otherwise:

“3-C Planning Process” means a “continuing, cooperative, and comprehensive” multimodal transportation planning process.

“C.F.R.” means the Code of Federal Regulations.

“Executive Director” means the administrative head of the Maui MPO.

“FHWA” means the Federal Highway Administration of the United States Department of Transportation.

“FTA” means the Federal Transit Administration of the United States Department of Transportation.

“HRS” means the Hawaii Revised Statutes.

“LRTP” means the Long Range Transportation Plan.

“MDOT” means the County of Maui Department of Transportation.

“MLRTP” means the Maui Long Range Transportation Plan.

“Maui County Council” means the legislative, governing body as outlined in the Maui County Charter.

“Maui MPO” means the Maui Metropolitan Planning Organization.

“MPA” means the Metropolitan Planning Area.

“MPO” means the Metropolitan Planning Organization.

“Policy Board” means the Maui MPO Policy Board.

“PPP” means the Public Participation Plan.

“TAC” means the Technical Advisory Committee to the Maui MPO.

“TIP” means the Transportation Improvement Program for the Maui MPO.

“UPWP” means the Unified Planning Work Program.

“U.S.C.” means the United States Code.



EXECUTIVE CHAMBERS

HONOLULU

STP 8 1238

NEIL ABERCROMBIE
GOVERNOR

June 16, 2013

Mr. Abraham Wong
Division Administrator
U. S. Department of Transportation
Federal Highway Administration
300 Ala Moana Boulevard, Room 3-308
P. O. Box 50208
Honolulu, Hawaii 96850

and

Mr. Leslie T. Rogers
Regional Administrator
Federal Transit Administration, Region IX
201 Mission Street, Suite 1850
San Francisco, California 94105

Dear Messrs. Wong and Rogers:

Pursuant to 23 USC 134 (d)(1) and 49 USC 5303 (d)(1), and as determined under the 2010 United States Census and 23 USC 134 (b)(7) and 49 USC 5302 (23), Maui County's urbanized area of Kahului/Waifuku/Pala is determined eligible for and shall be designated as a Metropolitan Planning Organization. At this time, it has been agreed to by the State Department of Transportation (DOT) and Maui County that to ensure a coordinated and integrated planning effort, the Metropolitan Planning Area (MPA) is designated to encompass the entire island of Maui.

The Metropolitan Planning Organization (MPO) for Maui shall be developed and operated in accordance with all applicable Federal, State, and local laws. We will be working with representatives from your respective staff on the details for the establishment of this Metropolitan Planning Organization.

EXHIBIT ' 1 '

STP 6.1238

Mr. Abraham Wong
Mr. Leslie T. Rogers
June 18, 2013
Page 2

If there are any questions or concerns you wish to discuss regarding this matter please contact our State Director of Transportation, Mr Glenn M. Okimoto at telephone number (808) 587-2160.

Sincerely,



NEIL ABERCROMBIE
Governor, State of Hawaii



GLENN M. OKIMOTO, Ph.D.
Director of Transportation



ALAN ARAKAWA
Mayor, County of Maui

Governance Committee

From: Greg KCA <Menehune215@twc.com>
Sent: Thursday, February 25, 2016 8:13 AM
To: Governance Committee
Subject: Comments on Council/Manager Government

To the Committee on Governance.

As the former elected Mayor and City Councilman of a medium size (Pop. 130,000) California city, I have been perplexed at the organization of Maui government. Maui County has the government that looks typical of cities with over a million in population. Elected Mayors with large staffs, appointed department heads, and a full time Council with their staffs. That's very expensive. Most cities the size of Maui want a lower cost approach and have a part time elected council and mayor, a city manager and permanent professional department heads. Thus the issue of Maui County Government Organization is really about saving money for the County - to lower taxes or increase services.

Why is the Council/Manager form more efficient? First of all, political department heads usually have a deputy that is permanent to provide continuity. That person would be the department head in the typical medium sized city. So right away you have two salaries for one job. That assumes that the appointee is professionally qualified for the job. Learning curves can be steep, and disruptive to ongoing operations.

Then there is the staggering amount of staffing to support all the politicians on Maui. To coordinate this bureaucracy seems to require lots of aides, executive assistants, managing director, chief of staff et al. A typical city of Maui's size elsewhere would have a five person City Council, a City Manager, maybe four assistant CMs and three support staff.

I also find it surprising that in a state where the legislature is part time, the Mayor and Council are full time - or at least paid that way. Part time officials don't have to stop their career for a job that has term limits. A part time Mayor and Council would allow more people to consider running for the posts. It would compliment the term limits in making more of our elected officials 'citizen' politicians instead of 'professional' ones.

There seems to be some concern that putting the Mayor onto the Council would destroy the separation of powers. However, the non partisan nature of the offices is designed to increase cooperation. With a council of 9 there is already going to be a lot of debate of policy. Just like the problems in Washington, we have seen the lack of cooperation between the Legislative and Executive branches here on Maui. It would be much better for all of us if there was less rancor. The Council/Manager form of government was designed to do that.

So I would encourage the Committee to forward a recommendation to the Council to modify the Charter to implement a Council/Manager form of government. My estimate is a minimum savings of \$5 million a year. We could do a lot with that.

Greg Stratton
Kihei

Governance Committee

From: Mark Hyde <hydem001@icloud.com>
Sent: Saturday, February 27, 2016 3:52 PM
To: Tony Takitani; Madge Schaefer; Paula Friel; Pua Canto; Ray Phillips; Kimo Haynes; Kay.okimoto@mauicounty.us; Kehau Filimoeatu; Dave Deleon; Tamara-Paltin@mauicounty.us; Jonathan Starr; Governance Committee
Subject: Evidence Supporting Change to County Manager Government
Attachments: Special Committee on governance 2 - 16.docx

Mark Hyde

To: Special Committee on Governance

From: Mark Hyde

Date: February 27, 2016

Re: Substantial evidence supports a Special Committee finding that establishment of county manager government would improve County management and operations.

Executive Summary: Establishing a county manager form of government would:

- Reduce executive/legislative branch conflict and hostility
- Foster collaboration
- Improve the planning process
- Install a performance management system
- Create greater government transparency and accountability
- Improve selection of key management personnel
- Take the influence of money out of day-to-day operations, and
- Reduce forced, massive executive turnover tied to an election cycle

I. The Specific Question

By Resolution, the question posed to the Committee is:

“Consider whether establishing a county manager form of government would improve *management* and *operations* of County government.”

The question does *not* ask the committee to consider (1) whether a county manager form of government would be more efficient than the current model or (2) to assess the role political theory, such as balance of power, plays in local government performance.

II. Substantial Evidence Supports a Finding That County Manager Government Would Improve *Management* and *Operations* of County Government

A. The Relationship Between the Executive and Legislative Branches Would Improve

Question: Would establishing a county manager form of government improve the operating relationship between the executive and legislative branches of County government?

Answer: Yes.

First, there is a mountain of uncontroverted evidence that the working relationship between our county’s chief executive/chief operating officer (the mayor) and council is broken, characterized by finger pointing, name-calling and lack of communication.

Second, several testifiers and some committee members have commented that while the current situation is remarkable in the extent of dysfunction and animosity between the two, this is not a one-time event; it has characterized several different administrations.

Unlike Maui County's "strong mayor" form of government, county manager model is collaborative, where a manager works with a council to achieve policy through professional implementation of goals and objectives. The manager typically attends all council meetings, works with the council in the development of goals and objectives, and is accountable to the council. Should a county manager fight with the council, name-call and/or finger point, his/her tenure would be short lived, unlike that in a strong mayor model where a mayor can act with impunity until the next election (and if a mayor is in a second term, as is the case now, there is no judgment day.)

The City of Nogales, Arizona, video "in evidence" before the committee succinctly and compellingly depicts how the strong mayor model breeds unproductive conflict and how the "county manager" form creates structural collaboration.

Finally, it is undeniable that people who work together achieve more than people who fight with each other, particularly when conflict occurs at the leadership level.

"There is a difference between healthy tension and unhealthy conflict. Wise leaders attempt to foster healthy tension where team members who love and trust one another sharpen each other and where ideas get matured and developed through robust discussion. Just as tension in exercise makes a body stronger, healthy tension can make a team stronger. Unhealthy conflict is very different. Unhealthy conflict spoils the unity and morale of the team. Unhealthy conflict distracts from the mission. Unhealthy conflict, if it is allowed to fester and grow, becomes more and more divisive and more and more harmful." ("Four Questions to Spot The Difference Between Healthy Tension and Unhealthy Conflict," Eric Geiger, January 18, 2016, <https://ericgeiger.com/2016/01/four-questions-to-spot-the-difference-between-healthy-tension-and-unhealthy-conflict/>)

What we have in Maui County government is unhealthy conflict. It can be improved by changing our county government structure to the collaborative county manager form.

B. Planning Would Improve

Question: Would establishing a county manager form of government improve the County's ability to plan and implement?

Answer: Yes.

Again, there is a mountain of uncontroverted evidence that the county's planning process is seriously broken, and there is evidence that no steps are underway to rectify the situation.¹ The mayor has repeatedly testified that the council is at fault because it has the power to extend time for plan development, and does just that. Further, both mayor Arakawa and Tavares have criticized the complexity of (a) the process and (b) the increasing density of our plans. But in the face of this, no one is leading or working on improving things, even though we know good planning and the ability to implement are *key to organizational success*. Plans help organizations chart a course, allocate limited resources, provide a basis for goal setting up and down the chain of command, help to manage risk, promote team building and cooperative effort, and are recognized as the best means to serve customers, or in our case, citizens. ("The Importance of Planning in an Organization," Brian Hill, 2016, <http://smallbusiness.chron.com/importance-planning-organization-1137.html>)

Here are the undisputed planning facts:

a. While the county code speaks to the general plan being updated on a decennial (10 year) basis, it took 22 years to revise the previous plan, and even then without code-mandated timelines or a required implementation chapter. The implementation plan was adopted 2 years later and even then without necessary benchmarks per the implementation chapter itself. Now, three years after adoption of the general plan there has been no assessment of performance, which the implementation chapter rightfully describes as a critical activity to plan achievement.

b. There is uncontroverted evidence that the community plan update process is similarly broken with no leadership or management steps being taken address the situation.

The committee can readily find that management and operation of Maui County's planning process will be improved by changing to a county manager form of government for at least three reasons.

First, the county manager form of government would end the blame game. No longer would the chief planner be able to point to another branch of government and claim it's their fault - because the professional manager would report to the council. Finger pointing at the boss is not a winner.

¹ In highly political situations where there is little accountability, political ends can be served, cynically, by poor planning because those in power can skirt accountability by pointing to the broken process ("it's impossible") and by assigning blame to another branch of government ("it's their fault"), as is the situation in Maui County.

Second, a manager is not a politician; he/she is a professional with management background, training, education and experience, including a heavy dose of planning and implementation know-how.

Third, a professional manager would easily be held accountable for nonperformance due to the contractual nature of his/her employment. This is entirely different from the “strong mayor” model where the executive and legislative branches of government lack the means to compel the other to act prudently, professionally, and in accordance with the best interests of the community, so they fight, generating unpleasant noise but not results.

C. Performance Management by Goals and Objectives Would Be Installed

Question: Would establishing a county manager form of government improve the County’s ability to manage performance by goals and objectives?

Answer: Yes.

As stated by Mayor Tavares, after 50 years of governance under the current form of “strong mayor” governance, county management has not graduated to a performance management system, one that holds people accountable for achievement of specific, measurable goals and objectives.

Goals and objectives currently contained in the county’s 800+ page budget are largely process-based, and the mayor’s 11 goals are far from big picture goals. The dense budget itself is far from transparent and lacks periodic assessment.

Professional managers understand the importance of “SMART” goals: those that are Specific, Measurable, Achievable, Results-oriented and Time-bound. Additionally, professional managers know quality management techniques that embrace the mantra of “plan, do, assess, act.” This is management 101.

Even more basic, the committee has received uncontroverted evidence that *Charter-required* annual management reports from directors are not on file with the county clerk for public inspection - even 5+ months after their due date. Timely and comprehensive management reports tied to goals and objectives are key tools for (a) goal achievement, (b) assessment of leadership/personnel/organizational effectiveness, (c) operational control and (d) culture development. Failure to produce key management reports is a huge red flag.

