

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

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

May 27, 2021

Ms. Cheryl Kakazu Park, Esq.
Director, Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 South Hotel Street, Suite 107
Honolulu, Hawaii 96813

Via U.S. Postal Service and email (oip@hawaii.gov)

Dear Ms. Park:

**SUBJECT: AMENDMENTS TO THE RULES OF THE COUNCIL
(ADDING A CONSENT CALENDAR) (GREAT-6(2))**

The Maui County Council will consider adopting the attached proposed resolution, entitled "AMENDING THE RULES OF THE COUNCIL TO ADD A CONSENT CALENDAR," at its meeting of June 4, 2021. The purpose of the proposed resolution is to amend the Rules of the Council to establish a consent calendar section of Council meeting agendas for items that are not anticipated to require discussion.

At its meeting of May 18, 2021, the Government Relations, Ethics, and Transparency Committee considered the Office of Information Practices' comments in the attached correspondence, dated May 17, 2021, and then recommended the Council adopt the resolution. I would like to thank the OIP for its assistance in the Committee's deliberations.

The Committee also raised the following Sunshine Law question:

May the Council Chair or the Council move an item from the consent calendar to another section of the meeting agenda—or from another section to the meeting agenda to the consent calendar—prior to accepting public testimony on the item?

May I please request you transmit your response by June 2, 2021. To ensure efficient processing, please transmit your response to great.committee@mauicounty.us and include the relevant Committee item number in the subject line.

Ms. Cheryl Kakazu Park, Esq.
May 27, 2021
Page 2

Should you have any questions, please contact me or the Committee staff (Legislative Analyst Wilton Leauanae at (808) 270-7761 or Legislative Attorney James Forrest at (808) 270-7137)).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Molina". The signature is fluid and cursive, with the first name "Michael" and last name "Molina" being the most prominent parts.

MICHAEL J. MOLINA, Chair
Government Relations, Ethics, and
Transparency Committee

great:ltr:006(2)a01:wal

Attachments



DAVID Y. IGE
GOVERNOR

**STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES**

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.oiip.hawaii.gov

CHERYL KAKAZU PARK
DIRECTOR

May 17, 2021

VIA EMAIL

Councilmember Michael J. Molina, Chair
Government Relations, Ethics, and Transparency Committee
Maui County Council

Re: Sunshine Law and Consent Calendar (CORR # 2021-0511-03)

Dear Chair Molina:

The Office of Information Practices (OIP) received your email dated May 11, 2021, attaching your letter dated May 10, 2021, in which you asked for OIP's thoughts on proposed rule amendments adding a process for a Consent Calendar for matters that will not require discussion at a Council meeting, specifically as it may be affected by the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes (HRS).

It doesn't appear that anything in the proposed process directly conflicts with the Sunshine Law's requirements – in other words, there is nothing where following a requirement in the Consent Calendar process would itself be a Sunshine Law violation – but if Council members were to focus only on following the Consent Calendar process set out by the rule without also considering whether the Sunshine Law allows the actions they are taking, they could very well end up acting contrary to the Sunshine Law's requirements even while following the Consent Calendar process.

The items listed on the Consent Calendar in the agenda as filed with the meeting notice are unlikely to give rise to Sunshine Law problems, assuming they are described with sufficient detail to meet the notice requirement, because they will meet the Sunshine Law's notice requirements and presumably the Council will accept public testimony on them and otherwise follow the Sunshine Law's public meeting requirements. The more likely hazards lie in the provision allowing Council members to add or remove Consent Calendar items at the meeting and discuss the proposed additions or removals.

Your letter mentioned that Consent Calendar items might include communications received by the Council that will be filed, not discussed or acted on; or communications that will be referred (perhaps for further action); or bills on second reading. In addition, an email to OIP from Legislative Attorney James Forrest, also asking OIP's thoughts on the proposed process, mentioned that it might also be used for receiving reports, adopting minutes, or approval of "noncontroversial" items that require Council action.

It sounds like most if not all of the items that may appear on the Consent Calendar will be Council business, being items within the Council's authority that are appearing on a Council agenda in the foreseeable future. While there may be an argument that some items are not truly within the authority of the full Council as opposed to Council staff – for instance, the filing of a communication on which no action is expected to be taken could be considered a ministerial act rather than something the Council is considering – bills on second reading or other noncontroversial items requiring Council action are clearly Council business even if the current action to be taken on them is routine or noncontroversial. Thus, Council members will need to follow the Sunshine Law's requirements for these items. To begin with, that means that Council members should not discuss them with other Council members outside a meeting except as allowed by the Sunshine Law's permitted interactions in section 92-2.5, HRS. OIP's three part Quick Review on Who Board Members Can Talk to and When, available in the training section of OIP's website (<https://oip.hawaii.gov/training/>), explains those permitted interactions.

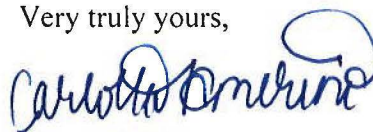
Further, when a Council member wants to add an item to the Consent Calendar at a meeting, the Council will need to follow the Sunshine Law's requirements for adding an item to the agenda at a meeting, as set forth in section 92-7(d), HRS. A board cannot add an agenda item at the meeting if it is "of reasonably major importance and action thereon by the board will affect a significant number of persons," but presumably the items proposed for the Consent Calendar will meet this qualification. The Council will still need the affirmative vote of two-thirds of all members to which it is entitled to add an item to the agenda, though, taken prior to the board's discussion of the item itself (since the item must be added to the agenda before the Sunshine Law allows it to be considered).

