

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE

Council of the County of Maui

MINUTES

July 5, 2016

Council Chamber, 8th Floor

RECONVENE: 9:02 a.m.

PRESENT: Councilmember Michael P. Victorino, Chair
Councilmember Don Couch, Vice-Chair (Out 11:33 a.m.)
Councilmember Gladys C. Baisa, Member
Councilmember Robert Carroll, Member
Councilmember Elle Cochran, Member (In 9:12 a.m.)
Councilmember Stacy Crivello, Member (Out 3:11 p.m.)
Councilmember Don S. Guzman, Member
Councilmember Riki Hokama, Member
Councilmember Mike White, Member

STAFF: Sharon Brooks, Legislative Attorney
Greg Garneau, Legislative Attorney
Tammy M. Frias, Committee Secretary
David Raatz, Director, Office of Council Services (Item PIA-10(5))
Seated in the gallery
Traci Fujita, Legislative Analyst

ADMIN.: Michele N. McLean, Deputy Planning Director, Department of Planning (Item PIA-10(11))
Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Seated in the gallery
Rosemary Robbins

PRESS: Akaku--Maui County Community Television, Inc.

CHAIR VICTORINO: . . .*(gavel)*. . . The Policy and Intergovernmental Affairs Committee will reconvene this adjourned meeting. This meeting was recessed on June 29, 2016. I will ask everyone at this time to make sure that their cell phones and any other noise-making device has been turned off. Decorum will be followed in these Chambers. For this morning's meeting I really don't have to read off the Members, but I guess I will. My Vice-Chair Mr. Couch is here. Good morning, Mr. Couch.

VICE-CHAIR COUCH: Good morning.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Mr. Carroll from East Maui, Ms. Baisa from Upcountry, Ms. Crivello from Molokai.

COUNCILMEMBER CRIVELLO: Good morning.

CHAIR VICTORINO: Mr. Hokama from Lanai, and Mr. Guzman from Kahului.

COUNCILMEMBER GUZMAN: Good morning, Chair.

CHAIR VICTORINO: Mr. White will be here shortly. He will be a little late and also Ms. Cochran from West Maui is a running a little late, so they'll be joining us very shortly. From the Administration we have Mr. Ed Kushi, First Deputy Corporation Counsel.

MR. KUSHI: Good morning, Mr. Chair.

CHAIR VICTORINO: Good morning, everyone. And Committee Staff we have Sharon Brooks, Legislative Attorney, and Tammy Frias our Committee Secretary. Thank you, ladies, for being here and thank you for all your hard work. Members, we are not taking any public testimony 'cause this is a reconvening of the meeting of June 29th so we can start moving. And let me recognize Mr. White from Makawao and Haiku. Thank you, Mr. White, for being here.

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR VICTORINO: Our Chair is here, so we have all but Ms. Cochran. So we have eight Members.

ITEM PIA-10(14): PROPOSED CHARTER AMENDMENTS (DEPARTMENT DIRECTOR APPOINTMENTS) (CC 09-229)

CHAIR VICTORINO: This meeting now will move on to our next nine proposed Charter amendments to consider. We will start with PIA-10(14) which was my proposal to condense or to combine several proposed amendments that were made. Now these proposal combines Mr. Carroll's, Mr. Hokama's, and Mr. Guzman's proposed amendments PIA-10(1), PIA-10(7), and PIA-10(9) relating to the appointments, removals, and qualification of department directors into one compressed...one comprehensive I should say, excuse me, amended to work from. This Committee welcomes any more amendments if you feel that this will...that you see fit. First of all, starting with the first "be it resolved." You may recall that Councilmember Crivello noted that Charter Section 3-8 which restricts Council from relating to appointments or removal of any appointment by the Mayor would need to be revised. Mr. Kushi our First Corporation Counsel agreed. So this resolution does that. We made the correction so this would be done properly. The second part of the "be it resolved" paragraph amends Section 6-2 to require the Council to approve Mayor's appointments of named...of any named department heads. The third "be it resolved"

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

paragraph adds a new section to the Charter allowing for more specific qualifications for the administrative heads to be established by County Code. Subsequent paragraphs make the needed revisions to the individual positions and consistency and allow all removal by the Mayor and the approval of the Council, and removal by resolution approved by two-thirds vote of the entire membership of the Council. So what I tried to put in a nutshell is to compress what we have been discussing, the legal issues that were brought up, and to make sure that now it's palatable and we can move ahead on it. Okay. So I did not change, Mr. Carroll, Mr. Hokama, and, Mr. Guzman, I didn't change what you guys had brought forward. I just made the necessary corrections so that we can move on it. So at this time, Members, if you've had time to check...read over the proposed combination PIA-14...PIA-10(14), I will open the floor to discussions and I will let all three Members whose proposals I've combined the opportunity to speak first. So I'll start with you, Mr. Carroll, Mr. Hokama, and then, Mr. Guzman. Mr. Carroll?

COUNCILMEMBER CARROLL: Thank you, Chair. What I have to say is just what's before us right now and just...I'll read just part of it again that amended, that it will require the Council's approval of the Mayor's appointments of department directors and allow the Council to initiate removal of department directors and allow additional qualifications for department directors to be established by ordinance. It's really very simple. It's common sense and it's something that really the way it is now it made things out of balance. I think this is the appropriate action and I hope for the Councilmember's support. Thank you.

CHAIR VICTORINO: Thank you, Mr. Carroll. Mr. Hokama, if you'd like to add your portion to this discussion.

COUNCILMEMBER HOKAMA: Chairman, I made my position very clear for many, many years how I look at this. And so, you know, I appreciate your efforts to try and combine, but at the end I think we're all going to make decisions based on each individual component of what you've combined. I think that is the easiest way to dispose of this business, Chairman. So thank you very much for your efforts. I appreciate it.

CHAIR VICTORINO: And thank you. And again, yes, we are looking at three separate issues, but I really think when you put 'em together it becomes one ballot amendment and I think it will make it much easier for the public to understand what we're trying to achieve. Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, thank you, Chair. I think you did a very good job combining the issues. Specifically in one of my proposals for the Charter amendments is qualifications for the Prosecutor and the head Prosecutor. So I'm very glad that you have, you've incorporated qualifications for all departments and so to allow the Council to add in qualifications via ordinances. So I'm very much in support of that. I'm also in support of the provisions that allow the Council approval of the Managing Director as well as the...by removal by resolution of a two-thirds vote for the Managing Director's position as well as the Corporation Counsel and Prosecuting Attorneys. I

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

believe, as I've stated before in my other proposed Charter amendments, those are the three positions, oh, as well as the Finance Director that the two, the Corporation Counsel and the Prosecutor, should remain neutral. And so by having the ability for the Council to terminate is equal to the Mayor's authority. The rationale behind the Managing Director and the Finance is because of the succession order of acting mayor and the great responsibility of the Finance Department. If so happen that the Managing Director is appointed we should as a body, a legislative body is to have that ability to approve it considering the fact that it is the next person in line for the acting mayor and so and so forth for the Finance Director. So I think you did a really fine job with combining it and I would hope that our Members find support or at least I seek support in this resolution that you've come up with, I mean this Charter amendment that you've created. Thank you.

CHAIR VICTORINO: Thank you. And again we have talked about transparency. We've talked about, you know, making sure that qualified people are put into these positions. And so now we've now gotten to a point where we're going to put our money where our mouth is and actually be a part of it. And so I think this is good for everyone, but I will ask the other Members who had no time, you know, the three that have brought these proposals forward have spoken. I will start with you, Ms. Baisa, what your take on it and then go right down the line. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. I think it would very helpful because there is so much information out there and we have been so busy with the other legislation that we handled last week. And I think there's a lot of confusion out there yet. For the viewing public particularly I think it would really help if we were to go over just...don't have to go into all the details but essentially what we are talking about.

CHAIR VICTORINO: Okay. I will have the Staff actually read over the combined and what...and then we can discuss what it specifically means to the public and us.

COUNCILMEMBER BAISA: Thank you, Chair.

CHAIR VICTORINO: Okay, no problem. Not yet, let me check with the others first. Mr. Couch?

VICE-CHAIR COUCH: Thank you, Mr. Chair. Yeah, this...most of this looks really good. I do have questions on Section 3-8 whenever you want to discuss them.

CHAIR VICTORINO: Okay.

VICE-CHAIR COUCH: And then the other one would be on a couple of these, the question would be is it...there's such, you know, like you say the number two position and the number three position, would those be...would it be more appropriate to have a super majority as opposed to seven...a majority of seven versus six to remove those folks. Only...we do have the...in our Council Rules we do have two instances where seven votes are required for certain action. This one might be for at least for the Managing

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

Director and Finance Director or I'm sorry, Corporation Counsel, I would think that might be a...we'd have to have a strong vote of no confidence for those two in my opinion --

CHAIR VICTORINO: Yeah.

VICE-CHAIR COUCH: --and any others that some of the Members feel. So I have those two questions and the third question is say the Council says alright we have a no confidence in this whether it's six or seven votes and we say they're removed. Does the Mayor in this instance have the authority to say well, wait a minute? I guess we might be cutting the legs underneath whoever's going to...whoever the Mayor is saying, sorry, too bad we don't like your pick, or we don't think they're doing a good job so we're going to remove them without your approval.

CHAIR VICTORINO: Okay, good discussion.

VICE-CHAIR COUCH: That's something to discuss.

CHAIR VICTORINO: Yeah, I think those are good discussion points and I won't go into it right this moment --

VICE-CHAIR COUCH: Right, right.

CHAIR VICTORINO: --because I want to have the Staff read the entire changes or entire resolution as proposed and then we can go from there. So I will move on. Ms. Crivello, do you have anything you'd like to?

COUNCILMEMBER CRIVELLO: Thank you, Chair. I appreciate the efforts that you're doing to do a complete combination of the proposed amendments. And it's already been mentioned that we go through each one because of confusion and what the public is expecting from us with these changes.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR VICTORINO: Thank you. Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. I like what you've done with this. I feel it's an important direction to move in. I also would like to know from Corp. Counsel whether there's any reason that would limit us from adding non-mayoral appointees to this? And the ones that come to mind are the Director of the Department of Liquor Control and the Director of Personnel Services, is there any reason why we could not add those, Corp. Counsel?

CHAIR VICTORINO: Okay, we can bring that as another discussion point

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER WHITE: I'm just asking Corp. Counsel if there's ...

CHAIR VICTORINO: Oh, you want the question now?

COUNCILMEMBER WHITE: Yeah.

CHAIR VICTORINO: Mr. Kushi, what would you respond to that question?

MR. KUSHI: Yes, if I understand the question there are four directors currently appointed by commissions; Fire, Police, Liquor, and Civil Service.

COUNCILMEMBER WHITE: Right.

MR. KUSHI: If you want to include them in this kind of scenario, you need to change the Charter sections for each of those.

COUNCILMEMBER WHITE: Right, but is there any limitation on us to...from doing that? And would we need to do all four or could we just do two?

MR. KUSHI: In my mind, and I have to check again, but I believe the Liquor Director and the Civil Service Director by State statute is appointed...required to be appointed by the Commission, but I'll need to check on that. I believe Fire and Police there's no State Statute requiring they be appointed by the Commissions. Historically they have been, though, but I need to check on that, but they cannot be included in this scenario unless you change their Charter sections.

COUNCILMEMBER WHITE: Right, okay. Thank you. Thank you, Chair.

CHAIR VICTORINO: Okay, Ms. Cochran, just to get you caught up --

COUNCILMEMBER COCHRAN: Hi.

CHAIR VICTORINO: --we were discussing...I know you just arrived, thank you.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR VICTORINO: We're discussing the combination and we're looking at 10(14) which combines the three proposals by Mr. Carroll, Mr. Hokama, and by Mr. Guzman into one and made the necessary corrections or changes because of what Ms. Crivello had brought up during the meeting about our powers and duties as a Council. So that's what we're discussing at this point and so since you just arrived I just want to give you an opportunity to chime in.

COUNCILMEMBER COCHRAN: Thank you very much. I appreciate that and, yeah, I've been hearing the discussion and like what I'm hearing, but of course that hopefully will go into more detail and discuss line by line and really get the gist and details of this.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Okay.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR VICTORINO: Alright, Staff, would you kindly go ahead and read the entire resolution as combined and as submitted, please, and that's 10(14).

MS. BROOKS: Yes, Chair.

CHAIR VICTORINO: Go ahead.

MS. BROOKS: Resolution Proposing an Amendment to the Revised Charter of the County of Maui (1983), as Amended, to Require Council Approval of the Mayor's Appointment of Department Directors, Allow the Council to Initiate Removal of Department Directors, and Allow Additional Qualifications for Department Directors to be Established by Ordinance. WHEREAS, the revised Charter of the County of Maui (1983), as amended, provides for a process by which the Council shall confirm or deny the confirmation of the Mayor's appointments of the Corporation Counsel, Prosecuting Attorney, and Director of Water Supply; and WHEREAS although other department directors appointed by the Mayor are also charged with the responsibilities that warrant the Council having approval authority over the appointments, no such process exists for the Mayor's appointments of department heads other than the Corporation Counsel, Prosecuting Attorney, and Director of Water Supply; and WHEREAS the Council should have the same authority as the Mayor to initiate removal of a department head; and WHEREAS the Charter sets forth general qualifications for department directors, but there is a need to allow flexibility to establish by ordinance, more specific qualifications and to adjust those qualifications with time; now, therefore, BE IT RESOLVED by Council of the County of Maui:

1. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 3-8 pertaining to restrictions on Council and Council Members, be amended to read as follows: Section 3-8. Restrictions on Council and Council Members. 1. Neither the Council nor any of its Members shall, in any manner, dictate the appointment or removal of any officer or employee appointed by the Mayor or the Mayor's subordinates. 2. Neither the Council nor its Members shall give orders to any County employees or County officers other than those appointed pursuant to Section 3-7 or Article 5, either publicly or privately. Any willful violation of the provisions of this subsection by a Member of the Council shall be sufficient grounds for the Councilmember's removal from the office by impeachment. 2. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 6-2, pertaining to the appointment and removal of officers and employees, be amended to read as follows: Section 6.2. Appointment and Removal of Officers and Employees. 1. The administrative head of a department may not appoint more than the staff for which appropriations have been made by the Council. 2. No appointing authority shall appoint any person to any office or position exempted from civil service until satisfied by proper investigation that the person to be appointed is fully qualified by experience and ability to perform the duties of the office or position. 3. The term of office of any administrative head of a department who is appointed by the Mayor [including the

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

Corporation Counsel and the Prosecuting Attorney] shall end with the term of Office of the Mayor except that any such administrative head may be earlier removed as provided for in this Charter. Such officers shall not hold over more than 60 days after their respective terms of office, and shall immediately vacate their respective offices at the end the 60-day period or upon appointment of a successor in accordance with this Charter, whichever occurs first. 4. The Mayor shall have the authority to appoint, on a temporary basis, an administrative head of any department, provided that such department is one where the administrative head is appointed by the Mayor. 5. Within 60 days of taking office, or within 60 days after a vacancy is created, the Mayor shall appoint the Managing Director, Corporation Counsel, [and] Prosecuting Attorney, Director of Finance, Director of Public Works, Director of Parks and Recreation, Planning Director, Director of Housing and Human Concerns, Director of Water Supply, Director of Transportation, and Director of Environmental Management, with written notice of the appointment to the Council. The Council shall confirm or deny the [confirmation] appointment within 60 days after receiving notice of the appointment by the Mayor. If the Council does not act within the 60-day period, the appointment shall be deemed to be confirmed. The [Corporation Counsel and Prosecuting Attorney] appointee shall take office upon appointment by the Mayor but shall not continue in office if the Council denies [confirmation] the appointment. If the appointment is [not confirmed] denied by the Council, the Mayor shall make a new appointment within 60 days of the Council's denial, and the Council shall confirm or deny within 60 days after receiving notice of the new appointment by the Mayor. If the Council does not act within the 60-day period, the appointment shall be deemed to be confirmed. 3. That pursuant to Charter Section 14-1(1), it hereby proposes a new Charter Section 6-4, pertaining to the Specific Qualifications of Administrative Heads of Departments, be inserted to read as follows: Section 6-4. Specific Qualifications of Administrative Heads of Departments. In addition to any qualifications set forth in this Charter, specific qualifications for administrative heads appointed by the Mayor may be established by the Council by ordinance. 4. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 8-1.2, pertaining to the Managing Director, be amended to read as follows: Section 8-1.2. Managing Director. The Managing Director shall be appointed by the Mayor with the approval of the Council and may be removed by the Mayor[.] with the approval of the Council or by resolution approved by a two-thirds vote of the entire membership of the Council. The Managing Director shall have had a minimum of five years of experience in an administrative capacity either in public or private business or both. 5. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 8-2.2, pertaining to the Corporation Counsel, be amended to read as follows: Section 8-2.2. Corporation Counsel. The Corporation Counsel shall be appointed by the Mayor with the approval of the Council and may be removed by the Mayor with the approval of the Council or by resolution approved by a two-thirds vote of the entire membership of the Council. The Corporation Counsel shall be an attorney licensed to practice and in good standing before the Supreme Court of the State and shall have engaged in the practice of law for at least three years. 6. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 8-3.2, pertaining to the Prosecuting Attorney, be amended to read as follows: Section 8-3.2. Prosecuting Attorney. The Prosecuting Attorney shall be appointed by the Mayor with the approval of the Council and may be

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

removed by the Mayor with the approval of the Council or by resolution approved by two-thirds vote of the entire membership of the Council. The Prosecuting Attorney shall be an attorney licensed to practice and in good standing before the Supreme Court of the State and shall have engaged in the practice of law for at least three years. 7. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 8-4.2, pertaining to the Director of Finance, be amended to read as follows: Section 8-4.2. Director of Finance. The Director of Finance shall be appointed by the Mayor with the approval of the Council and may be removed by the Mayor with the approval of the Council or by resolution approved by a two-thirds vote of the entire membership of the Council. The Director of Finance shall have had a minimum of five years of experience in a public or private financial position, at least three [years] of which shall have been in an administrative capacity. 8. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 8-5.2, pertaining to the Director of Public Works, be amended to read as follows: Section 8-5.2. Director of Public Works. The Director of Public Works shall be appointed by the Mayor with the approval of the Council and may be removed by the Mayor with the approval of the Council, or by resolution approved by a two-thirds vote of the entire membership of the Council. The Director of Public Works shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business or both. 9. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 8-6.2, pertaining to the Director of Parks and Recreation, be amended to read as follows: Section 8-6.2. Director of Parks and Recreation. The Director of Parks and Recreation shall be appointed by the Mayor with the approval of the Council and may be removed by the Mayor with the approval of the Council or by resolution approved by a two-thirds vote of the entire membership of the Council. The Director of Parks and Recreation shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both. 10. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 8-8.2, pertaining to the Planning Director, be amended to read as follows: Section 8-8.2. Planning Director. The Planning Director shall be appointed by the Mayor with the approval of the Council and may be removed by the Mayor with the approval of the Council, or by resolution approved by a two-thirds vote of the entire membership of the Council. The Planning Director shall have had a minimum of five years of experience in the field of planning, at least three of which shall have been in an administrative capacity[.], either in public service or private business, or both. 11. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 8-10.2, pertaining to the Director of Housing and Human Concerns, be amended to read as follows: Section 8-10.2. Director of [the Department of] Housing and Human Concerns. The Director of [the Department of] Housing and Human Concerns shall be appointed by the Mayor with the approval of the Council and may be removed by the Mayor with the approval of the Council or by resolution approved by a two-thirds vote of the entire membership of the Council. The Director of [the Department of] Housing and Human Concerns shall have had a minimum five years of experience in an administrative capacity, either in public service or private business, or both. 12. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 8-11.5, pertaining to the Director and Deputy Director of Water Supply, be amended to read as follows: Section 8-11.5. Director and Deputy Director of Water Supply. The

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

Director of [the Department of] Water Supply shall be appointed by the Mayor with the approval of the Council, and may be removed by the Mayor with the approval of the Council, or by resolution approved by a two-thirds vote of the entire membership of the Council. The Director of [the Department of] Water Supply shall have had a minimum of five years of experience in a management capacity either in public service or private business, or both. The Deputy Director of [the Department of] Water Supply shall be appointed by the Mayor and may be removed by the Mayor. The Director or Deputy Director of [the Department of] Water Supply shall be a registered engineer.

13. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 8-14.2, pertaining to the Director of Transportation, be amended to read as follows: Section 8-14.2. Director of Transportation. The Director of Transportation shall be appointed by the Mayor with the approval of the Council and may be removed by the Mayor with the approval of the Council, or by resolution approved by a two-thirds vote of the entire membership of the Council. The Director of Transportation shall have had a minimum of five years of experience in an administrative capacity either in public service or private business or both.

14. That pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 8-15.2 pertaining to the Director of Environmental Management be amended to read as follows: Section 8-15.2. Director of Environmental Management. The Director of Environmental Management shall be appointed by the Mayor with the approval of the Council, and may be removed by the Mayor with the approval of the Council or by resolution approved by a two-thirds vote of the entire membership of the Council. The Director of Environmental Management shall have had a minimum of five years of experience in an administrative capacity either in public service or private business or both.

15. That material to be repealed is bracketed and new material is underscored.

16. That County Clerk prepare the necessary ballot for presentation to the voters at the next General Election.

17. That pursuant to Section 14-2(1) of the Charter, it hereby proposes that the following question be placed on the next General Election ballot. Shall the Charter be amended to ease restrictions on the Council relating to the approval and disapproval of department director appointments; to require Council approval of the Mayor's appointment and removal of department directors to allow the Council to remove department heads by two-thirds vote of its entire membership; and to allow additional qualifications for department directors to be established by ordinance.

18. That pursuant to Section 14-2(2) of the Charter, the County Clerk shall publish the proposed amendment in a newspaper of general circulation.

19. That pursuant to Section 14-2(3) of the Charter, upon approval of the majority of the voters voting on the proposed amendment and upon official certification of such result, the amendment proposed herein shall take effect.

20. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, and the County Clerk.

CHAIR VICTORINO: Thank you, Ms. Brooks, that was very well done. Thank you very, very much. And so, before I move on to Members' questions I will go to Corporation Counsel, Mr. Kushi, the concerns that were raised by Member Crivello in this resolution has, and you and I have discussed this but just so that the Members and the public understand, have those issues been resolved basically by this Charter change?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

MR. KUSHI: Mr. Chair, how much time do you have?

CHAIR VICTORINO: Well, I mean, you know, would take the whole day but I would rather not do that but go ahead, Mr. Kushi.

MR. KUSHI: Yeah, okay, you're talking about Section 3-8 --

CHAIR VICTORINO: Yes.

MR. KUSHI: --subsection 1. Okay, subsection 1, these are restrictions on what the Council can do.

CHAIR VICTORINO: Presently has, right?

MR. KUSHI: Right.

CHAIR VICTORINO: Okay.

MR. KUSHI: Subsection 1 involves the appointment or removal of any officer or employee appointed by the Mayor or the Mayor's subordinates. Subsection 2 concerns giving orders to anybody, any County employees or officers other than the Clerk's Office or Council Services. So I think it's two separate sections.

CHAIR VICTORINO: Okay.

MR. KUSHI: Knowing the intent or the scheme of this resolution, I would keep the restriction on dictating appointment or removal but put in a preface saying that unless otherwise provided in this Charter, the Councilmember shall not get involved in the appointment. Then it's clear that the Charter provides that you have the approving authority for department heads, then that's accepted.

CHAIR VICTORINO: Okay.

MR. KUSHI: Otherwise this may involve getting down to department division or employees 'cause there will be no restrictions then. But that would be my recommendation.

CHAIR VICTORINO: Okay. Mr. Hokama, do you have something that you would like to address? Because primarily this is part of what you had brought forward and along with Mr. Guzman but you were the primary. So I'll start with you and then go to Mr. Guzman. Go ahead.

COUNCILMEMBER HOKAMA: Thank you, Mr. Chairman. Thank you for that comment, Mr. Kushi. In my proposal to the Members I just ask us to remember it's interesting the word timing 'cause we've discussed this six years ago more or less and what was our sentiment then regarding these proposals we have here this morning. And of course that was all in open meetings so the public can have full access to our records of what we said on this previously. But for me, Chairman, part of my concern here

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

and I ask that the Members seriously consider this and discuss it as we move forward --

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: --is part of my concern about having this Council doing Charter Commission work because, you know, hey, I'm a member of this Council. I have my own biases but it seems to be very legislative biased. And I think what the people deserve is a fair proposal of how we look at balancing power within the people's County government process. And so saying that, you know, Mr. Chairman, I don't want the Council to be so involved in operations we forget our main purpose --

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: --and that is setting policy and taking care of appropriations and accounting for those monies. Okay. We shouldn't be so involved in the operational direction, directives of employees. We may be concerned about the employment of certain key individuals but I'm not concerned about the day-to-day operations. If I was, I would have applied to be one department employee. I'm concerned about the policy of this County and keeping the balance there. So stating that, part of the concern I was made aware of from our community was about the amount of hiring in the Administration, and if that's the case I am assuming they were talking about the Mayor's Office. If that is one of the areas of concern of our community, none of this proposal addresses that. This is about department heads, not Mayor's Office. Okay, and if we're as sincere as we believe we are, then we could have made legislative decisions on policy and put in place equivalent personnel counts. 'Cause I don't have a problem telling the public how many people Council hires for Council Services purposes. I don't have anything to hide. I'm happy to tell them what it costs the Council to fund those positions to provide the work that the Council needs for services from our community. I would assume the Administration has the same willingness to be open regarding those type of positions. So if that is the case, then we should be addressing that and we can do that legislatively --

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: --not by Charter. So just my, you know, first thing regarding Section 3-8 and the first component of my concern about 6.2 is I hope we look for a balance of doing this very fairly because for me this County only works the best when get the two branches balancing each other off, not being one heavy handed over the other regardless of which branch it is. I'm looking for fairness on both sides. We talk about qualifications of people; I have no problem with that, Mr. Chairman. I think my colleagues have made good points on why we need to consider minimums.

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: But if that's the case then we should ask ourselves do we need to place minimums to be a member of this Council too then, being balanced. So

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

what makes nine of us, if we don't have qualifications, the one superior to make decisions on those with qualifications? That's what we got to satisfy the public. We're asking for all these qualifications. The two things I've always said that was our responsibility was money and policy. So should we have one minimum on how much we know about government financing? Should we have a minimum of how much we know about process? 'Cause that's our field of requirements. Okay, the people may say no and that's fine or they may yes. But the easiest way to accomplish those things, as I understand our Charter is through legislation of ordinances. Doesn't need to be in the Charter. The Charter gives us very much flexibility address changing times and unique situations. So, you know, some of these things I would ask Mr. Kushi if it can be done by ordinance to please make this Committee aware, as I understand the Charter's flexibility of its parameters. And if it's not I appreciate your advice and counsel on why it needs to be done in this manner. So I thank you very much, Chairman, for my time to speak at this time.