Finally, the mayor’s inability to answer committee member Haines’ question (2/25/16) about the county’s management performance review process indicates a serious knowledge deficit in the “strong mayor” model, one that picks the County’s chief operating officer (mayor) through a political process.

D. Transparency and Accountability Would Increase

Question: Would establishing a county manager form of government improve transparency and accountability for performance, both of which are key ingredients of good management and effective operations?

Answer: Yes.

There is uncontroverted evidence that *Charter-mandated* and *county code-required* annual reports by the Director of Planning to the mayor and council have not been and are not being delivered (acknowledged by the mayor in his 2/25/16 testimony).

Q. (By Committee Member Paltin) “You know, in chapter 8-8.5, page 27 of the county charter, page 27 of our county charter . . . ”

A. (By Mayor Arakawa) “Yeah, I got it.”

Q. (By Paltin) “Um, number 3 states that the planning director shall issue a report annually providing a detailed explanation of implementation and enforcement of the general and community plans to the mayor and council. Um, just wondering how often this is done and when we can expect the next one?”

A. (By Mayor Arakawa) [Chuckle.] Um I’m going to say that this particular requirement is probably not adhered to in the way the charter requires it.”

The charter uses the word “shall”: “The planning director *shall* issue a report annually providing a detailed explanation of the implementation and enforcement of the general plan and the community plans to the mayor and the council.” This is not just “nice to have;” it’s a constitutional duty owed the people, noncompliance with which is punishable by a fine or imprisonment. Maui County Code section 1.12.020 states: “Any person² who intentionally fails to exercise his duties and responsibilities as set forth in the charter of the county of Maui or who violates any prohibition provided for therein, for which no penalty is provided, shall be punished by a fine of not more than \$1,000 or by imprisonment for a term not to exceed one year, or both.”

Obviously, realizing these remedies for charter noncompliance is both unpalatable and highly unlikely. Yet, receiving detailed annual reports from the planning director about where we are, where we are supposed to be and where we are going is extremely important to getting to where we want to be.

Short of lobbying for the commencement of criminal proceedings for failure to

² This would cover the planning director for failure to make the reports as required by Article 8-8.5.3 and the mayor for failure to enforce this provision of the charter pursuant to Article 7.5.17 and county ordinance.

deliver these mandated annual reports, there is no effective remedy for the people to compel performance or hold a “strong mayor” accountable for nonfeasance. Making matters worse, in the current situation, the mayor will not stand for reelection because he is “termed out.” The ballot box is no help.

Ignoring constitutionally mandated duties is the antithesis of good government and good management. Furthermore, ignoring ones sworn duty³ fosters a culture of arrogance and erodes public trust in government. The people are left holding the bag with the likelihood that our long-range plans will not be attained.

By contrast, if a county manager were to ignore charter-mandated annual reports, he/she could be held immediately accountable.

Even the fact that it has taken extraordinary citizen effort to compel exploration of county manager government supports a finding that county manager government would “improve management and operations of County government.” Five years ago the county adopted a Countywide Policy Plan containing a section entitled “Goals, Objectives, Policies and Actions” *requiring* the following under the caption “Implementing Actions”: “Evaluate and, if necessary, recommend modifications to the County Charter that could result in a possible change to the form of governance for Maui County.” “Evaluate” and “recommend” are words of action and command. So what happened? Nothing.⁴ Two years later the charter commission recommended examination of different forms of government. What happened then? Again, nothing.

Resistance to change is a common organizational malady. High performing organizations continually engage in healthy self examination to determine whether there are better ways of doing things, including assessment of structure. Turning a blind eye to structure in the presence of policy requiring it falls in the category of refusal to do an assignment. Trained, professional managers understand the need to act in the face of policy directives, they “get” how structure either facilitates or impedes performance, and they are not threatened by change. Quite opposite; failure to adapt and change poses a threat.

E. Management Personnel Selection Would Improve

³ See the universal oath of office in Article 16 section 4 of the Hawaii state constitution, which dictates the oath of office for numerous state and local officials: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully *discharge my duties* as to best of my ability.” (Emphasis added.)

⁴ Asking “What’s the rush?” is odd given this five year history of delay in the face of a clear policy directive.

Question: Would establishing a county manager government improve the quality of management personnel hired into high-level positions?

Answer: Yes.

There is substantial evidence that not all appointees to director-level positions within the current “strong mayor” administration are qualified to lead departments to which they have been appointed due to lack of subject matter knowledge and/or lack of adequate management/administrative experience (although the mayor has repeatedly defended the quality of all his appointments and supports flexibility to hire who he wants as permitted by the charter⁵).

Professional managers understand the importance of hiring the right people for the work to be done. They know the benefits of good job descriptions, minimum criteria against which candidates are sorted and a solid hiring process.

Furthermore, there is a sense that politics plays a part in director selection in the “strong mayor” form of government. By contrast, county managers are incentivized to select candidates based on ability alone because they rely on their hires to achieve goals and objectives. And, because the hiring process is apolitical, there is no need to reward political supporters with jobs.

F. Money’s Role in Day-to-Day Operations Would Be Reduced

Question: Would establishing a county manager form of government improve management and operations by removing money from of day-to-day operations?

Answer: Yes.

Maui County’s combined chief executive/chief operating officer (mayor) selection process necessitates raising money to become the head of operations (the managing director is only an aid to the mayor/CEO/COO).⁶ Yet the ability to raise campaign funds bears no relationship to the work of a chief operating/administrative officer. Furthermore, as we saw in the Maui News article entitled “Damage Control,” the county’s managing director has defined himself and other directors as “political,” their “customer” being the mayor, not the people. This is made more complicated by mayor-sponsored fund-raising “birthday parties” and *Kokua* fundraising events attended by many high level county employees. The specter of “pay to play” emerges, whether fair or not.

⁵ Charter Article 6.2.2 requires all non-civil service appointees to be fully qualified by experience and ability, however.

⁶ Mayor Arakawa raised almost \$900,000 between 2010 - 2014 to become the county’s CEO/COO.)

By contrast, selection of professional city/county managers is free from campaign fund-raising, eliminating the real and perceived negative influences money can have on conduct in office. (Also, see ICMA's code of ethics prohibiting involvement in or donations to local election campaigns.) After all, management skills are different from political skills needed to win elections. More importantly, the real currency of our democracy is trust.

G. Executive Turnover Would Be Managed, Not Forced and Massive

Question: Would establishing a county manager form of government improve management and operations of County government by eliminating politically based, massive forced turnover of all directors and deputy directors with each mayoral election cycle?

Answer: Yes.

With the exception of the mayor's 2/25/16 testimony supporting sweeping out all directors and deputies with each new mayoral term, common sense, good management practice and public testimony rejects the merits of massive turnover of an entire management team predicated on a change in political regime. Continuity of management is an asset, not a liability. Furthermore, continuity of top management as elected mayors come and go will mitigate transition woes described so well by Mayor Tavares in her testimony.

Good business practice recognizes the importance of management continuity. No business would choose to toss out every Vice President or director with a change of leadership at the top. Professional managers understand the cost of "negative turnover" to an organization.

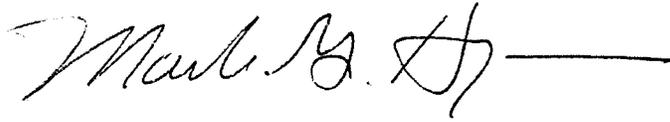
III. What Form Might County Manager Government Take?

There are several variations of county manager government, but most agree the model best suit Maui County is one which *retains an elected mayor* with power (a) to veto legislation, (b) appoint boards and commissions (with advice from the manager and consent of the council) and (c) coupled with all other duties ordinarily assumed by a mayor except day-to-day management of county operations, which would be assigned to a manager who would hire department heads other than those appointed by the four commissions currently contained in the charter. Further, a manager's tenure should be unhitched from election cycles, thereby creating management continuity, reducing the impact of mayoral transitions, and fostering a culture of professionalism free from the influence of money.

The only question remaining is whether a mayor would sit with the council and, if so, with only a voice, or with a voice and a weighted vote to avoid ties.

IV. Why Now?

The current mayor's term expires at the end of 2018, providing adequate transition time between adoption of a charter change in the fall 2016 and commencement of professional management of operations in January 2019.

A handwritten signature in cursive script, appearing to read "Mark B. St. John", followed by a horizontal line.

Governance Committee

Subject: FW: Thursday Hearing

From: Julianne Lee [mailto:leesatkula@yahoo.com]
Sent: Sunday, March 06, 2016 4:11 PM
To: Governance Committee <Governance.Committee@mauicounty.us>
Subject: Thursday Hearing

Aloha:

As I am unable to attend Thursday's public hearing on possible changes to our county form of government, I'd like to express my views in writing.

First, thanks to all on the committee for giving your time and interest toward this important matter. Your efforts are appreciated.

There is no doubt in my mind that Maui has long outlived it's need for a serious look at the way our county government operates. When a mayoral candidate, seeking re-election offers two of his challengers to drop out of the race and come to work for him, and they do, and he does, something is wrong. When no one comes forward to question this action, the system needs changing.

When a mayor is heard to say "it's all about me" (speaking to his underlings) he's reminding them that they owe their jobs to him. That shows the system needs changing. Because when someone is hired for who they know rather than what they know, Maui's citizens get short changed. We need to break that cycle of returning and repeating personnel with each election.

Our county has grown tremendously, and our county government is dealing with a wide array of issues, many of which are extremely complex, requiring special skills in governing more efficiently, economically, and with greater transparency.

To this end, I favor adopting a county manager-council form of government for Maui County. However, I also believe that there is still a role for an elected mayor as well. I propose a mayor-council-manager form, with the manager taking over the day to day operations of the county, with oversight by the council. The council has the responsibility of hiring (and firing) the manager. This is not unique to local governments nation wide.

The mayor's responsibilities would be reduced, while still retaining many of the jobs assigned: interfacing with state and federal officials, attending council meetings (no voting or veto powers) representing the county at community meetings, and continuing in the role of Maui's ambassador.

I hope you will consider my proposals during your deliberations.

Thank you.

Julianne Perry Lee
2633A Poko Pl.
Haiku
573 0255

Governance Committee

From: Jim or Belinda <2jbhome@hawaiiantel.net>
Sent: Wednesday, March 09, 2016 12:47 PM
To: Governance Committee
Subject: TESTIMONY - 03_10_16 (CG-1(1))
Attachments: COM ON GOV TESTIMONY 03_10_16.odt

Aloha,

I am submitting the attached testimony for this committee's meeting on Thursday.

Thank you so much.

Jim

RECEIVED AT GOV MEETING ON 3/10/16

Jim Smith
99 Kapuai Road
Haiku, Maui, Hawaii 96708

March 10, 2016
Special Committee on County Governance
Council of the County of Maui

TESTIMONY

Concerning the political circumstance faced by this Committee (CG-1(1))

Chair Person Tony Takitani and Members of this Committee,

The trust and confidence engendered by committee establishment and individual appointment springs more from hope than expectation. Recently, an organization promoting the adoption of the managerial model of governance was announced by Mr. Hyde and friends in a viewpoint article in the Maui News. There is a down side to confidence, that is political.

When reviewing the form advocated by this group I can't help but associate its historical emergence with the ending of the Civil War and the impact this traumatic clash of culture had on American politics. It is important to note that in Alabama, almost exclusively governed at the local level by managerial models of governance, managerial techniques have been used to disenfranchise fellow citizens.

The first model is said to have been established in the early 1900's in Virginia I think earlier versions can be identified. Before this Committee moves on, I ask that you examine the State of Alabama; and proliferation of the managerial model there, to determine whether the model has an impact upon voter registration. This is only one political result, a change in structure might inspire.

Signed: Jim Smith
03_10_16

Governance Committee

From: Maile Kekona Tsurusato <maiekekona@gmail.com>
Sent: Wednesday, March 09, 2016 2:17 PM
To: Governance Committee
Subject: Testimony for the Special Committee on County Governance Agenda March 10th 5:00pm
Attachments: Maile Kekona T Public Testimony re Special Committee on County Governance.docx; Understanding the Mayor's Office in Council-Manager Cities (1).pdf

Good Day,

Please see my attached testimony that I will be presenting in person, along with one reference source. I will distribute an additional source at the meeting, as it will be submitted prior to my testimony. I will have 16 copies available for distribution -

The article is, " The Changing Structure of American Cities: A study of the Diffusion of Innovation", from the Public Administration Review Volume 64, NO. 3

Thank you.