Removal of an item from the Consent Calendar will present less difficulty, since there is no requirement of a supermajority vote to remove an item. However, OIP reminds the Council that if it will be discussing an item, even if the discussion is just in the context of whether to remove it from the Consent Calendar, it should still treat the item as an agenda item in the sense of allowing public testimony on the item, if any, prior to the Council's discussion as required by section 92-3, HRS.

I hope this gives you insight into the potential Sunshine Law implications of the Council's new Consent Calendar process. This letter also serves as notice that OIP is not representing anyone in this matter. OIP's role herein is as a neutral third party.

If you have further questions concerning this matter, do not hesitate to contact OIP.

Very truly yours,



Jennifer Z. Brooks
Staff Attorney

JZB:rt

cc: James Forrest, Esq.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
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WAILUKU, MAUI, HAWAII 96793
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April 30, 2021

Director of Council Services
Traci N. T. Fujita, Esq.

RECEIVED

2021 APR 30 AM 11:51

OFFICE OF THE
COUNTY CLERK

The Honorable Alice L. Lee
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair Lee:

SUBJECT: **CONSENT CALENDAR** (PAF 20-121)

May I request the attached proposed resolution, entitled "AMENDING THE RULES OF THE COUNCIL TO ADD A CONSENT CALENDAR," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, appearing to read "Keani N.W. Rawlins-Fernandez".

KEANI N.W. RAWLINS-FERNANDEZ
Council Vice Chair

paf:jbf:20-121d

Enclosure

COUNTY COMMUNICATION NO. 21-214

Resolution

No. _____

AMENDING THE RULES OF THE COUNCIL TO ADD A CONSENT CALENDAR

WHEREAS, by Resolution 21-5, Draft 1, the Council adopted the Rules of the Council on January 2, 2021;

WHEREAS, the Council now wishes to amend the Rules of the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui that it adopts the amended Rules of the Council as set forth in Exhibit "A," with new material underscored and deleted material in brackets, and with the County Clerk authorized to publish the Rules of the Council, as amended, without the underscoring, deleted material, or brackets.

paf:jbf:20-121b

Exhibit "A"

RULES OF THE COUNCIL

- Rule 1. Administration of Oath or Affirmation.
- Rule 2. Meetings and Public Hearings of the Council.
- Rule 3. Executive Meetings.
- Rule 4. Public Hearings Requested by Three Members.
- Rule 5. Quorum and Vote; Exceptions Listed.
- Rule 6. Officers and Their Duties.
- Rule 7. Committees of the Council.
- Rule 8. Committee Reports.
- Rule 9. Voting and Recording of Votes.
- Rule 10. Roll Call.
- Rule 11. Deadline for Agenda of Regular Meetings of the Council.
- Rule 12. Order of Business.
- Rule 13. Attendance.
- Rule 14. Procedures Relating to Rules.
- Rule 15. Ordinances and Resolutions.
- Rule 16. Rules of Procedure.
- Rule 17. Testimony.
- Rule 18. Resource Persons.
- Rule 19. Distribution of Written Materials; Amendments to Bills and Resolutions; Nonsubstantive Revisions.
- Rule 20. Recesses.
- Rule 21. Postponement of Pending Council Business Beyond Next Regular Council Meeting.
- Rule 22. Council Travel.
- Rule 23. Filing or Referral of Communications.
- Rule 24. Documents Transmitted by the Administration.
- Rule 25. Conduct Relating to Public Meetings.
- Rule 26. Code of Ethics, Prohibitions and Penalties.
- Rule 27. Modifications to the Council Chamber.
- Rule 28. Posting Items on Council Agenda.

Rule 1. Administration of Oath or Affirmation.

Prior to any other business, the oath or affirmation of office shall be administered to the Council members by a person duly qualified to administer oaths or affirmations.

Rule 2. Meetings and Public Hearings of the Council.

A. Organizational meeting. When the time specified by law arrives for the first convening of the newly elected Council, the Mayor shall call the Council to order and shall appoint a temporary Clerk. The Council shall then elect a Chair, Vice-Chair, and Presiding Officer Pro Tempore.

The Chair shall assume the position of the presiding officer immediately upon election (Section 3-5.1, Revised Charter of the County of Maui (1983), as amended ("Charter")).

B. Regular meetings. Regular meetings are Council meetings that are scheduled on the approved annual Council calendar. The Chair may reschedule a regular meeting for a different date or place within the same month.

C. Special meetings. Special meetings may be called at any time by Council resolution or by the Chair.

D. Emergency meetings. Emergency meetings shall be governed by Subsection 4-2.6 of the Charter and Section 92-8, Hawaii Revised Statutes ("HRS"). An emergency meeting may be held by telephone conference or videoconference in the event of public calamity, if the Chair finds such means are prudent.

E. At least two Council meetings per month. Section 3-5.2 of the Charter states, in part: "The council shall meet regularly at least twice in every month at such times and places as the council may prescribe by rule." For the purpose of compliance with the Charter's requirement of at least two Council meetings per month, the following shall be counted as a Council meeting: the organizational meeting convened pursuant to Subsection A of this rule, any regular meeting convened pursuant to Subsection B of this rule, any special meeting convened pursuant to Subsection C of this rule, and any emergency meeting convened pursuant to Subsection D of this rule.

F. Public hearings. The Chair shall schedule a public hearing for the Council when required by law or when deemed advisable. A public hearing is for the purpose of receiving testimony on one or more bills and resolutions. No voting shall occur unless necessary for the orderly conduct of the public hearing.