CHAIR VICTORINO: Thank you. So to answer that question, Mr. Kushi, you've heard what Mr. Hokama has brought forward and the question he asked. Do you believe that by ordinance instead of through the Charter some of these changes should be made or could be made through?

MR. KUSHI: If you're talking about the qualifications, minimum qualifications?

CHAIR VICTORINO: Let's start with that, yes.

MR. KUSHI: Okay. Yeah, okay, I'll refer you to your proposed new Section 6-4 about specific qualifications of administrative heads or departments. Being the first time seeing this I've got some concerns about this. Each of the sections for each department head in this resolution as well as in the existing Charter you have minimum qualifications; five years, three years, et cetera. Now, as I understand this, this proposes that in addition to those minimum qualifications by ordinance this body can then set additional qualifications be it desired or minimum. Again this gets kind of into the appointment stage of the department heads but more troubling would be a situation where I can see a new mayor gets in, you know, he appoints Director of Planning and this body approves it pursuant to your changes. And that person has minimum, meets the minimum qualifications; five years of planning, three years of which must be so and so. Subsequently, you by ordinance propose additional minimum qualifications, a Master's Degree in Urban Planning which the current department head does not have then what happens? That department head is appointed for the term of the Mayor. Is he then out or is he grandfathered in? I guess, yeah, a question on that situation. So again, it would cause consternation to say the least, and again this body, in my opinion, is not the Department of Personnel Services unless you get some sort of study or consulting done. And again, like all ordinances it's subject to the Mayor's veto, but those are my concerns. In terms of by ordinance approving the appointment of department heads, I believe you need to do it by Charter. All other jurisdictions do it that way and I believe, I mean Big Island and Oahu, City and County, they are all approved by the Council. Only Maui and --

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

COUNCILMEMBER HOKAMA: Except for us...

MR. KUSHI: --Kauai I think except for maybe the Corp. Counsel. Mr. Chair, if I may?

CHAIR VICTORINO: Go ahead.

MR. KUSHI: I looked at the other proposals from Member Hokama, Member Guzman, and Member Carroll and none of 'em initially had the provision about removing by two-thirds majority vote of the body except for Member Guzman's amendment to Member Carroll's provisions. Again, that may be an issue but I don't believe it's illegal but just for the Committee's information, the initial proposals did not have the removal initiated by the Council with a two-thirds majority vote. Lastly, Mr. Chair, if anything, the effective date of this Charter amendment should be 2019 because that's when the new Mayor comes in. If you put it earlier that would really cause a lot of problems.

CHAIR VICTORINO: Okay, Mr. Kushi, thank you very, very much. Again, you know, any amendment can be made to this proposal to make clarification and corrections and that's the way I had set it up to be done in that manner. But I just wanted the public to understand that really this were initiated by the various Councilmembers. Others made other or brought up other questions and other amendments to their original amendment. So I've tried to incorporate so now we need to understand or at least get to the point where what do you want removed that you feel will be comfortable and appropriate and what do we need to keep? And I guess that's the question we have on the table right now. I want to do it in an organized manner so that's why I want to give the people who made the proposals first option. So I will go to you, Mr. Guzman. Your proposal was removal with two-thirds majority, if I'm correct.

COUNCILMEMBER GUZMAN: Yes, that, that's correct.

CHAIR VICTORINO: So you brought that part and I've tried to incorporate it but go ahead, Mr. Guzman.

COUNCILMEMBER GUZMAN: Yes. Yes. Thank you, Chair, and you did a fine job with incorporating. And just getting...for let's take this one step at a time --

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: --the first part was Section 3-8, the restrictions on Council and Councilmembers. I tend to agree with Mr. Kushi about adding...leaving that language in there; neither the Council nor any of its Members shall in any manner dictate the appointment or removal, and then at the end of subordinates, unless otherwise provided by Charter. So I believe that would be sufficient for allowing the appointments and the removals to happen.

CHAIR VICTORINO: Okay.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER GUZMAN: And it would narrow the scope to only the head of the departments.

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: And so I agree with Mr. Kushi on that portion but just adding that unless otherwise provided by Charter. I think that will rectify it.

CHAIR VICTORINO: Did you get that, Ms. Brooks?

MS. BROOKS: Yes.

CHAIR VICTORINO: Okay, good.

COUNCILMEMBER GUZMAN: And then as far as the...the way I look at this whole resolution is this is the alternative version of having a Managing Director type government. And when we're looking at that...when we were looking at that proposal, we were seeking transparency; we were seeking more authority and involvement in hiring the directors. And therefore we were looking for a manager that would do that for us and to make sure that things were up and up and we were basically handing over those powers to the Managing Director. Well, in this case, as provided by Mr. Hokama in his proposal in 10(7) it is reverting to the Council to help...to assist in approval of the directors. I agree with that. Adding the removal portion for the...in my proposal was basically for the Corporation Counsel and the Prosecutor, and Managing Director, and Finance Director, and I've stated the reasons thereof because of the positions that they hold for us to have that authority to remove. But if we're talking about balancing...to order to balance the other directors, I think all that we would need to do is to delete the...let me restate that. The language I believe would be...would allow the balance of power, it would be basically, the director shall be appointed by the Mayor with the approval of the Council and may be removed by the Mayor, period, and/or by resolution approved by the two-thirds vote of the entire membership of the Council. So that would allow the Mayor to remove the director if he feels fit and also would allow the Council to remove the director if the Council in a two-thirds vote feel that it's a vote of no confidence. So that balances it out. I think you don't really need to have the approval of the Council when the Mayor wants to remove. I think it should be just the Mayor. If he wants to get rid of his director, it's his prerogative to get rid of it.

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: He don't need no approval from us, but in the same breath if we have a vote of no confidence of two-thirds, then the Mayor shouldn't have approval authority over us to allow us to terminate or to remove. So I think that's a good balance in the removal process. So that's where my position is on that. So if the Members are willing to go along with that, all that would need is just a change in language.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

CHAIR VICTORINO: Just to take out the --

COUNCILMEMBER GUZMAN: Yeah, with just ...

CHAIR VICTORINO: --with the approval of the Council, right?

COUNCILMEMBER GUZMAN: Yeah, so just basically, the Mayor may be...may be removed by the Mayor, and then delete, with the approval of the Council, delete that, and then just add in or, and just continue on, or by resolution approved by two-thirds vote of entire membership of the Council. That's a no confidence vote.

CHAIR VICTORINO: Yeah, okay.

COUNCILMEMBER GUZMAN: Thank you.

CHAIR VICTORINO: No, that sounds like a great compromise in my mind. I mean again it's accomplishing what we had initially set out to do. So okay, I will ask other Members what they think of that proposal. Yes, Mr. Couch?

VICE-CHAIR COUCH: Thank you, Mr. Chair. And I agree with Mr. Guzman on the 3-8.1 --

CHAIR VICTORINO: Okay.

VICE-CHAIR COUCH: --that seems...that was one of my biggest concerns in this reso.

CHAIR VICTORINO: Okay.

VICE-CHAIR COUCH: As far as, you know, I agree with Mr. Hokama that, yeah, we get comments about too many staff in the Administration. We can deal with that in the budget.

CHAIR VICTORINO: And I think we have that, yeah.

VICE-CHAIR COUCH: Yeah, that's our ...

CHAIR VICTORINO: Yeah, we have that power.

VICE-CHAIR COUCH: That's how we can handle that now. So that's...there's nothing new there, but as he said all of those complaints are not handled in this resolution because this is department directors.

CHAIR VICTORINO: Yes.

VICE-CHAIR COUCH: I agree with Mr. Guzman, yes, let's do the approval. I have a little bit of concern on the removal. It is basically telling the directors they have two bosses now. They've got the Mayor who can fire them and also two-thirds or seven Councilmembers. I would think that if you have seven Councilmembers then that's a

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

good sign that there's a problem somewhere even if the Mayor were to agree with the director. But to have just plain old two-thirds might be problematic 'cause then who does the director report to? Do they report to the Mayor or the Council? So that would be my concern on the removal portion. Approving the appointment, that's, I think that's great for all department heads. And if we want to put in the Section 6-4 specific qualifications by ordinance, that's fine, but I agree with Mr. Hokama who are we to set standards, that's the Department of Personnel Services. I like Mr. White's idea or concerns or questions on the whole Liquor and Personnel. It might be little bit more problematic with Police and Fire but those ...

CHAIR VICTORINO: Well, I don't want to start straying from --

VICE-CHAIR COUCH: Yeah.

CHAIR VICTORINO: --what we need to work on first because now you're moving into another dynamic --

VICE-CHAIR COUCH: Right those aren't Mayor appointments.

CHAIR VICTORINO: --which we haven't agendized --

VICE-CHAIR COUCH: Right.

CHAIR VICTORINO: --first and foremost.

VICE-CHAIR COUCH: Oh, yeah.

CHAIR VICTORINO: Yeah, we haven't agendized that, okay, and so I don't want to get really us all confused and the public at large, if you're confused then they're going to --

VICE-CHAIR COUCH: Yeah.

CHAIR VICTORINO: --be more confused. I understand the recommendation and that will be something that needs to be looked at at a future date.

VICE-CHAIR COUCH: Sure.

CHAIR VICTORINO: But at this point because it wasn't agendized and we are talking specifically about these proposals by the Members, that's what I'd like to focus our attention on.

VICE-CHAIR COUCH: Okay.

CHAIR VICTORINO: Okay.

VICE-CHAIR COUCH: So, I just have concerns on removal.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Yeah, mister ...

VICE-CHAIR COUCH: I can probably live with seven.

CHAIR VICTORINO: Yeah, well, no, no, no, just hang on. Mr. Kushi would like to address that. Mr. Kushi, you had something you'd like to address on that matter, please?

MR. KUSHI: Yeah, Mr. Chair, if I may?

CHAIR VICTORINO: Yes, please.

MR. KUSHI: It just occurred to me concerning the...in my mind, the appointment by the Mayor is subject to the Council's approval. It's, is no problem 'cause other jurisdictions have done that. The removal by the Mayor as his appointee with or without Council approval, again I don't see a problem because he's the appointing authority. The initiation of the removal of a department head by this body concerns me because I believe removal powers and appointment powers go hand-in-hand. If you have the authority to appoint, you also have the authority to remove. Now, if you have the authority to remove then you should have the authority to appoint also. With that being the case, this body has no authority to appoint. So I may...I see a potential conflict.

CHAIR VICTORINO: Okay. Go ahead, Mr. Hokama, your response.

COUNCILMEMBER HOKAMA: Chair, just a point of information.

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: Because I think Mr. Guzman, my colleague, brought it up in a different manner but we're already required by Charter to approve the employment of Water Director --

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: --Corporation Counsel, and Prosecutors.

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: That's by Charter. We're required to participate, vet, and either confirm or deny. So we are part of a hiring process because the Charter requires our participation. So I don't know if Mr. Kushi in a way just kind of reaffirm what Mr. Guzman is trying to propose regarding termination since we're already in the process of employment.

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: So maybe you can --

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Mr. Kushi?

COUNCILMEMBER HOKAMA: --help us with this, Mr. Kushi?

MR. KUSHI: Yes, I agree.

CHAIR VICTORINO: Go ahead.

MR. KUSHI: I agree but again that's...your approval process is after the Mayor appoints, appointments subject to your approval. In this case by removing you're in essence equating that power of appointment also, that's what I'm saying. The power to appoint...the authority to appoint and the authority to remove --

COUNCILMEMBER HOKAMA: Who picks the name first is the key.

MR. KUSHI: --should go together.

COUNCILMEMBER HOKAMA: Is that what you're telling us?

MR. KUSHI: Right.

COUNCILMEMBER HOKAMA: Who has the power of giving the name first? Okay.

MR. KUSHI: Again, and this just came to my mind.

COUNCILMEMBER HOKAMA: And is that supported by a ruling or a court decision, as you are aware of, Mr. Kushi?

MR. KUSHI: Not that I know of, but I'm sure our offices can do some research on that.

COUNCILMEMBER HOKAMA: Thank you, Chair.

CHAIR VICTORINO: Okay. Again, thank you for that clarification, the removal aspect has been, you know, brought up by certain...by Councilman Guzman for certain positions and it was our feeling that if you're going to do for some you need the ability to do all. Again, one of the biggest complaints that I have heard of beyond what was brought up earlier was department heads and the qualifications and the job a department head was doing. I think that has come across to us loud and clear and that was why this new form of government...managing director type of government was brought forward because of some of the concerns of appointments and as well as their performances. And so I think this is what the Council is looking to do is to have some say in the appointment, first and foremost, and if the person is not accomplishing what needs to be done, a resolution to ask the Mayor, maybe that's maybe what we want to do to ask the Mayor to remove that individual. Now, if the Mayor refuses now what next, yeah? I guess that would be where I'd be at with this question, what next. But, you know, again, I understand what you're saying, Mr. Kushi, and but I really believe this is what

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

this Council wants to move towards or at least I thought that's what we were looking to move towards with various proposals by various Councilmembers. And to make sure that the transparency on appointments and if there was an "incompetent" director, that there would be some means of having that person removed if the Mayor chose not to. Okay and I think that's what we're asking for, Mr. Kushi, some methodology in that respect. You have something you want to say, Mr. Kushi, before I recognize Mr. White?

MR. KUSHI: Yeah, just following up on your comment.

CHAIR VICTORINO: Sure, sure.

MR. KUSHI: This body has tried to do that in the past through the Budget Ordinance. You have not put in salaries for a director.

COUNCILMEMBER GUZMAN: Chair? Chair?

CHAIR VICTORINO: Well, before you do that, I got to recognize Mr. White 'cause he had asked for a recognition and then I'll go to you, Mr. Guzman, please. Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. I think it's important that we have Mr. Kushi or our Staff look into whether or not the appointing authority goes hand-in-hand with the authority to remove. Because I agree with us moving in that direction but at the same time because we've now...because we're now combining the qualifications and the confirmation of each position, I wouldn't want those to be brought down by having something in the proposal that is later deemed inappropriate. So I'd like either Corp. Counsel or our Staff to look into that post-haste so we know whether it can and should be included.

CHAIR VICTORINO: Okay. Okay. So, if I hear you correctly, then at this point we need that information before we could move on any further with this...with these proposals.

COUNCILMEMBER WHITE: Well, not necessarily. I mean we can obviously discuss other elements of the proposal, but I think it's important that we not have a piece in the proposal that may be faulty.

CHAIR VICTORINO: Okay, okay. Alright, so what else would you like to discuss about the proposal? Because I think we're working our way down, and in the meantime I will have Staff try to, and if Mr. Raatz or some others are listening, maybe go out and try to find out some of that information that we, you know, are requiring, yeah. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much. I echo what you said earlier, for me I think the most frequent thing that I've heard in my years here are complaints about, from the public, who feel that there might be a director who was not qualified or has not performed up to snuff. And so I think this, and I agree, I think this recent move to do something about it by replacing with a city manager was part of it. And since that

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

is not going forward I think that we have an obligation to look very carefully at, you know, all the information that we heard and all the work that was done. So I'm comfortable, not, you know, 100 percent comfortable but comfortable enough to support the idea of us approving the department heads and of course in putting some qualifications on who would be qualified to receive these appointments. The thing that bothers me is that I've never been happy with saying you have to have a minimum of five years. I know a lot of people that have been in jobs for five years and I wouldn't hire them. So I think it's more than time. You know you can sit in a job for 10 years and get away, at 20 years and 30 years and really not be very effective at what you do. So it kind of bothers me. I just don't think that arbitrary five years or three years is sufficient and I don't know how we deal with that. So that's some of the things that are, you know, going through my mind. Thank you.

COUNCILMEMBER GUZMAN: Chair?

CHAIR VICTORINO: Well, I think that's one of the areas where I think qualifications would help augment and because even in the business world we have qualifications but experience is part of the qualifications. Okay, so I mean this is not something we've just recreated...we reinvented the wheel. So I just trying to, again, we tried to follow what the business world does also.

COUNCILMEMBER BAISA: Well, the business world that I've been in always looks at, you know, some kind of qualification of experience but also looks for performance and to see if you have, you know, good letters of recommendation, if you can show outcomes, and that you've grown a company, and that it, you know, yields good results or whatever. So my concern is that I don't think that the years is enough to make me happy about your being qualified.

CHAIR VICTORINO: Mr. Guzman?

COUNCILMEMBER GUZMAN: Thanks, Chair. I would also like to support what Ms. Baisa is saying in terms of the, you know, looking at the managing director's type policy form of government. And also what you have stated earlier that, you know, I think we do need the ability to remove. You know when I first got into office, I have EAR Committee which is Parks and Rec, and I had a director who was basically on leave for more than a year. And so if we had had that power then maybe at some point that director would have been removed much earlier than taking one year's leave of absence. But there are times that we do need to have that authority to step in and I think that's what the people who are looking for when they were looking at a managing type government, managing director type government. Someone to be able to step in and do something quickly and efficiently. So I think we do need to have that authority to step in and there are times when we do. When there is a director that's just rogue and the Mayor is completely protected that director or tolerates that director. So that's my other point. Thank you.

CHAIR VICTORINO: You all bring good...you all bring what I call excellent points of view and I believe there's not an easy answer to any of these questions; however, we're moving

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

towards what I consider a transparency and the ability to look at these various directors as they come in and their performance. I think this is very important because in any company, you know, sometimes you will bring in somebody who may not have all the great qualifications and you watch their performance and in some areas they perform admirably; other times it doesn't. You know you sometimes are forced with just this is the only person you got available for that position, you know, it's not like we have 25 people knocking at the door trying to pound the door in and get into the job. So again there are some definite changes and challenges but I'm trying to, trying to get the entire picture together so that we can...if we're going to bring this forward, we're going to put this on the ballot that the people will understand what this is all about. And again, directors have been one of the major issues, and secondly, you know, qualifications again need to be worked on. Again, if Personnel is going to be one to do the qualifications then maybe we need to sit down with them and give them direction because some of the qualifications they've come up to us in the past have not been suitable for positions that were being filled. Not to knock them but just what they had to work with. So again, I open the floor again, what other concerns do you have? I get the picture so far. I just want to see what we can achieve. Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I appreciate your flexibility this morning on allowing the discussion.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: I think it's very helpful and healthy, helpful and healthy, Chairman. On page, under Section 6.2, number 5 which is a long section, Chairman, you have a point regarding...situations regarding denial of nomination and the language states that the Mayor is required to make a new appointment within 60 days. So we can just prepare, I was wondering what was your understanding of the word new? Is it just a submittal that meets the clock? New means you cannot resubmit the same name? New means...I'm just trying to get an understanding of what is new because some of us have gone through unique situations in the past regarding the word new. So I'm just asking if you have a different understanding from myself, Chairman.

CHAIR VICTORINO: Well, you bring a good point. My interpretation of new would be someone who has not been or has not been submitted by the Mayor, that it's a new appointment. So if I submitted my name I mean my name was submitted and I was turned down, he cannot resubmit me as a new appointee because I've already been turned down. I think that has become very clear with boards and commissions, you know, we have turned down people and that name never came back out as far as a board or commission. So if you want to put specific language that any individual that has been submitted and denied would not be eligible as a new appointee. I mean we can do whatever you think is ...

COUNCILMEMBER HOKAMA: No, no, Chairman.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: Again this is a Charter --

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: --I don't need it to be as detailed and clogged up like a potential ordinance.

CHAIR VICTORINO: Yes, I agree with you.

COUNCILMEMBER HOKAMA: Okay. We can put things in ordinances that is appropriate regarding --

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: --specific additional detail that the body may feel or the community feels appropriate but I just want it on the record, part of the Committee Report --

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: --that the understanding of this Committee is that it is a new individual that is being submitted for consideration and not again sometimes in the past you had certain appointees that felt, was felt to be worthy enough to be resubmitted. Okay and I appreciate the component of the current Charter that has a 60-day limit 'cause those days until interim could have been years.

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: Interim appointments. So I appreciate the intent of going forward. I just wanted to make it very clear of our understanding what is a new appointment, Mr. Chairman, and that's why I bring that up for consideration. And I would agree with some of the comments already given on 6-4, I don't have a problem looking at ordinances regarding specific department positions if need be. The only one I find interesting in the Charter that one of the Members brought up is our variation on years. Some has three years, others is five. Those I would think that might be considered for five was only three years so is there a understanding or is that just what is basically the minimums of all municipalities, three to five years so we just pick those as the minimum standards, Chairman? 'Cause I thought Ms. Baisa brought up a legitimate question on why do we have the years at three and five? What's the magic of three and five?

CHAIR VICTORINO: I got to be perfectly honest, those were existing languages that we...

COUNCILMEMBER HOKAMA: Understood.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: So I'm not going to say anything more to that. I don't, I don't have an answer. I never really looked into that aspect but that was existing language that's in the Charter right now and I assume that many of us read that. And in many cases whether you understood or accepted it or not that's what was in the Charter. So, yeah, so anyhow, you have something else you wanted to add, Ms. Baisa?

COUNCILMEMBER BAISA: No, just that I've never understood it and I've never cared for it. I tell you why. You know I had a staff of about 300 people at MEO and there were times when we would want to hire but somebody was short by a couple of months and yet they were very well qualified and would have made a great employee. So I'm not crazy about that firm three year or that firm five 'cause I'm not sure that's how we get the best person which is the goal of all of this is that we get the best person doing the job.

CHAIR VICTORINO: Okay. Again, but minimums many times are set for that purpose of making sure that that person has the qualifications but, you know. But, Ms. Cochran, go ahead.

COUNCILMEMBER COCHRAN: Thank you very much. And I appreciate you trying to condense the...some of the applications into this one. I'm just reading the end question/proposal to be put on the Charter and sitting here and trying to be just the layman person picking up a ballot and just reading this maybe not having followed us, maybe not really following it like we are, seems I don't know, I think they'll be confused. It's very wordy. I think Mr. White mentioned that I hate to have a question...one of these points in here to throw it all out because a person says well I like those two but this, don't like it, so they're going to have to vote no on the entire question. So I don't know if there's a way to...and I think that's initially how it was proposed is each was separately a question and now you're trying to just incorporate it all because it seems to all match each other or fall into place with each other. So I'm just wondering, I don't know. For me I have concerns as to the lengthy question and all the stuff kind of added in but I understand...I get it and we're trying to simplify it but somehow it's looking a little more complicated if I were to not have ...

CHAIR VICTORINO: Actually it's not because you would have to do the same thing with each individual --

COUNCILMEMBER COCHRAN: Yeah.

CHAIR VICTORINO: --if we had done that because I incorporated their language.

COUNCILMEMBER COCHRAN: Right but I mean if you just stopped at, you know, the first...before first comma you can get it, you can digest it and go, okay, I get that, department director appointments, yes or no, you know. So anyhow that's just what I was looking at. And hearing why we're even here discussing these Charter amendments are because of the concerns within, we've all heard through our offices from the community, and to downsize of sorts or whatever. And so as this body, currently, in order to say we wanted to not have a certain person in a position or downsize the Mayor's 9th floor so to speak would be through the Budget. I mean we

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

clearly have that through defunding, you know, cutting funding but then of course within the program budget they can take from somewhere else to still fund that so-called position that perhaps we were hoping to maybe, you know, get rid of. So I don't know where...how that can be addressed if it's not through this process if at all and it doesn't seem like maybe there is other alternative process.

CHAIR VICTORINO: Well, there may be an alternative but this specifically goes to the various directors.

COUNCILMEMBER COCHRAN: Right.

CHAIR VICTORINO: Okay and specific positions that is in the Charter. Now as far as the Mayor's and who he hires and who he brings in and what he pays them is really up to the Mayor and as well as us as far as the funding mechanism. That was always our power if I'm correct, that's our means of, you know, control. If you want checks and balances in that respect. But like Mr. Hokama did mention that we've also always had that respect between the Mayor's Office, Council Services, and as well as our offices here, you know, as far as the need of the staff and what we feel is appropriate. So again I would be hesitant to...that would be a whole different subject matter. Just like again that not...that hasn't been agendized on this. Again we were looking at specifically positions that are in the Charter. Okay.

COUNCILMEMBER COCHRAN: No. Right.

CHAIR VICTORINO: And even the stuff you brought forward, everything is in the Charter or will be added into the Charter either by ordinance and/or by amendments to the Charter. Okay. So as far as what you're asking me right now, I really, really don't want to get into that and just so that you understand that I understand your question but again we're focusing on the positions that are in the Charter.

COUNCILMEMBER COCHRAN: Right. And I completely agree with the additional qualifications.

CHAIR VICTORINO: Yeah, okay that's a different matter but yeah.

COUNCILMEMBER COCHRAN: That's where people...and that's exactly what my proposal is in regards to the planning commissioners or the, you know, extended qualifications. So, again, I love all the questions. I just think combined it's, so a lot for someone to digest out there but it's, okay, that's up for discussion. Thank you, Chair.

CHAIR VICTORINO: You know and again you'd be doing three separate ones and that's fine. Yeah, so anyhow, so I have some research that was sent down from or sent up from our Council Services. State law gives independent boards and authorities over directors and Personnel Services, and Liquor Control. This is HRS 281-17 that was sent up from downstairs. And when it comes to Personnel Services HRS 76-75. Checking on the...they're presently checking on State law regarding the Liquor area, okay. So they did respond and I want to thank Mr. Raatz and the Staff downstairs for

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

responding to our questions earlier. Mr. White, I just wanted to let you know they did go look into it.

COUNCILMEMBER WHITE: Yeah, he also responded to me --

CHAIR VICTORINO: Oh, okay.

COUNCILMEMBER WHITE: --that Liquor is also off the table for us.

CHAIR VICTORINO: Okay.

MS. BROOKS: Chair, if I may? The citation for the Liquor is HRS Section 281-17.

CHAIR VICTORINO: Yeah, I did say that, 281-17. I did. And the other one is the Personnel Services is 76-75, yes. So anyhow just so, you know, again I don't want us focusing all over the place. I'd like to focus on what we're trying to accomplish today. So continuing on, other questions for Mr. Kushi or other comments in regards...I guess the question comes down to removal and I guess that's the main sticking point and qualifications.

COUNCILMEMBER CRIVELLO: Chair?

CHAIR VICTORINO: I think those are the two. Yes, Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you, Chair. So, Mr. Kushi, if I'm hearing you right the Mayor recommends the appointment basically to the Council and we approve or deny the appointment. As far as removal as it stands now or what we're trying to propose is the Mayor recommends the approval and then we approve or disapprove the approval. So if we wanted to remove, as I think Mr. Guzman is proposing, am I hearing you say that we don't basically have that authority because it has to be submitted maybe by the Mayor?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: Yes, my comment was by separating those two issues, yeah, power of appointment, the Mayor appoints you guys confirm. Okay that's settled. Second issue, you're moving an existing director, right now the Mayor can do it on his own --

CHAIR VICTORINO: Right.

