

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

October 7, 2016

Council Chamber, 8th Floor

CONVENE: 1:37 p.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Gladys C. Baisa
Councilmember Robert Carroll
Councilmember Elle Cochran
Councilmember Don Couch
Councilmember Riki Hokama
Councilmember Michael P. Victorino (left at 2:49 p.m.)
Councilmember Mike White (arrived at 1:40 p.m.)

EXCUSED: Councilmember Stacy Crivello, Vice-Chair

STAFF: Carla Nakata, Legislative Attorney
Pauline Martins, Substitute Committee Secretary

Tina Thompson, Executive Assistant to Councilmember Crivello,
Molokai Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via
telephone conference bridge)
Dawn Lono, Council Aide, Hana Council Office (via telephone
conference bridge)

ADMIN.: Christie M. Trenholme, Deputy Corporation Counsel, Department
of the Corporation Counsel
Moana M. Lutey, Deputy Corporation Counsel, Department of the
Corporation Counsel
Caleb P. Rowe, Deputy Corporation Counsel, Department of the
Corporation Counsel
Jeffrey Murray, Chief, Department of Fire and Public Safety
Victor Ramos, Assistant Chief, Uniformed Services Bureau,
Department of Police
Carmelito Vila, Administrator, Motor Vehicle and Licensing
Division, Department of Finance
Laurie Kealiinohomoku, Assistant Administrator, Motor Vehicle
and Licensing Division, Department of Finance
Ralph Thomas, Equal Employment Opportunity Specialist,
Department of Management

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

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CHAIR GUZMAN: . . . *(gavel)* . . . Good afternoon. I'm Don Guzman, Chair of the Committee of the Whole. I would like to introduce the Members that we have present today. We have Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: Good afternoon. Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR GUZMAN: Good afternoon. Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha. Good afternoon.

CHAIR GUZMAN: Good afternoon. Mr. Don Couch.

COUNCILMEMBER COUCH: Aloha and good afternoon, Chair.

CHAIR GUZMAN: Mr. Riki Hokama.

COUNCILMEMBER HOKAMA: Good afternoon.

CHAIR GUZMAN: Good afternoon. And Mr. Mike Victorino.

COUNCILMEMBER VICTORINO: Good afternoon and Aloha, Chair.

CHAIR GUZMAN: Good afternoon. And shortly joining us will be Chair of the Council Mike White. We have for our Staff is Carla Nakata and Pauline Martins. We have for our Deputy Corporation Counsel, Moana Lutey, and the other Deputies who will be assisting us with the cases as they are called. Before we begin, I would like to remind everyone to turn off their cellphones or put it in a silence mode. If you would like to testify, please limit your testimony to three minutes and when you come to the podium, please identify yourself and organization which you belong to or represent. We would like to check in with our District Offices. Calling in. Hana Office, are you there?

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

CHAIR GUZMAN: Okay. Thank you, Ms. Lono. Is there anyone wishing to testify?

MS. LONO: There is no one waiting to testify.

CHAIR GUZMAN: Oh, thank you very much, Ms. Lono. And we're going to go ahead and check on the Lanai District Office.

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

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CHAIR GUZMAN: Oh, thank you very much, Ms. Fernandez. And on Molokai District Office.

MS. THOMPSON: This is Tina Thompson at the Molokai Office, and there is no one waiting to testify.

CHAIR GUZMAN: Oh, thank you very much, Tina. How's it over there on Molokai? . . . *(chuckled)* . . . I didn't realize you were there, but thank you very much. And we'll go ahead and move forward in addressing the gallery, or at least the Chambers. Is there anyone wishing to testify?

MS. NAKATA: Mr. Chair, no one has signed up to testify in the Chamber.

CHAIR GUZMAN: Oh, very good. So at this time, there's, we would like to . . . *(chuckled)* . . . very good that we move forward, Members. Without objections, we will close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR GUZMAN: Thank you. Moving on to today's first item on today's agenda.