G. Start time. The Chair shall determine the start time of all Council meetings and public hearings convened pursuant to this rule.

H. Meetings by videoconference. Each presiding officer shall attempt to accommodate any Council member's request for a meeting by videoconference, when practicable.

Rule 3. Executive Meetings.

A. Votes required. The Council or a committee may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the Council members or voting members of the committee present; provided that the affirmative vote constitutes a

majority of the Council or of the voting members of the committee (Section 92-4, HRS).

B. Purpose. The reason for holding such a meeting shall be publicly announced and included as part of any motion to hold an executive meeting (Sections 92-4 and 92-5, HRS).

C. Attendance. In addition to Council members, only staff and other personnel who the presiding officer finds necessary to assist the Council or committee shall attend an executive meeting, provided that such assistance relates to some special knowledge, expertise, or performance of a function that relates to the executive meeting. The presiding officer may find it necessary that certain staff members attend an executive meeting from time to time for training or management purposes, to ensure that Council staff is able to effectively assist the Council and its committees in future executive meetings.

D. Confidentiality; attorney-client privilege. The information provided in an executive meeting shall be confidential and may be protected by the attorney-client privilege. The attorney-client privilege may only be waived by Council resolution.

Rule 4. Public Hearings Requested by Three Members.

A. Applicability. This rule establishes procedures for implementing Section 4-2.3 of the Charter, which states: "Upon the request of three members of the council, a public hearing shall be held on any proposed ordinance or resolution."

B. Requesting a public hearing. A Council member's request for a public hearing on a bill or resolution may be made at a Council meeting, in writing or verbally, provided that the bill or resolution is referenced on the meeting agenda. All written requests for a public hearing submitted prior to the deadline to be placed on the meeting agenda shall be separately listed on the agenda. A written request shall be deemed made at the meeting if it has been referenced on the agenda or is distributed at the meeting; provided that a member may verbally withdraw the member's written request for a public hearing at the meeting. If requests to conduct a public hearing are made by three members at the same Council meeting, the Chair shall schedule the public hearing.

C. Timing of public hearing. The Chair shall determine the date, time, and location of the public hearing.

D. Only one public hearing required. Section 4-2.3 of the Charter is satisfied by the convening of one public hearing on a bill or resolution, even if the basis for the public hearing is different (e.g., Section 9-4 of the Charter or Rule 2(F)) or if the public hearing is conducted in a different

Council term. Another public hearing shall not be required after the bill or resolution is amended, unless the revisions are so fundamental as to transform the original proposal into a new proposal (Corporation Counsel Opinion 01-02).

Rule 5. Quorum and Vote; Exceptions Listed.

A. Quorum; five votes generally required for Council action. Five members of the Council shall constitute a quorum. The vote of at least five members shall be necessary to take any action, unless otherwise provided by law.

B. Six votes required for certain actions. As provided by law, an affirmative vote of at least six members shall be required for the Council to:

1. Override the Mayor's veto (Sections 4-3.1 and 4-3.2 of the Charter).

2. Find that an emergency exists due to a public calamity (Section 4-2.6 of the Charter).

3. Retain or employ special counsel for any special matter presenting a real necessity for such employment (Section 3-6.6 of the Charter).

4. Adopt revisions or amendments to the general plan, community plan, zoning ordinances, or other land use ordinances proposed by the Council when a planning commission disapproves the proposed revision or amendment or recommends a modification thereof, not accepted by the Council, or fails to make its report within the period specified by law (Section 8-8.6(2) of the Charter).

5. Amend or repeal initiative ordinances after one year from the certification of election results (Sections 11-7 and 11-8 of the Charter).

6. Initiate amendments to the Charter by resolution adopted after two readings on separate days (Section 14-1.1 of the Charter).

7. Waive the requirement that personal property belonging to the County be disposed of through sale by auction or call for sealed bids (Section 2.72.050, Maui County Code ("MCC")).

8. Find that it is in the public interest to dispose of real property owned by the County without public auction (Section 3.44.030, MCC).

9. Find that it is in the public interest to sell real property by a call for sealed bids (Section 3.44.040, MCC).

10. Find that it is in the public interest to sell real property through negotiation (Section 3.44.050, MCC).

11. Find that an exchange of real property for private property is in the public interest (Section 3.44.060, MCC).

12. Overrule a protest of the owners of land in a proposed improvement district against a proposed improvement involving sanitary sewerage or storm drainage facilities (Section 14.46.040, MCC).

13. Make changes or modifications in proceedings, acts, or reports relating to a proposed improvement district (Section 14.46.140, MCC).

14. Apply the proceeds from the issuance of County bonds for purposes other than those for which such bonds were initially issued (Section 47-5, HRS).

15. Approve a district boundary amendment if lands are identified as important agricultural lands (Section 19.68.040, MCC).

16. Approve a change in zoning pursuant to Section 19.510.040(B), MCC.

C. Seven votes required for certain actions. As provided by law, an affirmative vote of at least seven members shall be required for the Council to:

1. Make emergency appropriations, upon written request by the Mayor (Section 9-9.2 of the Charter and Section 3.96.030, MCC).

2. Change by ordinance the purposes for which the capital improvement reserve fund may be expended (Section 9-14 of the Charter).

D. Lack of quorum. The presiding officer may convene or reconvene a meeting in the absence of a quorum for one of the following limited purposes:

1. Canceling the meeting;

2. Adjourning the meeting; or

3. Receiving testimony on agenda items and questioning testifiers, provided that the requirements of Section 92-2.5(d), HRS, are met.