MR. KUSHI: --a sitting director, your proposal is saying that you can, by two-thirds majority, you can remove a sitting director without the Mayor's comment or knowledge or even...or approval, just by this body. That authority is the authority to remove. My comment is that that authority to remove should be coexistent with the authority to appoint. And under the Charter, under the scheme of Executive and Legislative Branches the Mayor is the only one that can appoint the department directors subject to your approval. So I mean that's my comment and I'm not...Mr. Chair?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Go ahead. Go ahead.

MR. KUSHI: I don't know of any cases on point but last week, as recently as last week or the week before, the Intermediate Court of Appeals of our State came down with a ruling on the Police Commission's beef with the Kauai Police Commissioner and the Kauai Mayor. And the Mayor...the Commission appoints the Police Commissioner, the Mayor wanted to suspend or discipline the Police Commissioner, okay or whatever that case is and that issue went on appeal, the Police Commissioner said, you know, we appoint, we remove. But the Mayor says well as Executive Director, Executive Branch controlling all department heads I can suspend or discipline, you know. So it's in-between the power of appointment and removal. Our court came down and said no, the power of appointment is with the Commission --

COUNCILMEMBER CRIVELLO: Right.

MR. KUSHI: --the power of terminating is with the Commission. Anything between is still with the Commission.

COUNCILMEMBER CRIVELLO: Right.

MR. KUSHI: That was the ruling.

COUNCILMEMBER CRIVELLO: That's...

MR. KUSHI: Now, applying that kind of situation or analogy to what you have here may be applicable but it's a different situation, yeah.

COUNCILMEMBER CRIVELLO: Right, right. Thank you. Thank you for that analogy.

CHAIR VICTORINO: Ms. Baisa?

COUNCILMEMBER BAISA: Is Ms. Crivello done? Okay.

CHAIR VICTORINO: I'm sorry.

COUNCILMEMBER BAISA: Let me ask something else that I've been thinking about ever since we sat down here and started talking about appointment and removal. It says in here that, you know, we're going to appoint people or the Mayor will appoint people and then we've got 60 days to deal with all this and they serve until such time as, you know, the confirmation or the rejection happens. What is in the news of course this week is the appointment of the PUC Commissioner and there's all these legal stuff we're watching on TV about whether he can do that or he can't do that and what is the status of that PUC Commissioner. I'm wondering if Mr. Kushi could comment.

MR. KUSHI: I know what you're talking about --

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER BAISA: Yes.

MR. KUSHI: --but that's the State AG's problem.

COUNCILMEMBER BAISA: Yeah, I know is it anything like what...is it going to be a problem here?

MR. KUSHI: Right.

COUNCILMEMBER BAISA: Are these people real or not until we're all confirmed?

MR. KUSHI: Right. I believe the State law says that these commissioners are appointed by the Governor but confirmed by the Senate.

COUNCILMEMBER BAISA: Right.

MR. KUSHI: But I'm not sure what happens in the interim, you know, whether he serves, he has the authority to serve and vote pending Senate confirmation, but that's the big issue right now. In our situation in that one section you cited --

COUNCILMEMBER BAISA: Yes.

MR. KUSHI: --once the Mayor appoints they're in office for a period of time until you confirm but I think there's a maximum period of time they can serve.

COUNCILMEMBER BAISA: This is...is this that 60 days we're talking about --

MR. KUSHI: Right.

COUNCILMEMBER BAISA: --under 6.2? Well it just came to mind 'cause I've been seeing this on TV and here we are talking about the same kind of things. So I want to make sure we're okay.

MR. KUSHI: Yes, I believe it might be covered under 6-2, subsection 3?

COUNCILMEMBER BAISA: Yeah.

MR. KUSHI: Which has not been changed...oh, wait, which has been changed.

CHAIR VICTORINO: So, Mr. Kushi ...

MR. KUSHI: Yeah and, excuse me, Mr. Chair?

CHAIR VICTORINO: Yeah, go ahead.

MR. KUSHI: And 6-2.5 covers that interim period also.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER BAISA: So they would be legal and acting legally even though the confirmation is pending?

MR. KUSHI: Right.

COUNCILMEMBER BAISA: Okay.

MR. KUSHI: And there's a maximum, there's a time period for which to have the confirmation approved.

COUNCILMEMBER BAISA: Okay, you know, I just wanted to be sure we were clear because reading about all that stuff I'm saying my goodness they should have covered that a long time ago.

CHAIR VICTORINO: Well, again, that one...that also came down because of the idea that this guy was the attorney all these years for the PUC and now he's being appointed as a commission member, that was part of it and the lack of approval by the Senate.

COUNCILMEMBER BAISA: Correct.

CHAIR VICTORINO: The Senate had no time to approve...and the AG is saying it's okay. The Senate and others are saying no it's not. So again that's ...

COUNCILMEMBER BAISA: Even though that happens all the time that they make interim appointments and then when they go into session they approve 'cause I see it all the time.

CHAIR VICTORINO: Well this is not an interim, you know, so and that guy that's in there is saying no I serve until I am replaced. So there's a whole legal issue, yeah.

COUNCILMEMBER BAISA: And that's another problem is the other guy doesn't want to get out.

CHAIR VICTORINO: Yeah, yeah.

COUNCILMEMBER BAISA: Okay, no, I just wanted to make sure that, you know, our law covers that because we don't want that problem here. We have enough problems. Thank you.

CHAIR VICTORINO: That is correct. That is correct. You know so anyhow again ...

COUNCILMEMBER HOKAMA: Chairman?

CHAIR VICTORINO: Yes? Go ahead, Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, you know, for me the key core are ones that I am still unsure which way I'm going to make my final decision is of course Council

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

initiation of termination for Finance, the two attorneys, and Managing Director. Yeah, I mean to me that's the four top positions too because of succession to the CEO position. But just regarding those more workable ones I would say I find it interesting and I'm going to bring up the minimum again for the two top attorneys and interestingly enough this is the only one by State Statute, not Constitution, where the State Attorney General is required to be removed with the consent of the Senate. Okay that's something I got reaffirmed of. It's not a Constitution, I think it's a State law regarding the Attorney General's removal and that it requires advise and consent of the Senate. The only position of a State Cabinet official, the Attorney General interestingly enough. But for me, Chairman, I would say, I would like discussion 'cause I can see and be in support of increasing the minimum years for our chief attorneys to five years minimum from three.

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: I think it's important to have additional experience. I think temperament is critical especially when situations are again should be based on the issue before the County whether the Corp. Counsel or the Prosecutor leans with either Legislative Branch or the Administration. It shouldn't be by the appointing authority. It should be based on the issue. And one part that the Council does have in this area that the Administration does not have is the authority to initiate and approve special counsel. Okay, only we nine have that authority and affirm by State through the Supreme Court. So that's something that is good on our side, Mr. Chairman, but I don't have a problem at this point in time hearing some of comments and some of the issues between when we have our disagreements between the Legislative and the Executive Branch. 'Cause I can see when Corp. Counsel goes with us and then who represents the Administration. It's rare, some people can count on their one hand but it can occur and it has occurred but it's rare. So I just ask that we talk about it. You know I'm not at the point where like other counties I'm supportive of an elected prosecutor at this point in time. I think people want to minimize politics and increase transparency and one of the ways is to create confidence in key positions like Corporation Counsel and Prosecutor. So I'm open to other Members' thoughts but I am willing to support upping the minimum to five years, Chairman.

CHAIR VICTORINO: Well, I have no objections to that in all of the positions, instead of three years making it five. You know again I would have no objections to that.

COUNCILMEMBER HOKAMA: And one last one, Chairman?

CHAIR VICTORINO: Yes, sir?

COUNCILMEMBER HOKAMA: I think if we go and look at certain ordinance in the future about additional, more detailed qualifications --

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: --I understand what Ms. Baisa said --

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: --there are those that may not make the years but overall experience and there's always in Civil Service from on the bottom or equivalent substitution or whatever that phrase means --

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: --to take for those unique situations where the candidate has other attributes that may make a difference. You know we already give veterans an additional point because of service.

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: And so, you know, there's things that maybe the employer which is us can consider to taking upon those unique situations, Chairman. Thank you.

CHAIR VICTORINO: We're at the point of our midmorning break and so I'm going to throw a couple of things for you to think about while you're on the break and then come back and we'll look at these...some of these changes that you've been kind of putting in general and we'll kind of put it down more like in actual verbiage and then we'll go from there. One of 'em is, you know, if the group desires to keeping the four that Mr. Guzman brought up as far as hiring and as far as removal with a two-thirds or super majority, that would be one thing I'd put on the table for consideration. It maybe not all the directors but maybe those particular four, that would be one aspect. As far as qualifications, specific qualifications or equivalent to and that's one of the words we use in business all the time. So, you know, we'll look at some verbiage in that respect. And finally, as far as these various positions and the four top positions, making sure that the specific qualifications for those would be something that we would have...we would do by ordinance and all of 'em obviously but those four and I'm talking about Managing Director, Finance Director, and then Prosecuting Attorney, and Corporation Counsel. So something to think about and we're going to take a midmorning break and I'll ask you all to be back, I know this is going to be hard but all be back by 10 minutes to 11:00. Okay, this meeting stands in recess. . . .(gavel). . .

RECESS: 10:36 a.m.

RECONVENE: 10:58 a.m.

CHAIR VICTORINO: . . .(gavel). . . The meeting of the Policy and Intergovernmental Committee will come back to order. I have produced some changes that we have been discussing and I'll have the Staff pass 'em out to all of you. These are some of the words that Mr. Guzman had presented, you, Mr. Hokama, and others. And so, again, this is just, again, one first step in many steps that we need to try to accomplish this.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

Let me say this, I will...our next meeting is July 14th and it has come to my attention that two of the nine Members will not be here for reasons that they'll be traveling. And so as much as possible because I've really been a real bugaboo about all nine of us coming to a decision-making process and being the decision makers and not just seven or five, I would like to try to complete today what we need to complete. So just, and I'm not trying to put timeframes and restrictions but by the time these Members were to return, one of 'em would be in August and the other one would be the latter part of July, and then we would be moving right into--what do you call?--NACo, our NACo board meeting and many of us are taking off for that from the 19th to 20th of July. So again, please understand I'm trying to expedite this so I need your help and your focus in this area. So you've received the language. You haven't given me one. They gave everybody but the Chair. Okay, thank you. I appreciate it. Okay. So, if you would like, oh, let me get started, if you would, Ms. Brooks, let's start with Section 3-8, restrictions on Council and Councilmembers. Ms. Brooks?

MS. BROOKS: Yes, Chair. The top paragraph in the handout has in the red marked changes the suggestion of Mr. Kushi and also Mr. Guzman which is to leave in paragraph one which is why the brackets are marked out. And then to add in the qualifiers, unless otherwise provided in this Charter, neither the Council nor any of its Members shall in any manner dictate the appointment or removal of any, and then the words officer and employee would be taken out, and department head added that was suggested by Mr. Guzman, appointed by the Mayor, and then taken out at Mr. Guzman's suggestion, or by the subordinates. So that is the first of the suggestions.

CHAIR VICTORINO: Okay, let's stop right there because I'd rather make sure we get it done correctly and everybody is in agreement before we move to the next one. Okay, so you see the changes we've made with the suggestion that was made by both Mr. Kushi and Mr. Guzman. First of all, Mr. Kushi, I will give you first divvy then I'll turn to Mr. Guzman. Are you much more comfortable with this wording as provided?

MR. KUSHI: Yes, Mr. Chair, thank you. Unfortunately, no. The qualifier is fine, unless otherwise provided, but if you take out officer or employee and just leave department head in and you take out, or by the Mayor subordinates, then impliedly this okays this Council's authority to go down to any employee or officer, not a department head.

COUNCILMEMBER GUZMAN: Right, right.

MR. KUSHI: So, I would leave the language in but just put the qualifier in.

COUNCILMEMBER GUZMAN: Yeah.

CHAIR VICTORINO: Okay, so what you're suggesting is just put in, unless otherwise provided in the Charter neither, and then leave all the language as it's stated right now, do not remove any of that language?

MR. KUSHI: That would be my recommendation, Mr. Chair.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

COUNCILMEMBER GUZMAN: Yeah, I would agree.

CHAIR VICTORINO: Mr. Guzman, do you agree with that?

COUNCILMEMBER GUZMAN: I agree with that.

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: Chair, I don't recall adding in the department head but --

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: --yeah, by adding that department head it contradicts.

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: It's contrary to what we want but so what we want to do is --

CHAIR VICTORINO: Got it.

COUNCILMEMBER GUZMAN: --not be able to have to hassle with the subordinate officers or employees --

CHAIR VICTORINO: Okay. Okay.

COUNCILMEMBER GUZMAN: --but just deal with the department head so we need to delete that language in there, department head.

CHAIR VICTORINO: Okay, so what will...then so what was ...what will ...

COUNCILMEMBER GUZMAN: Then keep everything else in.

CHAIR VICTORINO: The language would read unless otherwise provided by...in this Charter, neither the Council nor its Members shall in any manner dictate the appointment or removal of any officer or employee appointed by the Mayor or by the Mayor's subordinates. Okay.

COUNCILMEMBER GUZMAN: Correct.

CHAIR VICTORINO: Alright, so make note that is what the paragraph one would read and leave the department heads out and I've read it the way it should be read, should be presented. Okay. Number two, go ahead.

MS. BROOKS: Number two is one of several paragraphs that has to do with the removal of the various department heads. This paragraph is only with regard to the Managing Director but once the language ...

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Is it 8.1?

MS. BROOKS: Eight dash ...

CHAIR VICTORINO: Eight dash one point two, okay, so that everybody knows where we're going to. Okay, go ahead.

MS. BROOKS: Correct. But this is just an example of what would be mirrored in the other sections. So in this section this was requested by Mr. Guzman the appointment is the same as the proposal but what would be changed would be the deletion of the language, with the approval of the Council, from the Mayor's removal power. So in other words it would read, the Managing Director shall be appointed by the Mayor with the approval of the Council and may be removed by the Mayor or by resolution approved by a two-thirds vote of the entire membership of the Council.

CHAIR VICTORINO: Okay. Questions in that area? Again, and that's what you had suggested, Mr. Guzman, that was your original language. Any questions in that area? Yes, Mr. Couch?

VICE-CHAIR COUCH: It's more in general what there are concerns with throughout this whole thing and this is the first one. So I think there's...I hear two different things, one, that everybody is fine with the approval, everybody would love to have Council approval for all the department heads.

CHAIR VICTORINO: You got it. Go ahead.

VICE-CHAIR COUCH: I don't think there's a problem with that. I think there's a concern by enough Members that the removal is an issue so my thought and I know it's going to give you a little bit of heartburn, Mr. Chair, but my thought is let's make a Charter amendment that say Council approves all the department heads, period, then another one that says Council can remove by two-thirds majority, department heads. Because if you combine them I think it's never going to make it to the Charter or if it gets in there it's never going to pass. So 'cause you're combining two very strong statements that if one or the other is not liked then the whole thing gets thrown out. So my question is do we want to throw out the, you know, the good stuff with the bad or separate and see, let them decide both.

CHAIR VICTORINO: Mister...wait, because you're making a substantial change now 'cause that was never part of the discussion and we did not bring that forward and it's again I'm going to point out not a discussion matter as far as a separate item. It was incorporated together. I'm going to have to ask Mr. Kushi, Mr. Kushi, if we were, first of all, we can remove it, that's not a problem. I know that can be removed as far as removal but now to introduce another change to say that the Council would have, for lack of a better term and we got to put the exact words, the power with either a super majority or a two-thirds majority whichever, removal of these various directors. My question to you is that hasn't been presented as a separate entity, can we do that now?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

MR. KUSHI: If I understand your question, Mr. Chair --

CHAIR VICTORINO: Yes.

MR. KUSHI: --yeah, it's, that's separate Charter section about removal, solely removal by the Council independent of the Mayor?

CHAIR VICTORINO: Right.

MR. KUSHI: It's not in writing anywhere. It's not posted. However, this is Committee work and again, you know, as long as it's done before first reading.

CHAIR VICTORINO: Okay.

MR. KUSHI: Again, we reserve our office's right...office's suggestion to give you some comments about the power of removal.

CHAIR VICTORINO: And that's what my concern is, you know, we had vetted it out here, but now we're going to separate it completely and have a separate section, a separate Charter section for removal, which I going be honest with you, Mr. Chair...Mr. Couch, that will never pass. I can. . .*(inaudible)*. . .you people are not going to... 'cause you going incorporate all these guys and I don't think that's going to work. But again, again my other suggestion was too really to focus on the main four like Mr. Guzman had said, Managing Director, Corporation Counsel, Prosecuting Attorney, and Finance Director. That's the ones I was going to focus on and take out the rest. For the removal process I would delete that from the rest of the directors. We would just be approval but that was going to be my next suggestion but again it is your call.

VICE-CHAIR COUCH: Okay, I'm sorry. I didn't know that you were going to remove the removal from the rest of the ...

CHAIR VICTORINO: Yeah, well, I hadn't gotten to there. You jumped the gun but that's okay 'cause I wanted to make sure that first I wanted to incorporate Mr. Guzman's four main...the four biggies, right, because of succession power and because of their power within the...our structure of government. It's so important that I think the Council have some ability to look at this individuals and saying whether they're doing a good job or not, and if they're not doing the job we think they should be doing, then instituting a ability to have them removed. That was the four I was looking at. Okay. So let's focus on that at this point. Anymore questions when it comes to Managing Director, Corporation Counsel, Prosecuting Attorney, and Finance Director? Yes, Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much. I understand what we're trying to do and I don't really have a problem with it; however, I understand that from what I see before us is that the Mayor can remove any one of these people.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Yes.

COUNCILMEMBER BAISA: Okay, he can say aloha, good bye.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: Now, what we're talking about as it reads right now is that we could try to do that likewise by a resolution. Council can say we don't like the Managing Director, he's not doing a good job, we want to get rid of him and by a resolution, and with a vote of two-thirds we can get rid of him. What my question is is there any interaction that's going to go on with the Mayor before we do this or we just sit here and say well we don't like him, he's gone? Kind of not so good, yeah. Wouldn't it be nice if after consultation with the Mayor and he says no and we say yes we do it anyway. Okay, no, you know what I mean? It just seems like there ought to be some interaction with the appointing authority before we dump the person.

CHAIR VICTORINO: People, you heard her suggestion, in consultation with the Mayor.

COUNCILMEMBER BAISA: Or after if he refuses to do it or?

CHAIR VICTORINO: That's the suggestion that's been put on the floor. Again, based upon the four positions we're talking about. Mr. Guzman, your ideas?

COUNCILMEMBER GUZMAN: Yeah.

CHAIR VICTORINO: Yes, go ahead, Mr. Guzman.

COUNCILMEMBER GUZMAN: Chair, I...in order to, you know, keep the balance of power, so you basically have the Mayor being able to fire at will his appointed directors. So we don't have a say in what he can and cannot do and same is true with our vote of non-confidence, no confidence, which is basically hey, we believe that this director is...has gone rogue and is not doing a good job. We as the body, Legislative body should have the authority to take that vote of no confidence and terminate that person or remove 'em. I think it would...it works just like in corporations. I think the idea here was to be more to emulate...emulate more of the managing director model where you have someone that's going to take action, that's going to be the one that's going to fire and hire and...when things go array. And so, like I...with these positions I think you really need to have that type of authority efficiently and expeditiously done and so I think basically the two balances of power are equal.

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: Yeah, thank you.

CHAIR VICTORINO: Okay and, you know, again I am opening the floor for discussion. Mr. Couch?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

VICE-CHAIR COUCH: Thank you, Mr. Chair. I can't support the removal of any of those except for potentially Corporation Counsel because that's our person as well. That's the only one that I think we can justify. And I think Mr. Kushi is correct, generally with approval...if you have approval power then or appointment power then you have removal power but you don't have removal power if you don't have appointment power. If we finally...if we get a chance to approve that's great, after that we have to live by our decision as well. If the person messes up like what Mr. Guzman said in another instance, you know, not one of these then that's up to the Mayor or the public in the next election but we can't...it's not our job to, you know, manage at that level. So, you know, I can't support the removal of any of them except for potentially the Corporation Counsel. And I do realize that those are the...the Managing Director and the Finance Director is number two and three in line with the Mayor but we didn't appoint the Mayor, so, we didn't approve the appointment of the Mayor, that's up to the general public. So I wouldn't be able to support that. Thank you.

CHAIR VICTORINO: Okay. Mr. White, you have any comments in this area?

COUNCILMEMBER WHITE: No, I'm pretty comfortable with the removal being limited to the four that Mr. Guzman came up with. I don't foresee using it much, you know, we have not had what I would consider a removal incident with any of the folks in the five years or so that I've been here. And I accept Ms. Baisa's concern that maybe we should have some consultation with the Mayor prior to any action being taken by the Council. If we're going to have the power to remove I don't think we should have it based on, you know, approval by the Mayor, but again I'm interested in finding out whether there's any case law that allows us to remove if we're not the appointing authority. And I believe --

CHAIR VICTORINO: Mister ...

COUNCILMEMBER WHITE: --Staff, well, maybe Mr. Kushi has been able to take a look at it but the Staff was unable to come up with any case law either way.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER WHITE: So ...

CHAIR VICTORINO: 'Cause Mr. Raatz did come up to address that situation and he says there are many cases where different agencies do have the ability to not only appoint but terminate based upon performance and other criteria and this is throughout other municipalities. So it's not unusual to have more than one entity be able to terminate employment of somebody but--hang on, Ms. Baisa, hang on.

COUNCILMEMBER WHITE: Okay.

CHAIR VICTORINO: So just so that you know that, that Mr. Raatz did bring that up to us but again there's no major case law and you know.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER WHITE: Right.

CHAIR VICTORINO: So, okay. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much. I don't want to be misunderstood. My point was that I thought like Chair White says that there should be a consultation with the Mayor --

CHAIR VICTORINO: Absolutely.

COUNCILMEMBER BAISA: --that doesn't take away our right to terminate if we want but we need to at least talk to him first. I think it's the fair thing to do.

COUNCILMEMBER WHITE: Yeah.

CHAIR VICTORINO: In consultation with the Mayor, yes, okay.

COUNCILMEMBER BAISA: But after. You know if we have a problem, bring the Mayor down, tell him that we have a problem with your guy and if he says I disagree I'm going to keep him, we still have the power to get rid of him.

CHAIR VICTORINO: Are we clear?

COUNCILMEMBER BAISA: But I think we should have some conversation first and I think that's what's been missing and why we're sitting here doing this is that we don't talk enough. I'm sorry.

CHAIR VICTORINO: Okay, okay. Alright so is there any objection to putting language in here somewhere and we'll go figure it out after consultation ...

COUNCILMEMBER WHITE: Yeah, following consultation.

CHAIR VICTORINO: Following consultation with the Mayor, okay, whoever the Mayor is.

COUNCILMEMBER COCHRAN: Chair?

CHAIR VICTORINO: Yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: Chair, I mean I understand what Ms. Baisa is saying and I think that's basically common courtesy, that is something that, you know, a person would want to do. But to put it in that level of a Charter I don't think is really necessary. I think it's deep within ourselves as professionals and what have you I should hope would be doing that. But I think sometimes conflicts come about and there is no talking. There is no consulting and that is why this body I think is looking for a way to have that okay in order to, you know, dismiss, deny, fire, whatever. And it's...but I'm sure steps would be taken before this is actually utilized I would think --

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Well ...

COUNCILMEMBER COCHRAN: --but we have never gotten to that point --

CHAIR VICTORINO: We haven't and ...

COUNCILMEMBER COCHRAN: --and that's where I think...so anyhow, I mean either way but I don't think it should be forced upon anybody to have to have to cause, you know. And that's why I mean if everyone is going to know what this body is thinking and planning to do and the others from the...can feel free to testify or send letters or whatever. You know and I think there's a venue for people to be involved without having to detail it in this Charter but that's just my comments, Chair. Thank you.

CHAIR VICTORINO: Well, again, I think it's not so much the detailing but to make it perfectly clear before something was initiated that consultation had been done. Okay, now it doesn't mean that we wouldn't do it if it wasn't in there, but the point I think is being made by some of the Members is the fact that by having that it has to be done. You have to have consulted with the Mayor prior to you initiating your resolution and I think that's also fair because that means if the mayors, you said Mr. Mayor or Ms. Mayor, whoever the mayor is at that point said, you know, you said we have a problem with certain-certain director and we want to sit down and talk with you. If the mayor says no I'm not interested in talking. I like this or I like this person and I believe he's doing or she's doing a good job, well, you've consulted with him or her saying that you are thinking of removal. So at least you've done that and it says specifically to do something like that. Again, I don't want to make what you call, our Charter so restrictive that we, you know, we tie ourselves up but also we got to make sure that we cover the bases 'cause that's what the public's been complaining about. This is exactly where the public is coming from and so we need to have that. You know this is not something I created, it's what the public has been telling all these years. I've been in these Chamber for 9½ years and I've heard this time-in and time-out. So that's my only take on that. It's not something that we forcing upon somebody, we want to make sure it was done and that way if, you know, if the Mayor decides for example of the other director and the Mayor says no, that person is doing a good job, I want to keep 'em. We feel that he's not, okay, we've consulted with the Mayor, boom, we have the right then to take that resolution forward. Anymore questions?

COUNCILMEMBER GUZMAN: Chair?

CHAIR VICTORINO: Ms. Cochran?

COUNCILMEMBER COCHRAN: No, no, I'm fine. Thank you.

CHAIR VICTORINO: Okay. Go ahead, Mr. Hokama had his hand up first and then --

COUNCILMEMBER GUZMAN: Oh, I'm sorry. I yield.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: --and then I'll recognize you. Go ahead, Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, again I find this healthy discussion. I appreciate my colleague from West Maui's point of view and her comments. I would agree with you, I don't want this to be so tight in the Charter that it takes away some of the flexibility a future Council may need, Chairman. But I think we've already setup at the beginning of the existing Charter our general philosophy and that is to follow the island way, honor the Hawaiian culture which is recognizing the uniqueness of a four-island County and doing it the island way. You know I throw that out a lot lately but I believe in it, that's who we are. We're islanders. We have to come up with our own island solutions to island requirements. And for me, Chairman, you know, I find it hard to believe any executive officer would be so insensitive or uninformed whether through the Council or the general community of major concerns with a department head and to ignore it. For me, you know, to go through a public process of vote of non-confidence so I mean, yeah, we could do it that way but I would hope the integrity of those that take appointments would find that if it gets so egregious of a situation that discussions of this type occur, I would assume that one of the first options would be resignation. But if we go through with this whole process then my thing to Mr. Kushi is because this is a personnel issue what about due process for the employee, and does it have to be in an open session court where anybody and everything deals with a personnel issue where we have always gone into Executive Session to protect the interest of individuals and whatnot regarding personnel issues? So are we going to view this in a different manner and make this potentially a public spectacle? Or are we bound by certain State laws and civil service requirements by rules that that individual has due process rights and we need to address those that are already established by law?