RECEIVED AT GOV MEETING ON 3/10/16

Understanding the Mayor's Office in Council-Manager Cities

James H. Svava

In November of odd-numbered years, cities throughout North Carolina hold elections to choose their mayor. Nearly a third of them- virtually all cities with a population over 5,000- use the council-manager form of government. The office of mayor in those cities- that is, council manager cities- is probably the most misunderstood leadership position in government. Some of us may think of a mayor in North Carolina as being comparable with mayors of other cities in certain other states, who occupy a true executive office (most visibly, the big city mayors of the North). Other of us may dismiss the mayor as a figurehead. North Carolina's nonexecutive mayors are commonly perceived either to be doing less than they actually are or to have more power to act than state law and the municipal charter give them. Mayors in council-manager cities are not mere ribbon cutters and gavel-pounders, nor are they the driving force in city government. What they are- somewhere between the two stereotypes- is an important leader who can strongly influence how well city government performs.

It is difficult for voters to assess candidates for mayor. Those who seek and hold the office may also need to know more about the position and the realistic potential inherent in it. Mayoral candidates, borrowing a page from the campaign book of the executive mayor, often present themselves as the leader who will take charge of city government and propose bold solutions to the city's problems. Once elected, however, they will have difficulty in following through. Although he or she has the title of mayor and some of the popular expectations for leadership associated with the title, the North Carolina mayor has no powers on which to base true executive leadership and must depend on other officials, elected and appointed, for most of what he accomplishes. He lacks both the ability to initiate policies on his own and the legal authority to implement those policies.

Let's look at the office of council-manager mayor in order to help voters know what qualities to look for in a candidate and to suggest to officeholders and candidates how they can best fill the post.

The Nature of the Office

The council-manager mayor is analogous to a company's chairman of the board, important but not crucial to the organization's operation. The government may operate adequately with minimal leadership from the mayor, since the plural executive organization provided by the council spreads out the responsibility for policy initiation. In addition, the manager has considerable informal influence, based on expertise and staff support, over the generation of proposals, and he has formal authority to direct implementation. Still, the "chairman" mayor can have an impact on governmental performance through contributions to the governing process that, though different from those of the "executive" mayor, are still important.

The elements of leadership can be organized in two categories. One category is a coordinative function in which the mayor is more or less active at pulling together the parts of the system to improve their interaction. The parts are the council, manager/staff, and public; the mayor has a special and close relationship with each. By virtue of his favored position, the mayor can tap into various communication networks among elected officials, governmental staff, and community leaders. Although they can and do interact with each other independently, the mayor- if he has done his homework- can transmit messages better than anyone else in the government because of his broad knowledge. He therefore has a unique potential to expand the level of understanding and improve the coordination among the participants in city government.

The second element is guidance in the initiation of policy, which may be done as part of the coordinating function or separately. The mayor not only channels communication but may also influence

and shape messages being transmitted. He can also use more dramatic techniques to raise issues and put forth proposals, but these must be used cautiously because he runs the risk of alienating the council, whose support he needs to be effective.

Variety of Roles

It is a testament to the diffuseness of the mayor's job that there is such variation in how the job is perceived, once one goes beyond formal responsibilities. In a series of interviews with and about the mayors of North Carolina's five largest cities (Charlotte, Winston, Salem, Greensboro, Raleigh, Durham) the mayors, council members, and community leaders were asked to describe the mayor's responsibilities and roles in their city. The responses revealed ten roles, which can be grouped into four dimensions of leadership- i.e., major areas in which a mayor may contribute to the functioning of city government. Whether he engages in the roles and how well he handles them are questions that provide the basis for distinguishing among types of mayoral leadership, which are addressed in the next section. The dimensions and roles of leadership are listed in Table 1.

Ceremony and Presiding

The *ceremonial* function is the dimension of leadership that observers of city government typically see. The mayor is in heavy demand for appearances at many various meetings, dinners, and other special occasions. He

Table 1. Dimensions and Roles of Mayoral Leadership in Council Manager Cities

Roles are identified by letters A-J
Dimensions are indicated by numbers I-IV

- I. Ceremony and Presiding
 - A. Ceremonial tasks
 - B. Spokesman for council
 - C. Presiding officer
- II. Communication and Facilitation
 - D. Educator; informational and educational tasks vis-a-vis the council, manager, and/or public.
 - E. Liaison with manager: promotes informal exchange between the council and the manager and staff.
 - F. Team leader; coalescing the council, building consensus, and enhancing group performance.
- III. Organization and Guidance
 - G. Goal setter; setting goals and objectives for council and manager; identifying problems; establishing tone for the council.
 - H. Organizer; stabilizing relationships; guiding the council to recognition of its roles and

responsibilities; defining and adjusting the relationship with the manager.

- I. Policy advocate; developing programs; lining up support for or opposition to proposals.
- IV. Promotion
 - J. Promoter: promoting and defending the city; seeking investment; handling external relationships; securing agreement among parties to a project.

also serves as *spokesman for the council*, enunciating positions taken, informing the public about coming business, and fielding questions about the city's policies and intentions. In these two activities, the mayor builds an extensive contact with the public and media, which can be a valuable resource. In addition, the mayor *presides* at meetings. In so doing, he sets the tone for meetings and may exert mild influence over outcomes by guiding the debate, by drawing more from some witnesses and limiting the contributions of others, and by determining the timing of resolution issues. Councils often face difficult choices and, like small groups generally, depend to some extent on the resolve of the leader either to decide or delay.

Communication and Facilitation

Beyond simply transmitting council views to the public, the mayor may also serve as an *educator*. In his relations with the council, the public, the media, and/or the manager and staff,

Table 2. Performance Levels in Various Leadership Functions by Types of Mayors in Council-Manager Cities

Type	Ceremony and Presiding	Organization and Guidance	Communication and Facilitation	Promotion
Caretaker	Low	Low	Low	Low
Coordinator	High	Low	High	Low
Promoter	High	Low	Low	High
Director	High	High	High	High
Symbolic Leader	High	Low	Low	Low
Activist/Reformer	High	High	Low	Low

the mayor identifies issues or problems for consideration, promotes awareness of important concerns, and seeks to expand citywide understanding by providing information. In this activity, he is not primarily promoting an idea, as in activities discussed below, but informing and educating. For example, the

mayor who systematically speaks to the press and groups about increasing imbalance between needs and revenues helps to prepare the public for a tax increase at budget time.

As *liaison* person with the manager, he links the two major components of the system- the legislative body and administrative apparatus- and can facilitate communication and understanding between elected and appointed officials. The mayor increases the manager's awareness of council preferences and can predict how the council will react to administrative proposals. Although the manager must maintain positive relationships with each member of the council, the mayor-manager interaction is an official way to exchange information. For the mayor to hold up his end of the relationship, he must be sensitive to the concerns of all council members, accurately convey their sentiments, and share with them what he learns from the manager.

Finally, as *team builder* the mayor works to coalesce the council and build consensus. In this regard, he promotes cohesion without trying to guide the council in any particular direction. Council members do not automatically work well together, and the larger the council, the less harmony there is likely to be. The goal here is not agreement or likemindedness, but rather to approach city business as a common enterprise. The mayor as team leader seeks to promote full expression, help the council work through differences expeditiously, and encourage it to face issues and resolve them decisively.

Organization and Policy Guidance

In the roles considered so far, the mayor has stressed communication and coordination, whereas the group of roles to be discussed here involves influencing the direction of city government affairs and the content of policy. As *goal setter*, the mayor establishes goals and objectives for council and manager, identifies problems, and sets some tone for the council. Some mayors keep track of a set of key objectives so that the council and the manager orient themselves to accomplish these priority items.

The mayor may also be active as an organizer and stabilizer of key relations within city government. He guides the council to recognition of its roles and responsibilities. He helps to define the pattern of interaction between council and manager, and monitors it, and make adjustments. The sharing and separation of responsibilities between the council and manager in this form of government is a complex relationship. The mayor is uniquely situated to control it and better able than any other official to correct it, if change is needed. For example, the mayor may advise the manager to bring more matters to the council or fewer;

he may intervene with a council member who is intruding into operational matters, or he may seek to alleviate tension between the council and staff before a series rift develops. The mayor often handles these efforts in organization and stabilization privately. Indeed, his ability to make such adjustments out of the spotlight is one of his greatest advantages.

Finally, the mayor may be a *policy advocate*. As an active guide in policy-making, he develops programs and lines up support or organizes opposition to proposals. In these activities, the mayor most closely resembles the executive mayor's public persona as the city's problem solver. The chairman mayor has a potential for policy leadership that is not sufficiently recognized. Still, the mayor should be aware that advocating policies must be balanced with the other roles, not pursued to the exclusion of others. He must proceed subtly and more indirectly than the executive mayor, who can launch a new proposal with a press conference and has executive resources for building coalitions. Still, the chairman mayor can influence the perspectives and decisions of the council and the manager. Especially if he is a mayor elected directly by voters rather than a member of council who has been elected to mayorship by his council colleagues (as some mayor are), the mayor has a vague mandate to lead, but he must take care not to alienate the council and isolate himself by moving too far away from it as an assertive advocate of new policies.

Promotion

Conceptually, distinct from the functions already discussed in the mayor's role in promoting and defending the city. He may be involved in external relations and help secure agreement amongst parties to a project. For some mayors, the *promoter* role is a simple extension of ceremonial tasks. Others are active initiators of contacts and help develop possibilities for the city. As official representative, the mayor has extensive dealings with officials in other governments and may serve as a key participant in formulating agreements with state or federal officials, developers, and others who seek joint ventures with city government. The mayor may also take the lead in projecting a favorable image of the city and seek to "sell" others on investment in it.

Types of Leadership

The kind of mayoral leadership an incumbent provides depends on which roles he performs and how well. The combinations of activities pursued by individual mayors is varied, but certain general types are clear. Mayors develop a leadership type for

themselves by the way they combine the four dimensions of leadership. (See Table 2.)

The mayor could invest so little in the office and define its scope so narrowly that he is simply a *caretaker*- a uniformly underdeveloped type of leadership. For most mayors, the presiding and ceremonial tasks are inescapable because they are legally required or inherent parts of the job. Mayors who perform no other roles may be called *symbolic heads* of their government. Such narrowly defined leadership will not meet the needs of the modern government system. Although he serves as presiding officer, ceremonial head, and spokesman, such a mayor makes no effort to unify the council members, keep them informed, communicate with the public, intervene between the council and the manager, and so forth. As a consequence, the council is likely to be divided, confused, and disorganized, and the manager's influence will expand.

If he does undertake the unifying, informing, communicating and intervening tasks, the mayor becomes a *coordinator*. Pursuing these activities effectively is essential to a smoothly functioning council-manager government with strong elected leadership. Council members do not always work well together; nor do the council, manager, and public necessarily interact smoothly. The coordinator is a team leader; he keeps the manager and council in touch and interacts with the public and outside agencies in order to improve communication. He helps to achieve high levels of shared information. But since he is weak in policy guidance, he contributes little to policy formulation (at least, no more than any other member of council.) The coordinator is not a "complete" type of leader, since the organizing and guidance roles are not part of his repertoire.

There are two other incomplete types of leader. One of them has two variations- the activist and the reformer. This type emphasizes policy guidance and advocacy but neglects coordinate activities, especially team building. The *activist* wants to get things accomplished quickly and succeeds by force of his personality and the presence of a working majority on the council. Although influential, the activist is viewed by some members of the council (perhaps even his own supporters) as abrasive and exclusionary in his leadership. The tenure of this type of mayor is marked by successful policy initiatives along with friction and disgruntlement among the council members. The *reformer* launches noble campaigns that have little prospect of success because he has limited support on the council. The reformer is more concerned with enunciating ideas about what the city should do than working with the council and maintaining coordination. As a result, he is likely to

be ineffective as a policy leader because he is isolated from the rest of the council.

Another incomplete form of leadership found occasionally is the mayor who specializes in promotion. The *promoter* role may be combined with any of the other types and is becoming increasingly important for all mayors. The mayor who is excessively involved in promotion, however, may devote so much time to traveling and selling the city that he gives little attention to other aspects of the job. This type of leader may be more successful at negotiating agreement among developers, financial institutions, and government agencies for a major project than he is at welding a majority within the council. The specialized promoter leaves a vacuum of responsibility for tasks involving coordination, organization, and policy guidance, and others must try to fill it.