COW-1(46): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: A CHARGE OF DISCRIMINATION FILED WITH THE HAWAII CIVIL RIGHTS COMMISSION AND FEDERAL EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ON MARCH 11, 2014; FEDERAL EMPLOYMENT PRACTICES AGENCY M-16340; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION 37B-2011-00145) (CC 15-6)

CHAIR GUZMAN: This is the matter of Charge of discrimination filed with the Hawaii Civil Rights Commission and Federal Equal Employment Opportunity Commission on March 11, 2014; Federal Employment Practices Agency M-16340; Equal Employment Opportunity Commission 37B-2011-00145). This is COW-1(46). The Committee is in receipt of the correspondence dated September 13, 2016 from the Department of Corporation Counsel, requesting consideration of the proposed resolution entitled authorizing settlement of the aforesaid what I have just mentioned. The purpose of the proposed resolution is to authorize settlement of the case. The Committee may consider whether to recommend adoption, with or without revisions. The Committee may also file the correspondence and other related actions. Today, we have, I believe this is Christie Trenholme's case. She will be presenting in open session. We have also present that will be allowed to make opening comments is Mr. Thomas from the Equal Employment Opportunity Specialist from the Department of Management; as well as Mr. Vila, who is with the Department of Motor Vehicles. So, Ms. Trenholme, the floor is yours for opening statements.

MS. TRENHOLME: Thank you, Chair. Yes, we are seeking settlement authorization in this case. It's a disability discrimination . . .

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COUNCILMEMBER VICTORINO: Chair? Just, I hate to be a one stick in the mud, but could she identify herself? Just for the record.

CHAIR GUZMAN: Oh, yes. Yes.

MS. TRENHOLME: Oh.

CHAIR GUZMAN: Thank you. Thank you very much.

COUNCILMEMBER VICTORINO: Yeah, just . . .

MS. TRENHOLME: Sorry about that.

COUNCILMEMBER VICTORINO: No, no problem.

CHAIR GUZMAN: Please identify yourself--

MS. TRENHOLME: Okay.

CHAIR GUZMAN: --for the record. Thank you.

MS. TRENHOLME: Christie Trenholme, Deputy Corporation Counsel, and we're seeking settlement authority in this matter. It was a charge of disability discrimination filed by a former County of Maui employee. The Hawai'i Civil Rights Commission is taking the lead on this matter, and they have issued a notice of . . . um . . . a notice to us that we would like to discuss in executive session.

CHAIR GUZMAN: Thank you. I would like to recognize the presence of our Chair of the Council, Mr. Mike White. Thank you. Do you have any opening comments from the Administration, Mr. Villa, from the Department of Motor Vehicles?

MR. VILA: No comments at this time. I'm just here in the event there are questions that I would be answered, and I'll do my best to answer them for the Council.

CHAIR GUZMAN: And for the Equal Opportunity Specialist, Mr. Thomas. Do you have any opening statements?

MR. THOMAS: That would be no sir, Ralph Thomas. No comments at this time.

CHAIR GUZMAN: Okay, thank you. Members, do you have any questions or comments that you'd like to share in open session? Seeing none. Is there a request to go into executive session?

MS. TRENHOLME: Yes, we would request to go into executive session at this point.

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CHAIR GUZMAN: Okay, thank you. There has been a request to enter into executive session pursuant to Section HRS 92-5(a)(4) for the duties to consult with our Corporation Counsel for powers, duties, privileges, immunities, and liabilities. Also, under Section 92-5(a)(8) of the HRS to consider and deliberate on decisions that require confidentiality pursuant to State or Federal law, as well as court order.

COUNCILMEMBER COUCH: So moved, Mr. Chair.

COUNCILMEMBER VICTORINO: Second.

CHAIR GUZMAN: Moved by Mr. Couch, seconded by Mr. Victorino. Any further discussion? Seeing none, all those in favor, say "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR GUZMAN: All those opposed, say "no." We have eight "ayes," one excused. Motion carries.