CHAIR VICTORINO: Mr. Kushi, would you like to respond to Mr. Hokama's question?

MR. KUSHI: Yeah, okay, Mr. Chair, if I understand the situation, again, comparing department heads, deputies that are appointed by commissions in the Charter and through State law, if the commission wants to terminate then they are entitled to a hearing and it's for cause but that's for commission appointees. If this thing goes through and you're considering a removal by two-thirds majority, we would suggest you do it in Executive Session pursuant to 92-, HRS 92-5(b) or whatever, hire evaluation dismissal of an officer. Unless the officer wants it in open session, he always has that...he or she always had that alternative. But, Mr. Chair, again, thinking out loud and for the record, I'm sitting here representing this Committee, I don't know what the Mayor's position is and I haven't asked so I'm advising you on behalf of my duties as a Committee. If this...if you're looking at the power of removal and these people are exempt. We went through that situation, again, they have no civil service rights, they have no automatic appeal rights to any commission. However, they have for wrongful termination rights to go to the Hawaii Civil Service...Hawaii Civil Rights Commission, the Federal EEOC. So if you ...

COUNCILMEMBER HOKAMA: Labor Board.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

MR. KUSHI: For wrongful termination, discriminatory actions, they have that independent right. So as the appointing authority equating to your authority to remove, you all may be subject to these proceedings. So you're jumping into something that you may not want to jump into. Again, the power of removal equates to the power of appointment. I think that's the basic premise. We need to do research. However, if you are looking at getting some Council input, the way it is right now or if you propose, the Mayor appoints subject to your confirmation. If you want to remove by two-thirds majority so that's subject to his approval also. Two-way street. Now, again, if he doesn't approve you will surely send him a message.

CHAIR VICTORINO: Okay, thank you for that comment. Mr. Guzman, I noticed you ...

COUNCILMEMBER GUZMAN: Yeah, well, you know, Chair, I know that we've done the research and it doesn't necessarily need to be a circular type approval.

CHAIR VICTORINO: Right.

COUNCILMEMBER GUZMAN: I believe that there's enough balance there to, you know, allowing the Mayor to terminate at will and then allowing the Council to terminate at will. I just don't want this whole consultation to be a trigger to prevent a resolution from happening, meaning that if you have that language in the Charter that we are required to consult with the Mayor. The Mayor puts up his hand and doesn't want to talk at all, that means we cannot move forward on a resolution. So if we're talking due process then let's talk notice. Let's give the Mayor, I don't know how many days' notice he gives his directors when he terminates them but whatever the Personnel Department gives is probably the standard we would probably use as giving the Mayor notice, 10-days' notice, 30-days' notice that we are going to be filing a resolution. And I think that's enough due process that's reasonable that would allow the Mayor to consult with or at least come forward and talk to the Council or the Council talk to the Mayor. He's been given enough notice. It doesn't lead itself to rash decisions that we're going to go ahead and file a reso tomorrow or terminating. You know it allows enough reasonable time to think about things, gives the Mayor a set, you know, 10 days, 20 days, 30-days' notice. And so I would be agreeable to a notice type thing but not a consultation requirement, that's a little bit too much I think in terms of trying to, you know, it could be used as a sword or a shield. Thanks.

COUNCILMEMBER BAISA: Chair?

CHAIR VICTORINO: Yes, Ms. Baisa?

COUNCILMEMBER BAISA: Chair, I want to respond to that. You know earlier it was said here that we want to do things uniquely the way we do things here in the islands which is kind of pono style. And one of the things that we treasure very much here and is very effective is this idea of talk story, and if you look at Hawaiian values ho'oponopono, so important to sit down, kukakuka. You know I think again and I'm going to say it 'cause I hear it all the time that we have a problem that we don't talk to each other. I don't see anything wrong with giving the Mayor notice and telling him

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

we'd like to have a meeting with you and yes it can be in Executive Session and tell him look, we're very, very upset and you don't want to terminate this person so let's...we're telling you we're going to do it. And if he says well I change my mind okay I'll just take care of it then and avoid all of that, it's done. And I don't see that this is such a terrible giving up of power on our part because we still have the power to terminate if we want to but I'm trying to think of doing it the island way. Thank you.

COUNCILMEMBER GUZMAN: Chair?

CHAIR VICTORINO: Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you. I would completely agree with Ms. Baisa and I think that by having it in Executive Session that leads to a lot of open dialogue. And even if we do propose a resolution it doesn't necessarily mean it's going to pass.

CHAIR VICTORINO: Absolutely.

COUNCILMEMBER GUZMAN: And a lot of things get resolved in Executive Session and we all know that --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER GUZMAN: --especially in Committee of the Whole. So, you know, I think it's...this is a great opportunity, bring down the director and the Mayor and the Administration and in Executive Session and we can talk about it. And if things need to be improved, hey, we can defer that reso for another 30, 60 days, 6 months and see if the director or that person improves. If not, hey, we bring that back up on the table but it's an opportunity to get the dialogue going. And I think this is tool that we definitely need to move forward in our County government. So thank you, Chair.

CHAIR VICTORINO: Okay. And no, at this point with your permission I'd like to work on again some of this word verbiage and try to make some more changes. If you have any suggestions on what you'd like changes to be done on those four now, again, I'm going to focus on the four before I go anywhere else, Managing Director, Corporation Counsel, Prosecuting Attorney, and Finance Director. Okay, those are the four I'm focusing on, okay. Again, like you said, Ms. Cochran, piecemeal but I'm focusing on areas that I need to focus on right now. And if there's any changes or verbiage that you'd like to submit to the Staff, please do so. I'm going to take lunch from 11:30 to 1:00 because some people had obligations they had to leave early and I wanted to at least give them that opportunity. So if with your permission if you all can be back by 1:00 p.m. and we'll try to wrap this baby up as best we can. Again, I'm afraid come the July meeting, the next July meeting I'm not going to have all nine of you, and that's going to make it difficult. So I want to try to accomplish as much as possible and get to Ms. Cochran and some others, get those taken care of. And I believe those are relatively simple to get done once we get past this big mountain. So, with no objections, I'm going to recess the meeting --

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

COUNCILMEMBER HOKAMA: Chairman?

CHAIR VICTORINO: --to 1:00 p.m.

COUNCILMEMBER BAISA: Chair?

CHAIR VICTORINO: Wait hang on. Mr. Hokama and then Ms. Baisa.

COUNCILMEMBER HOKAMA: Very quickly, Chairman.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: I just want to throw this out because so that it's on the record.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: I'm happy of your direction. I'm very supportive, and regarding the Finance and Managing Director positions and for future discussions, one of the areas that I would like the Committee to think about --

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: --whether or not it has enough merit for additional discussion, for me, Chairman, I'm looking at comes a point where I prefer under a certain situation that the person that takes over the Office of the Mayor be an elected position under certain circumstances. All other branches and levels of government deal with electeds in replacement of the top elected official. So I would like to have some discussion about whether or not a Member of this body or the Chairman or her should be considered as one of the succession positions under unique and special situations. Thank you.

CHAIR VICTORINO: Okay, thank you. And, Ms. Baisa?

COUNCILMEMBER BAISA: Oh, I was trying to confirm with you. You said our next meeting was on the 14th?

CHAIR VICTORINO: I think no, correction, correction, it would be July 11th. I'm sorry, correction.

COUNCILMEMBER BAISA: July 11th, okay.

CHAIR VICTORINO: July 11th. I said the 14th but I'm mistaken. I apologize.

COUNCILMEMBER BAISA: Thank you 'cause I looked on my calendar and that was Planning so I wondered if we had switched.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Just, no, no, I did not.

COUNCILMEMBER BAISA: Okay.

CHAIR VICTORINO: The 11th, July 11th.

COUNCILMEMBER BAISA: Okay, correct. No problem.

CHAIR VICTORINO: Okay, so this meeting will stand in recess till 1:00 p.m. . . .(gavel). . .

RECESS: 11:33 a.m.

RECONVENE: 1:02 p.m.

CHAIR VICTORINO: . . .(gavel). . . The meeting of the Policy and Intergovernmental Affairs Committee will reconvene. Have we passed this out already? Can you pass it out? We did during the break incorporate some of the language that had been discussed by us prior to the break. But I wanted to read over real quickly our Corporation Counsel isn't going to be able to say removal procedures are illegal just because they don't mirror the appointment procedure. If the Charter language is clear and assuming it doesn't implicate Constitutional rights or against discrimination, the courts will be okay with this. The overriding principle in all these cases is the...relating to the municipal charters; problems arise when the Charter language isn't clear or is silent on these issues. So as far as removal is concerned, again from what I've been told by our Council Services that it would not and there is other municipalities that have multiple jurisdictions or agencies that have multiple jurisdiction over issues of what we're discussing. Anyhow, so just to get that clarified before we get started. And, you know, I've come to the conclusion that no matter how hard I try I'm not going to have nine so whenever we get ready to vote on a certain issue we're going to vote with whoever is here and I'm sorry, you know, and they can come in later and bring their manao to the table. But I just cannot continue 'cause if we don't get this done in the next couple of weeks it's just not going to show up. So, Members, let us get started with some of the changes, 8-3 already we went over, unless otherwise provided by the Charter, and then we made the other changes. Eight-dash-one-point-two the Managing Director, we did add following consultation with the Mayor. We did add that in there. Okay. Eight dash four point two, same thing, 8-2.2 Corporation Counsel, same thing, and we did add five years or having equivalent experience. Okay, so --

COUNCILMEMBER BAISA: Very good.

CHAIR VICTORINO: --we're trying to make as broad as possible and yet keep experience as part of it.

COUNCILMEMBER BAISA: Excellent.

CHAIR VICTORINO: Okay. And then 8-3.2 Prosecuting Attorney, we did the same thing we put five years or having or have equivalent experience in that one. And so in that one

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

also I noticed you forgot to put that part in, following consultation with the Mayor. And don't mind the spelling, pardon me, you know, our Staff really worked fast and over the hour and a half. So, pardon, it's supposed to be Mayor in 8-2.2 and 8-3.2 it also should have the same language, following consultation with the Mayor. Okay.

MR. KUSHI: Mr. Chair?

CHAIR VICTORINO: Yeah.

MR. KUSHI: I'm sorry to interrupt but for the Corporation Counsel and the Prosecuting Attorney you changed it from three to five years?

CHAIR VICTORINO: Three to five years or have equivalent experience.

MR. KUSHI: Yeah, or have equivalent experience.

CHAIR VICTORINO: Yes.

MR. KUSHI: You know it basically says you got to be in good standing before the Supreme Court of Hawaii of the State. So you either are or you're not.

CHAIR VICTORINO: Okay. Okay. Yeah.

MR. KUSHI: So if you want to change it to five years of good standing, fine and well.

CHAIR VICTORINO: Okay. So in other words we don't have to...for those two particular ones you're saying having equivalent experience is not applicable?

MR. KUSHI: Yeah, 'cause you either are in good standing or you're not.

CHAIR VICTORINO: Okay, Members, do you have a question for that? Ms. Baisa?

COUNCILMEMBER BAISA: So, Ed, I'm assuming that equivalent experience having good standing with the bar, the bar would say that you have enough experience?

MR. KUSHI: Yes.

COUNCILMEMBER BAISA: Okay.

MR. KUSHI: Unless, Member Baisa or Mr. Chair --

CHAIR VICTORINO: Go ahead.

MR. KUSHI: --let's say he has two years of good standing for the Hawaii Bar...Hawaii Supreme Court but he has 10 years before the California Supreme Court. What do you want, you know?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER BAISA: So, okay, so we're looking for the Hawaii Bar. Okay.

CHAIR VICTORINO: Is that okay with the rest of you?

COUNCILMEMBER CRIVELLO: Yes.

CHAIR VICTORINO: Okay? You know so we could leave out or have equivalent experience for both Corporation Counsel and Prosecuting Attorney. We can remove those...that part for those two, yeah.

MR. KUSHI: And, Chair?

CHAIR VICTORINO: But the other two, Managing Director and Director of Finance, we want to keep that in, yeah? Okay. Mr. Guzman, did you get a copy of the changes? I think they're sitting right in front of you.

COUNCILMEMBER GUZMAN: . . .*(Inaudible)*. . .

CHAIR VICTORINO: Yeah. So it's basically the changes for Managing Director and for the Director of Finance is following consultation with the Mayor and below that a minimum of five years' experience or--no, no that one that stayed the same. When we went to Corporation Counsel and Prosecuting Attorney we put five years or have equivalent experience, but according to Mr. Kushi we don't have to put that because if they have five years of good standing with the Hawaii State Bar that's enough.

COUNCILMEMBER GUZMAN: Yeah.

CHAIR VICTORINO: Okay? Okay, are we clear with all these changes? Ms. Cochran, are you clear with those changes?

COUNCILMEMBER COCHRAN: I'm clear. Thank you.

CHAIR VICTORINO: Okay. You know I just want to, you know, get so that those four, that's the most important that we're moving to make sure we got the wording proper in those. Okay. Anymore questions with those four, Managing Director, Director of Finance, Corporation Counsel, and Prosecuting Attorney? Seeing none, let's move on to the other directors. Here we made the changes with the approval of the Council or resolution approved by two-thirds. We bracketed it out. In other words, Department of Public Works, Director of Parks and Recreation, Director of Housing and Human Concern, Director and Deputy Director of Water as well as the Director of Transportation and Director of Environmental Management, all there would be is the Council would approve, after the Mayor's nomination, we would approve their appointment and that's it, that's basically in a nutshell. We're not removing. And I think, Mr. Hokama, 'cause I know you brought that in. Do you believe that would be an appropriate move as far as just approval of these directors?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER HOKAMA: Chairman, thank you. For me it shows guidance from our part, you know, what we would like to see in a director. We would have a sense from the director's...nominee's responses to questions posed by the Members about how he looks at implementation of Council or legislative policies, his philosophy as an administrator or a manager of people, and how he views his role in an administrative structure whereby the Mayor still yet by this Charter is the Chief Executive Officer and has full control over the implementation, management of finances once Council passes a budget. I think those responses would help guide us in the confirmation process on whether or not the person is qualified to take on those responsibilities. At the end of the day though, Mr. Chairman, I don't want it to be a concern of anyone who wishes to provide service as a director to keep guessing whether he has one boss from the Administration or ten bosses. One from the Administration and nine Councilmembers.

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: It has always been my position that governance by a committee whether in public sector or private sector does not work.

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: You need to have someone who's going to be accountable and responsible for decisions. And I don't have a problem with us doing our part from a policy standpoint and I prefer then that we measure those that are responsible for implementation and operations accordingly, Chairman. So, I can support the proposal as you have revised it. Thank you.

CHAIR VICTORINO: Thank you, Mr. Hokama. Any further discussion? Mr. Guzman?

COUNCILMEMBER GUZMAN: Oh, thank you, Chair. I'd also like to add my support for the changes that you've done so far. Thank you.

CHAIR VICTORINO: Thank you. And again I followed your direction so it's not my changes. It's what you folks all had indicated you wanted to see done. So I want to thank all the Committee for their manao. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. I too can support this. I think that this shows that we are paying close attention to what the public has told us, they'd like more scrutiny, they'd like us to pay attention, and I think that this does that and it gives us a role in the selection which I think is good because then the public will be exposed to listening and seeing all that goes on. You know I never forget my first experience in approving the Director of Water and also the Corporation Counsel, it was a really good experience and I thought we had a really good exchange, you know, to hear about their qualifications, their plans, and what they wanted to do. So I think, Chair, this is a move in the right direction, and we'll try it. This can be tried and if future Council's feel that they need to get into the removal process, well there's another part for them to deal with. Thank you.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Thank you. What I would ask of your indulgence, I will ask right now that we be given some time, the Staff be given some time to complete what I call a clean version. Okay. And then I will make my recommendation. I think I know where everybody wants to go with this at this point, but can I make a clean copy and present that to you after we hear a couple other items?

COUNCILMEMBER BAISA: Sure.

CHAIR VICTORINO: And then what I'd like to do, take it out of order with your permission. With no objections, I'm going to take this out of order.

COUNCILMEMBERS: No objections.

CHAIR VICTORINO: What I'd like to move and, Staff, this will give you guys some time, okay, so can you get those corrections done and ...

MS. BROOKS: Chair, I also would ask the preference on Mr. Kushi's suggestion for the effective date of January 2nd?

CHAIR VICTORINO: Yeah, January 2, 2019. Yeah, please incorporate that. I agree wholeheartedly because all the other ones basically say the same thing. So I don't know how I missed that but I apologize, I did. Okay. So, if you can, Staff, can get that ready within the next hour or so and then I will bring it forward.

ITEM PIA-10(5): PROPOSED CHARTER AMENDMENTS (ATTORNEYS WITHIN THE OFFICE OF COUNCIL SERVICES) (CC 09-229, CC 14-165)

CHAIR VICTORINO: But in the meantime I would like to move and I'm going to take it out of order because this has no relationship to these other items that we're discussing. But I'm looking at PIA-10(5) proposed Charter amendment relating to the attorneys within the Office of Corporation Counsel [sic]. Okay, so that is not part of what we got to make changes of so if you will allow me to move there because I don't want to take up any of the other items until this one is passed and if that's what we want and then I could defer or file some of the other ones. This one comes from you, Mr. Guzman. Previously we had discussed the City and County of Honolulu has a similar charter provision which allows the Council to authorize Council Service attorneys to represent in court, in its court litigation in which case they are deemed to have the status of special counsel. So, Mr. Guzman, this was what you had...we had been speaking about, again, 10(5), so I will call upon you for your manao in this area. Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. I believe that the Committee has discussed this --

CHAIR VICTORINO: Yes.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER GUZMAN: --in depth previously and it was by the, I believe most of the Members or if not all of the Members believed that this was a good resolution amendment but they didn't like the fact that the designation of our Council Service attorneys would be legal representatives.

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: So what I did was I deleted that language as legal representatives and I added as special counsel to serve as legal advisors to the Council and its Members. So that would be in conjunction with Corporation Counsel.

MS. BROOKS: Excuse me, Chair?

CHAIR VICTORINO: Okay.

MS. BROOKS: We have an amendment from Mr. Guzman and we're wondering if we can pass it out?

COUNCILMEMBER GUZMAN: Oh, yes.

CHAIR VICTORINO: Oh, well, I guess so because that would be nice.

COUNCILMEMBER GUZMAN: Oh, I apologize I thought everybody had the amendment.

...(Recording playing in the background)...

CHAIR VICTORINO: Please turn off your phones if you don't mind please. A quick recess please. ...*(gavel)*...

RECESS: 1:17 p.m.

RECONVENE: 1:19 p.m.

CHAIR VICTORINO: ...*(gavel)*... The Policy and Intergovernmental Committee will come back to order. Mr. Guzman, we are in receipt of your amendment so if you would please.

COUNCILMEMBER GUZMAN: Okay, yeah, thank you, Chair. On...as stated earlier there was a discussion that some language needed to be amended and I believe that was from Mr. Couch and I can't remember the other Councilmember but I did in fact change the language. This is on the second page on Section 3-7.

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: And so the language would then now read as number two, the attorneys within the Office of Council Services may serve as legal advisors to the Council and its Members in addition to the attorneys within the Department of

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

Corporation Counsel. The deletion is...we are deleting from the original language, and legal representatives. We're deleting that because we don't want a separation of like attorney suing attorney. So it's more or less our attorneys are in conjunction with the Department of Corporation Counsel --

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: --advising on form and legality, research, things like that. We don't want to go head-to-head --

CHAIR VICTORINO: Yeah, in other words, yeah, in litigation, yeah.

COUNCILMEMBER GUZMAN: --on confrontational litigation so we took out the legal representative's portion. If we want to do that, then we're going to have to, you know, vote for a special counsel --

CHAIR VICTORINO: Right.

COUNCILMEMBER GUZMAN: --you know, later on but I think this is more in line with working together with the Corporation Counsel and utilizing our attorneys that we have in our Council Services.

CHAIR VICTORINO: As legal advisers, yeah?

COUNCILMEMBER GUZMAN: As legal advisers so that they, they do have that JD number that they can put as form and legality.

CHAIR VICTORINO: Okay, Mr. Guzman. Thank you.

COUNCILMEMBER CRIVELLO: Chair?

CHAIR VICTORINO: Yeah, yeah.

COUNCILMEMBER CRIVELLO: I have a question for Mr. Guzman. If we look at 3-6 powers of Council and 7.

CHAIR VICTORINO: Yeah, six and seven has this designation, yeah.

COUNCILMEMBER CRIVELLO: Yeah, attorneys within the Office...to designate attorneys within the Office of Council Services as special counsel to serve as legal advisers by a vote, et cetera. And then here in Section 3-7 it says the attorneys within the Office of Council Services. So does it mean that number seven we designate who and number six it's all?

COUNCILMEMBER GUZMAN: To retain...

COUNCILMEMBER CRIVELLO: I mean number two. Yeah, number seven we designate.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER GUZMAN: Yeah, designate.

COUNCILMEMBER CRIVELLO: And then under 3-7 we...it sounds like it's all of the legal. Is it one or the other or both?

COUNCILMEMBER GUZMAN: I think that the...on number seven is if we do designate our attorneys like for instance we may not want to have them as our legal advisers so this gives us an option --

COUNCILMEMBER CRIVELLO: I see.

COUNCILMEMBER GUZMAN: --to just say okay if this Council...like maybe let's say the next Council they don't want anything to do with our attorneys in Council Services.

COUNCILMEMBER CRIVELLO: Right.

COUNCILMEMBER GUZMAN: So this gives them a way not to just, you know, basically say hey we're not going to vote on a two-thirds to treat you as legal advisers or special counsel. So that kind of gives them an option.

COUNCILMEMBER CRIVELLO: I see.

COUNCILMEMBER GUZMAN: So, if this Council wants to utilize our Council Services attorneys then we can vote two-thirds, vote, and have them act as our legal advisers but not legal representatives like litigation but just advising us on form and legality --

COUNCILMEMBER CRIVELLO: Okay.

COUNCILMEMBER GUZMAN: --research, things like that.

COUNCILMEMBER CRIVELLO: Thank you.

COUNCILMEMBER GUZMAN: I mean it all depends on which Council. You know, we want to --

CHAIR VICTORINO: Yeah, well, I ...

COUNCILMEMBER GUZMAN: --keep it open on how the Council wants to operate.

CHAIR VICTORINO: I remember the discussion and the form of [sic] legality that we were trying to say yes we can use them if we want to --

COUNCILMEMBER GUZMAN: Right.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: --to serve as legal advisers as, you know, for...as special counselors to serve as legal advisers by a vote of two-thirds. Okay, I remember that discussion and we saying yes to that and of course without any additional compensation.

COUNCILMEMBER GUZMAN: Right.

CHAIR VICTORINO: Okay, so that was also discussed.

COUNCILMEMBER CRIVELLO: Right.

CHAIR VICTORINO: Here what they're saying is the attorneys within the Office of Council Services may serve as legal advisers to the Councilmembers in addition to attorneys within the Department of Corporation Counsel. So I think the difference becomes if we want them to be...serve as special counsel then you'd need a two-thirds vote if I'm reading this correct, Mr. Guzman. The other one says they can serve as legal advisers. We don't have to vote on it but they can serve as legal advisers in addition to the attorneys within the Department of Corporation Counsel. Am I correct? 'Cause I kind of remember that was the discussion but I may be wrong, but that's what I read here. But you tell me, Mr. Guzman, you're...or maybe, Mr. Kushi, if you read these two, number seven and then number two.

COUNCILMEMBER GUZMAN: Yeah, I think you're correct. I think...I don't know where that that language, I haven't seen this language for a little bit. I apologize but I think you're correct, Mr. Chair, is that No. 7 gives the option to the Council to designate our attorneys as special counsel.

CHAIR VICTORINO: Right.

COUNCILMEMBER GUZMAN: But it still has only --

CHAIR VICTORINO: The other one just ...

COUNCILMEMBER GUZMAN: --it still has the language in there to serve as legal advisers.

CHAIR VICTORINO: Legal advisers, yes.

COUNCILMEMBER GUZMAN: So I have to revert back to my original position which is I thought that basically it would be up to the Council, whichever --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER GUZMAN: --Council is sitting if they wanted to utilize our Council Service attorneys for that term as legal advisers, then it needs a two-thirds vote to empower them to act as legal advisers. But if this Council or the next Council doesn't want to interject them, our attorneys, as legal advisers then it's their option. It would die as a, you know, not having enough votes --

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

CHAIR VICTORINO: Right.

COUNCILMEMBER GUZMAN: --but that's, that was what my intention was. But if you read it differently maybe we need to rework the language.

CHAIR VICTORINO: Yeah. Mr. Kushi, when you and, you know, being outside of the, you know, of the Council Services, the Office of Council Services, number seven and number two, number seven as it designates to serve as...to serve as special counsel to serve as legal advisers by a two-third...'cause I see that as special counsel. Whereas down below these attorneys within the Office of Council Services may serve as legal advisers, that's all they doing. This one is saying Council Services as special counsel to serve as legal advisers by a two-third...two-thirds vote of the entire membership. So what do you understand this to be if I may ask you, Mr. Kushi?

MR. KUSHI: Yeah, as I understand the proposal --

CHAIR VICTORINO: Yes.

MR. KUSHI: --which didn't come from us but Member Guzman makes a very good and clear distinction between legal advisers and legal representatives.

CHAIR VICTORINO: Right.

MR. KUSHI: I think if you want to be legal representatives you need to definitely change the Charter and put it into...under the powers of the Council, Section 3-6. If they're just serving as legal advisers to this body and its Members, I would think it would just...don't mess with 3-6, just put it into 3-7 and just add, you know, by a majority vote of the Council. You know and then it's clear that they can serve as legal advisers, memos, et cetera, but when it comes to...if anything hits the fan then our office would have to get involved, and it doesn't need...it's not a special counsel situation.

COUNCILMEMBER GUZMAN: Right.

MR. KUSHI: There's no real necessity for it as compared to 3-6.6. So if that's the case I don't see a problem. But it would be my understanding on a case by case basis --

CHAIR VICTORINO: Right.

MR. KUSHI: --and instead of a super majority, just a majority vote by resolution.

COUNCILMEMBER GUZMAN: So ...

CHAIR VICTORINO: I think we discussed about a two-thirds because we wanted to make sure that the Council as a unit, you know, not just majority. 'Cause I remember this discussion and I may be, you know, I may be off track but I remember the discussion. Ms. Baisa?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER BAISA: Thank you very much, Chair. I know what we're trying to do --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: --but I don't read this language the way it's being explained. I am concerned that there may be an understanding that vote of two-thirds would be done and then that's the way it is. I don't see where it says each Council will decide that. So I think there needs to be something in there, who and when. Is it an incumbent Council that decides? Because otherwise once it's set it's set.