The *director* is a complete type of mayor who not only contributes to smooth functioning but also a general sense of direction. A primary responsibility of the council is to determine the city government's mission and its broad goals. The director contributes significantly to consideration of broad questions of purpose. One mayor suggested that "my toughest job was keeping the council's attention on the horizon rather than on the potholes."

This type of mayor stands out as a leader in the eyes of the council, the press, and the public, but he must use that recognition as a source of leverage rather than control. He can enhance the influence of the elected officials by unifying the council, filling the policy vacuum that can exist on the council, and guiding policy towards that meet the community's needs. Furthermore, he is actively involved in monitoring and adjusting relationships within city government to maintain balance, cooperation, and high standards. No one else can attack the causes of friction between the council and manager (which may be produced by failings of either party) or promote the constructive interaction that is needed for effective performance. This mayor does not usurp the manager's prerogatives or diminish his leadership. In fact, in the organizer role, the mayor seeks to enhance the manager's ability to function as the chief executive officer. In sum, although the director does not become the driving force as the executive mayor can be, he is the guiding force in city government.

Conclusion

The council-manager form of government needs certain contributions from the mayor in order to operate smoothly. At a minimum, the mayor should accept the coordinator type of leadership in order to facilitate exchange of information among the public,

council, and staff and to help the council operate more effectively. This attention to the internal dynamics of city government and relationships with the public is crucial for complete leadership. If a mayor is to shape both the process and direction of city government, he cannot ignore the coordinative dimension; he can achieve victories over the short run but may become an isolated reformer. The mayor who defines the job as simply symbolic leadership is ignoring many important roles that are needed for effective city government.

Voters will have difficulty assessing whether a candidate has the qualities and intentions needed to be a good mayor city government. Voters will have difficulty assessing whether a candidate has the qualities and intentions needed to be a good mayor for their city. In meetings with candidates, it is important to find out how they conceive the office and how they would relate to other officials. Priorities and ideas about policy are important, because they are likely to be manifested in the intricate details of interaction handled by the mayor. It is also important to know how the prospective mayor will work with others to accomplish his policy goals. The media should try to find out how the candidates perform as leaders in small groups. The performance of incumbents can be assessed against the checklist of roles outlined in Table 1. The standard for assessing performance must be grounded in the conditions of that community and in what kind of mayor the city needs. Given the ambiguous nature of the mayor's office, these efforts by citizens to learn about candidates take on a special importance. In the process, voters not only assess the candidates, but also help shape expectations for the office itself.

For candidates and incumbents, it is time to abandon the notion that the mayor's office is "what one chooses to make of it." This often heard statement is misleading in two important respects. First, the activities of a good mayor are not matters of choice.

The increasing demands on city governments mean that these governments need strong leadership from the mayor, at least as a coordinator and preferably as a director. If the mayor does not undertake these activities, a serious vacuum exists in the council-manager government. Therefore, a good mayor *must* perform certain roles.

Second, the statement fosters the misconception that mayors who seek to define the responsibilities of their post broadly are on an "ego trip". They could, it would seem, just as well "choose" to be the first among equals on the council rather than make a big deal of being mayor. That position is not consistent with this study's analysis of leadership in large North Carolina cities. The nature of the office in council-manager government requires that the mayor be prepared to accept certain responsibilities reflected in the ten roles. He does so not because of inflated self-esteem but because the position calls for assumption of responsibility. Indeed, the mayor who provides complete leadership has accepted restraints on his freedom and the obligation to be an invisible leader within the council as well as a public advocate. The same logic applies to similar positions, such as the chairman or chairwoman of the county board of commissioners or the school board. Whoever occupies such offices should be expected to assert leadership across a wide range of roles and should not be faulted in doing so.

In conclusion, the council-manager mayor can contribute substantially to the performance of his government and the betterment of his local community. The position is not a pale imitation of the executive mayor's office in mayor-council city but rather a unique leadership position that requires distinctive qualities. Council-manager cities ask the mayor not to run the show, but to bring out the best in council and staff and to foster a common sense of purpose for.

Bibliography

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Governance Committee

From: Gmail <kualaau@hawaii.edu>
Sent: Wednesday, March 09, 2016 10:04 PM
To: Governance Committee
Subject: Support of County Manager

Aloha,

I am writing in support of a County Manager model. I am in favor of electing a council and having them select a qualified and knowledgeable individual as a County Manager. I don't think one person, the Mayor, should be able to appoint this individual. This position should not also change with each election. This turnover results in an inefficient and ineffective form of government. I ask that you please support the County Manager position. Mahalo.

Ku'ulei Kualā'au
(808)757-2389

Sent from my iPhone

Dale B. Bonar
400 Aulii Drive
Makawao, HI 96768

March 9, 2016

RE: Testimony for the Special Committee on Governance, March 10, 2016

Aloha Chair Takatani, members of the Special Committee,
I'm Dale Bonar, speaking as a member of the public who believes we need to significantly improve the effectiveness, professionalism and responsiveness of our governmental services.

Although the committee has received a great deal of testimony and information about the topic of Mayor-Council and Council-Manager-Mayor forms of governance, it has been somewhat disconcerting that there has not been time for discussion by the Committee of topic. It was a surprise when the committee was asked for a vote on the topic when there had not been more than cursory discussion. Moreso that the two questions asked were not representative of the core issue being addressed by the Committee.

I would like to offer a simple Proposal for Governance of Maui County that presents the elements of a County Manager type of structure and would be very straightforward to use as a basis for a pro-con discussion when the time comes for you to do so.

You have been provided with this one-page outline in your packet, and a copy has just been distributed to each of you again. I'll be happy to answer any questions.



(Proposal Attached)

RECEIVED AT GOV MEETING ON 3/10/16

PROPOSAL FOR MAUI COUNTY GOVERNANCE:

COUNCIL – MAYOR – COUNTY MANAGER

Goal: A more efficient, responsive, professional government structure

This proposal recommends retaining an elected Mayor while adding a professional manager reporting to the council

Modifications to Current System:

- A popularly elected Mayor would serve as the Chief Executive Officer (CEO), with duties to include:
 - Representing Maui County at local, state, national and international conferences, associations and events appropriate for the County.
 - Attending bi-weekly County Council meetings as a council member, and may cast tie-breaking votes.
 - Retaining a veto.
 - Proposing members of boards and commissions.
 - Participating with the County Council in recruiting, screening and hiring a County Manager.

- A professional, experienced County Manager, hired (and fired if necessary) by the County Council who would serve as the Chief Administrative Officer (CAO) overseeing day-to-day operations, with duties to include:
 - Hiring department directors and deputy directors, subject to Council approval
 - Attending County Council meetings and keeping the Council abreast of Departmental achievements, problems and opportunities.
 - Evaluating the senior administrative staff under Manager's direction annually
 - Annual (or more frequent) evaluation by County Council

- Positions of the senior staff (County Manager, Department Directors and Deputy Directors) would be regular, non-union positions that would not automatically turn over with each Mayoral election, but would be evaluated and retained based on performance.

Governance Committee

From: Walette Pellegrino <wpellegrino808@gmail.com>
Sent: Wednesday, March 09, 2016 10:39 PM
To: Governance Committee
Cc: Pellegrino, Walette; Mike White
Subject: COMMITTEE ON GOVERNANCE DISCUSSION OF COUNTY MANAGER PROPOSAL MEETING-March 10

TO: COUNTY OF MAUI SPECIAL COMMITTEE ON GOVERNANCE
(governance.committee@mauicounty.us)

FROM: WALLETTTE GARCIA PELLEGRINO

DATE: MARCH 9, 2016

SUBJECT: COMMITTEE ON GOVERNANCE DISCUSSION OF COUNTY MANAGER PROPOSAL

Aloha Special Committee on Governance:

Mahalo nui loa for scheduling a community meeting at UH Maui College on Thursday, March 10, 2016. This simple move demonstrates a willingness on your part to consider the busy lives of community members as you collect input on the County Manager proposal. And whether five or five hundred people attend, we appreciate your effort. I hope that this outreach strategy continues.

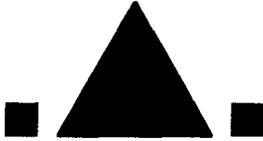
Once again I encourage the committee to prepare well for this public meeting. It will be helpful to have, in either hard copy form or a PowerPoint presentation, information comparing and contrasting what you have gleaned about the proposed option of a County Manager versus the status quo version of a "strong Mayor" (with Managing Director). That way people can tailor their testimony to specific issues and concerns rather than just offering generic "like" or "dislike" comments.

The various presentations you listened to and previous testimony from people who are well-versed in the analysis of governance should have given you sufficient information to prepare an objective, comprehensive and clearly written matrix for the audience to review. Your committee facilitator could assist you with that as well.

As I stated in my earlier testimony, whatever the outcome of the committee's work, I believe it is imperative, when you debrief the workings of the committee, that you also prepare a summary outlining the major concerns and needs captured through public testimony and your own research. Such a summary will help the administration, in whatever form it evolves, to address and improve upon its operations.

The work of the Special Committee on Governance has brought to the surface the many inefficiencies and problems found in the current model. These should not be ignored. Instead, what you learn and share from your work will be useful in improving the governance model in place now.

Thank you again for offering the public a more convenient and accessible opportunity to share their mana`o with the committee. Mahalo nui loa for your service to Maui County.



TONY RAMIL

P O Box 1161

Wailuku, Maui, Hawaii 96793

March 10, 2016

Chairman & Members
of the County Council,
and of the Special Committee,
Fellow Citizens

Maui County Form of Government

This public hearing is a welcome opportunity for us to present ideas and proposals to improve our County government. Thank you for this opportunity.

Just changing the form and structure of government would not by itself bring about a better and more effective and efficient public service. Better government service depends a lot on the competence, diligence, dedication and integrity of the people who work in government.

I personally don't entertain any illusions that there is anything magical in such words as "city manager" or "county manager" or that if we instituted a "city manager" or "county manager" form of government, things will be a lot better in Maui County.

In 1976, the people of Maui County undertook a process—discussions and public hearings--that led to the adoption of a new County Charter. One of the questions discussed and debated was whether Maui County should have a city-manager or county manager form a government. The people retained the Mayor-County Council form of government. However, the position of "managing director" was created. The managing director's job was simply stated to serve as "the mayor's principal management aide". He was one individual working for and under the mayor. The first person to hold the title of "managing director" was Shigeto "Mustard" Murayama, who had earlier served as county treasurer, finance director and later director of water supply.

Much have changed since forty (40) years ago. The present County Charter now provides for a separate Department of Management consisting of a managing director and the necessary staff, and bestowing on the managing director certain "powers, duties and functions" apart from those which the mayor may assign him or her.

I am for retaining the present structure of county of government. I strongly believe that the principal responsibility of running our county government should be one directly chosen by people and directly answerable to the people, and that is, the mayor. However, based on what I have heard and observed concerning the operation of county government and especially the office of the managing director, the following suggestions are proposed:

First: That the managing director's appointment be made by the mayor subject to

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confirmation by the County Council, and that the managing director may be removed from office by the mayor only with the concurrence of the County Council. Confirmation by the County Council, as the legislative body of the county, should impress upon the managing director that his or her office has a lot more significance in terms of serving the people and advancing the public good than his or her loyalty to the mayor or any one individual.

Second: That to be eligible for appointment to the office of managing director, a person must not have been actively (openly, directly or indirectly, or behind the scenes) involved in promoting and advancing the election of the appointing mayor or any of the incumbent County Council members--actively and openly involved in an election campaign shall include but not limited to serving in a candidate's campaign committee as chair or treasurer or member.

Third: That the managing director, while in office, shall not be actively (openly, directly or indirectly, or behind the scenes) involved in promoting and advancing the election of any candidate for elective public office in the County of Maui.

Fourth: That the managing director shall not be eligible for election to any elective public office in the County of Maui sooner than two (2) years after he or she shall have ended holding the office of managing director.

The obvious intent behind the foregoing proposals is to have the Department of Management and its staff, under the leadership of the managing director, focused on the management and operation of government—and not on politicking with its distractions such as spending time and effort running and directing a political campaign, debating and planning campaign strategy, following up on the sale and distribution campaign fundraising dinner tickets, or setting up rallies and public appearances. In plain terms, the managing director should not in the least allow the Department of Management to serve as, or turn it into, the hub of a political campaign operation for the purpose of electing or re-electing a mayor or any aspirant for elective public office.