E. Votes to discharge. A majority of the Council may discharge a committee from further consideration of any matter.

F. Quorum in meetings held by interactive conference technology. For meetings held by interactive conference technology, a Councilmember is present for purposes of establishing quorum if the Councilmember can simultaneously hear and see other voting Councilmembers while also being seen and heard by them. When a Councilmember's visual connection is briefly interrupted during a meeting, quorum is not lost if the Councilmember is able to provide the presiding officer with an immediate audible assurance that the Councilmember is present and able to participate.

Rule 6. Officers and Their Duties.

A. Council Chair. The Chair shall be the presiding officer and the chief administrative officer of the Council. In the absence or disability of the Chair, the Vice-Chair shall act as the presiding officer and chief administrative officer. The Council shall appoint a Presiding Officer Pro Tempore from its own members in the event of the absence or disability of both the Chair and Vice-Chair.

It shall be the duty of the Chair, in addition to those duties prescribed by law, to:

1. Assign duties not otherwise assigned by law or in these rules to the County Clerk and the Director of Council Services.

2. Appoint all employees of the Council, except that full-time appointments shall be approved by the Council; provided, however, that the appointment of full-time Council executive assistants and Council aides need not be approved by the Council.

3. Open all meetings of the Council at the appointed hour by calling the Council to order.

4. Call for the approval of the minutes of a prior meeting.

5. Maintain order and proper decorum.

6. Announce the business before the Council in the order prescribed by these rules.

7. Receive all communications and present them to the Council or a committee before which the subject matter is pending.

8. Dispose of matters properly brought before the Council, subject to appeal to the Council.

9. Authenticate by signature all acts of the Council.

10. Make known all rules of procedure when so requested, and decide all questions of procedure subject to appeal to the Council.

11. Announce the result of any matter voted on by the Council.

12. Reasonably administer the receipt of oral and written testimony on Council agenda items.

13. Coordinate all legislative and intergovernmental meetings, functions, and activities on behalf of the Council; provided that, any contract for lobbying on the Council's behalf shall be approved by the Council by resolution.

14. Hold a Chair's meeting, as needed, to informally discuss matters that are within the decision-making authority of the Chair or a committee chair, and that do not require Council approval.

15. Perform administrative tasks on the Council's behalf.

B. County Clerk. It shall be the duty of the County Clerk, in addition to those duties prescribed by law, to:

1. Review communications, reports, and other material received by the Council or its Chair, and prepare digests and compile necessary information.

2. Read bills, resolutions, and other matters to the Council, as directed by the Chair.

3. Transmit upon receipt all communications or other matters to the proper parties.

4. Deliver to the appropriate committee all petitions, resolutions, bills, or other matters, as may be duly referred to such committee.

5. Record all matters that come before the Council.

6. Make a list of all bills, resolutions, petitions, communications, and other matters set for consideration on particular dates.

7. Have charge of all records of the Council, including the journal and be responsible for the same; the journal of the Council shall consist of the minutes of the Council, communications, and other business matters transmitted to the Council.

8. Serve in all matters as Clerk of the Council and perform all clerical functions pertaining to such position as the Council shall from time to time direct, as well as other duties as shall by law or these rules, or rules thereafter adopted, be assigned.

9. Advertise digests of all bills passed on first reading and all resolutions requiring two readings that are passed on first reading, in accordance with law.

10. Enter the objections of the Mayor in the journal of the Council upon receipt of bills returned disapproved and place such objections and related bills on the agenda of the Council as directed by the Chair.

11. Certify ordinances.

12. Assign duties and tasks permissible by law to the Deputy County Clerk.

C. Director of Council Services. It shall be the duty of the Director of Council Services, in addition to duties that may be prescribed by law, to:

1. Manage the staff and activities of the Office of Council Services.

2. Develop organizational plans, staffing plans, and budgets pertaining to the Office of Council Services.

3. Plan, assign, and supervise studies and research, compile data, and prepare reports on projects requested by the Council, committees, subcommittees, or individual Council members, and recommend disposition of items for Council action.

4. Plan and coordinate special meetings and conferences.

5. Assist the Council Chair in coordinating all legislative and intergovernmental meetings, functions, and activities.

Rule 7. Committees of the Council.

A. Standing committees; establishment and membership. The Council by resolution shall establish standing committees and a chair and vice-chair of each standing committee. The standing committees may consist of voting and non-voting members. Unless excused, voting members shall attend each committee meeting. Non-voting members shall have the same rights and privileges as voting members, except that they shall not have the right to vote, or make or second motions, and shall not count toward quorum.

B. Standing committees; purpose. The purpose of the standing committees is to provide well-considered recommendations to the Council on all bills, resolutions, and other legislative matters referred to the standing committees by the Council. The chair may also call for discussion of the committee's priorities and procedures and may arrange for presentations or discussions on matters within the committee's subject-matter jurisdiction. Pursuant to Section 92-2.5(e), HRS, the chair shall allow for the receipt of reports from members who have attended informational meetings or presentations permitted by that section.

C. Standing committees; chair. The chair of a standing committee shall call meetings and preside over the same. The chair shall maintain order and proper decorum, and reasonably administer the receipt of oral and written testimony. In the absence of the chair, the vice-chair shall preside. In the absence of both, a majority of the voting members present shall select a temporary chair. The chair and vice-chair, and any temporary chair of a standing committee, shall be voting members of the committee.