CHAIR VICTORINO: Well, I thought it was done by a per case basis not the term, Mr. Guzman, so I ...

COUNCILMEMBER BAISA: And if it is --

CHAIR VICTORINO: Yeah, by ...

COUNCILMEMBER BAISA: --by case then we got to put it in.

COUNCILMEMBER GUZMAN: Is it per case?

CHAIR VICTORINO: Yeah, per case basis or --

COUNCILMEMBER BAISA: Yeah, it doesn't say.

CHAIR VICTORINO: --yeah, well, it wasn't by the term.

COUNCILMEMBER GUZMAN: It's very vague. It's vague.

CHAIR VICTORINO: Yeah, it wasn't by the term because you remember Mr. White had brought up a couple times it happens very infrequently but when it does, you know, we'd have that, that...so I don't know how to, you know, to change the wording to add on I guess a per case basis or upon the request of the sitting, and it's got to be sitting Council because it cannot be a former Council, you know.

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: Unless you guys ...

COUNCILMEMBER BAISA: I think we need to clarify that somehow.

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: Yeah.

COUNCILMEMBER GUZMAN: Okay.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

COUNCILMEMBER COCHRAN: Chair?

CHAIR VICTORINO: Go ahead. Yes, miss ...

COUNCILMEMBER COCHRAN: Thank you. And so, yeah, I'm just trying to...what I recall the discussion on this it was in reference to having our own attorneys downstairs at Council Services to be able to give...to be special counsel, but I thought it is when it hits the fan, you know, times that we can elect to have someone from 7th floor to do what our existing Corporation Counsel does for us if we so choose to utilize one of those, you know, people there. That's what I thought this was about, so then I had a whole different take on what was trying to be inserted here to this Charter change for me. 'Cause if I recall there were certain instances where we felt like we had better representation via 7th floor than 3rd and we wanted that option. But also to be...a lot of times my own staff will ask for special counsel via 7th floor and they said we're not able to do that. So I thought it was also going to address those situations.

CHAIR VICTORINO: You mean legal advice --

COUNCILMEMBER COCHRAN: Legal advice, yeah.

CHAIR VICTORINO: --not special counsel, yeah.

COUNCILMEMBER COCHRAN: Yeah legal advice and special counsel being different but the Charter changes were going to be incorporated in order to address those two types of circumstances which is just the light weight, give us legal advice, you know, in our offices and then the other if we wanted you to, not stand trial, but to really sit there as a special type counsel then we could also go...use them for that, but anyways.

CHAIR VICTORINO: But it wasn't for the term I remember that 'cause Mr. White had said it happens very infrequently so it really was based upon the issue at hand. It wasn't for the whole term. And so see this is what happens when you discuss 6,000 other things in between and now you come back to this and you're like okay what did we say. But I remember this discussion and the designation of attorneys in special cases from our office. So, Mr. Kushi, you have some other take on this 'cause you're ripping in there? Go ahead.

MR. KUSHI: Okay, Member Cochran is exactly correct. There are instances where...I'll give you an example what the City and County of Honolulu has in its Charter --

CHAIR VICTORINO: Yeah.

MR. KUSHI: --which I believe Member Guzman knows too. I'll just read it to you. It's under Section 3-107, one of these paragraphs: The Council may authorize attorneys within the Office of Council Services to represent it in court litigation where the dispute is with the Executive Branch and where the Corporation Counsel represent the Mayor or officers of the Executive Branch. In the event that attorneys within the Office of Council Services should be authorized to represent the City Council, those staff

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

attorneys shall be deemed to have the status of special counsel. If you want to have such language in there then it properly would belong to...in Section 3-6.

CHAIR VICTORINO: Yeah, that's why we put what we did.

MR. KUSHI: And also the added thing about serve without additional compensation.

CHAIR VICTORINO: Yeah.

MR. KUSHI: But in terms of just giving legal...be legal advisers, I don't see a problem.

CHAIR VICTORINO: Three point seven would cover that.

MR. KUSHI: Three point seven, as long as it's not a court case or legal representation.

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: Yeah. Now, I remember.

CHAIR VICTORINO: Now you remember.

COUNCILMEMBER GUZMAN: This is --

CHAIR VICTORINO: Yeah, this is one of those ...

COUNCILMEMBER GUZMAN: --like a total offshoot from Oahu --

CHAIR VICTORINO: Right, right.

COUNCILMEMBER GUZMAN: --'cause we were like okay we don't want to --

CHAIR VICTORINO: Be the same as Oahu.

COUNCILMEMBER GUZMAN: --yeah, we don't want to be --

CHAIR VICTORINO: Yes.

COUNCILMEMBER GUZMAN: --you know, litigating against Corp. Counsel.

CHAIR VICTORINO: That's correct.

COUNCILMEMBER GUZMAN: So we changed the language somewhat to try to make it, yeah, we will designate our Council Services as special counsel but for legal advice --

CHAIR VICTORINO: Right.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER GUZMAN: --not necessarily litigation. I think that was one of the...and then that being said we were to delete the language of legal representatives. So I kind of see where we were going during the discussion and I tried to amend it to --

CHAIR VICTORINO: To what, to what ...

COUNCILMEMBER GUZMAN: --yeah, to what the body wanted.

CHAIR VICTORINO: Yeah. Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I think from our...from Council's experience going to court with the Administration, I can be supportive of the intent of where we're trying to go, Chairman. You know I don't have any particular ownership to the City and County's proposed, their current language or Mr. Guzman's. For me I don't have a problem allowing our legislative attorneys be considered allowed to provide us with legal advice. I don't have a problem looking at them for potential special counsel designation if it's appropriate, but I think it's still to the Council's benefit and advantage that should we need particular expertise in a specialized area that we still have the ability to go outside and hire a third-party individual or firm that best suits our requirements for special counsel designation, and whatever compensation we agree to. But I would say, Chairman, for me it's a case-by-case situation. I wouldn't look at it from a term perspective. I'll look it from a case-to-case perspective and if anything it kind of supports what we have in our job description and job requirements of what we expect a legislative attorney to be able to have part of their knowledge base, whatever minimum experience we require them. And so I don't have problem utilizing them to the best of their abilities to forward our positions but they might not be the best litigator --

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: --in a court situation --

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: --and for me that's a key component in who I decide to help represent us in special counsel in litigation.

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: So for me that's another component that I would ask we consider, but I think this is an improvement toward reaching what I believe is our mission or our goal and so I can be very supportive.

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: And I look forward to advice on what might be the better language to present for consideration, Chairman. Thank you.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Okay. So, from what I'm understanding, you know, we have, and that's why I was saying no to you, Ms. Cochran, because I remember that discussion about Oahu and yet we didn't want to be the same way and we were going in a different direction. And I think this is the direction that the Staff and I were given. Now the exact wording, you know, whether you want to put a per case basis or as of the Council's prerogative. I don't know what words you want to put. And then as far as litigation, you know, Mr. Hokama, where would you want to put that, under six or under seven? I would assume you would want to go under 3-6 which I think would be more appropriate but, you know, I'm asking for your guidance in how we want to finish this up. Because I think we agree in what we're trying to get done here and again like you mentioned a number of times, Mr. White, and I used your name a number of times, you said it only comes up once in a while but it's the once in a while that has driven us crazy. So do you have any comments, Mr. White, before I recognize Ms. Crivello?

COUNCILMEMBER WHITE: Yes, thank you, Chair. You know I agree with Mr. Hokama's perspective where if we can depend on our own staff attorneys for legal advice --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER WHITE: --that solves my issue because I think if we're going to the step of litigation against the Administration, then that should take a vote of the Council and we should be hiring a specialist in whatever that area is. My concern is having the ability for the Council to get legal advice from our own attorneys or easily get special counsel for that, you know, on a retainer to do the same thing. But at this point I don't feel compelled to request authority for special counsel as we have in the...as I have in the past because right now we have working for us two first deputies, two prior first deputies. I'm confident that we can get a very good sense of where any issue lies and if it becomes a bone of contention between the Council and the Administration that's when the issue should be brought back to the Council for a vote as to whether we engage special counsel. So I'm...of course then I'm thinking okay but this is, this is for a long, long period if we put something in the Charter. So my issue is to have the ability to have legal advice from our Staff or have an ease of getting special counsel for that purpose on a retainer, not to engage for litigation 'cause I think litigation we have the ability to do that now through the hiring of special counsel.

CHAIR VICTORINO: Okay.

COUNCILMEMBER WHITE: Thank you.

CHAIR VICTORINO: So, again, I guess my question comes up does seven resolve the issue that we're referring to that if you needed to name somebody, one of our members as a special--now you getting to that point now, Mr. Chair.

COUNCILMEMBER WHITE: But see my feeling is --

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Yeah.

COUNCILMEMBER WHITE: --to go and get special counsel, outside special counsel should require a vote of two-thirds.

CHAIR VICTORINO: Right, right, right.

COUNCILMEMBER WHITE: But to get advice from our own attorneys, for them to act as legal advisers I don't think we should have a vote requirement for that. I think whether you're a chair of any committee or the Chair of the Council you should be able to get that legal advice and be able to depend on it.

COUNCILMEMBER COCHRAN: True.

COUNCILMEMBER WHITE: And at that point you make a decision whether you go to whatever committee it is and ask for I guess it would be PIA, this Committee for authorization for special counsel, so.

CHAIR VICTORINO: So we can just take out number seven then and that's what your recommendation is remove number seven entirely?

COUNCILMEMBER WHITE: I'm not an attorney. I'll leave that up to --

CHAIR VICTORINO: Yeah, okay.

COUNCILMEMBER WHITE: --the attorneys like Mr. Kushi.

CHAIR VICTORINO: Mr. Guzman?

COUNCILMEMBER GUZMAN: So, Chair, yeah, I kind of get where everybody is going.

CHAIR VICTORINO: Yeah, yeah.

COUNCILMEMBER GUZMAN: So number six, number six would allow us to hire outside --

CHAIR VICTORINO: Right.

COUNCILMEMBER GUZMAN: --attorneys. Number seven, I can change this language to just and remove the special counsel portion of it, so to read as follows, to designate attorneys within the Council Services to serve as legal advisers ...

COUNCILMEMBER HOKAMA: To its membership.

CHAIR VICTORINO: But we have number six so, you know, 3.7 [sic] down below?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER GUZMAN: Yeah, 3.7 [sic]. I guess, I guess we can delete number seven. I don't think so, but I think we still need to have that authority --

CHAIR VICTORINO: Okay.

COUNCILMEMBER GUZMAN: --to be able to, you know, as one of the authorities under the Council. So number seven would be we do have the authority to designate our Council Service attorneys as legal advisers.

COUNCILMEMBER COCHRAN: Period.

COUNCILMEMBER CRIVELLO: And special counsel.

COUNCILMEMBER GUZMAN: Period without being ...

CHAIR VICTORINO: So then we wouldn't need number two and number seven, 3.7 [sic]?

COUNCILMEMBER GUZMAN: I think 3.7 [sic] it kind of explains it better, but.

CHAIR VICTORINO: Okay that's what I'm trying to get to because ...

COUNCILMEMBER GUZMAN: But I, but I still think...is there any problem with having them both in there?

CHAIR VICTORINO: I don't know.

COUNCILMEMBER GUZMAN: Because just by using the language to designate attorneys, this is our power, to designate attorneys within the Office of Council Services to serve as legal advisers. So that way we don't have to vote on it.

CHAIR VICTORINO: But then, and then 3.7 [sic] would say the attorneys within the Office of Counsel Services may serve as legal advisers to the Council and its Members in addition to attorneys within the Department of Corporation Counsel.

COUNCILMEMBER GUZMAN: Yes, I like that language because it shows there's a cooperation with --

CHAIR VICTORINO: Well, I got that, yeah, I got that.

COUNCILMEMBER GUZMAN: --the Department of Corporation Counsel.

COUNCILMEMBER CRIVELLO: Yeah, I think...Chair?

CHAIR VICTORINO: Okay, hang on, I just want one at a time. Okay, let me see if...are you finished? Are you finished, Mr. Guzman?

COUNCILMEMBER GUZMAN: Oh, yes, yes, Chair. Thank you.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Yes, Ms. Crivello?

COUNCILMEMBER CRIVELLO: I was just going to say because this section is powers of Council so what we're doing with item seven is giving us explanation, the powers we have as far as the designation of attorneys. And then Section 3-7 is Office of Council Services so it explains further what the Office of Council Services provides.

CHAIR VICTORINO: So I would say then ...

COUNCILMEMBER CRIVELLO: Yeah?

CHAIR VICTORINO: Yeah. Okay, I would say then we should --

COUNCILMEMBER CRIVELLO: If we look at the sections.

CHAIR VICTORINO: --revert this. We should put six and seven and seven and six and because to me it makes more, you know, when you're going down the proper steps you get to six which would now say to designate attorneys within the Office of Council Services to serve as legal advisers and delete the rest. And then number seven would then be to retain or employ by a vote of two-thirds for special counsel. I'm just removing the two. I'm not taking 'em out. I'm moving seven to six and six to seven.

COUNCILMEMBER WHITE: Oh, I see what you're saying.

CHAIR VICTORINO: Do you see what I'm saying? Then it makes more logistical.

COUNCILMEMBER GUZMAN: Yeah, it makes sense, yeah.

CHAIR VICTORINO: Right?

COUNCILMEMBER GUZMAN: But my question is, Chair --

CHAIR VICTORINO: Well, I'm just asking.

COUNCILMEMBER GUZMAN: --is that going to be complicated in proposing an amendment for the ballot? Like, you know, changing...move, you know, six to seven, seven to six?

CHAIR VICTORINO: Well, no, no.

COUNCILMEMBER GUZMAN: Is that a big deal? I'm not sure.

CHAIR VICTORINO: I mean we're doing it here now.

COUNCILMEMBER GUZMAN: Okay.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

CHAIR VICTORINO: Yeah, we're doing it here now and I think it would be, it would make more sense when people are reading it.

COUNCILMEMBER GUZMAN: Oh, yeah, no, I agree but when it is presented to the public is that another step that we have to show that hey we're actually ...

CHAIR VICTORINO: No we don't, no we don't have to do that.

COUNCILMEMBER GUZMAN: Oh, okay. Okay.

CHAIR VICTORINO: Yeah, so if we move seven to six and six to seven I mean we don't have to go through an explanation why we did that but then it makes more sense the way the thing moves --

COUNCILMEMBER GUZMAN: Oh, yeah.

CHAIR VICTORINO: --in its power of duties.

COUNCILMEMBER GUZMAN: I would agree. Yeah.

CHAIR VICTORINO: Mr. Kushi, you raising your hand, I'm sorry.

MR. KUSHI: Yeah.

CHAIR VICTORINO: Go ahead.

MR. KUSHI: Try to un-confuse me.

CHAIR VICTORINO: Yeah, I'm not trying hard.

MR. KUSHI: Three dash six new subsection seven, are you going to eliminate that?

CHAIR VICTORINO: No, we're going to move, yeah, what is going to read is to designate attorneys within the Office of Council Service to serve as legal advisers. That's it, all the rest is going to be removed. Am I correct, Mr. Guzman --

COUNCILMEMBER GUZMAN: Yes.

CHAIR VICTORINO: --that's what we...and are we all in agreement with that? Okay.

MR. KUSHI: So you don't need a two-thirds vote?

CHAIR VICTORINO: No. But now you move six to seven, this is to retain special counsel and then you need a two-thirds vote. Is that correct? Yes, Mr. Hokama?

COUNCILMEMBER HOKAMA: This may be semantical, Chairman, so --

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: That's okay, that's fine.

COUNCILMEMBER HOKAMA: --you know but I kind of see some of the concern Mr. Kushi may be having and just let me tell you my area of cloudiness at this time. I don't have a problem and I can be supportive of allowing our Council Services attorneys to give us legal advice.

CHAIR VICTORINO: Got it.

COUNCILMEMBER HOKAMA: And so either 3-7 language can take care of it, but what I'm also hearing is that if we choose too Council can also by an appropriate vote count designate Council Service attorneys as special counsel also which potentially can go to litigation if we feel that's the right group or individuals to represent Council's interest. So I'm just trying to make that, sure that that is, my understanding is accurate.

CHAIR VICTORINO: No, I don't think so but go ahead. Mr. Kushi, I think and correct me if I'm wrong, Members, what you were saying earlier is that on number seven that attorneys within the Office of Council Services to serve as legal advisers. All the rest would be deleted as far as two-thirds majority, such designations without additional compensation. All of that is deleted. Okay. So the change would be to designate attorneys within the Office of Council Services to serve as legal advisers. Now is that correct, Mr. Guzman? Is that what we were changing that to?

COUNCILMEMBER GUZMAN: Yes, and I was under the understanding that under number six --

CHAIR VICTORINO: Yes.

COUNCILMEMBER GUZMAN: --to retain or employ by a vote of two-thirds of the entire membership special counsel for any special matter.

CHAIR VICTORINO: Right.

COUNCILMEMBER GUZMAN: We could, it doesn't prevent us from appointing our own Council Services to special counsel.

CHAIR VICTORINO: No.

COUNCILMEMBER GUZMAN: That that, to me that would be open. I mean either we get an outside for special counsel or we could get our own Council Services 'cause it's kind of vague that way, the way it's written. It doesn't limit it.

CHAIR VICTORINO: Mr. White...yeah and no offense, I think I heard you say it differently, Mr. White, but go ahead.

COUNCILMEMBER WHITE: You know I'm not sure that it's necessary to preclude our own staff from being assigned to special counsel but I'm...but that would be for a very

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

specific purpose and it would require a vote for special counsel like any other special counsel vote.

COUNCILMEMBER GUZMAN: That's what I thought we would include in number six.

CHAIR VICTORINO: Okay. Mr. Kushi?

MR. KUSHI: Mr. Chair, if I may? And if this is the body's intent.

CHAIR VICTORINO: Yes.

MR. KUSHI: On a routine basis day-to-day you're saying authorize the Council Services to give you legal advice, legal advisers, and that would be taken care of 3-7 new subsection 2.

COUNCILMEMBER GUZMAN: Correct.

CHAIR VICTORINO: Okay.

MR. KUSHI: On certain occasions referring to Section 3-6 for a real necessity you would say you want to retain by a two-thirds majority vote in-house or outside counsel. So if that's the intent I would suggest just amend 3-6-6 [sic] and just say to retain, employ or designate by a two-thirds --

CHAIR VICTORINO: Okay, there you go.

MR. KUSHI: --vote of its entire membership special counsel for any special matter presenting a real necessity for such employment, any such employment shall specify a compensation if any. So when you designate you may say I designate you but I not going pay you, that would be your staff. So I think that would cover your choice to retain special counsel. Now again we caution Council Services Staff to comply with the Hawaii Rules of Disciplinary Procedures, professional rules, meaning that they need a supervisor, et cetera, et cetera to be...actually represent you in court. And thinking about...Mr. Chair, if I may?

CHAIR VICTORINO: Yes, go ahead.

MR. KUSHI: The Oahu language if it did go to court and they appoint their Council Services staff, our office would then recuse itself because we cannot, this body is our client. So we'd have to come in for special counsel, too.

CHAIR VICTORINO: You make this confusing. Okay, but I like your language. I think right, Mr. Guzman --

COUNCILMEMBER GUZMAN: Yeah.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: --I think that covers pretty much the entire desire that you had originally put forward because instead of having this number seven designating attorneys to do all of that, you're going to cover it under six.

COUNCILMEMBER GUZMAN: Number six, yeah.

CHAIR VICTORINO: Right?

COUNCILMEMBER GUZMAN: Right. So basically what Mr. Kushi was saying is that, yeah, if we change the language for number six to retain or employ --

CHAIR VICTORINO: Or employ or designate.

COUNCILMEMBER GUZMAN: --or designate by two-thirds, then that would cover when if ever we want to retain our own attorneys for special counsel. And then ...

MR. KUSHI: Mr. Chair, one more addition, I would say to retain, employ or designate by a vote of two-thirds of its entire membership special counsel as legal representatives, as legal representatives for any special. So you put that term legal representative.

CHAIR VICTORINO: So you're not using ...

MR. KUSHI: Not legal advisers.

CHAIR VICTORINO: Not legal advisers. Now you're using legal representative.

COUNCILMEMBER GUZMAN: Representative, yeah, I see.

MR. KUSHI: Right, that states the distinction that you're trying to make.

COUNCILMEMBER GUZMAN: Right, right. So legal representative, okay. And then number seven is legal advisers.

MR. KUSHI: Right.

COUNCILMEMBER GUZMAN: Right, got it.

MR. KUSHI: I mean they do it all the time anyway now.

COUNCILMEMBER GUZMAN: Right, right, right. It's just allowing them that authority to --

CHAIR VICTORINO: But number seven is just to designate attorneys --

COUNCILMEMBER GUZMAN: --sign off on.

CHAIR VICTORINO: --within the Office of Council Service to serve as legal advisers, period, right?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER GUZMAN: Period, correct.

MR. KUSHI: Yeah.

CHAIR VICTORINO: You're getting rid of all the rest, right?

COUNCILMEMBER GUZMAN: Yeah.

MR. KUSHI: I would suggest you delete the new proposed number seven because number six as amended will take care of it.

COUNCILMEMBER COCHRAN: But we didn't want two-thirds vote.

CHAIR VICTORINO: Wait, wait, wait. Hang on, hang on.

COUNCILMEMBER WHITE: But it's required a two-thirds vote which I don't think we should have it.

COUNCILMEMBER GUZMAN: Yeah, I think ...

CHAIR VICTORINO: Which one on number six or number seven?

COUNCILMEMBER GUZMAN: I think number six is fine with the amendment.

CHAIR VICTORINO: Yeah, number seven I'm just saying ...

COUNCILMEMBER GUZMAN: Oh with number seven I think what we've agreed on is that to designate attorneys within the Office of Council Services to serve as legal advisers. 'Cause that ...

CHAIR VICTORINO: Period. Yeah, all the rest is taken out.

COUNCILMEMBER GUZMAN: Yeah.

COUNCILMEMBER WHITE: Right, right.

CHAIR VICTORINO: And I said that four times --

COUNCILMEMBER GUZMAN: Right, right.

CHAIR VICTORINO: --but I guess nobody, you know, I guess --

COUNCILMEMBER GUZMAN: Sorry.

CHAIR VICTORINO: --nobody wants to hear me but that's okay, I understand.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER GUZMAN: Sorry.

CHAIR VICTORINO: No, no. You and I both agree.

COUNCILMEMBER GUZMAN: Oh, okay.

CHAIR VICTORINO: I think we got the picture but I not getting it across to the rest. So are we clear on number seven to designate attorneys within the Office of Council Service to serve as legal advisers?

COUNCILMEMBER COCHRAN: Yes.

COUNCILMEMBER GUZMAN: Yes.

COUNCILMEMBER WHITE: Yeah.

COUNCILMEMBER COCHRAN: Consensus.

CHAIR VICTORINO: Okay, alright. So we can move along. And number six, Mr. Garneau, did you get the appropriate language to retain or employ, and I going let you take it from there.

MR. GARNEAU: What I had was, hold on one second, to retain or employ or designate by two-thirds of its membership special counsel as legal representatives for any special matter presented. Was that all of it, Chair?

CHAIR VICTORINO: Was that it? I thought there was something to do...and in such employment shall specify compensation if any, right?

COUNCILMEMBER GUZMAN: Yeah, if any, you know, whether we ...

CHAIR VICTORINO: To be paid for this said services, right, Mr. Kushi?

COUNCILMEMBER GUZMAN: Yeah, whether we decide to pay them or not, I don't know.

MR. KUSHI: Yes.

CHAIR VICTORINO: Yeah, on that last sentence.

MR. KUSHI: Yes, it's what it is right now.

CHAIR VICTORINO: Leave it the same way?

MR. KUSHI: Right.

CHAIR VICTORINO: Okay, okay. Alright just want to make sure. Okay. Are we clear with that, Members? Yes, Mr. White?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER COCHRAN: Chair?

COUNCILMEMBER WHITE: Yes, very, very minor it was I think it was retain, employ or designate.

CHAIR VICTORINO: Okay, you got that, Mr. Garneau?

MR. GARNEAU: Yes, I do.

CHAIR VICTORINO: Okay. Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah, Chair, so six without any of these changes is existing, correct?

COUNCILMEMBER GUZMAN: Correct.

COUNCILMEMBER COCHRAN: Six, item six is already in there and now we're trying to revise existing. And I think Mr. Kushi was trying to get rid of seven to incorporate it into six. Is that right, Mr. Kushi?

MR. KUSHI: Mr. Chair?

CHAIR VICTORINO: Yeah, okay, go ahead.

MR. KUSHI: No, what I said, 3-6, subparagraph 6 the proposal is to amend that to allow in-house counsel to be appointed. My thought was to delete the proposed new subsection seven because you've taken care of that in the new Section 3-7 subsection 2, which is on the bottom of the page --

COUNCILMEMBER COCHRAN: Okay.

MR. KUSHI: --and you don't need a special vote for that.

CHAIR VICTORINO: Well, the special vote is out already. So again, remember ...

MR. KUSHI: As legal advisers.

CHAIR VICTORINO: Yeah. To designate attorneys within the Office of Council Services to serve as legal advisers.

MR. KUSHI: But, Mr. Chair, you have that already in your proposed 3-7 --

CHAIR VICTORINO: Well this is what they asking, okay.

MR. KUSHI: --subsection 2.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER GUZMAN: Yeah, but I think, Chairman, if I may?

CHAIR VICTORINO: Yes.

COUNCILMEMBER GUZMAN: Ms. Crivello, Member Crivello had a very good point that the designation of one through seven is stating our powers.

CHAIR VICTORINO: Powers, Council powers, yes.

COUNCILMEMBER GUZMAN: And then Ms. Crivello also noted that Section 3-7 specifies and explains the Office of Council Services and their duties. Once we've authorized that, that power it then comes under Office of Council Services under 3-7 and that explanation is right there for them to follow.

CHAIR VICTORINO: Do you get that?

COUNCILMEMBER GUZMAN: So I think it's very well stated on the floor.

CHAIR VICTORINO: Do you get that, Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah.

CHAIR VICTORINO: Okay. Yes, Mr. White?

COUNCILMEMBER WHITE: Yeah, and I also think that we need to leave it that way because otherwise in number six just to ask for legal advice we need a vote of two-thirds.

COUNCILMEMBER COCHRAN: Yeah that's why, yeah, we don't want...

COUNCILMEMBER WHITE: Right and I think we want to avoid that. Any chair, any committee chair should be able to go and get legal advice without ...

CHAIR VICTORINO: Oh, yeah, that's why we took that out the two-thirds.