It is proposed for further consideration as follows: That the managing director be a citizen of the United States, must have resided in the County for not less than five (5) years, and not less than 35 years of age. I believe that these requirements are consistent with and lend greater emphasis to, the present requirement that the managing director shall have had five years of experience in an administrative capacity, either in public or private business, or both.

Final proposal: That the managing director select and appoint the members of his or her staff. (Obviously, this would give the managing director some degree of "independence" from both mayor and Council.)

In conclusion, so-called city-manager forms of government obtain in many cities and municipalities in the mainland. And in those places, even as there is a city manager, there remains a mayor, apart from a Board, Council or legislative body. In the bigger cities, it is not unusual that the city manager receive a higher amount of remuneration than the mayor. In the smaller cities, it is quite common that the mayor and board or council members don't get paid, while the city manager is well-compensated (like between \$90,000 and \$150,000 per year).

Respectfully submitted:



TONY RAMIL

This committee has a unique opportunity to change our form of government and to forever save the taxpayer a significant amount of money. Maui County has the government that looks typical of cities with over a million in population. Probably copied from Honolulu or any large city. Such large cities have elected Mayors with large staffs, appointed department heads, and a full time Council with their staffs. That's very expensive. I counted up all the people that your elected officials directly employ, and it's well over 50. Many are well paid, so the cost for that group is easily over \$5 Million. That may not be much for Honolulu, but that's real money here on Maui.

Most governments the size of Maui want a lower cost approach and use the council/manager structure with professional department heads. That system works. How do I know? Because I did it. As the former elected Mayor and City Councilman of a medium size (Pop. 130,000) California city, we ran a city with basically the same services as Maui - police, planning, roads, water, sewer and even buses. We did that with five part time council members, including the elected Mayor, a city manager, four deputies and three administrative assistants. A lot less expensive. Yet it worked well. We were not unique, that model is used in most CA cities - up to populations over 500,000.

Some local governments even do not have an elected Mayor. I believe that in Hawaii politics that is a necessity. With only 4 local subdivisions of the State, the Mayor needs all the clout he can muster to negotiate with the Oahu centric State. As chair of the Council, the Mayor is also the one person the manager can talk to without violating open meeting laws. So it's still a very important job. The Mayor could be added as the Council chair who only votes in the case of a tie (like the Vice President is on the Senate), or the number of council districts could be changed to eight or, with all the population growth, ten.

So I would encourage the Committee to forward a recommendation to the Council to modify the Charter to implement a Council/Manager form of government. My estimate is a minimum savings of \$5 million a year. We could do a lot with that money.

GREG STANTON
201 891-0245

RECEIVED AT S-GC MEETING ON 3/10/16

March 10, 2016

To: Governance Committee Chair Takitani and members of the Special Committee
From: Dick Mayer
RE: Recommendation to the Maui County Council to include a Charter Change
Amendment on the November 2016 Ballot

PROPOSED CHARTER AMENDMENT TO IMPROVE MAUI COUNTY GOVERNANCE

COUNCIL – MAYOR – COUNTY MANAGER

Goal: A more efficient, responsive, professional government structure
This proposal recommends retaining an elected Mayor while adding a professional, experienced County Manager reporting to the Council.

Modifications to Current System:

1. **A countywide elected Mayor** would serve as the Chief Executive Officer (CEO), with duties to include:
 - A. Attending bi-weekly County Council meetings as a council member who may cast tie-breaking votes.
 - B. Proposing members of boards and commissions.
 - C. Participating with the County Council in recruiting, screening and hiring a County Manager.
 - D. Representing Maui County at local, state, national and international conferences, associations and events appropriate for the County.
 - E. Prepare the draft County budget for Council review and final adoption.
2. **A professional, experienced County Manager**, hired (and fired, if necessary) by the County Council who would serve as the Chief Administrative Officer (CAO) overseeing and coordinating day-to-day County administrative operations, with duties to include
 - A. Hiring department directors and deputy directors, subject to Council approval.
 - B. Attending County Council meetings and keeping the Council abreast of departmental progress, problems and opportunities.
 - C. Work with the Mayor to prepare the County budget by representing the needs of each of the County departments.
3. **Positions of the senior staff (County Manager, Department Directors and Deputy Directors)** would:
 - A. Have County Charter described minimum professional and experience qualifications
 - B. Be non-union positions that would not automatically turn over with each mayoral or council election approval
 - C. Be evaluated annually and retained based on performance
 - i. County Manager - Annual (or more frequent) evaluation by County Council
 - ii. Department and Deputy Directors - Annual evaluation by County Manager

RECEIVED AT 5 Gov MEETING ON 3/10/16

My name is Maile Kekona (T) and today, I represent myself.

I do not take for granted the awesome opportunity this is, to testify - to have a voice, and be heard. For that, Mahalo Chair and Committee for participating in this Democratic forum.

The question before you is whether establishing a county manager form of government would "improve management and operation of the County".

This question inherently suggests that management and operation of the county needs improvement. I appreciate this question, because it can't be fixed if we don't identify the possibility a problem exists.

All things being equal – We must recognize these two forms of government solve different issues, and all things being equal, they WILL yield vastly different results:

Mayor- Council -

Leads economic development

Champion Political responsiveness

Accountability to the community

Influence Engagement. Once these objectives are met, they create a natural environment for:

Explosive population growth, increased immigration, lagging infrastructure, and an environment of declining accountability and unequal enforcement due to extreme limitations on capacity. (US Reform Age) so about 100 yrs ago, this "New" form of Government was initiated.

Manager – Council - utilized to

Mitigate potential corruption

Resolve inefficiencies

Oversee management

equitable enforcement

*100 years of research tells us that neither of these two forms deliver desired results for the long term. Extrapolations of all research suggests that this has given rise to the preferred model of incremental changes every 10 years

If you look at the roles of each, it is easy to see the need for both.

If we focus on one area, at the expense of the other –I humbly suggest, the opportunity cost is too great. If we change our form of Government, we will produce different results...we can't afford to trade one set of priorities at the direct expense of another. rather - it can be both, simultaneously.

Negotiate our position on the spectrum. While I honor the passionate disagreement present, our opposition can inappropriately result in a battle for control rather than collaboration.

We all must want the best for ourselves, and for one another.

We are willing to be subject to equitable enforcement, while deserving accurate and timely responsiveness.

We want voters to participate, while mitigating the potential for preferential treatment.

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As a result of the research as discussed by the Cost of Governance Commission, the evidence as presented by this Committee, the testimony on behalf of this community, and personal research...may I propose the following:

An incremental step on the spectrum to find a workable solution. This doesn't have to be an all or nothing approach.

- I. Through Charter amendments and policy changes – restructure the position of the Managing Director to report to and perhaps be appointed by the Council.

This could happen a number of ways including a recommendation or nomination from the Mayor, with the support of x number of council members – or the institution of an interview process that involves the Council.

- II. The Charter amendments should include an enhancement of professional qualifications more in line with the Mayor – Council – Manager Type 3 Form of Government that is truly the trending form of Government structure in effect or under consideration at this time.
 - a. – these may be similar to the ICMA standards, or other such successfully utilized model.
- III. Key performance indicators tied to a measurable benchmark should also be required at every level – with a 360 degree assessment.
 - a. These indicators must go much further than quantities. Measuring the number of events completed doesn't gauge effectiveness or success. It speaks not to its outcome. Limiting accountability to finances ignores other important aspects. More than asking just “how funds have been administered”, we must consider- What has been accomplished, How fairly were people treated, What was our average processing, or response time, have we resolved problem areas reflective of these measurements, etc.

And I know there is concern about the Separation of Power -

"Therefore, the separation of powers is not two-way, but 3 way...between the mayor as executive and the council as legislative - between the mayor and Manager as joint executives, and between the Manager as executive and the council as legislature"

In closing, extrapolations suggest that on average, one quarter of American cities make at least one change every 10 years. It's time for us to make a strong, yet incremental step in the right direction. Help us now to make incremental step to solve for the immediate concerns, rather than jumping from the frying pan to the fire.

This is not an all-or-nothing approach. It can begin with a decision to join together to collaborate in collecting data about performance, identifying changes and revisions, and moving forward toward real, ongoing, shared responsibility for improving both public services, and the context of development necessary to achieve our Best Maui County.

Thank you

Maile Kekona (T).
(808) 495-6811

H. George Frederickson

University of Kansas

Gary Alan Johnson

University of North Carolina—Charlotte

Curtis Wood

Northern Illinois University

The Changing Structure of American Cities: A Study of the Diffusion of Innovation

Using historical and numerical analysis and the five-part schema, this study finds that over the past 50 years structural modifications and adaptations by American cities have generally followed the standard S curve of the diffusion of innovation. In tests of Kaufman's and Hirshman's theories of epochs of change from representativeness to administrative efficiency, this study determines that mayor-council cities have, in a standard innovation diffusion S curve, adopted many of the key features of council-manager cities, increasing their administrative efficiency. At the same time, council-manager cities, again in an S curve, have adopted many of the key features of mayor-council cities, increasing their political responsiveness. Fewer cities are now either distinctly mayor-council or council-manager in form, and most cities are structurally less distinct, constituting a newly merged or hybrid model of local government—the type III city.

Cities are collective institutions, both in physical and social terms. Just as people build houses and adapt and remodel them, and build roads and water systems, they also build cities as organizations and as governmental jurisdictions. Like houses and roads, the processes of building, adapting, and remodeling the institutions of local government are dynamic, responding to changing needs, circumstances, and values.

There are approximately 7,500 cities in the United States. The original organizational structure of American city government, the mayor-council model, is essentially a separation of powers structure based on the design of the federal government and state governments. Sometimes called the presidential model, the mayor-council model now includes fewer than half of American cities. A contrasting model of local government, the council-manager model, was a significant part of Progressive Era reforms. Council-manager cities are unity-of-powers structures modeled on business corporations. This model also resembles the parliamentary form of national government.

The availability, in one nation-state, of 7,500 cases of democratic local government with contrasting presiden-

tial and parliamentary forms provides an extraordinary laboratory for the study of democratic institutional structures. This laboratory is greatly aided by the availability of extensive data on American cities.¹ The size of this database facilitates the testing of hypotheses and the replication of findings essential to good social science. More important than the abstractions of social science, there are possible applications to democratic governments based on the findings of this research, applications that hold potential for improving the quality of governance.

Since 1987, H. George Frederickson has been the Edwin O. Steene Distinguished Professor of Public Administration at the University of Kansas. E-mail: gfred@ukans.edu.

Gary Alan Johnson is an assistant professor of political science at the University of North Carolina—Charlotte. E-mail: garjohns@email.uncc.edu.

Curtis Wood is a faculty member in the MPA program at Northern Illinois University and has a PhD in political science from the University of Kansas. His professional background includes 20 years of municipal government experience in Kansas. E-mail: chwood@niu.edu.

Frederickson, Johnson, and Wood have recently written *The Adopted City: Institutional Dynamics and Structural Change* (M.E. Sharpe, 2004).

Theory

The study of the changing structural characteristics of American cities is part of a broader body of social science theory generally described as *institutionalism* or the *new institutionalism* (March and Olsen 1984; DiMaggio and Powell 1991; Lynn 1993; Rogers 1995). Individuals, families, neighborhoods, interest groups, and businesses function in the context of the city as an institution. How we function in relationship to the institutional city is determined in part by the particular governance structure of the city. In its formal manifestations, the city sets the rules of participation, exercises authority by making and carrying out the law (statutes, ordinances, or regulations), selects persons to politically represent all residents or some subset of residents, operates a permanent bureaucracy, provides services, and determines who will pay what in taxes. How the city does each of these things is determined by its structure. These structures, as a general rule, tend to conform to societal expectations of how cities should look and function (Lynn 1993, 125). The extent to which societal expectations are matched by the function of the city is the measure of its legitimacy (Stone 1987). Because societal expectations change, institutions face the challenges of responding to change. Some are highly resistant, while others are dynamic.

Patterns of institutional dynamics are captured first by theories of the diffusion of innovation taken from sociology and political science, and second, by the application of theories of eras or epochs, which account for long-term shifts from one to another dominant ideology, theories taken from public administration and political philosophy.