D. Subcommittees. A subcommittee within any standing committee may be created for the purpose of providing well-considered recommendations to the standing committee, particularly on matters that require in-depth research or technical expertise. The standing committee shall appoint the chair, vice-chair, and members of the subcommittee, shall specify the objectives of the subcommittee, and shall set a date on which the subcommittee shall be deemed dissolved. Subcommittees shall comply with the procedural requirements applicable to standing committees, to the extent practicable. All Council members who are not voting members of a subcommittee shall serve as non-voting members of the subcommittee and may participate in the proceedings, but shall not be counted toward quorum for the subcommittee.

E. Special committees. The Council may create a special committee by resolution. The special committee may include members of the public, Council members, County officers, or County employees. The Council shall appoint the chair, vice-chair, and members of the special

committee, shall specify the objectives of the special committee, and shall set a date on which the special committee shall be deemed dissolved. Special committees shall comply with the procedural requirements applicable to standing committees, to the extent practicable. All Council members who are not voting members of a special committee shall serve as non-voting members of the special committee and may participate in the proceedings, but shall not be counted toward quorum for the special committee.

F. Temporary investigative groups. A standing committee may create a temporary investigative group pursuant to Section 92-2.5(e)(1), HRS.

G. Referral to committees; waiver of requirement. In the case of bills or resolutions having the force and effect of law, except for resolutions relating to the election, establishment, or appointment of the Council's officers, committees, or staff; the appointment of members to the Hawaii State Association of Counties Executive Committee, Western Interstate Region, or National Association of Counties; changing the date of a Council meeting; or amending these rules, the Council shall refer the matter to a standing committee and shall receive the committee's report prior to first reading or adoption; provided that the Council may waive this requirement by the affirmative vote of two-thirds of the entire membership of the Council.

H. Notwithstanding Subsection G of this rule, the Council Chair may refer matters to committee if there is a time limit for Council action; provided, however, that the Chair shall concurrently place on the Council agenda a communication to enable the Council to take such further action as it deems necessary.

I. Minutes. The chair of a committee shall approve minutes of committee meetings in the current Council term. In the absence of the chair, the vice-chair shall approve minutes. The Council Chair shall approve minutes of Council committee meetings that occurred prior to the current Council term.

J. Site inspection. The chair of a committee may convene a site inspection on a matter referred to that committee. A site inspection is a meeting and is subject to Part 1, Chapter 92, HRS, relating to the Sunshine Law.

Rule 8. Committee Reports.

A. Submission. To be placed on the Council agenda, committee reports must be submitted to the Clerk by the agenda deadline. Committee reports shall be signed by the chair of the committee.

B. Chair's absence; disability. The vice-chair of the committee may sign in the absence or disability of the chair.

Rule 9. Voting and Recording of Votes.

A. Applicability. Unless otherwise indicated, this rule shall apply to Council and committee meetings.

B. Voting generally required. No voting member shall refrain from voting on any matter unless abstaining pursuant to Subsection C of this rule. A failure to vote by any non-abstaining voting member who is present shall be deemed an affirmative vote and shall be so recorded.

C. Disclosure of interest; abstention from voting.

1. Service as a board member of corporation. A voting member who serves on the board of directors or executive committee of a for-profit or nonprofit corporation shall take the following actions when a Council or committee is considering a matter that directly affects the corporation: (a) prior to discussion on the matter, disclose the service; and (b) announce that the member will abstain from voting on the matter (Board of Ethics Advisory Opinion 97A-3). Examples of matters directly affecting a corporation include an approval requested by the corporation and an individual line-item appropriation to the corporation. General legislation, such as the overall County budget or a community plan update, does not constitute a matter directly affecting a corporation.

2. Other interests. Unless abstaining from voting pursuant to Subsection C(1) of this rule, a voting member shall disclose, prior to discussion on the matter: (a) a financial interest in any matter that may be affected by an action of the Council or committee; or (b) any other matter in which the member believes the member's voting would be in violation of the Code of Ethics (Article 10 of the Charter). The member shall then announce that the member will abstain from voting on the matter.

D. Abstaining member's participation. An abstaining member shall be permitted to participate in the discussion of the matter; provided that the member shall refrain from advocating the member's interests on which the abstention is based during the discussion; and further provided that the member shall not attend any executive meeting on the matter.

E. Non-voting member's participation. A non-voting member shall not be permitted to make or second a motion. A non-voting member may, however, speak on a motion.

F. Speaking on motion. During a Council meeting, no member shall speak more than twice on any pending motion, except upon the majority consent of the other members present; the movant shall not be permitted to speak in reply to arguments of other members until every member choosing to speak shall have spoken. At any meeting, the movant shall not be permitted to speak in opposition to the motion, although the movant may vote against the motion.

G. Calling for vote. Once the presiding officer calls for a vote, no member shall be permitted to explain the member's vote.

H. Simple majority for recommendations. A committee recommendation on any matter shall be made by a simple-majority vote of all of the voting members of the committee, even if Council action on the matter ultimately requires a super-majority vote.

I. No change after vote announced. After the presiding officer announces the result of a vote, no member shall be allowed to change the member's vote.

J. Recording votes. For Council meetings, the Clerk shall record the vote of each member upon the minutes.

Rule 10. Roll Call.

A. For Council meetings, the Clerk shall call the roll of members as required by the Chair.

B. For Council meetings, the Clerk shall announce the result of roll call votes.

Rule 11. Deadline for Agenda of Regular Meetings of the Council.

In order to be placed on the agenda of a regular meeting of the Council, all petitions, resolutions, reports, and other communications shall be submitted to the Clerk before 12:00 noon, at least seven calendar days prior to the meeting.