VOTE: AYES: Chair Guzman and Councilmembers Baisa, Carroll, Cochran, Couch, Hokama, Victorino, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello.

MOTION CARRIED.

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

CHAIR GUZMAN: Thank you. Moving on to the next item, Members.

COW-1(43): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: ROBERT LOW V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 8-15-00560) (CC 15-6)

CHAIR GUZMAN: We have the COW-1(43) and this is the—excuse me--Robert Low v. County of Maui, Disability Compensation Division Case 8-15-00560. The Committee is in receipt of the recommendation of the adoption of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF ROBERT LOW V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 8-15-00560." The claim alleges work-related injuries sustained on January 20, 2015. The Committee may consider whether to

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recommend the adoption of the proposed resolution, with or without revisions; as well as other, consider other matters, or and, or filing of the correspondence. So, I believe this is Mr. Caleb Rowe's case. Mr. Rowe, you may present in open session.

MR. ROWE: Thank you, Chair. Deputy Corporation Counsel Caleb Rowe. This involves, this claim involves an injury that was sustained by a firefighter on the island of Molokai. He was 49 years old at the time, and it occurred in the course of a training exercise. We have reached a proposed settlement in this matter that includes a wash, and therefore, is above the settlement authority of our Department. I would like to discuss this with you in executive session because it is ongoing litigation, and because there are medical details that are involved.

CHAIR GUZMAN: Thank you. We have Chief Murray here representing the Department. Do you have anything, any comments that you would like to share in open session?

MR. MURRAY: No.

CHAIR GUZMAN: Okay, none. Seeing none.

MR. MURRAY: Aloha, Chair. Thank you. I have no comments at this time.

CHAIR GUZMAN: Okay, thank you. Members, do you have any questions or comments you'd like to make in open session? Seeing none. There's been a request to enter into executive session pursuant to 92-5(a)(4) of the HRS to consult with legal counsel about powers, duties, immunities, and liabilities, regarding our, the County, this Committee, and/or the Council.

COUNCILMEMBER COUCH: Mr. Chair, I move that we go into executive session based on the comments you just made.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: There's been a . . .

MS. NAKATA: Excuse me, Mr. Chair. Also under Section 92-5(a)(8).

CHAIR GUZMAN: Oh, right, cause the employee. Okay. And as well as pursuant to 92-5(a)(8) of the HRS regarding decisions and deliberations on confidential matters and information that are to be kept confidential pursuant to State or Federal law, or court order.

COUNCILMEMBER COUCH: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR GUZMAN: Moved by Mr. Couch. Seconded by Mr. Victorino. Any further discussion? Seeing none, all those in favor, say "aye."

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to need to discuss her medical injuries with you to formulate a decision on settlement here, so I am requesting executive session.

CHAIR GUZMAN: Okay. I believe that we have Chief Ramos here. Do you have any opening comments that you would like to share?

MR. RAMOS: Vic Ramos, Assistant Chief, Maui Police Department, Uniformed Services Bureau. I have no comments.

CHAIR GUZMAN: Okay. Members, do you have any comments or questions in open session? Seeing none. There's been a request to enter into executive session. I would like to entertain a motion to enter into the executive meeting under 92-5(a)(4) for consultation with our attorney, powers, duties, privileges, immunities, and liabilities, as well as, Section 92-5(a)(8) of the HRS to deliberate on decisions that are matters requiring confidentiality and or Federal law, or court order, that must be kept confidential.

COUNCILMEMBER COUCH: So moved, Mr. Chair.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Moved by Mr. Couch. Seconded by Mr. Victorino. Any further discussion? Seeing none, all those in favor, say "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR GUZMAN: All those opposed, say "no." We have eight "ayes," one excused, and no "noes." Motion carries.