The Progressive movement in the first 50 years of the twentieth century spread many important organizational and policy innovations, including the council-manager form of city government, the short ballot, the secret ballot, merit systems in government, workers compensation laws, aid to the blind and deaf, and minimum wage laws. Edgar McCoy (1940) measured state policy innovations between 1869 and 1931, including old age pensions, women's suffrage, and workers compensation, and ranked them according to whether they were early or late adopters. Using maps, he found the centers of these innovations to be in New York, California, Wisconsin, and Michigan, and he traced the paths of diffusion in concentric circles from those centers. Paths of diffusion were influenced by state variations in transportation and communication capacities, wealth, and urbanization. From this grew the McCoy Innovation Index, which even now explains regional patterns of innovation diffusion.

Doubtless, the ultimate study is Everett M. Rogers's *Diffusion of Innovations* (1995). In a synthesis of thousands of studies of change, Rogers found that innovations or reforms spread in diffusions that exhibit a common pat-

tern—the S curve. At first, the adoption of change or reform is slow, with experimentation, trial and error, and the challenges of being the guinea pig. Once a few others adopt a reform successfully, there tends to be a steep climb in adoption, followed by a leveling off. When institutional change reaches the leveling-off stage, investments in the advantages associated with adopting the innovation drop sharply. Diffusions in social systems happen in surprisingly predictable ways, and the spread of structural changes among American cities is a good example of that.

Patterns of diffusion (some are more comfortable simply calling diffusion "change," whereas those who favor a particular diffusion tend to call it "reform" or "innovation") are explained by a series of attendant hypotheses.

1. There is an association between the presence of a perceived crisis and the propensity to adopt a change.
2. Diffusion theory accounts for the compatibility between the purposes of a change or reform and the dominant values of a social system. Because social values change, there is a diffusion of innovation by which innovations adapt to changed values.
3. Spatial proximity often accounts for a diffusion of innovation.
4. Public media are often the carriers of innovation.
5. Communities of experts and consultants are often the agents of diffusion.
6. Closely associated with the media and with diffusion change agents are changing fads and fashions.
7. The diffusion of change is often an institutional pursuit of prestige, status, and social standing.

If the S curve describes patterns of the diffusion of innovation, what explains the likely direction of innovation? Two prominent scholars have given detailed consideration to the directions of institutional change and the reason for those directions. Both use the concept of cycles or epochs of time, a concept that fits comfortably with the S curve of the diffusion of innovation.

Herbert Kaufman (1963, 339) describes the early history of American government as a reaction "against executive dominance in the colonial era." This was followed by the design of a limited government based on checks and balances and the separation of powers that relies primarily on elected legislative leadership. "By the middle of the 19th century, however, legislative supremacy, the long ballot, and the spoils system resulted in widespread disillusionment with our political institutions" (Kaufman 1963, 339). As a consequence, there was an impetus to separate administration from politics, build merit systems, and reduce the influence of political parties. The municipal reform movement was part of this era, as was the emergence of the new academic field of public administration. But in time, there were reactions against the so-called neutral, professional, faceless bureaucrats and a search for greater

political representation and elected political leadership in the office of mayor, governor, and the presidency.

Kaufman describes the values associated with these eras or epochs, first as representativeness, second as neutral competence, and third, executive leadership. These are not just theoretical matters, as Kaufman reminds us:

This is not to say the values are pursued abstractly, as ends in themselves, or that there is universal agreement on which should be emphasized at any given time. On the contrary, different segments of the population feel differently disadvantaged by the governmental machinery in operation at any given moment, and agitate for structural changes to improve their position—i.e., to increase their influence—in the system. Discontent on the part of various groups is thus the dynamic force that motivates the quest for new forms. Some groups feel resentful because they consider themselves inadequately represented; some feel frustrated because, although they are influential in forming policy, the policy decisions seem to be dissipated by the political biases or the technical incompetence of the public bureaucracies; some feel thwarted by lack of leadership to weld the numerous parts of government into a coherent, unified team that can get things done. At different points in time, enough people (not necessarily a numerical majority) will be persuaded by one or another of these discontents to support remedial action—increased representatives, better and politically neutral bureaucracies, or stronger chief executives as the case may be. But emphasis on one remedy over a prolonged period merely accumulated the other discontents until new remedies gain enough support to be put into effect, and no totally stable solution has yet been devised. So the constant shift in emphasis goes on. (4)

The political philosopher Albert O. Hirschman (1982) found long-term cycles of change in shifting values, attitudes, and ideology. In broad terms, he describes these cycles as eras or epochs of shifting involvement between the collective pursuits of the public interest on the one hand, and the individual or group pursuit of private interests on the other hand. For example, in the United States, we now have low voter turnout, public institutions are held in low regard, and there is little trust in either public officials or public institutions. We are, Hirschman claims, in an era of private interests, following a 70-year era of public interest—the two world wars, the New Deal, and a long period of positive government. In the era of public action and positive government, there were trade-offs and costs in the form of big government, higher taxes, regulations, restrictions on individual uses of property, and very high complexity. And, we learned there were certain intractable problems such as poverty, drug abuse, and terrorism that even

positive government could not solve entirely. As the most recent era of positive government matured in the 1950s and early 1960s, the people could more easily see the public policy costs and trade-offs that had been made. And, to use Hirschman's term, the people were disappointed. The limitations and failures of public institutions were obvious—Watergate and the war in Vietnam, poverty, crime, and drug abuse. In this context, a new acceptance of private interests evolved gradually, and that new acceptance has been the dominant ideology over the last 30 years. As a consequence, public institutions downsized, contracted out, privatized, and deregulated. This is a dynamic process of institutional change that broadly reflects social change and changed contextual circumstances.

This study demonstrates that patterns of structural change in American cities resemble both Hirschman's and Kaufman's arguments about the longer-term eras or epochs of public preferences and changed circumstances. And this study finds that cities tend to change incrementally rather than changing dramatically from one institutional structure to another. This pattern of incremental structural change takes the form of the S curve found in virtually all studies of the diffusion of innovation.

Structural Change in Municipalities

As part of the Progressive Era and the municipal reform movement, council-manager government, more than any other idea (with the possible exception of jurisdictional suburbanization), influenced the character and quality of American cities (Adrian 1955; Stillman 1974). For much of the twentieth century, council-manager city government was thought to be the new idea, the reform model. As we approach the one hundredth anniversary of council-manager government, it is no longer a new idea. The municipal reform movement, of which council-manager government was such an important part, is over. The rapid increase in the number of council-manager cities is also over. Council-manager government was designed to solve corruption, inefficiency, and management problems, and it did (Adrian 1955). Now that corruption, inefficiency, and poor management are no longer compelling problems, most reform cities with council-manager structures have turned their attention to economic development, political responsiveness, political leadership and accountability, and equity (Nalbandian 1991). Council-manager government, some argue, is a large and influential idea whose time has passed (Gurwitt 1993).

The two ordinary categories of cities are, in fact, legal distinctions. In the statutes of all 50 states, the residents of a particular area may, under certain rules and procedures, incorporate a city. In most states, these statutes provide for at least two city types, the mayor-council form and the

council-manager form. However, city residents may adopt extensive variations within one of the legal forms. Therefore, within a particular state, two cities may be legally established as mayor-council cities, yet be very different structurally. In addition, most states provide for charter cities, a legal process by which the residents of a city may custom design the particular details of a democratic structure into a draft charter and then vote to accept or reject it. For the first 50 years of the twentieth century, the two statutory categories of American cities were relatively good descriptions of distinctly different structures based on distinctly different kinds of democratic logic. Beginning in the 1950s, cities using both structures began a steady process of structural adaptation. But these cities continued to be legally categorized as mayor-council or council-manager structures, categories that often mask actual structural details.

The two dominant forms of American local government, the council-manager system and the mayor-council system, are also institutional concepts. It is rightly assumed that institutions matter, that different institutions, all else being equal, produce different results (Weaver and Rockman 1993). The structural differences between council-manager and mayor-council government have long been judged by scholars to be important (Lineberry and Fowler 1967). For example, during the municipal reform movement in the first half of the twentieth century, cities used structural changes to largely eliminate graft and corruption. City structural changes in the second half of the twentieth century are equally important, but less dramatic than stamping out corruption. Because replacing mayor-council government with council-manager government or vice versa is rare, it would seem there has been little change in municipal structures (Protasel 1988). Debate over the strengths and weaknesses of each model, while important, has tended to obscure a profound pattern of changes that have been under way in each form of city government. Because of this, structural changes in American cities in the last 50 years are not well understood. The purpose of this study is to describe those changes and the likely result of those changes.

Beginning in the 1950s, the most prominent features of council-manager government, such as a professional executive and a merit civil service, were being widely adopted in mayor-council cities (Renner and DeSantis 1998). At the same time, the most prominent features of mayor-council government, such as a directly elected mayor and some or all members of the city council elected by districts, were being widely adopted in council-manager form government. By the 1990s, the fusion of these two models resulted in what is now the dominant modern form of American local government. Although almost all cities are still formally or legally labeled mayor-council or council-manager cities,

in empirical fact most cities are now better described as "adapted cities" or "type III cities."

If the type III adapted city is increasingly the norm, how can it be best described and understood? The language and vocabulary used in the study of city structures and the reform of those structures is woefully inadequate. The traditional language is based on the formal and legal designation of cities as either mayor-council or council-manager, and does not capture variations among them nor help to describe patterns of structural change. The development of the type III city is a response to the theoretical and empirical challenges of understanding American local government. "Because cities have adopted a myriad of structural arrangements that cannot easily be considered part of one model or the other, researchers must reflect this situation in order to be more useful from both a theoretical and practical standpoint" (Renner 1988). The results from this study could not be described using only the traditional categories, so additional categories were created and a new vocabulary invented to describe the research findings. The flexibility of the English language was used to describe the concepts and categories in different ways.

The type I city describes the original mayor-council form of cities (as well as states and the national government) with separation-of-power structures. Type I cities are also referred to as "political" cities. The research shows that type I political cities are increasingly rare.

The type II city is a unity-of-powers model, called an "administrative" city because of its comparative emphasis on management and efficiency. The type II administrative city is a reform of the type I political city, and it is called in the classic literature the council-manager model, which is also increasingly rare, as this study will show.

Most Americans now live in type III or adapted cities. Because this is such a large group of cities, three subcategories or variants of type III adapted cities were created—the adapted political city, the adapted administrative city, and the conciliated city.

The adapted political city retains the basic elements of separation of powers, but has also adopted important administrative features that have buffered the influence of politics and increased management capacity. Adapted political cities rest on mayor-council statutory or legal platforms (a few are on council-manager legal platforms), but they are clearly distinguishable from their type I political city parents.

The adapted administrative city retains the basic elements of the unity-of-powers model but has modified its structures to increase the prospects for political responsiveness and to centralize political responsibility. The type III adapted administrative city is clearly distinguishable from the type II administrative city. The adapted administrative city rests on the council-manager statutory platform.

The third category of type III cities is called the conciliated city. Conciliated means to assemble, to unite, or to make compatible, and it is used here to describe type III cities that are no longer exclusively based on either a separation-of-powers model or a unity-of-powers model. More type III conciliated cities use the council-manager legal platform than the mayor-council legal platform.

Based on this new vocabulary, a five-part schema categorizing American cities according to the details of their structures has been created (table 1). One can quarrel with the detailed structural characteristics used to classify cities. For example, city A, with a council-appointed city manager, at-large election of city council members, and a mayor chosen from among the city council (a type II administrative city), is significantly different from city B, which has a council-appointed city administrator but a district-elected council and a directly elected mayor (a type III administrative adapted city). Although both cities appear to retain the unity-of-powers principle, these structural differences are important and influence the allocation of political and administrative power between the mayor, the council, and the city administrator, as well as influence the day-to-day functioning of city government.

Our findings indicate that cities are much more structurally dynamic than the literature suggests. In fact, cities

are remarkably fluid and adaptable. Between 1992 and 1996, 12.5 percent of American cities reported at least one structural adaptation of the type described in table 1 (Frederickson and Johnson 2001). An extrapolation of this finding suggests that, on average, one-quarter of American cities make at least one change during a 10-year period. The aggregation of these structural adaptations over time has resulted in the emergence of distinct forms of city government.