Rule 12. Order of Business.

The following shall be the order of business for Council meetings, unless the Chair determines a different order is appropriate:

- A. Roll Call
- B. Opening Remarks
- C. Pledge of Allegiance

- D. Testimony on Ceremonial Resolutions
- E. Ceremonial Resolutions
- F. Presentation of Written or Oral Testimony
- G. Consent Calendar and Minutes
- H. Communications
 - 1. County
 - 2. General
- I. Committee Reports
- J. Resolutions
- K. Ordinances
- L. Unfinished Business

The Consent Calendar is intended for matters that will not require discussion at a Council meeting.

Prior to the posting deadline, committee chairs will be notified of the items intended for posting on the meeting agenda. Committee chairs will inform staff of the items intended to be included in the Consent Calendar and the intended action of each item. Items that can be added to the Consent Calendar include County or General Communications intended for filing or referral and bills on second reading. The Consent Calendar will indicate the intended action for each item.

At the meeting, Councilmembers may request to add items to or remove items from the Consent Calendar. The item being removed from the Consent Calendar would default to the location required by the Rules of the Council unless otherwise specified. If a Councilmember disagrees with the indicated action of an item on the Consent Calendar, the Councilmember must request its removal from the Consent Calendar for discussion; this includes requests for committee referrals.

Once the Consent Calendar is agreed upon, no further discussion will be permitted. The recommended actions indicated on the Consent Calendar must be taken up in one motion.

After the Council has taken action on the Consent Calendar, and prior to proceeding with the remaining items on the meeting agenda, the County

Clerk must announce the resolution and bill numbers assigned to all resolutions and bills passed as part of the Consent Calendar.

Rule 13. Attendance.

A voting member of the Council or committee shall attend each duly noticed meeting of the Council or committee, at the scheduled time and for the duration of the meeting, unless the member has been excused by the presiding officer in writing, following a written request. A member of the Council or a voting member of a committee who is absent but not excused from a properly noticed meeting shall be subject to formal censure by resolution. A voting member with five absences from a committee meeting may be removed as a voting member of the committee, at the request of the committee chair and with the Council's approval by resolution.

Rule 14. Procedures Relating to Rules.

A. Amendment, rescission, and adoption. The amendment or rescission of existing rules shall become effective upon the adoption of a resolution approved by two-thirds of the Council.

B. Suspension. These rules may be suspended by the vote of two-thirds of the Council or the voting members of a committee; provided that the duration of the suspension shall not be longer than necessary to further the purpose of the suspension.

C. Effective date; sunset. These rules shall become effective upon adoption of this resolution by the Council and shall remain in effect until January 2, 2023, twelve o'clock meridian, unless superseded earlier by new rules.

Rule 15. Ordinances and Resolutions.

A. Council action by ordinance or resolution. Unless otherwise provided in the Charter, every legislative act of the Council shall be by ordinance (Section 4-1 of the Charter). Other acts of the Council may be by resolution, including approval or disapproval of nominated County officers, matters relating to the County's or Hawaii State Association of Counties' legislative package, and the Council's rescheduling of regular meetings or the Council's scheduling of special meetings.

B. Format of bills. The enacting clause of every bill for an ordinance shall be "BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI".

C. Format of resolutions. The enacting clause of every resolution shall be "BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF MAUI".

Rule 16. Rules of Procedure.

The rules of parliamentary practice set forth in Robert's Rules of Order Newly Revised, 11th Edition, shall govern the procedure for Council and committee meetings in all cases in which they are not inconsistent with law or the Rules of the Council.

Rule 17. Testimony.

A. Acceptance of testimony required. At a Council meeting, public hearing, or committee meeting, written and oral testimony pertaining to items on the meeting agenda or hearing notice shall be accepted.

B. Oral testimony. For each item on the meeting agenda or hearing notice, oral testimony shall be accepted during the testimony portion of the meeting or hearing. The following procedure shall apply to oral testimony:

1. Testimony registration; close of testimony period. Any individual shall be permitted to register for oral testimony on an item during the testimony period for the item. The presiding officer shall accept testimony on all items at the beginning of the meeting, or may determine and announce at the beginning of the meeting that testimony on each item shall be accepted before consideration of the item. The presiding officer shall close the testimony period for an item or all items on the meeting agenda or hearing notice only after all registrants to that point have been afforded an opportunity to testify, and the presiding officer verbally invites and affords any other members of the public an opportunity to do so.

2. Duration of oral testimony. Each testifier shall be allowed to speak for up to three minutes on each item. If approved by the presiding officer and announced prior to any oral testimony being taken, the testifier may be allowed one minute to conclude the testimony on the item. The time limits for testimony at a public hearing, Council or committee meeting may be modified, if the modification is initiated by the presiding officer and approved by a majority of the voting members of the Council or committee, as the case may be; provided that a modification would apply equally to all testifiers and all items. No further oral testimony by the testifier on the item shall be permitted. An individual's request to testify may be deemed withdrawn if the individual does not answer when called to testify.

3. Conduct. Testimony shall pertain to items on the meeting agenda. Testifiers shall direct their remarks to the Council or committee and not to any individual Council member or member

of the public. The presiding officer may allow members to ask testifiers to repeat or rephrase statements made during their testimony, but members shall not ask questions that give a testifier a greater opportunity to testify than others. Members shall not comment on testimony or testifiers during the testimony period.