COUNCILMEMBER WHITE: No, I know but I'm just suggesting that if we take out seven then we're left with six, and six requires --

CHAIR VICTORINO: Yeah, yeah. Okay.

COUNCILMEMBER WHITE: --a two-thirds vote so.

CHAIR VICTORINO: Okay.

COUNCILMEMBER WHITE: Leave it as it is.

COUNCILMEMBER GUZMAN: You got it, Chair?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: I got it. I had it half an hour ago but that's okay. Alright, anything else so before we move on? Okay. Now moving on to 3-7, I think we're okay with that as the language as stated, right?

COUNCILMEMBER WHITE: Yeah.

CHAIR VICTORINO: Okay. Moving along, what is our next, okay, what is the next area? Number three the language as existing, it would be in pursuant of Section 14-1(1) of the Charter, okay, yeah, that's existing language. Okay. Alright, then we move to number four, [that material to be repealed] is bracketed by new material underscored.

COUNCILMEMBER GUZMAN: Yeah.

CHAIR VICTORINO: Okay, that's okay, I think I got that one. That was no problem. Moving right along. I guess number six would be the next big one, that pursuant in Section 14-2(1) of the Charter I hereby propose the following question to be placed on the next General Election ballot, okay, shall the Charter of the...be amended to allow the Corporation Counsel to...see now there you go, we're going to have to change this one, right? The Council to designate by two-thirds vote of the entire membership attorneys within the Office of Council Services as special counsel to serve as legal advisers to the Council and its Members.

COUNCILMEMBER GUZMAN: Yeah, Chair, can we just allow Staff to craft the Charter question --

CHAIR VICTORINO: Well, but we've ...

COUNCILMEMBER GUZMAN: --based off of what we've ...

CHAIR VICTORINO: Yeah, but we voting on this so that's why I want to make --

COUNCILMEMBER GUZMAN: Yeah.

CHAIR VICTORINO: --sure we don't, you know, I'm willing to let it be done, but I mean again this was designed on what we had originally --

COUNCILMEMBER GUZMAN: Right.

CHAIR VICTORINO: --spoken towards and now we're speaking a little different. But I mean I will allow Staff to make those changes but we should look at it, look at it before we sign it out, right?

COUNCILMEMBER GUZMAN: I agree.

CHAIR VICTORINO: Okay. Alright, Staff, you guys know what you're charged with. Boy, they got a lot of things. Okay, so ...

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER CRIVELLO: Chair?

CHAIR VICTORINO: Yes?

COUNCILMEMBER CRIVELLO: I'm sorry. As we're going through all this I have a question.

CHAIR VICTORINO: Yes.

COUNCILMEMBER CRIVELLO: We get totally confused and we have to deal with the wordings and wordsmith, everything. Like the County Manager proposal, I personally felt it wasn't vetted enough for public participation. And how are we going to process this for public participation, too?

CHAIR VICTORINO: Well, I going be honest with you. Once we get it done we'd have to on second reading I guess publish it and have the people at least be made aware of what's going on. I don't see any other way we can 'cause if we're going to hold public hearings and go out there and try to meet with different groups our deadline is right around corner, so. I understand what you're asking. Yes, Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. Ms. Crivello brings up a good point once again and, you know, we have sent out budget mailers and we can certainly, once all this work is done, we can certainly send a mailer that would incorporate an education piece that tells people what the changes are and the reasons for them.

CHAIR VICTORINO: Well, and I think we have to publicize...put it in public notices, too.

COUNCILMEMBER WHITE: Yeah, we're required --

CHAIR VICTORINO: Yeah, we're required anyhow so.

COUNCILMEMBER WHITE: --to publish it in the paper and other places --

CHAIR VICTORINO: Yeah, yeah.

COUNCILMEMBER WHITE: --and we'll certainly have it up online but in addition to that we can...I'll see if we have money in the Budget to pay for a mailer as well as we've done with Budget.

CHAIR VICTORINO: And that's the best we can do, Ms. Crivello, that would be the best we could do.

COUNCILMEMBER CRIVELLO: No, I just have concerns because that was my concern with the original, some of the changes because when you deal with Charter amendments it remains with us for, forevermore until another ...

CHAIR VICTORINO: Until it's changed again.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER CRIVELLO: Yeah. And just listening to just these two amendments that we've just worked on, I mean can you imagine the public what...how they try to understand what we're trying to say. Yeah, that's just my personal concern, Chair.

CHAIR VICTORINO: Yeah, no, and you bring a legitimate concern and I don't know how else to address it because the clock's running and I'm trying to get as much done as I can so we have whatever items to be brought forward. So, okay, so, Staff, you know what we need to get done. And so are we willing to vote on this and have Staff make those necessary corrections? Okay, if that's what you guys so choose, then I would like to make my recommendation.

COUNCILMEMBER WHITE: Recommendation.

COUNCILMEMBER COCHRAN: Recommendation.

CHAIR VICTORINO: The Chair would like to entertain a motion for first reading of the proposed resolution entitled Proposing an Amendment to the Revised Charter of the County of Maui (1983), as Amended, Relating Attorneys Within the Office of Council Services; and the filing of County Communication 14-165.

COUNCILMEMBER GUZMAN: So moved.

COUNCILMEMBER WHITE: Second.

CHAIR VICTORINO: It has been moved and second. Anymore discussion? Yes, Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, I appreciate your recommendations. I won't support it today just 'cause I think it's important enough for me to see it in writing and I'll support whatever is the decision of this Committee but for myself I choose not to work on the fly with Charter amendments. Thank you.

CHAIR VICTORINO: Thank you, Mr. Hokama. Any other discussion? Seeing none, all those in favor, signify by saying "aye."

COUNCILMEMBERS: Aye.

CHAIR VICTORINO: Opposed?

COUNCILMEMBER HOKAMA: No.

CHAIR VICTORINO: If I count correct seven "ayes," one "no" and one excused, Mr. Couch.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

VOTE: **AYES:** **Chair Victorino and Councilmembers Baisa, Carroll, Cochran, Crivello, Guzman, and White.**

NOES: **Councilmember Hokama.**

EXC.: **Vice-Chair Couch.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **Recommending FIRST READING of revised resolution and FILING of communication.**

CHAIR VICTORINO: Okay. So we will move on that and we'll make the corrections and by first reading, you know, you'll have that and you can scrutinize and if there's any challenges in that respect.

ITEM PIA-10(10): PROPOSED CHARTER AMENDMENTS (PROHIBIT THE CORPORATION COUNSEL AND THE PROSECUTING ATTORNEY, AND THEIR DEPUTIES, FROM AIDING IN THE ELECTION OR DEFEAT OF ANY CANDIDATE FOR COUNTY PUBLIC OFFICE) (CC 09 229)

CHAIR VICTORINO: Okay, moving onto...we're taking this out of order so that we can, okay, hang on, next one would be 10(10), PIA-10(10) and this is a proposed Charter amendment relating to Prohibiting Corporation Counsel and Prosecuting Attorney, and their Deputies from Aiding in any Election or Defeat of any Candidate for County Public Office. We have discussed this item in a previous meeting and Mr. Hokama noted that the Auditor's Office is prohibited from participating in political campaigns. Mr. Kushi on the other hand stated that the amendment brings up First Amendment issues. Mr. Hokama, would you like to speak to this amendment?

COUNCILMEMBER HOKAMA: Chairman, you know, I appreciate the discussion you've already allowed and that was my key purpose so I don't have a problem with filing this request. Thank you.

CHAIR VICTORINO: You've heard the request from Mr. Hokama so if there's no objections and no further discussion, I will move to file County Communication, I don't have a number here...correspondence but it doesn't have the correspondence number here. Correspondence...please, thank you, 10(10). Okay, so my recommendation is the filing of County Communication 10(10) [sic], correspondence dated April 27, 2016 from Mr. Hokama, the filing of this communication.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

COUNCILMEMBER COCHRAN: No objections.

CHAIR VICTORINO: No.

COUNCILMEMBER WHITE: So moved.

COUNCILMEMBER HOKAMA: Second.

CHAIR VICTORINO: Yeah, it's been moved and seconded; moved by Mr. White, seconded by Mr. Hokama. Any more discussion? Seeing none, all those in favor of the motion, signify by saying "aye."

COUNCILMEMBERS: Aye.

CHAIR VICTORINO: Opposed? Let the record show eight "ayes," no "noes," and one excused again Mr. Couch. And unless designated I will not say that again.

MS. BROOKS: . . .*(Inaudible)*. . .

COUNCILMEMBER COCHRAN: And Mr. Guzman. Mr. Guzman's gone.

CHAIR VICTORINO: Oh, Mr. Guzman, oh, I didn't see him. I'm sorry seven "ayes," two excused Mr. Guzman and Mr. Couch.

VOTE: **AYES:** **Chair Victorino and Councilmembers Baisa, Carroll, Cochran, Crivello, Hokama, and White.**

NOES: **None.**

EXC.: **Vice-Chair Couch and Councilmember Guzman.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **Recommending FILING of correspondence.**

CHAIR VICTORINO: I didn't see him leave, sorry.

ITEM PIA-10(11): PROPOSED CHARTER AMENDMENTS (DESIGNATING PLANNING COMMISSION SEATS FOR LEADERS OF HAWAIIAN CULTURAL AND ENVIRONMENTAL PROTECTION GROUPS) (CC 09 229)

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Okay, moving right along. Now next one, okay, is 10(11) proposed Charter amendment relating to Designating Planning Commission Seats to Leaders of Hawaiian Cultural and Environmental Protection Groups. At our last meeting we discussed this matter and suggested qualifications would be better placed in County Codes rather than in this proposed Charter amendment. Ms. Cochran, it is your item so I will let you discuss it.

COUNCILMEMBER COCHRAN: Yes, and thank you very much, Chair. And let me recall where we left off. Basically, Members, if you recall we had some great discussion and some concerns were brought up on the floor and we discussed that. So currently what you have, I have amended the language to address the concerns that we spoke about at our last Committee meeting. And the language about the intent of the requirements would go into the Charter specifying that details about how to meet those requirements would be written into our County Code. And so the amended Charter language is each planning commission shall have at least one member of the commission with a background in conservation and natural resources as set forth in the Maui County Code. Each planning commission shall have at least one member of the commission other than the member described by paragraph two of this section having demonstrated expertise in Native Hawaiian traditional and customary practices as set forth in Maui County Code. So the details of what those exactly mean will be what we'll put in our Code instead of the Charter which I believe our discussion there were concerns in regards to that. And each planning commission member shall participate in a Native Hawaiian law training course as set forth in Maui County Code providing funding for the training is available through Office of Hawaiian Affairs. And this language would give an escape clause in a sense in case OHA doesn't fund the program anymore but still explains the intent for commissioners to be trained in Native Hawaiian law. And the language is not specific to who should provide that training. So in the event OHA doesn't fund the specific course perhaps County can find another way to provide training but wouldn't be required to do so by law. So it won't behold us to have to have to do it. Corporation Counsel during our last meeting suggested receiving comments from Planning Department about this proposal. The Director had indicated support for the proposal on the basis that we address the shared concern about not having specific qualifications within the Charter language. And my Staff also spoke to others in Long Range Planning who shared enthusiasm for the designated positions being proposed. And so my motion today, Chair, is going to be the current language, we reworded the question because we thought it wasn't as clear for the general voting public. So I can make my motion to what the language I would like to see put in.

CHAIR VICTORINO: Did you pass the motion out? Have you been able to pass it out, the change?

COUNCILMEMBER COCHRAN: Sorry? It's in the binder on your iPads. Is that right or do we need hard copies?

CHAIR VICTORINO: So, no it's still in the binder 'cause it's on June and then ...

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER COCHRAN: Do we need...do we want to get copies now then to...oh, okay. Yeah, I have ...

CHAIR VICTORINO: Okay.

COUNCILMEMBER COCHRAN: The last ...

CHAIR VICTORINO: By the way just for the public to understand we have binders and we have iPads and we're trying to switch over just to iPad. So please excuse us we're still in that switch over moderm. And so, okay, so you see the motion as presented by Ms. Cochran, do I have a second?

COUNCILMEMBER GUZMAN: Second.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COCHRAN: Wait. I didn't read it. Did I read it? I didn't say my motion.

COUNCILMEMBER GUZMAN: Okay.

COUNCILMEMBER COCHRAN: Chair? So my motion, I move to amend the revised proposal.

CHAIR VICTORINO: Well, that's why I was going to ...

COUNCILMEMBER WHITE: Wait.

COUNCILMEMBER COCHRAN: Oh, sorry.

COUNCILMEMBER WHITE: What is the date of your correspondence?

CHAIR VICTORINO: ...6/27/2016.

COUNCILMEMBER COCHRAN: Yes.

CHAIR VICTORINO: Okay so just to make it clear we were putting the motion on the floor that was originally proposed. Now you're going to amend it.

COUNCILMEMBER COCHRAN: Yes

CHAIR VICTORINO: Okay so that's what we're trying to do now. So do you make a motion to the original --

COUNCILMEMBER COCHRAN: Proposed.

CHAIR VICTORINO: --proposal?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER COCHRAN: Yes.

CHAIR VICTORINO: Okay and he second it. Now you can make your amendment.

COUNCILMEMBER COCHRAN: Okay. Oh okay, got it. Got it.

CHAIR VICTORINO: That's what I was trying to get.

COUNCILMEMBER COCHRAN: So, oh, okay.

CHAIR VICTORINO: You got it, Mr. White?

COUNCILMEMBER WHITE: Yeah, thank you.

CHAIR VICTORINO: Okay. Alright. It's here.

COUNCILMEMBER COCHRAN: Okay, everyone on the same page now? Okay, excellent. And so I move to amend the revised proposed resolution by striking the existing ballot question and by inserting a ballot question to read as follows, shall the Charter be amended to designate two seats on each planning commissions for one member with a background in conservation, and one member with demonstrated expertise in Hawaiian customs, and to add, Native Hawaiian law training requirements for all planning commission members? That's my motion.

COUNCILMEMBER GUZMAN: Second.

CHAIR VICTORINO: Okay, it's moved by Ms. Cochran and second by Mr. Guzman. Okay.

COUNCILMEMBER COCHRAN: So, Chair...oh, I guess Mr. Kushi has something to add but I have my...and so the reason for this ...

CHAIR VICTORINO: Let her finish please, Mr. Kushi. Go ahead.

COUNCILMEMBER COCHRAN: My feeling is...my motion improves upon the ballot question in the resolution to make it more easily understood by voters. So that was primarily my main reason, but I can see Corporation Counsel has his hand up.

CHAIR VICTORINO: Okay, well, okay, Staff...okay hang on. Are you finished?

COUNCILMEMBER COCHRAN: Yes.

CHAIR VICTORINO: Okay. Corporation Counsel, please?

MR. KUSHI: Yes, Mr. Chair. Member Cochran, I have nothing to comment about the substance but --

COUNCILMEMBER COCHRAN: Oh, okay.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

MR. KUSHI: --for the ballot question I would recommend with all ballot questions to read to amend, shall Section 8-8.4 of the Charter be amended. Just to --

COUNCILMEMBER COCHRAN: To address ...

MR. KUSHI: --to address the section.

CHAIR VICTORINO: Yes, the specific for...yeah.

COUNCILMEMBER COCHRAN: Okay, is that non-substantive or is that we need to say it now?

MR. KUSHI: Yeah, it's just ...

CHAIR VICTORINO: It needs to be put in there, yeah.

COUNCILMEMBER COCHRAN: Okay, what was the number again?

MR. KUSHI: Shall Section 8-8.4 --

COUNCILMEMBER COCHRAN: Eight point four.

MR. KUSHI: --of the Charter be amended to designate, et cetera, et cetera.

CHAIR VICTORINO: Okay. Okay?

COUNCILMEMBER COCHRAN: Okay. So to amend the amendment then, shall the Charter be amended, what, to Section 8 that ...

MR. KUSHI: Shall Section 8-8.4 of the Charter be amended.

COUNCILMEMBER COCHRAN: Okay, yes.

CHAIR VICTORINO: Okay, you don't have to get deep into it.

COUNCILMEMBER COCHRAN: Yes. Right so that, we'll add in that as Mr. Kushi is recommending.

CHAIR VICTORINO: Yeah, and Staff has it so that's fine. Okay.

COUNCILMEMBER COCHRAN: Okay.

CHAIR VICTORINO: Mr. Hokama, you had something you wanted to add?

COUNCILMEMBER HOKAMA: Yes, Chairman, thank you. I don't know if this is to address a Maui island issue. For Lanai I would say we would have concerns with this proposal.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Absolutely.

COUNCILMEMBER HOKAMA: And I would have hoped we would have allowed our commissioners to weigh in on this as it relates to their jurisdictional area and what they perceive to be a weakness or shortcoming of their current makeup or what we'd like to see in a commission makeup. So let me say that first. One, I think Lanai has its own unique challenges. I don't think we have any issues about having people be knowledgeable of Hawaiian history, Hawaiian practices, especially as it relates to Lanai. Okay. We understand our sister residents on Molokai view it slightly differently from us. People in Hana through their advisory group have viewed certain things differently from us and that is why there's various components throughout this County regarding special regions, whether it be a district overlay for certain regions only versus the whole County. We have provisions in ordinance that says except for Molokai. We've recognized the uniqueness of our County by when appropriate either exempting certain regions or adjusting it to make it fit those unique regions. And I say this because for us everyone knows we have a limited population base. There's only so many volunteers in any community. But what I bring up is while I have a heart for the Native Hawaiian component we just had our Lanai Commissioner on Cultural Resources resign because she felt that they weren't meeting, they couldn't get quorum, they couldn't conduct business from a specific request to participate regarding importance of cultural resources in this County. So I find it kind of unique that one component we've established to give us good input for an important area cannot even find quorum to meet and now we're going to consider potentially making it a requirement of another commission. I know we cannot force attendance. We ask them to be upfront and candid with their volunteering time. But for me, Chairman, you know, I'm not ready to say that Lanai needs to be part of this Charter question. I don't have a problem with tweaking it through an ordinance proposal. If this is what Maui feels is critical and required for Maui Island I can be very supportive and open to that, but I don't see it for Lanai per se. I think for us we're more concerned about our unique practices and how we have done things on Lanai because that's what fits Lanai. And I again don't support one-size-fits-all mentality not for our unique County. So I just share this in my understanding of our community on Lanai. And I see merits. I don't have a problem with it. I just don't know if I want to do it through a Charter amendment at this time, Chairman. Thank you.

CHAIR VICTORINO: Thank you, Mr. Hokama. Ms. Crivello, I will give you the same opportunity as far as your concerns for the island of Molokai.

COUNCILMEMBER CRIVELLO: Well, my concern would be who qualifies, first of all, you know. You know we do have Hawaiian laws and recognize and protect our traditionally customary native rights and practices. Who will sit on the planning commission that has that qualifications and brings to the table that will be able to take a stand on that basis? You know we have many that may qualify but not, may not want to put in their application. It's just the culture. And if one is an activist that doesn't make that person a practitioner of the ocean, maybe a practitioner mauka but not makai, you know. So it all differs. And I think the proposal is a good proposal. I

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

like the thought of having a commissioner with the planning that has the knowledge and the background of all of our customary rights and practices. So going to a half-day or one full day of Hawaiian law does not make that person an expert in my opinion. I've attended that and I have much to learn. Though I think most of all I think what I'd like to see is the protection of our resources and that will be of value for somebody on the commission. My major concern is who qualifies the traditional expert? Is it the kupuna? Is it the practitioner? Is it someone who just came out of school? You know who knows about the gathering rights and the konohiki fishing rights that may someday disappear? I think that's where we have to get into the meat of it. I think Ms. Cochran's efforts to assure this kind of protection is important. And I think Maui has major concerns with that. And that's not to say Molokai doesn't have because it has also. And that's my major concern, Chair, is how do we qualify someone? Not too long ago we had a--was it last year?--someone for the cultural resources that we were going to appoint to the commission. Three-year resident and most of our Members was in support of having this newcomer, and then we had to have it deferred because I felt that didn't qualify, pulling out the dictionary is not sufficient in naming the street. So we actually had to bring...go and search for an actual practitioner who could understand the kauna, the meaning of the place and what it means. So those are my major concerns as to how we will protect the traditional and customary rights of the host culture, yeah.

CHAIR VICTORINO: Thank you for your insights, Ms. Crivello, and I think I also share the same concern for the outlying districts. First of all, quorum has been a real challenge and it continues to be a challenge, and that's something I want to address through my Committee in the very near future. If something like this was designated for the island of Maui with the option of...or leaving Lanai and Molokai to decide on their own or even Hana and their commission to try to, you know, incorporate that or whatever they could, even the educational part where they attend the class or attend the Hawaiian law program. I have no problem with that, but I'm not sure I can support every one of the commissions to have this specifically put on. And again Mr. Hokama brings up a good point as far as when we put it in the Charter it's a Charter requirement. If it's there and we put it under ordinance we can then maybe define it like you just said, Ms. Crivello.

COUNCILMEMBER CRIVELLO: Chair, I don't have a problem --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER CRIVELLO: --for adding this to the Molokai Planning Commission.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER CRIVELLO: I don't. I'm sure my community would support it.

CHAIR VICTORINO: The requirements.

COUNCILMEMBER CRIVELLO: Like I mentioned it's who qualifies --

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

CHAIR VICTORINO: That's correct.

COUNCILMEMBER CRIVELLO: --to serve, yeah.

CHAIR VICTORINO: I think that's where the challenge comes up at this point. Wait, before I recognize you again.

COUNCILMEMBER COCHRAN: Okay.

CHAIR VICTORINO: Ms. Baisa, you had something, and Mr. Carroll.

COUNCILMEMBER BAISA: If you like, Mr. Carroll, can go ahead.

CHAIR VICTORINO: Okay, go ahead Mr. Carroll first and then you after that.

COUNCILMEMBER BAISA: Okay, yeah, sure.

CHAIR VICTORINO: Okay that's fine.

COUNCILMEMBER BAISA: No problem.

CHAIR VICTORINO: That's fine.

COUNCILMEMBER CARROLL: Thank you, Chair. This discussion is actually really old. We've had it --

CHAIR VICTORINO: Yes.

COUNCILMEMBER CARROLL: --way, way, way back. I would rather see it as an ordinance myself because an ordinance we have more flexibility. As the commissions then we...we pass it, let's say we pass it as an ordinance, if the commissions have problems or they start wanting to define it more who they would like to be on there and the qualifications, we can change it relatively easy. But if it's an ordinance...I mean --

CHAIR VICTORINO: Charter.

COUNCILMEMBER CARROLL: --if we're going to change the Charter it really is going to be difficult to give us the flexibility to actually listen to the commissions and give them the tools that they need to get the people that they want on there. So my personal feeling is an ordinance would be...serve our planning commission and anybody else more effectively than changing our Charter. Thank you.

CHAIR VICTORINO: Thank you and your advisory committee is very important in Hana. So I understand your challenge, and even quorum there sometimes becomes very difficult. Ms. Baisa?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER BAISA: Thank you. I've been mulling this over now for quite a while and, you know, I'm thinking that I can muddy it up even a little bit more. You know if we're going to look at putting specific kinds of people on the Planning Commission, you know, when you look at what the Planning Commission does and that job to me is getting more important every day because, you know, we're seeing the effects of not doing long range and good planning and we live with the effects of it. You know the Planning Commission affects everything and they decide what gets built or developed and where it goes and all that kind of stuff. So therefore when I look at that I think it's really tied to our quality of life. So I'd like to see if we're going to put specific people on the Planning Commission, well, maybe we should have a water person, a water and a wastewater person, maybe we should have a traffic person, maybe we should have an education person, a financial person who can talk about how the planning develop...whatever is going on that's going to affect us. Somebody who knows education, somebody who knows human services, I mean I could go on and on here because everything that the Planning Commission does affects all of these areas that make up our life here in our community and each sector of this is important. So while I totally understand that this is Hawaii and it's important that we have Hawaiian, you know, knowledge on the Commission, I also think we might want to look at the total makeup of a commission and let's get it more balanced so that we represent all of the aspects of our lives that are affected by decisions made in the Planning Commission. That's just where I'm at at this point.

CHAIR VICTORINO: Okay, thank you, Ms. Baisa. Ms. Cochran, you had something else you wanted to add?

COUNCILMEMBER COCHRAN: Yeah, well, actually I just wanted to address the different comments and concerns I've been hearing so far from today's discussion and I completely agree with everybody. First of all, with Mr. Hokama in regards to Lanai and if, you know, Lanai would like to be exempt out of this I mean that's something that could happen also just to take it out and move forward with Maui and Molokai to stay in. Ms. Crivello isn't sitting here currently but, you know, if that's...that would be something that could work out. There was discussion on Lanai in regards to this and I guess some people kind of felt like it was being said that perhaps there's not, not just not enough qualifications but enough population to fit the profile here. And they in a sense kind of took offense that, you know, they...there's a lot of people that have been there as, you know, as long as Mr. Hokama and others that have that, the manao to share and they don't need to be college graduates. They just are from the area and know it inside and out and they...and so a person such as that can qualify. And as for qualifications and those details, that's why it would be in the Code and I went to the BLNR, the Board of Land and Natural Resources' version and sort of mirrored them where the question their initial point is via the Charter question at least one member of the board shall have a background conservation, natural resources. Then the bullet points one, two, and three under that goes to the Code that specifies college degree is relevant to the field of forestry, wildlife, conservation, geology, environmental science, so on or work history sufficient to demonstrate an appropriate level of knowledge. And this was sent out, given in our binder's last discussion. So the details we will put into the Code, not on the Charter. So the second question in my Charter amendment has

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

to do with the Hawaiian traditional and customary practices. In the BLNR Code, Codes 1, 2, and 3 and so forth it says how they qualify these people via (a) college degree, (2) via work history, demonstrates the appropriate level of, you know, of knowledge in Native Hawaiian traditional. So it's like, you know, my buddy in Honokohau Valley, Wili Wood. He restores loi. He definitely has, you know, traditional customary working knowledge of how this is done. You know haole boy but I'll tell you what, he knows how ancient Hawaiians did loi, builds the walls, restores the water, I mean on and on. So someone of that nature could be qualified for sure but no college degree about this. So this is where the details come. It's in our Code. It would not be in this Charter. And if I'm not mistaken I think in order, and what brought this on too is in the existing Charter, Mr. Carroll, the details are not there. I mean I think that's why we want...people want to see a balance. And if it needs to be in this Charter to make sure we have that traditional customary person, that conservation environmental type of person, then that's where people feel it ought to be and then again the details are in the Code. But the main question is there so I think my question to Corporation Counsel right now can we do this without a Charter amendment? Can we make the qualifications for the nine people sitting in the commissions have these qualifications but not via this Charter? Would it happen with existing language in this Charter?