Methodology

To defend the proposition that American city structures are highly dynamic and that the contemporary reflection of that dynamism is the emergence of type III cities, a mixture of methodologies was used in this study. Because of the 120-year sweep of time covered in this study, history is important and is used throughout. In reconstructing the rate of structural adaptation from type I to type II cities between 1880 and 1920, early texts on city government were examined (Adrian 1961, 1967, 1988; Banfield and Wilson 1963; Bollens 1952; Bromage 1957; Chang 1918; Childs 1965; Goodnow 1910; Griffith 1974; Lineberry and Fowler 1967; Schiesel 1977; Stone, Price, and Stone 1940; Svava 1989, 1994; Wood 1958; Zinc 1939). Beginning in

Table 1 Types and Categories of American Cities

Type I Political	Adapted political	Type III Conciliated	Adapted administrative	Type II Administrative
Mayor directly elected	Mayor directly elected	Mayor either directly elected or selected by council	Mayor directly elected	Mayor selected by council
Most council elected by district	Council elected by district, at-large, or mixed	Council elected by district, at-large, or mixed	Council elected by district, at-large, or mixed	Most council elected at-large
No CAO	Likely to have CAO	Has CAO	Has CAO	Has CAO
Mayor is not on council	Mayor is not on council	Mayor is not on council	Mayor is on council	Mayor is on council
Mayor has veto power	Mayor has veto power	Mayor may have veto power	Mayor may have veto power	Mayor does not have veto power
Mayor full-time	Mayor full-time	Mayor may be full-time or part-time	Mayor is usually part-time	Mayor is part-time
Mayor has staff	Mayor has staff	Mayor may have staff	Mayor does not have staff	Mayor does not have staff
Council full-time	Council full-time or part-time	Council may be full-time or part-time	Council is part-time	Council is part-time
Council has staff	Council may have staff	Council may have staff	Council does not have staff	Council does not have staff
Partisan or nonpartisan	Partisan or nonpartisan elections	Partisan or nonpartisan elections	Usually nonpartisan elections	Nonpartisan elections
Department heads report to mayor	Department heads report to mayor	Department heads report to CAO	Department heads report to CAO	Department heads report to CAO
Mayor serves as CAO	Mayor appoints and terminates CAO without consent of council	Mayor appoints and terminates CAO with consent of council	Council appoints and terminates city manager	Council appoints and terminates city manager
May have civil service	May have civil service	Usually has civil service	Usually has civil service	Usually has civil service
May have bidding system	May have bidding system	Usually has bidding system	Usually has bidding system	Usually has bidding system
Statutory of charter form is mayor-council form	Statutory of charter form is likely to be mayor-council form	Statutory of charter form may be council-manager or mayor-council	Statutory of charter form is likely to be council-manager	Statutory of charter form is council-manager

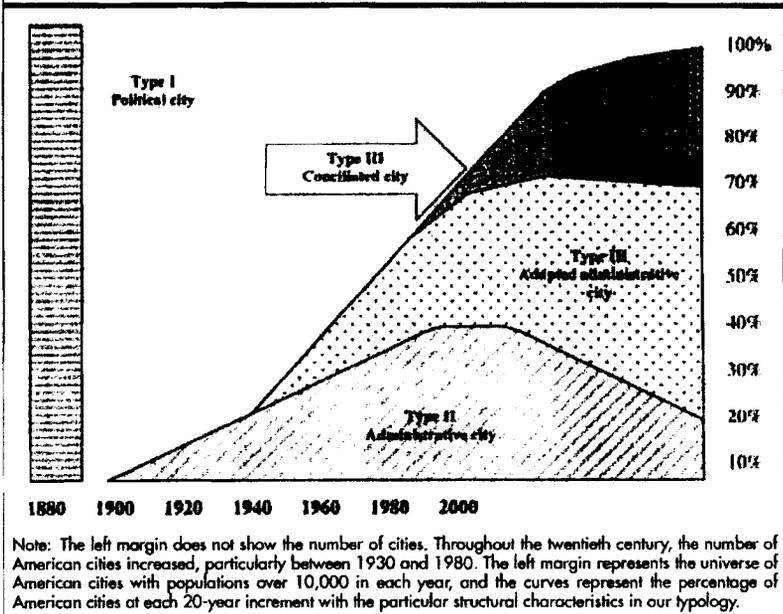
the 1930s, the survey of cities that appears in the International City/County Management Association's (ICMA) annual *Municipal Year Book* was used to estimate the number of cities fitting type I, type II, and the three variants of type III.² It is important to point out that the total number of cities increased during the last 70 years. Using information and data from early textbooks on city government and the ICMA *Municipal Year Book*, the percentage of cities that fit into each of the five categories was estimated for 1880–2000. The 2000 estimate was extrapolated from the 1998 ICMA *Municipal Year Book* and the results of a 1998 random survey that the authors conducted, which examined the structural details of 116 cities with populations over 10,000.³

Findings

Using the structural distinctions between the types of cities and the methodology described previously, the findings are summarized in figure 1. Starting in 1880, most American cities had the structural features of the type I political city. Gradually, starting just before the turn of the century—the early stages of the municipal reform movement—the council-manager form of city government began to appear. Almost all of the cities adopting the council-manager form exhibited the characteristics of the type II administrative city. The diffusion of this innovation continued in an S curve through the 1970s. Beginning in the late 1920s, some type II cities began adopting the structural characteristics of type III adapted administrative cities. By the late 1950s, there were almost equal numbers of type II administrative and type III adapted administrative cities. The growth of the type II orthodox council-manager city government leveled off in the 1960s and then, in a reverse S curve, began a steady decline, replaced by an increasing number of cities on council-manager platforms with type III adapted administrative characteristics.

As the number of type II administrative and type III adapted administrative cities increased, the number of type I political cities declined. Beginning in the 1950s, some cities on orthodox type I political mayor-council platforms adopted the structural characteristics of type III adapted political cities. This process, another S curve of change, continued throughout the last half of the twentieth century, a process that reduced the number of type I political cities and increased the number of type III adapted political cities.

Figure 1 City Structural Adaptation and the Forces of Reform



Finally, starting in the 1980s, a few cities had so completely mixed structural features that they constituted a third variant of type III city, the conciliated city. Although the conciliated city represents only about 8 percent of the American cities (15 of the 116 cities in the 1998 survey were classified as conciliated cities), the logic of the S-shaped pattern of diffusion of innovation suggests that more adapted political and adapted administrative cities will become conciliated cities.

From Type I Political Cities to Type III Adapted Political Cities

Over the past 50 years, most type I political cities have become what we describe as type III adapted political cities. In recent decades, many cities on mayor-council charter platforms have provided for the appointment of full-time professional administrators, known variously as chief administrative officers (CAO), chief executive officers, deputy mayors, or vice mayors for administration. The method of CAO appointment varies. In type III adapted political jurisdictions, the mayor appoints a CAO. Most CAOs function very much like a city manager, and many have served as managers in cities with council-manager charters (Svara 1999). The existence of the CAO position in political cities leads to improved efficiency and effectiveness, and therefore warrants the new category of "adapted political city."

Professional CAOs and city managers ordinarily influence policy. In the day-to-day operations of the type III adapted political city, the mayor has a great deal of struc-

tural power to enforce his or her policy preferences, but tends to delegate to the CAO supervision of the day-to-day functioning of the city administration. In such settings, the relationship between the mayor and the CAO is often described as very cooperative (Svara 1999). In type III adapted political cities, there is still a clear separation of power between mayoral and CAO executive prerogatives on the one hand, and the legislative and budgetary powers held by the city council on the other hand. Checks and balances are commonplace. City council representation of district interests is still routine. It is not uncommon for city council members to anticipate running for mayor and, when in mayoral campaign mode, to use their council position to oppose the policies and programs not only of the mayor, but also of the CAO.

The data indicate distinct elements of the separation of political power and checks and balances in type III adapted political cities. However, there is also less political influence over day-to-day city administrative matters in type III adapted political cities than in type I political cities. Therefore, in type III adapted political cities, the separation of powers is not two-way, between the mayor as executive and the council as legislature, but three-way, between the mayor as executive and the council as legislature, between the mayor and CAO as joint executives, and between the CAO as executive and the council as legislature.

From Type II Administrative Cities to Type III Adapted Administrative Cities

In type II administrative cities, the city manager tends to have a wide scope of influence, including control of virtually all policy implementation, a good bit of city policy making, and even some influence over the city mission, although always in a nonpartisan way (Svara 1989; Nalbandian 1991). Politics in type II administrative cities tend to cluster around elections and then recede sharply. The emphasis is on effectiveness, efficiency, and professional management. It is no wonder that type II administrative cities flourished in homogenous American suburbs, the Midwest, Southwest, and West. These are the crown jewels of municipal reform. But the municipal reform movement is over, and type II administrative cities are increasingly rare. It is estimated that 20 percent of American cities still retain the orthodox council-manager form of government.

Most American cities now elect all or at least some of their council members by district. It is believed that responsiveness to neighborhoods is enhanced by changing from city council members elected at large to city council members elected by district. Over time, more and more cities with district-elected city council members have arranged some monthly pay and certain forms of support

such as offices, cellular telephones, home computers, cars, and access to staff help for council members. Adaptations in this direction are almost always associated with size, larger cities being more inclined to these changes.

An important pattern of structural adaptation from type II administrative cities to type III administrative adapted cities is the changed role of the mayor. The distinct majority of cities with council-manager statutory or charter legal platforms have altered those platforms to provide for the direct election of the mayor. In most of these adaptations, the directly elected mayor is still a member of the city council, serving as the presiding city officer, but with few powers not held by other city council members. It could be said that such cities have the symbols of a mayor without the substance, but those symbols are not unimportant. There is still an essential unity of political powers in a council that includes a directly elected mayor with only symbolic powers. When the entire city council selects the city manager—with the mayor playing no special role in that selection—and the appointed city manager has full administrative powers over day-to-day city affairs, there is a unity of political powers in the council and a distinct separation between council-exercised political powers and management-exercised executive powers.

The trends are all in the direction of enhanced mayoral powers. As cities grow and become more heterogeneous, mayors tend to move from voluntary to part-time and then to full-time positions. In the process, these mayors require offices, salaries, and staff. It is not unusual for full-time mayors to seek the full range of mayoral powers, to become “strong mayors” (Gurwitt 1993). Patterns of political separation of powers and checks and balances usually accompany the trend toward enhanced mayoral powers between the mayor and the council.

In the classic type II administrative city, the council tends to be made up of business leaders who meet one evening a week to make city policy and engage in oversight over city administrative affairs. Seldom do city council members of this type anticipate long-term political careers. Political representativeness and responsiveness in such a model is thought to be general to everyone in the city. In broad policy terms, at-large city councils in type II administrative cities are likely concerned primarily with the overall aspects of city policy. It is wordplay, therefore, to claim that at-large councils are not representative or responsive, because they are. The question of representation changes from the quality of generalized representation of the whole city to the quality of specific representation—to put it another way, representativeness of and for whom. Obviously, not all residents of the city are alike. There is no question that at-large councils in type II administrative cities are primarily white male business leaders who live in middle-class and upper-class neighbor-

hoods (Bledsoe 1993; Welch and Bledsoe 1988). Specific responsiveness to minorities and ethnic groups, as well as the representation of poor neighborhoods, has been an issue over the past 30 years. As a result, a majority of at-large council election formats in type II cities have been changed to all or at least a majority of council members elected on the basis of districts—all in the name of political representation and responsiveness. Cities with all or part district-elected council (with a mayor directly elected by the citizens) are considered type III adapted administrative cities. Council policy processes in type III adapted administrative cities tend to reflect neighborhood and group patterns of representation and, in larger cities, patterns of political careerism and some of the elements of political checks and balances, depending on how the mayor is elected and what the mayor's powers are (Ehrenhalt 1991). Professional city managers and administrators, as well as most of those who study city management, agree that when compared with type II cities, generalized administrative efficiency is often diminished in type III adapted administrative cities because of district-elected councils (Newland 1994).

At the center of the distinctions between type II administrative and type III adapted administrative cities is who selects the city manager or administrator. Connected to this distinction is the issue of administrative reporting patterns—to whom should city department heads report? In type III adapted political cities, the administrator tends to be appointed by and reports to the mayor. In type III adapted administrative cities, the manager tends to be appointed by and reports to the council. However, mayors in type III adapted administrative cities tend to expect managers to report to them. In either setting, the relationship between the mayor and the manager is often described as a partnership (Svara 1994). The background and day-to-day work of professional managers in either setting has been found to be more similar than different. Nevertheless, to those in the city management profession, the manner of managerial appointment, the reporting pattern of the manager (to the council or to the mayor), and the formal power of the manager to appoint and supervise department heads are the critical distinctions between council-manager and mayor-council city governments and between unity-of-powers and separation-of-powers structures (Hansell 1999). From the professional manager's perspective, these distinctions are understandable. Research findings show these distinctions have blurred and, over time, are blurring even further. This structural blurring has resulted in what is the modal form of American city government—the type III adapted city.