VOTE: AYES: Chair Guzman and Councilmembers Baisa, Carroll, Cochran, Couch, Hokama, Victorino, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello.

MOTION CARRIED.

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

CHAIR GUZMAN: Thank you. Members, moving on to the next item.

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**COW-1(44) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION:
APRIL FREELAND, ET AL. V. COUNTY OF MAUI, ET AL.; CIVIL
11-00617 ACK-KSC; NINTH CIRCUIT U.S. COURT OF
APPEALS 14-15014) (CC 15-6)**

CHAIR GUZMAN: COW-1(44), which is the April Freeland case. The Committee is in receipt of correspondence dated August 29, 2016, from the Department of Corporation Counsel, requesting consideration of the proposed resolution, entitled "AUTHORIZING SETTLEMENT OF APRIL FREELAND, ET AL. VS. COUNTY OF MAUI, ET AL.; CIVIL NO. 11-00617 ACK-KSC; NINTH CIRCUIT U.S. COURT OF APPEALS NO. 14-15014," and transmitting a copy of the Second Amended Complaint. The complaint alleges unlawful seizure, unlawful arrest, unlawful search, inadequate supervision and training, false arrest, assault, battery, false imprisonment, negligent infliction of emotional distress, and intentional infliction of emotional distress arising from an incident on April 15, 2011, involving Defendants Jerald Perkett, Jeffrey Calibuso, Keoki Santos, Richard Dods, Christopher Gantala, Kenneth Carroll, Clifford Dagulo, Jamie Wright, Matthew Brown, Eduardo Bayle, Christopher Kealoha, Clifton Perreira, Gregg Okamoto, Matthew Bigoss, and Gary Yabuta as Chief of Police. The purpose of the proposed resolution is to authorize settlement of the case. The Committee may consider whether to recommend the adoption of the proposed resolution, with or without revisions, and also consider filing of the correspondence and other related actions. I believe this case is Ms. Lutey's case.

MS. LUTEY: Thank you.

CHAIR GUZMAN: Okay, you have the floor.

MS. LUTEY: This case is in active litigation. We are currently on appeal, and what this case stems from is a search warrant that we executed on April 15, 2011 at the Freeland residence. The Freeland . . . (uh) . . . we got a search warrant there, hit that house, and unfortunately, we were at the wrong home, and so the Freelands sued us. I have filed a motion for summary judgment in this case. That was filed in 2013. And all of the defendants were dismissed as a result of that motion, except for Lieutenant Perkett and Officer Bigoss. We are pending oral arguments before the Ninth Circuit Court of Appeals in this matter, and the plaintiff's attorney has provided me with a settlement demand in this case, and because those are protected by our rules of evidence, I am asking for executive session to convey that demand, and have discussions on this matter with you.

CHAIR GUZMAN: Okay. Any comments or questions from the Members? There's been a request by Corporation Counsel to enter into executive session pursuant to 92-5(a)(4) of the HRS to consult with legal counsel on questions, duties, privileges, immunities, and liabilities for this County, this Committee, and the Council. Oh, and 92-5(a)(8) of the HRS to deliberate and make decisions regarding confidential matters pursuant to State, Federal law, or court order.

COUNCILMEMBER COUCH: So moved, Mr. Chair.

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COW-1(46): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: A CHARGE OF DISCRIMINATION FILED WITH THE HAWAII CIVIL RIGHTS COMMISSION AND FEDERAL EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ON MARCH 11, 2014; FEDERAL EMPLOYMENT PRACTICES AGENCY M-16340; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION 37B-2011-00145) (CC 15-6)

CHAIR GUZMAN: Pursuant to our discussions in executive session regarding item number one COW-1(46) litigation matters. Settlement authorization for the Hawaii Civil Rights Commission. There's a, the Chair will entertain a motion to recommend adoption of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF A CHARGE OF DISCRIMINATION FILED WITH THE HAWAII CIVIL RIGHTS COMMISSION AND FEDERAL EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ON MARCH 11, 2014; FEDERAL EMPLOYMENT PRACTICES AGENCY NO. M-16340; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION NO. 37B-2011-00145."