CHAIR VICTORINO: Ms. Cochran, before you ask Corporation Counsel I have one concern that hasn't been brought up, the word expertise. Expertise, okay, it is a very strong word. Okay and I think that's why the concern has come up from miss... 'cause what is an expert? Okay, I'm asking that question, okay, 'cause I read in other areas where experience and knowledge and all that is there but not the word expertise. So your...says one member which demonstrates expertise in Hawaiian customs. Okay. Again, that's maybe where I'm hung up on, okay, and I going be honest with you. Mr. Kushi, to address her question and I leave my question out for right now, listening to her, can this be done via the...via ordinance versus being done through the Charter? And by the way I want to recognize Michele. She's here and I will call upon her right after this but go ahead, Mr. Kushi.

MR. KUSHI: Yes, if I recall that this body did when it created the Public Works Commission, the fairly most recent one, they did put some, on the creation of the board members, they did put some special qualifications in that Commission. Also, on I forget what other section --

COUNCILMEMBER HOKAMA: Variance and Appeals.

MR. KUSHI: --they I think they had one member from each, on various commissions, one member from each island membership. So the answer is yes you could do it by ordinance. On the Cultural Resources Commission I believe there's also some qualifications set by ordinance. On the Urban Design Review Board there's some qualifications set by ordinance. So, yes.

COUNCILMEMBER COCHRAN: Okay.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Ms. Cochran?

COUNCILMEMBER COCHRAN: Okay that was my...and then as for, Chair, for your concern you mentioned the word expertise in the question, I guess that word I mean there could be a substitute, capability, knowledge, proficiency, you know, words such as that, somebody who has proven whatever, track...you know, in doing --

CHAIR VICTORINO: 'Cause you just mentioned your friend out there --

COUNCILMEMBER COCHRAN: --in Hawaiian customs.

CHAIR VICTORINO: --in Honokohau, right?

COUNCILMEMBER COCHRAN: Yeah, yeah.

CHAIR VICTORINO: So, I mean is he an expert? I don't know.

COUNCILMEMBER COCHRAN: I feel he is. He has a very successful, yeah, loi but I mean he's capable, he's knowledgeable, and he's very proficient at what he does also. So it fits the bill for someone of his practices in our traditional customary Hawaiian practices, too. So I mean the word, if expertise is too strong or not defined enough or something you know, I don't know. That was just a word that was brought up but it could be substituted also and amended, that's not a problem.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR VICTORINO: Yes, Ms. Crivello?

COUNCILMEMBER CRIVELLO: I'm not sure if this correlates to this, but I think with the DLNR and I'm not sure what is really explicit in the advisory of the...over here we call it the aha moku; on Molokai we call it the aha kiolo.

CHAIR VICTORINO: Okay.

COUNCILMEMBER CRIVELLO: And so they, they have representation from each ahupuaa for that to be advisory to I guess matters that has to do with the natural resources and the conservation of our marine life and...or fisheries. So I'm not sure if this could be sort of leaning to that or what have you, maybe Ms. Cochran can explain that a little further.

COUNCILMEMBER COCHRAN: Yeah, well, I think the general idea of putting these types of specific qualifications in a sense for the commissions is to have that type of voice being represented, have that type of representation in the decision-making process within our commissions. Mr. Keeaumoku Kapu was here and he shared support for this. I don't think we want to have aha moku per se person be a member. I mean they can

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

be definitely but not to make it that specific or mandatory in a sense. And also just to address a lot of the interventions that do occur because a lot of times people in the community feel this area of knowledge is not being spoken about, addressed or, you know, looked at. So they come in and testify to try and insert that type of thought and manao. And so in order...so to make it again, you know, I don't know, a qualified person of some sorts to be there on a regular basis. 'Cause currently as was also stated the makeup of the commission here on Maui anyways are mainly industry which is fine. I mean in all these of course everyone needs to have their equal representation, but it seems to be very not as balanced as people would like to see with I guess one...three...two realtors, four union, and of course these people could also have knowledge in our Native Hawaiian or be local and understand their ahupuaa or what have you. But I guess to have people actually with credentials with these backgrounds is in the Code that we would like to see details is why people would like to see this proposed, so.

CHAIR VICTORINO: Okay, thank you, Ms. Cochran. At this time, Michele, I will recognize you and ask you as you look at this proposed Charter amendment and as you've heard the discussion between all the Members to this point that have spoken. (A) the Department's feeling and (b) if there's any other suggestions you would like to, to make. Because I think one of the big concerns I had was the expertise, the other was quorum especially for Lanai, Molokai, and Hana. They seem to have at times challenges with quorums and then, you know, you have people like on Lanai, the cultural specialist give up because they don't have quorum, they're not meeting and all that. And I'm not trying to pin blame on anyone, I'm just trying to...and I will look into this matter, I'll bring this up very shortly after we get through with all of this. But how, you know, how are you addressing this and what is your take on having the specific disciplines as mentioned in Ms. Cochran's Charter amendment. Michele?

MS. McLEAN: Thank you, Chair, Committee Members. I was listening to the meeting before I came over and I believe I heard Councilmember Cochran saying that the Planning Director had expressed support for this and that some of our Staff had expressed support for this. I'm not sure if I heard that correctly. It's my understanding that the Director doesn't have strong support for this and in terms of what our Staff said, I don't know, I'll have to find that out. In concept I think it's a really great idea but in practice it would, it could be very challenging for us. We have difficulty filling vacancies, unqualified if you will, vacancies on all of those planning commissions. We also have trouble filling vacancies on our Cultural Resources Commission. Our Urban Design Review Board has specific requirements in the Code so going into the question of can this be established in the Code, our Urban Design Review Board by Code shall consist of two registered architects, one registered landscape architect, two registered civil engineers, and four persons with interest or experience in urban planning, fine arts, beautification, conservations, or historic preservation. One member shall be a resident of the island of Molokai and one member shall be a resident of the island of Lanai. The Cultural Resources Commission shall be chosen from professionals and persons with demonstrated experience in the following disciplines; architecture, history, archaeology, planning, architectural history, Hawaiian culture, and ethnic history and culture of the County. And it also has a requirement to be represented

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

from each island. So, you know, we have difficulties getting members to serve on these. We have...once we get members we do have difficulty achieving a quorum. With the Maui Planning Commission we try even though it's not requirement, we look for geographic balance and that's hard to do right now. We don't have a West Maui member on the Maui Planning Commission. We don't have an East Maui member on the Maui Planning Commission. If we had to have those, those seats might be vacant and that adds to the quorum problems when we have vacancies. So it's...for it to be in the Charter it's almost...that's a higher level of requirement in a sense. It would be difficult to administer. If it's something in the County Code that can be refined more and that could in some, that could somehow address our challenges in getting these seats filled, that would require more discussion but then we wouldn't be under the time crunch that you're under for a Charter amendment. So overall it's a great concept. It really is but we really struggle with vacancies as it is now without those kinds of requirements. Thank you.

CHAIR VICTORINO: Thank you, Michele. Yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Deputy, for being here. And so do you folks see all the applicants? I mean you're aware of every single person that applies for these different commissions or does that just go via Mayor, Mr. Molina, and then out?

CHAIR VICTORINO: Go ahead.

MS. McLEAN: When there is a vacancy we're are often asked if we have any suggestions or if we know of anybody who's interested if the Mayor's Office doesn't already have applicants. And so we will put out feelers to, you know, to staff but then a variety of people to try to generate interest. We don't always see them but if we do get suggestions, then we pass those along to the Mayor's Office.

COUNCILMEMBER COCHRAN: Okay. I'm trying to get the minutes 'cause Director was on the, in seat that you're in and he did say he supported it. That it would be better if we didn't put details into the Charter and better in the Code and that is why I'm here today putting this all out in a different manner. So, I thought I addressed whatever concerns was stated on this floor a few weeks back and now here we are. So I'm trying to dig up the minutes, but I'm not going to sit here and argue that point at this point. I do know people who have applied for different commissions and were never called or never acknowledged, were never anything. So for me I beg to differ that every single person's application is vetted and put on the floor and you still have vacancies. We'll I don't, perhaps these people didn't fit your...the people's, whosever bill to be put on the floor, so.

CHAIR VICTORINO: Ms. Cochran, I'm not going to try to get into you said, they said. Alright, let's not go into that area --

COUNCILMEMBER COCHRAN: Right.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: --at this point. And I apologize, you know, I want to stay on the subject matter as what we're discussing here. So, Mr. Hokama and then Ms. Crivello, please. Mr. Hokama?

COUNCILMEMBER HOKAMA: Thank you, Chairman. Deputy Director, you know, one of the things that I feel Ms. Cochran did bring up that is a good point is her concern about training whether it be in Hawaiian law or Hawaiian practices or traditions. I find that helpful for any group. So my thing is why wouldn't the Department either through general departmental policy or ask the commissions through a rule that annually it would have some type of seminar or workshop to continually keep the commissioners briefed of any recent decisions by a court or any new filing of an opinion from whatever attorney that may impact them in their decision-making or experience as a commissioner, particularly to areas of ocean and SMA jurisdiction. Or how a court decision like Gatri impacts them on an application. I think what Ms. Cochran brought up in those area I am very supportive because I think it helps everyone to have a general understanding of the parameters they work under. So whether it be cultural, historic, court decisions, adjustments to Federal law under Coastal Zone Management or this County's practice of allowing the commissions to make SMA decisions. I find that helpful and I would encourage that be automatic instead of a requirement that we have to do through legislation. To me it just I hate to use the phrase common sense, Chairman, but I take pride that our people are akamai that there's a good degree of common sense for the local people that like I said it just makes sense for us to do it without having to legislate every single thing that the community has a concern about. So is that something you can address for us administratively already instead of us doing some legislation requirements?

CHAIR VICTORINO: Michele, go ahead.

MS. McLEAN: Thank you.

COUNCILMEMBER HOKAMA: Or if you're doing that, please tell us what you are doing.

MS. McLEAN: Yes, we do that. Every April or May when we have new commissioners, sometimes only one, sometimes a few, we do an orientation. It's usually two half days on separate meetings just 'cause it's a lot of information to take in. For the three planning commissions there's a big focus on SMA 'cause that's one of their major duties. It also goes through some of the basic Title 19 and zoning issues. It does go through court cases. It goes through the Code of Ethics and Sunshine Law, quite a variety of duties really trying to highlight what they will see on a most regular basis. We do talk about PASH, we do talk about Gatri, and as new things come along that would really have a bearing we would include those. We try to make them understandable for the layperson 'cause our commissioners are generally lay people and not too technical and academic. So we do that every April or May with all of our boards and commissions.

COUNCILMEMBER HOKAMA: Okay, 'cause, you know, it's just me, Director, I don't feel it should be just one commissioner's responsibility. I think it should be all the

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

commissioners' responsibility to have this general understanding of our history and culture.

MS. McLEAN: Right, we do it...it's agendized on the commission agenda. So the orientation is given for the whole body. So it's a refresher for those who are continuing their terms and then it's new information for the new folks. So we actually do get questions from commissioners who have been there for a couple of years still have questions during the orientation, so.

COUNCILMEMBER HOKAMA: But have you found in the recent past a need for maybe better seminars or training? I mean, you know, for a Member to bring it up as a Charter proposal tells me it has a level of importance already. So is there shortcomings in what you providing that there's sense in the community that we need either better representation of what our culture is, our history is? Or I mean what's going on that there seems to be a sense that we don't know who we are?

MS. McLEAN: Well, of course our training can always be better and if we felt or we got input that our training was deficient in some areas, then we would certainly do what we'd need to get it up to snuff. The Native Hawaiian law seminars is a relatively recent thing that I've seen. We've gotten notices for them as well for our staff. And I think it's through the UH Law School funded by OHA. It's a relatively new program and I don't think that any of us have attended it, but I think it would be good for some staff to attend it and then to have an idea if that's the kind of information that would be helpful for commissioners. The difficult thing is that commissioners do view such a big variety of things --

COUNCILMEMBER HOKAMA: Understood.

MS. McLEAN: --to really focus their training on what they're going to be considering the most, but having that background, you know, is helpful in everything that they look at so it's ...

COUNCILMEMBER HOKAMA: Well, you know, the Corporation Counsel asked this, well, not this Committee, but the Councilors for financial support where every year we've basically agreed to the general policy of half can go to their annual attorney's conference and half got to stay home and work and then they can reverse it the following year. But I would think those type of conferences should take into account, and let's say if we need...next year we're going to work on planning commissions. We'll have all the commissions come from the State counties, talk to all the attorneys, and we'll focus on whether it be native law, historical practices, or what have you. But I mean I see the merit in what Ms. Cochran is proposing and I'm just saying that I think we can approach it different ways to accomplish what she would like to do and I'm just trying to find out how are we currently utilizing whatever is available to us to maximize that ability. 'Cause there's a lot of options out there that we already through the budget are paying for and so for me it's make use of those opportunities we finance and approve through the budget to help us achieve some of the concerns that

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

is being brought up by this agenda this afternoon. So, I thank you for that, Deputy. Thank you, Chairman.

CHAIR VICTORINO: Thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you, Chair. I guess for, I'm sorry, I stepped out for a while but I think this is a good proposal and I don't see how it will harm the process. I think it will avoid if anything, put some brakes to some challenges that may come from the environmentalists or those of the culture because that delays lots of...if you...it puts a lot of delays and challenges through the process. I think it's...I value and important that we are mindful of our host culture. We need to be mindful in every aspect as well as it goes hand-in-hand with the protection of the environment if we truly follow that. So I can understand Ms. Cochran's and appreciate her proposed Charter amendments is how do we make it ordinance or do we make it Charter. I think that's the question that we have. Because as she stated in her resolution she references the General Plan where it says excellence in the stewardship of the natural environment and cultural resources, and further talks about the...establishes the following objective, perpetuate the Hawaiian Culture as a vital force in the lives of residents. So I don't see it as something to be adversary but more that we can be compatible in working together so that we don't end up with the challenges in the court. So however which way maybe we need to work more...put more work into this with the Department or Ms. Cochran or however else she decides to further encourage this kind of Charter amendments.

CHAIR VICTORINO: Ms. Baisa, then Ms. Cochran.

COUNCILMEMBER BAISA: Thank you very much, Chair. Chair, the part of this that I am totally supportive of and I really think it's a good idea is this Native Hawaiian training. You know four years ago I had the opportunity to go. I went to the William Richardson School and spent a Saturday and it was put together by OHA and it was absolutely wonderful. It opened my eyes to a lot of things that I had heard about but that I really didn't know. And I was fascinated with what I learned and really felt from that time that I begged them if they could bring that conference to Maui to see if we could have it here rather than people going to Oahu so that everybody could participate. So I think that is the part of this that I absolutely think is really great. I don't know if it's required as a Charter amendment. It should be something that maybe we can handle internally by just, you know, making a deal with OHA to bring that thing to Maui and maybe we can find money to support that. Because I really think it would give everyone a really good understanding of, you know, what is all of this that we hear about Native Hawaiian rights and, you know, how they originated and that this isn't just some wild scheme but there is actual real history behind it. And it's real eye opening too to learn and to see from people who really know and they really know. The people that talk are backed with real firm history and so you come away from it with a real understanding, a feeling of what it's all about. On the other part of course I understand why we want to emphasize the Hawaiian-ness of the Planning Commission. But I really think that if we're going to deal with it then maybe we better look at the whole Planning Commission and see how it's put together and maybe it's

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

time to modernize it, and put on it experts that we need from the various areas so that we have a planning commission that can address planning thoroughly. You know when we do these plans, you know, we have sections; one is on environment; one on population, one on human services, one on history, and all these things that areas of planning that we need to deal with even like in the Island Plan. And I'm thinking that's where Planning Commission should also be that we have people representing various areas, and maybe something to take a look at.

CHAIR VICTORINO: Thank you. Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah, thank you. And, Chair, and, Chair, initially the...my office...I did not want to go the Charter amendment route. Really, I didn't want to have to go through all this and but it was told to me in my office that we had to. It was told by County Clerk. It was told to us by Corporation Counsel that we had to go this route in order to make an ordinance and change the details and what we wanted to insert into this. We couldn't do it any other way, that is why I even went down this route. So that too is the minutes and we're drumming that all up right now, Chair, but that's the whole reason why I'm even going down this route. So I think Mr. Guzman had some stuff.

COUNCILMEMBER GUZMAN: Chair?

CHAIR VICTORINO: Yes, Mr. Guzman.

COUNCILMEMBER GUZMAN: Real briefly. I think since the discussion is very unclear as to how specific we want to get on some of these qualifications, I recall at the last meeting on June 1st that ...

CHAIR VICTORINO: June 29th.

COUNCILMEMBER GUZMAN: Oh, was it June 29th? I apologize.

CHAIR VICTORINO: Yeah, not June 1st. June 29th.

COUNCILMEMBER GUZMAN: Okay, June 29th that I believe it might have been Corporation Counsel or I can't recall but anyway it was said on the floor that qualifications needed to be at least designated in the Charter. And so I think that's where Ms. Cochran was going. If we were going to keep it more vague, I think it would be best if we at least allow enabling language to allow the Council to create qualifications. I did try to propose some type of qualifications for Corporation Counsel as an ordinance, and it was bounced back as I believe a Corporation Counsel opinion that said that basically we couldn't do it by ordinance and it had to be done by Charter. So in order to do that, in order to be able to make qualifications by ordinance there needs to be some type of enabling language in the Charter, that's what the opinion said. And this could be easily resolved in this case, in this specific amendment to the Charter by just referring to 8-8.4 Planning Commission. After the sentence, after the full sentence on the last sentence, the members of each planning commission shall be residents of the

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

island of the planning commission on which the members serves. And then just add, the Council may establish by ordinance additional qualifications and requirements of the commission members. And that would allow that type of enabling language so that we would thereafter be able to create ordinances to establish qualifications instead of stating all of the specifics in the Charter amendment as presented in Ms. Cochran's bill. Can refer to Mr. Kushi for any comments he may have.

CHAIR VICTORINO: Mr. Kushi, you've heard the suggestion from Mr. Guzman, do you have any comments?

MR. KUSHI: I think it will work, you know, but then there's this part two of that, then you have to create an ordinance.

COUNCILMEMBER GUZMAN: Right.

MR. KUSHI: And what Member Cochran said that if my office said that it can only be done by Charter amendment ...

UNIDENTIFIED SPEAKER: Clerk's Office she said.

MR. KUSHI: Yeah but she said my office. I don't recall. I don't recall what I ate last night too, so.

COUNCILMEMBER GUZMAN: No but, Chair, I do have an opinion and I can pull it out that when I was trying to do qualifications via an ordinance for the Prosecutor there was an opinion that said we couldn't do it by ordinance it had to be ...

CHAIR VICTORINO: Can I see that opinion?

COUNCILMEMBER GUZMAN: Oh, yes, yes.

CHAIR VICTORINO: Do you have a copy of it?

COUNCILMEMBER GUZMAN: Yes. I can do that.

CHAIR VICTORINO: And because that was Prosecuting Attorney and this is something entirely different but --

COUNCILMEMBER GUZMAN: Right, right.

CHAIR VICTORINO: --I would like to see that opinion please.

COUNCILMEMBER GUZMAN: But the same kind of concept where it's like okay we could have done it had there been enabling language in the Charter that allowed us to create an ordinance for specific qualifications. Because apparently there were a little bit of qualifications in that certain position and by adding it via ordinance it would contradict or I guess it wasn't proper to have it via ordinance. We could have done it

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

had there been language allowing us to create additional qualifications. So that's my point. And instead of maybe hashing this all out right now on the floor on specifics, maybe all that we really need is enabling language to allow the Council to create an ordinance for additional qualifications for the commission members, planning commission members. And if you excuse me, I can go try to find that.

CHAIR VICTORINO: Yeah, go try find that and bring it back. Okay, go ahead. Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I appreciate what Ms. Cochran just shared and that's one of my areas of contention, bloody opinions. We all have opinions. I can live with a decision by a judge or a court --

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: --but an opinion is an opinion. Someone's best guess, okay. Our forefathers, foremothers anticipated potential situations like this, Chairman, and that is why in the current Charter even in '88, even from '68 there was always kept a phrase for the Council, without limitations of its foregoing powers, limitations. It allowed the Council to make ordinances to address certain unique situations as it arises and that's why we don't have that prohibition that limits the Council's powers unless expressed by the document, the Charter. So for someone to tell me that it's their opinion that the Council needs authorization, my thing is the people gave us that authorization by allowing us without limitation of the foregoing powers. That phrase grants us that authority. Okay, for those that have an opinion if they don't like it they can go get a court decision on it for all I care, but to me that gives us enough authority to move forward. And they want to challenge it fine, challenge it, but the people gave us that authority, and for now for them to tell me it's our opinion that you got to go back and go get additional authority. Well, I don't know what is their role, but go get a decision because I think what Ms. Cochran wants to do is allowed already currently through an ordinance. We can fine tune it additionally, that's why a statute is there to fine tune the State Constitution and not go back and make Constitutional amendments over and over again either. It's what's granted to the Legislature, the Judiciary, or the Executive Branch. We're just exercising what the people have granted the Legislative Branch of this County government, that flexibility. And it goes through a transparent public process, multiple readings, must be in final form for the people to see. I rather deal with that than opinions, Chairman. Thank you.

CHAIR VICTORINO: Thank you very much. Yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And yeah unfortunately last meeting we didn't get to talk on this subject so it was the July 1st...June 1st. It was the one prior but anyhow I think Mr. Guzman hit it on the head in reference to what Corporation Counsel on the floor was saying and it was the Charter needs that enabling language in order for us, this body, to create the detailed qualifications in Code, ordinance, what have you. So currently in this Charter it just says members shall be residents of islands of the commission where the member serves. I mean that's the qualification. So the community is wanting a little more detail as to what the body is made up of

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

such as how public commissions is, such as these other...BLNR is. And so somehow we wanted it in our County to reflect that type of, you know, candidates, nominees for our planning commissions. And just trying to figure out a way so we were told that it had to have initially enabling language in this Charter in order to do all this stuff we're talking about. So that's where that's coming from, Mr. Kushi, and what that was, where that discussion started.

CHAIR VICTORINO: Well, and I understand and of course Mr. Hokama is saying that we have enabling language right now if I hear him correctly and that by ordinance we could change these as we feel appropriate because unless it's specifies that we cannot, then we are able to do. Right, Mr. Hokama, is that what you're...?

COUNCILMEMBER HOKAMA: That's what the Charter says, Mr. Chair.

CHAIR VICTORINO: Yeah, so again, you know, we have enabling so if that's your concern --

COUNCILMEMBER COCHRAN: Okay.

CHAIR VICTORINO: --we have it and you're hearing that from the man who is probably more knowledgeable than most of us in this room. And Mr. Guzman ran off to find that other part and I don't have a problem. Again, the way this has been stated designated two seats on each of the planning commission and the other part is the expertise on the Hawaiian custom. I think that's my stumbling block. I got to be honest with you, that's my stumbling block because again Molokai and Lanai may sometimes have a challenge, okay, and Hana. Okay that's first and then expertise, you know, that word, you know, I don't know experts. You know I know people who claim to be experts and I've had people come in and tell me they're an expert and when I listen to them they didn't know much more than I did. They weren't much of an expert. Is your friend in Honokohau Valley an expert? I would say he's knowledgeable. I don't know if he's an expert. Maybe your opinion says yes, my opinion says no but that's what I'm trying to come to. So I'm just trying to get so we can move on how do we either address this and/or address it through legislation, I'm not...that's what I'm trying to get to right now.

COUNCILMEMBER COCHRAN: And I appreciate that. Chair, if I may? So in reference to what Mr. Hokama's... 'cause I appreciate --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER COCHRAN: --Mr. Hokama and everyone trying to say we understand the intent here, how can we move forward, do we really have to do it through Charter? And I'm on board with that so I'm looking at Article 4 then, Mr. Hokama or Corporation Counsel, ordinances and resolutions, the Section 4-1, actions of the Council.

CHAIR VICTORINO: Page?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER COCHRAN: Page 11 in our Charter.

CHAIR VICTORINO: Okay, thank you.

COUNCILMEMBER COCHRAN: Is that, Mr. Hokama, where you're referencing that allows us to do this without having to do a Charter? It says actions of the Council, every legislative act of the Council shall be by ordinance --

COUNCILMEMBER HOKAMA: Yes.

COUNCILMEMBER COCHRAN: --unless authorized provided for herein, other acts by the Council may be by resolution. So ...

COUNCILMEMBER HOKAMA: I'm referring to 3-6, Ms. Cochran, Page 8, the very first paragraph. The second sentence of the very first paragraph. After it says the Council shall be the legislative body, then it starts, without limitation of the foregoing grant or of other powers given by this Charter, the Council shall have blah, blah, blah, one, two, three, four, five, six. But it starts off with that key phrase and that's why, it starts off without limitation of the foregoing grant of powers.

COUNCILMEMBER COCHRAN: Okay.

COUNCILMEMBER HOKAMA: That's a powerful statement that the people gave this body, without limitation.

COUNCILMEMBER COCHRAN: Okay. And so if maybe just a comment I guess from Mr. Kushi if he has or --

CHAIR VICTORINO: Mr. Kushi, would you like to address ...

COUNCILMEMBER COCHRAN: --if that's your interpretation I suppose, Mr. Kushi, also?

MR. KUSHI: Well, without looking into it further I tend to agree with Councilmember Hokama, without limitation of the foregoing grant or of other powers. So without that, if you didn't have that preference you could only do one through six.

COUNCILMEMBER HOKAMA: Bingo.

MR. KUSHI: So I mean that's reading it in a layman's application. So you may have other hidden inherit powers or implied powers as the legislative body.

COUNCILMEMBER COCHRAN: Surpassing one through six. So doesn't necessarily ...

MR. KUSHI: Yeah, so not, you may not...you may have other powers including powers one through six.

COUNCILMEMBER COCHRAN: Okay, okay.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

MR. KUSHI: Where it is, I have no idea.

COUNCILMEMBER COCHRAN: Okay. Okay, thanks.

CHAIR VICTORINO: Thank you, Ms. Cochran.

COUNCILMEMBER COCHRAN: Yeah, and again, Chair, it was initially just suggested, opined or whatever --

CHAIR VICTORINO: Yes, yes.

COUNCILMEMBER COCHRAN: --we want to use that this is the route I need to go in order to accomplish the intent that I have.

CHAIR VICTORINO: Yes.

COUNCILMEMBER COCHRAN: And so if there's other means then by all means I shall pursue those routes.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COCHRAN: I mean I'm more than happy to and so what?

CHAIR VICTORINO: So if you are satisfied that the other appropriate means that can be taken to accomplish what you have set out to do then if you, you know, then I would say at this point with your permission I would ask for the filing of this communication and that way, you know, you can take appropriate action deemed necessary.

MS. FRIAS: You have two motions pending, Mr. Chair.

CHAIR VICTORINO: There are? Okay. Okay. Oh okay. There actually there's two motions on the floor. I forgot we had done that so long ago. I forgot about that. To adopt and to amend 'cause remember we had to adopt the original motion and then we amended.