There are many small variations within the generalized type III city architecture, such as whether the civil service is unionized and has bargaining rights, whether the mayor

prepares or presents the budget, and whether the mayor has a veto. Under particular circumstances or associated with particular issues, each of these variations may be important. But the importance of each variation is played out within the broader common architecture of the type III city.

Is the type III city a unity-of-powers or a separation-of-powers government structure? It is a mixture of both. Type III cities are not pure unity-of-powers models and do not replicate American corporate structures or the structures of parliamentary national governments. The standard arguments for the unity of powers have to do with the majoritarian democratic capacity to make policy with dispatch and the executive capacity to implement that policy efficiently. Because type II cities are unity-of-powers models and because many type III adapted administrative cities were previously type II administrative cities, there is little question that type III adapted administrative cities have traded some majoritarian democratic capacity to decide and some administrative capacity to efficiently implement policy in return for greater representation and greater direct involvement of elected officials in city executive and administrative functioning.

The standard arguments for the separation of powers are based on the logic of limited government. The founders who designed the separation-of-powers model were determined to stamp out hereditary and despotic governments, and they believed this could be accomplished by pitting democratic ambition against ambition, structurally achieved by bicameral legislative bodies and a separately elected executive (president, governor, or mayor) who would be able to check legislative excesses. For several reasons, type III adapted political cities cannot be properly described as modeled exclusively on the separation of powers. First, there is an established merit-based civil service and a professional administrator who directs their day-to-day work, either by delegated mayoral authority or by direct statutory or charter-based executive power. Second, there are administrative policies, processes, and procedures that militate against direct meddling in city administrative affairs by city council members and even occasionally by mayors. Because most type III adapted political cities evolved from type I political cities, they have traded many of the classic features of the separation of powers and the politics of checks and balances for greater administrative efficiency and capacity.

What is the type III city, if it is neither exclusively a unity-of-powers nor a separation of powers democratic polity? Type III cities are a blend of two logically opposite models of democracy. It appears that citizens who have, over the years, voted for the incremental steps that brought us type III cities were less interested in the contrasting logic of these two models and more interested in reconciling competing notions of democracy. Citizens appear to want

both the advantages of direct neighborhood representation and the assignment of overall political accountability to a mayor. But they also want professional leadership and a merit-based city administration functioning without political mischief.

Conclusions: Accounting for the Directions of City Structural Change

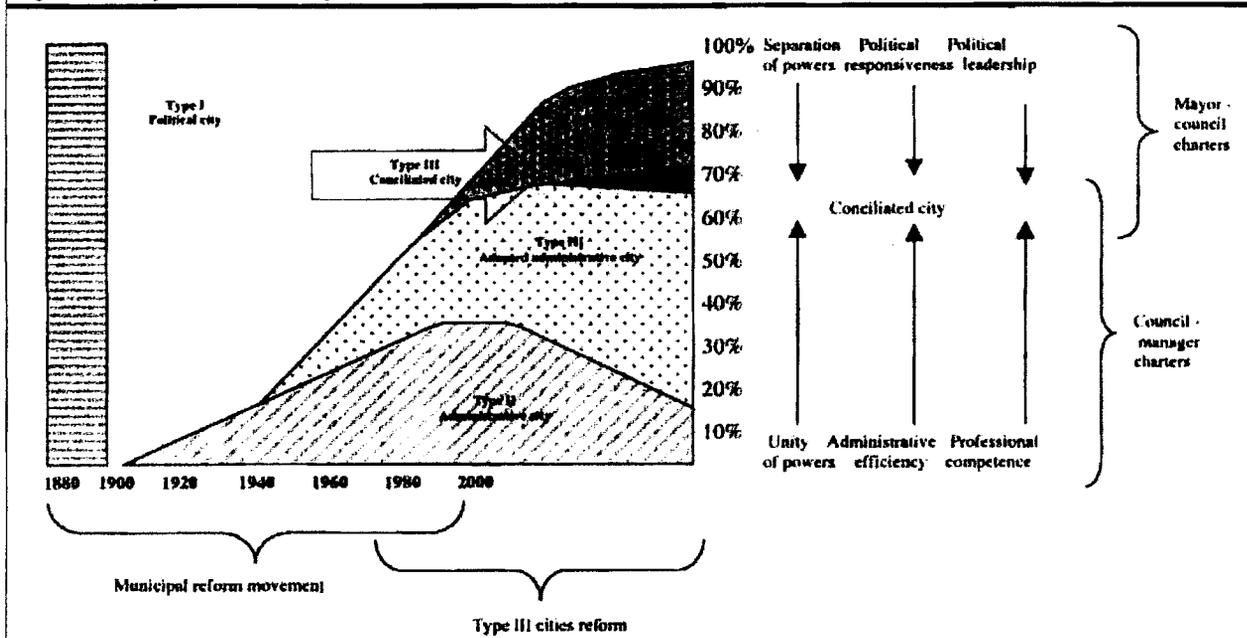
Competing and contrasting values account for the changing patterns of city structures and the S curve of innovation. The arrows shown in figure 2 illustrate the forces driving these structural changes—the drive for administrative efficiency, professional competence, and unity of powers coming from one direction, and the drive for political responsiveness, political leadership, and separation of powers coming from the other direction. The arrows empirically represent competing theories of democratic government. This study tests Herbert Kaufman's theory that, over time, American democratic politics swings in a wide arc between the search for neutral administrative competence and political representativeness. Based on the 120 years represented in figure 2, the structural adaptation arc of city democratic structures does not appear to move from one pole to the other. Instead, the arc of change appears to settle somewhere in the middle.

The rhetoric of change is a polar language, but the actual incremental, democratic structural adaptation of cities appears to be more cautious and intermediate. This rhetoric is captured in Albert Hirschman's (1982) "disap-

pointment" thesis. Like Kaufman, Hirschman observed a wide arc of change over time between efficiency and political responsiveness. The forces pulling structural adaptation through that arc in one direction or the other have to do with the force of contemporary winning arguments based on democratic expressions of disappointment. For example, a typical type I city could easily be described, particularly after a scandal, as riddled with patronage and corruption and, therefore, a disappointment. Such a disappointment provides the impetus and incentive for structural adaptations favoring merit-based civil service and tight bid and purchasing controls. This was exactly the rhetoric of the municipal reform movement, and vestiges of that movement still can be found in the process of adaptation from type I political cities to type III adapted political or conciliated cities.

Much more obvious in the past 20 years has been the rhetoric of disappointment with the detached, efficient, neutral administration of type II cities. When things go wrong—and they always do—there is a logical instinct to fix responsibility, and in democratic political systems responsibility ultimately rests with elected officials. If they are to be held responsible for city affairs, they argue, should they not have greater political and executive power to influence those affairs? While the findings in this study generally support the disappointment thesis, there is also ample evidence that the processes of change, at least as those processes are represented by the incremental adaptation of city structures, are less sweeping and more tentative than the disappointment thesis suggests.

Figure 2 City Structural Adaptation and the Forces of Reform



These findings fit comfortably in the so-called new institutionalism perspective. Synthesis of many studies of institutional reform in complex public systems concludes that radical and comprehensive reform and reorganization is unlikely to be politically digestible (Olsen 2001). Actual change is almost always incremental, because existing structures usually reflect long historical processes, the repeated consideration of competing preferences, and a good bit of compromise. Patterns of adaptation respond to the issues that are winning the battle for limited public attention (March and Olsen 1984). Shifting attention is a function of scandal, crisis, disappointment, and the skills of leaders. Initial proposals for city structural change—for instance, a proposal that a type II city change to a directly elected mayor with mayoral empowerment, or that a type I city change to provide for a chief administrative officer—are not usually successful initially. Instead, they are ideas, preferences, and perspectives competing with other ideas, preferences, and perspectives.

The three forces influencing contemporary patterns of city structural diffusion are the drive for political leadership, political responsiveness, and administrative effectiveness. When combined, these forces produce patterns of diffusion exhibiting fewer and fewer structural distinctions between cities over time. Other studies of diffusion (DiMaggio and Powell 1991) find growing isomorphism among companies and institutions as a result of adaptation. Put another way, cities are becoming more like one another structurally and there are fewer and fewer outliers. There are more and more American cities with relatively similar structural characteristics and fewer and fewer classic type I and type II cities. The modal American city will have a directly elected mayor, a professional city manager or chief administrative officer, some or all of the city council elected by district, a merit-based civil service, formal bid and purchasing controls, and required external auditing.

The findings show that the detailed features of these traditional models have been so mingled as to all but eliminate the importance of the formal designation of a city as either mayor-council or council-manager (Ebdon and Brucato 2000). This is not to suggest there are not some “pure” mayor-council and council-manager cities, because there are. It suggests, however, there are now fewer of them and that the adapted type III city is now the mode, especially for cities with more than 50,000 people. Nor is it suggested that the different values upon which mayor-council and council-manager forms of government are based are now less important. In fact, values such as professional administration, on the one hand, and democratically elected political leadership, on the other, are so important that they are no longer exclusively associated with one or the other model of local government. The emergence of the type III adapted city is a splendid example of the innovation, cre-

ativity, and malleability of American local government.

If type III cities blend the values of responsiveness and democratic leadership, on one hand, and efficiency and professional competence, on the other hand, are these values compatible? Can they be blended effectively? Empirically, the answer to each of these questions appear to be yes. Citizens appear to favor blending the contrasting logic of unity of powers and separation of powers and believe this blending to be compatible. Or, they take logical purity less seriously than they take wanting the best from both forms of logic and can find no reason why the best of each form of logic cannot be combined. Through the processes of incremental structural adaptation, city residents have essentially invented the type III city.

In the short run, it appears that type III cities are functioning as their residents want and expect. They may be less efficient than the advocates of unity of powers want, and they may be less politically responsive than separation-of-powers advocates may want, but type III cities appear to meet the needs and wants of the citizens. At least in the eyes of the citizens, thus far, type III cities have successfully combined contrasting democratic logic.

It is very important, however, to remember how malleable and dynamic American city structures are. The present dominance of the type III city structure will no doubt evolve, the direction of that adaptation open to the forces of changing circumstances and the changing salience of winning ideas.

Notes

1. The primary data sources are the computer tapes and documents of the U.S. Census of Governments, the International City/County Management Association's annual *Municipal Year Book*, the *City-County Data Books*, and data and documents from the U.S. Advisory Commission on Intergovernmental Relations.
2. The surveys conducted by the International City/County Management Association are sent to all cities with populations over 2,500; the results are presented in the annual *Municipal Year Book*.
3. The authors categorized the 116 cities in the 1998 survey data set based on the five-part schema in table 1. For a comprehensive description and analysis of the structural characteristics of each type of city, see Frederickson and Johnson (2001) and Frederickson, Johnson, and Wood (2002).

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PROPOSAL FOR MAUI COUNTY GOVERNANCE:

COUNCIL – MAYOR – COUNTY MANAGER

Goal: A more efficient, responsive, professional government structure

This proposal recommends retaining an elected Mayor while adding a professional manager reporting to the council

Modifications to Current System:

- A popularly elected Mayor would serve as the Chief Executive Officer (CEO), with duties to include:
 - Representing Maui County at local, state, national and international conferences, associations and events appropriate for the County.
 - Attending bi-weekly County Council meetings as a council member, and may cast tie-breaking votes.
 - Retaining a veto.
 - Proposing members of boards and commissions.
 - Participating with the County Council in recruiting, screening and hiring a County Manager.

- A professional, experienced County Manager, hired (and fired if necessary) by the County Council who would serve as the Chief Administrative Officer (CAO) overseeing day-to-day operations, with duties to include:
 - Hiring department directors and deputy directors, subject to Council approval
 - Attending County Council meetings and keeping the Council abreast of Departmental achievements, problems and opportunities.
 - Evaluating the senior administrative staff under Manager's direction annually
 - Annual (or more frequent) evaluation by County Council

- Positions of the senior staff (County Manager, Department Directors and Deputy Directors) would be regular, non-union positions that would not automatically turn over with each Mayoral election, but would be evaluated and retained based on performance.

RECEIVED AT 5900 MEETING ON 3/10/16
Dale Bonar