4. Disclosure of lobbyist status. Each testifier who is a paid lobbyist as defined by Section 2.56.040, MCC, shall disclose that status in the testimony.

5. To the extent capable, the Council shall provide interactive communications access. Said access shall include, but not be limited to, the ability of the public to testify, of Council members to ask questions, and of the public to respond to questions.

C. Distribution of written testimony. To ensure its distribution prior to the meeting, written testimony must be received in the Office of Council Services for committee testimony and the Office of the County Clerk for Council testimony at least 24 hours prior to the meeting; provided that if a meeting will be held on a Monday, written testimony shall be received by 12:00 noon on the business day preceding the meeting. If feasible, efforts shall still be made to distribute written testimony in a timely manner. If a Council member receives a written communication that reasonably appears to have been intended as written testimony, the Council member shall promptly forward the written communication to the Office of Council Services for committee testimony or the Office of the County Clerk for Council testimony.

D. Reconvened meetings. When a meeting or hearing has reconvened after being in recess, whether on the same day or later, no one may testify on an item if the testimony period has closed for that item.

E. Presiding officer's authority. Nothing in this section shall diminish the responsibility or the authority of the presiding officer to maintain order and decorum.

F. Public forum not created. The conduct of meetings or hearings, including the receipt of testimony, is intended to support the legislative process, and does not constitute the creation of an unrestricted public forum.

Rule 18. Resource Persons.

A. Participation as resource person. The presiding officer may allow government officials and employees, legal advisors, and individuals who have special expertise in the subject matter being considered to participate in meetings as resource persons for the purpose of providing information

or advice to facilitate the deliberative process. When practicable, the identity of resource persons anticipated to participate in a meeting shall be listed on the meeting agenda. At the meeting, the presiding officer shall state the resource person's special expertise in the subject matter being considered and state whether the resource person is a paid lobbyist as defined by Section 2.56.040, MCC. Participation in the meeting by a resource person pursuant to this subsection shall not constitute testimony.

B. Participation as testifier. In addition to providing information at a meeting as a resource, a resource person may also submit written or oral testimony pursuant to these rules.

Rule 19. Distribution of Written Materials; Amendments to Bills and Resolutions; Nonsubstantive Revisions.

A. Distributed only at meeting. Correspondence from any source that advocates a position on a pending bill or resolution or on an amendment to a pending bill or resolution shall not be distributed by a Council member to other Council members except during a meeting on the bill or resolution.

B. May be distributed outside of meeting.

1. A Council member may propose a written amendment of a pending bill or resolution at any time to members of the Council or the relevant committee; provided that the proposal shall only contain: (a) the text of the amendment; (b) a description of the amendment's direct effect on the bill or resolution; and (c) factual information to ensure that the proposal is appropriately processed.

2. A Council member may transmit proposed legislation to a committee with a pending item relating to the proposal's subject, provided that the transmittal shall only contain factual information to ensure that the proposal is appropriately processed.

C. Amendment at final reading. A bill or resolution being considered for final reading that is amended at a Council meeting shall not be acted upon at the same meeting as the amendment. Final action on such an amended bill or resolution shall not be taken until the next feasible meeting. This requirement of a delay shall not apply to: (1) any bill or resolution that requires final action at the meeting to ensure compliance with a deadline established pursuant to Federal law, State law, or the Charter; (2) the correction of manifest clerical or typographical errors in numbering, spelling, capitalization, punctuation, or grammar, or the correction of other nonsubstantive errors, which may be made at the meeting, or by the County Clerk after consultation with the Department of

the Corporation Counsel, provided that the correction does not alter the meaning or effect of the bill or resolution; (3) amendments that have been posted on the meeting agenda; and (4) resolutions relating to the election, establishment, or appointment of the Council's officers, committees, or staff, or relating to amendments of these rules.

D. Nonsubstantive revisions. The Council Chair may work with the County Clerk and Director of Council Services to correct manifest clerical or typographical errors in numbering, spelling, capitalization, punctuation, or grammar, or any other nonsubstantive errors in committee reports and all other documents. The Council Chair shall notify the appropriate committee chair of any corrections made to committee documents.

Rule 20. Recesses.

A Council meeting, public hearing, or committee meeting may be recessed to a reasonable date, time, and place, but not for more than 14 consecutive calendar days and not to a date more than 60 consecutive calendar days from the date of the originally noticed meeting. The date, time, and place for the reconvened meeting or hearing shall be publicly announced by the presiding officer prior to the recess.

Rule 21. Postponement of Pending Council Business Beyond Next Regular Council Meeting.

The Council may postpone a pending matter beyond the next regular Council meeting, provided that the postponement is: (A) to a date and time certain; (B) contingent upon a certain event; or (C) to an unspecified date and time to be determined by the Council Chair. At the Council Chair's discretion, a matter postponed pursuant to this rule may be placed on the agenda of a Council meeting before the date and time specified or before the contingent event occurs. This rule shall not prevent the postponement of a pending matter to the next regular Council meeting. Rule 23 shall apply notwithstanding any postponement under this rule.

Rule 22. Council Travel.

A. Prior approval required. All expenditures from the County Council (including the Office of Council Services and Office of the County Clerk) travel accounts shall be subject to prior approval by the Council Chair or a representative designated for such purpose.

B. Reporting requirements. The Council Chair shall require a report, as the Chair deems appropriate, from any officer or employee who expends public funds on off-island travel. Unless specifically required by

the Chair, this requirement shall not apply to travel required to attend a meeting of the Council or a committee of the Council, or to travel required between a Council member's residence and the County Building, Wailuku, Hawaii.