COUNCILMEMBER COCHRAN: Original and then I amended.

CHAIR VICTORINO: Yes, so we have two motions on the floor. So unless you withdraw the motions or we say no and file it. It's your call, Ms. Cochran, I'll leave it in your hands.

COUNCILMEMBER COCHRAN: Yeah, well, what are we down to here?

COUNCILMEMBER HOKAMA: Chairman?

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: Would you grant us a short, short recess?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Short, short recess 'cause I mean yeah, okay.

COUNCILMEMBER COCHRAN: It's kind of our midday break. Oh, no, what time did start?

CHAIR VICTORINO: No, we started 1:00 so no worry about that. We're not having a break, anyhow you guys need to just go when you to go. But I, 'cause I have the revisions that we need to go over for the first one and we have one more after that, so.

COUNCILMEMBER COCHRAN: Yeah, just if we can have a brief recess.

CHAIR VICTORINO: I'll give you guys three minutes. . . .(gavel). . .

RECESS: 3:11 p.m.

RECONVENE: 3:16 p.m.

CHAIR VICTORINO: . . .(gavel). . . The meeting will reconvene. Okay, Mr. White wanted to say a few words before we decided which direction we would move. But again, Ms. Cochran, I agree with you with the intent and whichever way because in the other cases I looked it up and those were done by ordinance, all the other boards and commissions as far as their expertise and the necessary qualification. It's all done by ordinance, not by Charter.

COUNCILMEMBER COCHRAN: But, Chair, did they need enabling language in their Charter or what have you in order to create those more detailed --

CHAIR VICTORINO: It was...no.

COUNCILMEMBER COCHRAN: --ordinances and what have you?

CHAIR VICTORINO: Not that I, not that I checked with, no. But anyhow, Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. I've asked our office to reach out to OHA and see if they could bring the Native Hawaiian law presentation over for...either a special Chair's presentation here in the Chambers and/or a community presentation as well 'cause I agree with Ms. Cochran that that's certainly something that we need to move forward on. Additionally, I feel that her...the goal is a very good one to have the kind of expertise on the commissions that we need to protect our environment, protect our host culture. At the same time the amount of evidence that there is that we not only have criteria for other commissions that has been done by ordinance but you also have commissions that we've initiated by ordinance. They're not included or outlined anywhere in the Charter. So I think it's clear to me that this can be done by ordinance and so my feeling at this point is that we need to focus on that and I'd love to see us move forward with this but in a more relaxed fashion than we're dealing with today.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Okay.

COUNCILMEMBER WHITE: And but I certainly, I appreciate Ms. Cochran bringing this forward because I think it is something that we all want to ensure because it's protecting our environment, it's protecting a lot of things we hold near and dear. So I really appreciate her and the work that the Staff has done. Thank you, Chair.

CHAIR VICTORINO: And I agree and I thank Ms. Cochran and her Staff but again, you know, the angst I had and I think you can through enabling legislation put these forward and have these more specified. So, it's your call, Ms. Cochran.

COUNCILMEMBER COCHRAN: And, Chair, as much as...and I understand, I hear everyone's concerns and, and thoughts and manao and completely agree. And so, and my comment in regards to I was led to believe it was the only way I had to get this done but now I'm hearing otherwise and also hearing from fellow Members that it would be much, you know, a better process if we did it in a different manner. And so I wholeheartedly agree as long as the intent can happen one day soon. And, you know, I also appreciate the words of appreciation towards my staff and everyone that worked so hard on this in going down this path and in the end here we are debating whether to actually end it, continue this route. But I can read where the votes going just due to the sheer I guess nature of how we're going about fulfilling this, this end goal and I, you know, I don't...as much as I want to put up to the vote, I'm not. I just feel like I guess at this point we shall file but it's not a dead subject --

CHAIR VICTORINO: No.

COUNCILMEMBER COCHRAN: --and we shall continue the discussion and we shall bring it to this body for a vote in what manner we feel appropriate. And looking forward to that work and looking forward to building the details of what needs to be so we can have those voices represented in our commissions.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER COCHRAN: I heard that loud and clear through the community and I'm also hearing it from you folks. And so the training too I think is so, so special for all of us to definitely to go through, any decision-maker actually. So, if we can get it here, I thank Mr. White for going ahead and consulting OHA in regards to having it come here. But at this point, Chair, I want to thank everybody's indulgence on this and participation so I hear where everyone's heart is in this which is very, which is in line with where mine is but I just thought I had to go this way. So if it doesn't then, you know, that's fine but I definitely want to bring it back up to work on it.

CHAIR VICTORINO: Well, again, you know, again, and you now have that opportunity. You have been told that. It's on the record so it's not something that is not...made aware by Mr. Hokama to you and all of us that it is possible. So it's up to you now from that point and I would support it wholeheartedly. I've never had an objection to that except the word expertise I guess was something that and then the two members.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER COCHRAN: Yeah it's hard to define for you.

CHAIR VICTORINO: Yeah, and then the two members, especially Molokai and Lanai where sometimes it's really difficult just getting quorum, just getting qualified people. Just getting anybody for that matter and so that was my angst on that. So again this gives you the chance to just establish the criteria's for Maui, Lanai, Molokai, I mean Hana's advisory. It gives you the opportunity to work on it in totality and individually, yeah. Mr. Guzman, I know I asked you to go find that.

COUNCILMEMBER GUZMAN: Yeah, I did find it, Chair.

CHAIR VICTORINO: And that's fine.

COUNCILMEMBER GUZMAN: The opinion is from Mr. Kushi.

CHAIR VICTORINO: Yeah, so but at this point I think when you was doing that we kind of came around and found that we could do it without it, but.

COUNCILMEMBER GUZMAN: Oh, really but his opinion says we can't and it's like five pages long.

CHAIR VICTORINO: We not going spend all day on the five pages.

COUNCILMEMBER GUZMAN: It took me a long time to find it. Can I just submit it to the Committee?

CHAIR VICTORINO: Yeah, you can submit it for the record --

COUNCILMEMBER GUZMAN: Okay.

CHAIR VICTORINO: --then I will accept it and put it in the record. I assure you that and I thank you very much for doing that.

COUNCILMEMBER GUZMAN: Oh, thank you.

CHAIR VICTORINO: So, you know, at this point then the Chair would recommend filing of the communication ...

MS. FRIAS: Chair, there's two motions pending.

MR. KUSHI: Mr. Chair?

CHAIR VICTORINO: Oh, yeah, you got to dispose of the two motions.

MR. KUSHI: Is that an opinion about a department head?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER GUZMAN: Yeah, it's a department head.

MR. KUSHI: Okay, well that's different from a board member.

CHAIR VICTORINO: Okay, okay, and let's not get into that.

COUNCILMEMBER GUZMAN: It's enabling language, that's the ...

CHAIR VICTORINO: Yeah, so you can submit it and let me assure you, Mr. Kushi, we're just submitting it to the record, okay. Okay.

COUNCILMEMBER COCHRAN: Okay.

CHAIR VICTORINO: Would you like to withdraw your original motions?

COUNCILMEMBER COCHRAN: Yes, I will do --

CHAIR VICTORINO: And the amendment?

COUNCILMEMBER COCHRAN: --that at this time.

CHAIR VICTORINO: And the second? Okay. Alright, so now, Ms. Cochran, if, you know, if you'd like to make a motion to file this communication and so that we can move on.

COUNCILMEMBER COCHRAN: Yes, I make a motion to file. File. What is it?

CHAIR VICTORINO: This is 10 ...

COUNCILMEMBER COCHRAN: County Communication 09-...no, 229, oh, correspondence, oh my God, okay, sorry.

CHAIR VICTORINO: Dated June 20, 2016.

COUNCILMEMBER COCHRAN: A correspondence dated June 20, 2016.

CHAIR VICTORINO: Do I have a second?

COUNCILMEMBER HOKAMA: Second.

CHAIR VICTORINO: It's been moved and seconded to file communication dated June 20, 2016. Any further discussion? Seeing none, all those in favor, signify by saying "aye."

COUNCILMEMBERS: Aye.

CHAIR VICTORINO: Opposed? Let the record show seven "ayes," two excused, Mr. Couch and Ms. Crivello this time.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

VOTE: **AYES:** **Chair Victorino and Councilmembers Baisa, Carroll, Cochran, Guzman, Hokama, and White.**

NOES: **None.**

EXC.: **Vice-Chair Couch and Councilmember Crivello.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **Recommending FILING of correspondence.**

ITEM PIA-10(14): PROPOSED CHARTER AMENDMENTS (DEPARTMENT DIRECTOR APPOINTMENTS) (CC 09-229)

CHAIR VICTORINO: Okay, you have...did we pass that out, Sharon?

MS. BROOKS: Yes.

CHAIR VICTORINO: You're receipt of the changes to the resolution regarding the allowing Council or the Mayor to remove the Managing Director, Director of Finance, Corporation Counsel, and Prosecuting Attorney, and allowing additional qualification for department directors to be established by ordinance. Okay. I think that has been passed out to all of you. We tried to incorporate all the request and changes that was brought forth today. Ms. Brooks, would you like to go over anything specific?

MS. BROOKS: Yes, this version incorporates the Committee's decision to have approval of department directors that are appointed by the Mayor, by the Council, and then removal by either the Mayor or the Council with two-thirds vote of its membership after, following consultation with the Mayor. I did want to point out on Page 6 in this version; we had deleted the current language in the Charter in Section 8-11.5 which has to do with the Director and Deputy Director of Water Supply. And currently it is an anomaly because it does require approval of the Council for removal. So removal by the Mayor and the words, with approval of the Council, were taken out to make it consistent. But if that's not the Committee's intent then, well, we can probably remove that deletion so that would be on line 4 in Section 8-11.5 having to do with the Director and Deputy Director of the Water Supply on Page 6.

CHAIR VICTORINO: And that is...by removing what it was in the existing language it said with the approval of the Council?

MS. BROOKS: Correct.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: That exists right now in the Charter?

MS. BROOKS: Yes.

CHAIR VICTORINO: Okay. So that was the only one and again by the way that is the only one that you see Director and Deputy Director primarily because one of them need to have...be a licensed engineer and that's why it must be inclusive of both. That's why I couldn't take...just put a director and leave the deputy out. Okay. So any questions? Let's start with 8.11-5 [sic]. What is the feeling of the group, my Members, do you want to leave with the approval of the Council in there or delete it? It's your call.

COUNCILMEMBER HOKAMA: Which one is this?

CHAIR VICTORINO: This is Page 6 about two-thirds down. It's under Section 8-11.5 Directors and Deputy Director of...Director and Deputy Director of Water Supply. And the fourth line down it says may be removed by the Mayor with the approval of the Council. That's the current language that is and with the approval of the Council has been bracketed out. So it is your call. Should we leave it in or take it out? That would be the only one that we have that specific language. Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, if memory serves me right, part of the rationale of ensuring Council's participation with the Water Director as I recall was so that the Director would always make a decision for what is right for the public's interest. It wasn't for the Council's interest or the Mayor's interest. That the Water Director was always and should be foremost committed to doing what is right for the public's interest, and that is why it takes both branches to either hire or terminate the Water Director. I know in the past we've had our at times disappointments that the Water Director may not have looked at it from our perspective, the public's best interest, but that was my understanding of why we had that in the current, in the Charter regarding the hiring and termination of this position was to allow that director I guess to be able to divorce as much as possible. I mean this is government, you will never eliminate politics 100 percent. But it was to try and allow that person to do again what was the best interest of the public on public water assets and public rights to public water. So I just share that because I still think that the Council has a say especially with water. We should have a say in the monies and in the waters because that is two critical components that impact this County greatly in its ability to serve its community. Thank you.

CHAIR VICTORINO: So, if I hear you correctly, you would like that language to remain in? With the approval of the Council, you would like that to remain in the ...

COUNCILMEMBER HOKAMA: 'Cause other than that I just think then that, you know, the Mayor's politics gets a lot more involved with the Director's decisions.

CHAIR VICTORINO: Okay. Any objections?

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER HOKAMA: That's just my perspective, Chairman. Thank you.

CHAIR VICTORINO: Any objections to remove the brackets and let...and allow that language to remain in this version? Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR VICTORINO: Seeing none, then I will instruct Staff to put that back in and remove the brackets. So it will still read, the Director of the Department of Water Supply...I mean, excuse me, the Director of Water Supply shall be appointed by the Mayor and with the approval of the Council and may be removed by the Mayor with the approval of the Council. Okay. Are we clear with that? Alright. Anything else? You know the rest we've discussed but I will ask for any more discussion with the revisions that were made per your request, by various Members' requests.

COUNCILMEMBER HOKAMA: Chairman?

CHAIR VICTORINO: Yes, sir?

COUNCILMEMBER HOKAMA: I know that we only talk about it in vacancy of the Mayor --

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: --in the Charter and so I just bring it up to you that if you feel it's important for us under the Managing Director and Finance Director to mention some sort of role in succession.

CHAIR VICTORINO: Well, as I stated to you, Mr. Hokama, it's not part of our subject matter but I will allow you to give a dissertation and, and open the discussion to a degree --

COUNCILMEMBER HOKAMA: Thank you.

CHAIR VICTORINO: --as far as the succession.

COUNCILMEMBER HOKAMA: Yeah, yeah.

CHAIR VICTORINO: Yeah, because we can't really take action on something that wasn't agendized. Okay. Thank you. Go ahead, Mr. Hokama.

COUNCILMEMBER HOKAMA: And real quickly, Chairman, just as within the scope that we've placed it, the Managing Director shall be appointed by the Mayor --

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: -- approved by the Council. We're looking at upping or having the minimum experience both maybe stated by Charter and through a potential ordinance more specific qualifications for the position. But I think when we talk about

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

those kind of things it should be also considered as part of the additional responsibility in their potential role as Chief Executive Officer because they are part of a succession scenario that the Charter provides for. And so I just bring this up that on a temporary basis I can see why we would continue to consider supporting the MD as the temporary interim mayor should the Mayor go for official business out of State or off island. We understand that. But let's say for a permanent or physical issue regarding capacity to perform, I know the Charter talks about length of the remaining term and there comes a point where if the term is sufficient enough I believe that discussion warrants whether or not it should be an appointed position or one that the people have elected to take certain positions. Whether it's the Federal government, State government, succession is given to an elected position. Okay. The County we don't elect a lieutenant mayor, deputy mayor, it's just the Mayor. And so I can understand the executive component in succession but I also think under the right circumstances I would be happy to discuss why I would think maybe an elected Councilmember or its chairman would not be the better consideration temporarily to become the interim mayor under certain circumstances, because, one, that person was elected by the people. I think we should discuss it. If it doesn't make sense, hey, at least we had the discussion, and there was no merit to even consider it so it died. I can live with that but I foresee that there are certain circumstances whether it be unfortunate death in the office or whatnot that for a period of time maybe it's better to have an elected person lead this County than an appointed person. And so, I thank you for this opportunity to just share some thoughts regarding those two positions Finance and Managing Directors in this role of succession within this current Council Charter setup. Thank you, Chairman.

CHAIR VICTORINO: Thank you. And again you bring up a good point. Right now, the only thing that covers...is covered is on Page 17 Section 7-6 vacancy in the office. And a vacant...a vacancy in the Office of Mayor shall be filled for the remaining, remainder of the unexpired term in the following manner, and it subscribes that if it's unexpired term one year or less the Managing Director shall act as mayor. If the Office of Managing Director is vacated...vacant or shall be for a period of time, the Managing Director is unable for such act, the Director of Finance shall be...shall act as mayor. And then it goes if the unexpired term is one year or more then the vacancy will be filled by special elections called by the Council within 30 days and to be held within 90 days of the occurrence of the vacancy. So we do have some specific timeframes and you're well aware of it. I'm just...and I'm preaching to choir but I'm also making the public aware that we do have some definitive timeframes should it be one year or longer. If it's one year or less then it becomes more vague and a little bit more uncertain. The elector of the County shall elect a successor with...and relinquish qualifications to fill the vacancy of the remaining term. And I think this has happened because I think we've lost, Eddie Tam when he passed away there was a special election. I don't know of anybody else. I think when Elmer resigned I think ...

COUNCILMEMBER HOKAMA: We had a special election.

CHAIR VICTORINO: Special election. I recall a few incidents in my time, you know, that we had this specific incident occur. Eventually, and, you know, I'll say this, I do not have

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

a qualm with what you're suggesting. The only challenge I have is if, and again we are elected by the people to serve as Councilmembers, not as Mayor, okay I have this real challenge. I mean I know where you're going and you see where I'm coming from.

COUNCILMEMBER HOKAMA: I understand, Chair.

CHAIR VICTORINO: Yeah, and to say the Chair, no offense to you, Mr. White, you know who will become the Mayor should the Mayor expire or unable to fill or gets into a bad car accident. Oh, I don't know, you can think of a number of scenarios, and the Managing Director now would fall under that. What it does too, again, in my mind, is put the Council and that person as almost the sole power. And so, and again we can go on with this discussion but I don't want to take it too far and too long because I would like to finish this and vote on this because this is really the last major item we have. We have your ethics and you've stated what you want to do with that. But I'd like to finish this so that at least I know the majority of these issues are completed. But just to finish up, Mr. White wanted to say something please if I may allow Mr. White first. Go ahead, Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. I appreciate Mr. Hokama's comments, but for myself I think having the Managing Director and the Finance Director step in in the absence of a Mayor continues the focus on the Mayor's desires and his responsibilities in a much more cohesive fashion than having somebody from the Council jump in because all those folks are on an ongoing basis involved in the day-to-day activities to carry out the Mayor's wishes and the Council's policies. But I think it's appropriate for it to stay...in my mind it's more appropriate for it to stay the way it is even though it is true that elected officials replace other elected officials in their absence but I think this...the way we have it setup makes sense. And as you inferred, I wasn't elected to run the County. I was elected to be on the Council and I think that's the appropriate way for us to proceed.

CHAIR VICTORINO: Mr. Hokama?

COUNCILMEMBER HOKAMA: Again, healthy discussion --

CHAIR VICTORINO: Absolutely.

COUNCILMEMBER HOKAMA: --. . .*(inaudible)*. . .with this and again I respect my colleague's thoughts that he just shared. One of the reasons why I brought that up...this, Members, is following now the current succession, the MD, whatnot, as I understand they've become the temporary mayor, okay, but they still the MD and they still the Finance Director. So if I read our proposal correct, they still can be terminated by Council even if they're the acting Mayor because they're still I guess officially either Finance Director or Managing Director, so again not to belabor today. It's a long day but I would ask that the Staff think about that question and do we need to...is it a concern for us regarding this potential adjustment through Charter. Thank you, Chairman.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CHAIR VICTORINO: Okay. Anything else before I make my recommendation?

COUNCILMEMBER WHITE: Recommendation.

CHAIR VICTORINO: Anymore discussion? Recommendation?

COUNCILMEMBER COCHRAN: Yeah.

CHAIR VICTORINO: Okay. Alright, the Chair would like to make a motion to amend the proposed resolution by amending the ballot question, shall the Charter be amended effective January 2, 2019 to ease the restrictions on the Council relating to the approval or disapproval of the department directors appointments to require the Council approval of the Mayor's appointments and removal of specific directors such as Managing Director, Public Works, Prosecuting Attorney, and Finance Director to allow the Council to remove department directors, those department directors by a two-thirds vote of the entire Council and to allow additional qualification of department directors to be established by ordinance. Yes, Mr. Kushi?

MR. KUSHI: Yeah, Mr. Chair, before you entertain a motion --

CHAIR VICTORINO: Yeah.

MR. KUSHI: --to that effect.

CHAIR VICTORINO: Yes.

MR. KUSHI: A couple comments from my perspective --

CHAIR VICTORINO: Okay go ahead.

MR. KUSHI: --in my office in representing this Committee. Again it's still in my mind there remains an issue whether your power to remove is the same as the power to appoint. In fact your third whereas on the first page admits that you should have the same authority. Until that issue is resolved, I will not sign off on this, this reso, you know, but again you've done it before. You've gone through without our office's signature. But hopefully we can get the issue resolved before first reading.

CHAIR VICTORINO: Yes, yes.

MR. KUSHI: Okay. A technical issue about the ballot question.

CHAIR VICTORINO: Yes.

MR. KUSHI: I would recommend that you separately list by an asterisk in the reference --

CHAIR VICTORINO: Yes.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER WHITE: Chair, quick recess.

CHAIR VICTORINO: Oh, yes, quick recess. Okay. . . .(gavel). . .

RECESS: 3:43 p.m.

RECONVENE: 3:47 p.m.

CHAIR VICTORINO: . . .(gavel). . . We reconvene this meeting.

ITEM PIA-10(1): PROPOSED CHARTER AMENDMENTS (COUNCIL INITIATED REMOVAL OF THE CORPORATION COUNSEL) (CC 09-229, CC 14-313)

ITEM PIA-10(7): PROPOSED CHARTER AMENDMENTS (COUNCIL APPROVAL OF MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS) (CC 09 229, CC 15-305)

ITEM PIA-10(9): PROPOSED CHARTER AMENDMENTS (COUNCIL APPROVAL OF MAYOR'S APPOINTMENT OR REMOVAL OF THE DIRECTOR OF FINANCE) (CC 09 229)

CHAIR VICTORINO: First of all before we go to 10(3), Mr. White, I would like to with your permission file PIA-10(1), 10(3), 10(7) and 10(15) because we've incorporated those and Mr. White has said that he'd like to, oh, you wanted to defer that, not file.

COUNCILMEMBER WHITE: Yeah to defer 10(15).

CHAIR VICTORINO: Yeah, okay. Let me, let me do 10(1), 10(3), and 10(7) because that's what we incorporated together under 10(16). I would like to file, I would like to have a motion to file those three communications, those three items I should say, 10(1), 10(3), and 10(7).

COUNCILMEMBER HOKAMA: So moved.

COUNCILMEMBER WHITE: So moved.

CHAIR VICTORINO: Do I have a second? Two guys said so moved.

COUNCILMEMBER HOKAMA: Second.

COUNCILMEMBER WHITE: Second.

CHAIR VICTORINO: Okay, just throw me off here. Okay. Again if I can remind you, you know, remind you that those are the three I combined and we finally came out with 10(16).

COUNCILMEMBER HOKAMA: Yeah that's fine.

**POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui**

July 5, 2016

CHAIR VICTORINO: Okay. Anymore discussion?

COUNCILMEMBER WHITE: Actually I'm not sure 10(3).

CHAIR VICTORINO: Oh, wait a minute.

MS. BROOKS: Chair, I believe if I may? It's 1, 7, and 9.

CHAIR VICTORINO: Okay 1, 7, and 9, okay, I stand corrected. If I may make that correction, 10(1), 10(7), and 10(9), Mr. White.

COUNCILMEMBER WHITE: So moved.

COUNCILMEMBER HOKAMA: Second.

CHAIR VICTORINO: Okay, it's been moved and seconded by Mr. White and Mr. Hokama. Anymore discussion? All those in favor, signify by saying "aye."

COUNCILMEMBERS: Aye.

CHAIR VICTORINO: Opposed? Let the record show five "ayes," Mr. Carroll, Ms. Baisa, Mr. Couch, and Ms. Crivello excused.

VOTE: AYES: Chair Victorino, and Councilmembers Cochran, Guzman, Hokama, and White.

NOES: None.

EXC.: Vice-Chair Couch and Councilmembers Baisa, Carroll, and Crivello.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending FILING of communications and FILING of correspondence dated April 28, 2016.

ITEM PIA-10(15): PROPOSED CHARTER AMENDMENTS (BOARD OF ETHICS) (CC 09-229)

CHAIR VICTORINO: Alright, moving on to 10(3), that is...oh, yeah, and wait, hang on...and with no objections, I'd like to file 10(15) proposed Charter amendment relating to the Board of Ethics.

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

COUNCILMEMBER WHITE: Defer.

CHAIR VICTORINO: Defer, yeah, okay.

COUNCILMEMBER WHITE: Yeah. Not to file, to defer.

CHAIR VICTORINO: Oh, no I said, did I say file?

COUNCILMEMBER WHITE: You said file.

CHAIR VICTORINO: Again, ay carambas. To defer, I meant defer, with no objections.

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS (excused: DC, GCB, RC, SC).

ACTION: DEFER pending further discussion.

ITEM PIA-10(3): PROPOSED CHARTER AMENDMENTS (CODE OF ETHICS) (CC 09-229)

CHAIR VICTORINO: Okay, now, we go to 10(3). And 10(3) is a proposed Charter amendment relating to the Code of Ethics. This amendment is proposed by Council Chair Mike White. Mr. White, I open the floor up for your discussion. Previously Mr. Kushi stated that the concerns about Section 10-2(g) which takes disciplinary action away from the appointing authority and places it in the hands of the Board of Ethics. So with that said I'll start with you, Mr. White, and then move to Mr. Kushi. Mr. White?

COUNCILMEMBER WHITE: You know, Chair, I'm okay with deferring this as well.

CHAIR VICTORINO: Okay. Okay. Thank you. If there is no objections, I will propose deferring PIA-10(3).

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS (excused: DC, GCB, RC, SC).

ACTION: DEFER pending further discussion.

CHAIR VICTORINO: Okay.

COUNCILMEMBER WHITE: I think we have enough on our list of amendments, so.

CHAIR VICTORINO: And I will work with Mr. Kushi and our Staff to make the necessary grammatical and other non-substantive changes and get that corrected and have a

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

clean version for all of us come our...when is the first reading? When would we have first reading?

MS. BROOKS: July 15th.

CHAIR VICTORINO: July 15th okay. Ladies and gentleman, I want to thank you very, very much. We got a lot accomplished, and like you said, Mr. Hokama, a lot of healthy discussion. You know I think this is important that the public sees that we've taken a lot of that Managing Director issue very seriously but we've incorporated it in areas where we can do...we can take action now. And hopefully with the Charter changes and the Charter amendments put on the ballot the public will be favorable in that hopefully. If not, if they say no, then we know that they didn't want it. And this is an opportunity as been stated by others for the public to weigh in and decide which way this County will continue to move. So I want to thank all of you. I want to thank the Staff. I want to thank Mr. Kushi. I want to thank Deputy Director Michele for coming in and sharing her manao. Thank you, Mr. Kushi, very, very much. And with no objections and nothing else to discuss, this meeting of the Policy and Intergovernmental Affairs Committee for July 5, 2016 is now adjourned. . . .(gavel). . .

ADJOURN: 3:52 p.m.

APPROVED:



MICHAEL P. VICTORINO, Chair
Policy and Intergovernmental Affairs Committee

pia:min:160705r:cs

Transcribed by: Cathy Simmons

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE MINUTES
Council of the County of Maui

July 5, 2016

CERTIFICATE

I, Cathy Simmons, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 1st day of August 2016, in Wailuku, Hawaii.



Cathy Simmons