COUNCILMEMBER COUCH: So moved, Mr. Chair.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Moved by Mr. Couch. Seconded by Mr. White. Any further discussion? Seeing none, all those in favor, say "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR GUZMAN: All those opposed, say "no." Two excused, so we have seven "ayes," and no "noes." Motion carries.

VOTE: AYES: Chair Guzman and Councilmembers Baisa, Carroll, Cochran, Couch, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello and Councilmember Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR GUZMAN: Thank you. Moving on to the next item.

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**COW-1(43): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION:
ROBERT LOW V. COUNTY OF MAUI; DISABILITY
COMPENSATION DIVISION CASE 8-15-00560) (CC 15-6)**

CHAIR GUZMAN: Members, COW-1(43). Pursuant to our executive session and discussion with Corporation Counsel, the Chair will entertain a motion to recommend adoption of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF ROBERT LOW V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 8-15-00560."

COUNCILMEMBER COUCH: So moved, Mr. Chair.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Moved by Mr. Couch. Seconded by Mr. White. Any further discussion? Seeing none, all those in favor, say "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR GUZMAN: All those opposed, say "no." Seven "ayes," no "noes," and two excused. Motion carries.

**VOTE: AYES: Chair Guzman and Councilmembers Baisa, Carroll,
Cochran, Couch, Hokama, and White.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello and Councilmember Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR GUZMAN: Thank you. Moving on to the next item.

**COW-1(45): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION:
CLAIM 2014-2034-10-0001 OF KAREN HUNTER) (CC 15-6)**

CHAIR GUZMAN: Item number three, COW-1(45) litigation matters regarding Karen Hunter. The Chair will entertain a motion to recommend adoption of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 2014-2034-10-0001 OF KAREN HUNTER."

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MS. NAKATA: Excuse me, Mr. Chair.

CHAIR GUZMAN: Excuse me.

MS. NAKATA: I believe they'll need to be some revisions to this resolution.

CHAIR GUZMAN: Oh.

MS. NAKATA: I think Deputy Corporation Counsel Lutey can explain.

MS. LUTEY: Thank you. In the resolution, it was four individual defendants that are no longer in this lawsuit. There are only two remaining. Chief Yabuta, or former Chief Yabuta, and Keoki Santos were dismissed by stipulation after an order dismissing them without prejudice. So the only two remaining are Officer Bigoss and Lieutenant Jerald Perkett.

MS. NAKATA: So if Staff could have the, to make the appropriate adjustments to the resolution.

CHAIR GUZMAN: Yeah. We will incorporate that as part of the motion. If the Members don't mind, a friendly amendment to allow the nonsubstantive matters to be included into the resolution.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR GUZMAN: Okay? All those in favor, say "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR GUZMAN: All those opposed, say "no."

COUNCILMEMBER COUCH: No.

CHAIR GUZMAN: One "no," six "ayes," and two excused. Motion carries.

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

NOES: **Councilmember Couch.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Vice-Chair Crivello and Councilmember Victorino.**

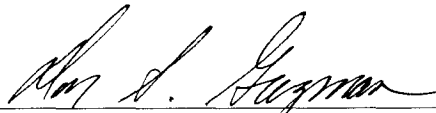
MOTION CARRIED.

ACTION: **Recommending ADOPTION of revised resolution.**

CHAIR GUZMAN: Thank you very much, Members, and happy aloha Friday. And thank you, Staff, for sticking it out. It's been a long, long day. It feels like Budget season, but we're not in it. Okay. So have a great weekend, and a safe weekend. Aloha. . . . *(gavel)* . . .

ADJOURN: 3:42 p.m.

APPROVED:



DON S. GUZMAN, CHAIR
Committee of the Whole

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Transcribed by: Pauline Martins