Rule 23. Filing or Referral of Communications.

A. End-of-term filing or referral of communications pending before committees. At the expiration of a Council term, all communications pending before committees shall be deemed filed and disposed of; provided that communications relating to the following shall be deemed referred to the Council Chair for the ensuing term, for consideration by the Council:

1. A bill or resolution amending the current fiscal year's budget, submitted by the Mayor, Director of Finance, or Budget Director, including bond authorizations, capital improvement projects, and the operating budget;

2. A valid nomination of a County officer;

3. A resolution authorizing settlement pursuant to Section 3.16.020, MCC; indemnification of a County officer or employee, as requested by the Corporation Counsel; employment of special counsel pursuant to Section 3-6.6 of the Charter; proceedings in eminent domain pursuant to Section 4-2.7 of the Charter; or acceptance of a gift or donation pursuant to Chapter 3.56, MCC;

4. A bill for a land use ordinance for which recommendations of the appropriate planning commission or planning commissions have been received pursuant to Sections 8-8.4 or 8-8.6 of the Charter;

5. A resolution approving or disapproving a Board of Variances and Appeals action pursuant to Section 19.02A.040(D), MCC;

6. Department of Water Supply capital improvement plans or water use and development plans for which recommendations of the Board of Water Supply have been received pursuant to Section 8-11.6 of the Charter;

7. A bill for a traffic safety measure for which recommendations of the Public Works Commission have been received pursuant to Section 2.98.030(A), MCC;

8. A bill or resolution for which recommendations of the Maui County Cultural Resources Commission or the Public Works

Commission have been received pursuant to Sections 2.88.060 or 2.98.030(B), MCC;

9. A bill to revise or update the General Plan or a community plan for which recommendations of the appropriate planning commission or planning commissions have been received pursuant to Chapter 2.80B, MCC;

10. A bill or resolution for which recommendations of the Maui County Arborist Committee have been received pursuant to Section 12.24A.030, MCC;

11. Resolutions approving, disapproving, or approving with modification a project pursuant to Chapter 201H, HRS; and

12. A bill or resolution that has passed one of two required readings and was subsequently referred to committee.

For purposes of this rule, “communication” means a County Communication; a General Communication; a Miscellaneous Communication; a recommitted committee report, bill, or resolution; or correspondence transmitted directly to a committee.

B. Procedure for committees to refer communications. A communication that would otherwise be filed at the end of the term pursuant to Subsection A of this rule may be referred to the Council Chair for the ensuing term upon the recommendation of the chair of the committee and with the approval of the committee and then the Council.

C. Bills or resolutions that pass one of two required readings without subsequent referral to committee or other disposition. Any bill or resolution that has passed one of two required readings and was not subsequently referred to a committee or otherwise disposed of shall be referred to the Council Chair for the ensuing term, for consideration by the Council on second and final reading.

D. Resubmittal not prohibited. This rule shall not prevent the resubmittal of any communication to the Council in a subsequent term, for consideration as a new communication.

Rule 24. Documents Transmitted by the Administration.

A. Corporation Counsel approval. A bill or resolution transmitted to the Council from the Administration shall be signed by the Corporation Counsel or a Deputy Corporation Counsel, when practicable, prior to the communication transmitting the bill or resolution being posted on a Council meeting agenda.

B. Transmission of electronic documents. Except for original, approved legislation or other documents that must be transmitted by paper, the Administration may submit electronic documents to the Council.

C. Administration proposals. Legislative proposals to the Council or a committee from the Administration shall include a cover letter and an attached bill or resolution. Each transmittal under this subsection shall be accompanied by the requisite number of copies.

Rule 25. Conduct Relating to Public Meetings.

For all public meetings, Council members shall strive to do the following:

A. Respect the opinions of fellow Council members and other meeting participants, be well informed on issues, and participate in deliberations in a productive manner.

B. Accept responsibility to attend all Council meetings and all committee meetings of which they are a voting member.

C. Be courteous to and respect the opinions of members of the public and all meeting participants.

D. Do their best to communicate in clear, concise, and audible language and written communications.

E. Discuss issues, not personalities.

F. Speak in a manner that does not undermine the integrity or motives of the Council, any Council member, or any meeting participant.

G. Refrain from browsing the Internet on non-County business while a meeting is in session so that the Council's or committee's full attention can be given to the topic at hand. Refrain from texting with Administration or other resource persons during meetings in which they are participating, as such communication could be perceived as contravening open-government principles.

H. Prohibit unruly or disrespectful behavior in the Council Chamber and encourage a safe and respectful environment for all attendees.

Rule 26. Code of Ethics, Prohibitions and Penalties.

The prohibitions stated in Article 10, Code of Ethics, Section 10-4, Revised Charter of the County of Maui (1983), as amended, and the penalties stated in Article 10, Code of Ethics, Section 10-5, Revised Charter of the

County of Maui (1983), as amended, shall be incorporated herein and made a part hereof. Council members shall be ruled by the Code of Ethics.

Rule 27. Modifications to the Council Chamber.

Any structural, permanent fixture, or other nonemergency modifications to the Council Chamber shall be discussed in a Chair's meeting prior to funds being expended.

Rule 28. Posting Items on Council Agenda.

Any item or matter initiated by a Councilmember and transmitted to the Council Chair or County Clerk for posting, referral, or consideration by the Council that has not been posted on the next regularly scheduled Council meeting shall be automatically posted on the following scheduled Council meeting, unless the Chair receives permission in writing from the Councilmember transmitting the item to delay posting.

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