

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

M I N U T E S

Council Chamber

October 16, 2019

RECONVENE: 1:38 p.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair
Councilmember Riki Hokama
Councilmember Kelly T. King
Councilmember Alice L. Lee
Councilmember Tamara Paltin
Councilmember Shane M. Sinenci
Councilmember Yuki Lei K. Sugimura (arrived 1:42 p.m.)

EXCUSED: Councilmember Tasha Kama

STAFF: Shelly Espeleta, Legislative Analyst
John Rapacz, Legislative Attorney
James Forrest, Legislative Attorney
Pauline Martins, Committee Secretary

Kate Griffiths, Executive Assistant to Councilmember King

ADMIN.: Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department
of the Corporation Counsel
Richelle Thomson, Deputy Corporation Counsel, Department of the
Corporation Counsel
Moana M. Lutey, Corporation Counsel, Department of the
Corporation Counsel

OTHERS: One (1) other person

PRESS: *Akaku Maui Community Television, Inc.*

**GET-11(28) (SPECIAL COUNSEL AUTHORIZATION: TO ADVISE AND REPRESENT THE
MAUI COUNTY COUNCIL RELATED TO INTERPRETATION OF THE
CHARTER OF THE COUNTY OF MAUI REGARDING LEGISLATIVE AND
EXECUTIVE AUTHORITY IN COUNTY OF MAUI V. HAWAII WILDLIFE FUND,
ET AL., U.S. SUPREME COURT DOCKET 18-260 (CC 19-29))**

CHAIR MOLINA: . . . *(gavel)* . . . The recessed GET meeting of Tuesday, October 15, 2019 is now back in session. Today is Wednesday, October 16th, 1:38 p.m. Thank you to

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everyone in attendance. For the record we will see who's here. Excused first are Members Kama and Sugimura. And we have from West Maui, Ms. Paltin. Good afternoon.

COUNCILMEMBER PALTIN: Aloha auinala, Chair.

CHAIR MOLINA: Aloha. And from Lanai, Mr. Riki Hokama. Good afternoon. And Committee Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha auinala, Chair.

CHAIR MOLINA: Aloha auinala. And from Wailuku, Ms. Lee.

COUNCILMEMBER LEE: And Mexico, hola, que tal, Mr. Chair.

CHAIR MOLINA: Hola. All right. Mahalo. And we have Council Chair King.

COUNCILMEMBER KING: Hola.

CHAIR MOLINA: Hola. And of course, all the way from heavenly Hana, Mr. Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair. Aloha auinala.

CHAIR MOLINA: Aloha. Thank you. And we have Mr. Kushi and Ms. Thomson from Corporation Counsel's Office. And Committee Staff we have Ms. Espeleta, Ms. Martins, and Mr. Rapacz. All right, Members, we have one item to address today which is the litigation matter related to Advise and Represent the Maui County Council Related to Interpretation of the Charter of the County of Maui Regarding Legislative and Executive Authority in County of Maui v. Hawaii Wildlife Fund. And the Resolution being considered or actually for discussion, I should say, is Authorizing the Employment of Special Counsel to Advise and Represent the Maui County Council Related to Interpretation of the Charter of the County of Maui Regarding Legislative and Executive Authority, and this was submitted by Council Chair King. And the purpose of the proposed Resolution is to authorize the employment of special counsel to represent the Maui County Council related to the interpretation of the Revised Charter of the County of Maui 1983, as amended, regarding the Legislative and Executive authority in County of Maui v. Hawaii Wildlife Fund. And if you'll note, under the status portion of your agenda, the Committee may discuss the matter, but no legislative action will be taken today. So, basically, Members, we're going to use this time to discuss however long you want to take this to, and then a decision on this matter will occur at this Friday's Council meeting. So, with that said, any questions before I recognize Corporation Counsel to give comments on the Resolution? Member Lee?

COUNCILMEMBER LEE: Mr. Chair, maybe you could tell us who has to leave and at what time.

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CHAIR MOLINA: Okay. I believe Member Paltin indicated to us she can only stay with us until three o'clock today.

COUNCILMEMBER PALTIN: Yeah.

CHAIR MOLINA: Thank you. And I know Member Kama was gonna be gone. I believe Ms. Sugimura initially stated she could be here yesterday, but apparently her plans have changed so I'm assuming she will not be here. And your Chair too also can only stay 'til at the latest till 3:30 p.m. today. So, but I believe this is sufficient time for us to discuss the matter. So, with that said, I would like to proceed with Corporation Counsel to give us their thoughts on the Resolution.

MS. THOMSON: Chair, we don't have any comments on the Resolution.

CHAIR MOLINA: Okay. No comments. All right, I'll open up the floor for questions if any from Chair King, as the author of the Resolution.

COUNCILMEMBER KING: Chair, I was not the author of this Resolution. I did request it, but this was actually authored by Moana Lutey who did tell us that she would be here to advocate for it as a responsibility of Corp. Counsel to provide representation for the County Council. So, I'm disappointed that she's not here today to speak to this. Although maybe she's ill or something.

CHAIR MOLINA: Okay. Well...

COUNCILMEMBER KING: I didn't, you know, I was told that she was going to be advocating so I didn't come prepared to advocate for it because I think she realized that, the need for it. Thank you.

CHAIR MOLINA: Okay. All right. Well, I guess Ms. Thomson will be speaking on behalf of Ms. Lutey.

MS. THOMSON: Thank you, Chair. The Resolution that's on today's agenda was drafted by me in response to a request from Chair King. So, Moana Lutey did not draft that Resolution.

COUNCILMEMBER KING: Okay. Thank you. She did tell us, however, and I double-checked with David Raatz who is off island today that she would be advocating for it. So, do you know why she's not here, Ms. Thomson?

CHAIR MOLINA: Ms. Thomson?

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MS. THOMSON: Thank you. I don't believe that we would be advocating for or against a Resolution. This is entirely the Council's determination of whether it needs special counsel in this matter of Charter interpretation.

COUNCILMEMBER KING: Okay. Well, that's disappointing because we were told, you know, and I double-checked with Dave yesterday, that you know, that we were told she was going to advocate for it because she saw the need for, she understands right now that the County Council has no legal representation, that your office, Corp. Counsel has pulled back from representing our position and our vote. And so, she recognized in the meeting that we had with her, that we do need representation and this is the way to obtain it.

MS. THOMSON: Chair?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: So, our office, so we're not talking today about the Hawaii Wildlife matter that's before the Supreme Court.

COUNCILMEMBER KING: No.

MS. THOMSON: That's separate and distinct.

COUNCILMEMBER KING: Right.

MS. THOMSON: We provided legal opinion, Peter Hanano of our office, provided a legal opinion, both specific to the settlement proposal from the Plaintiffs. And then, also a prior memo on the authority under the Charter for the Executive and the Legislative Branches. So, today's Resolution is, as I understand it, the Council's desire to potentially have special counsel to assist it, if it, if the matter becomes ripe, if they want to go to court for some reason or to have different advice.

COUNCILMEMBER KING: Okay. So, Ms. Thomson, we did discuss the need for a declaratory ruling because the Council clearly believes we have the authority, that's why we took the vote. And, your office believes we don't. And apparently the Mayor, you're representing the Mayor in that, correct?

CHAIR MOLINA: Ms. Thomson?

COUNCILMEMBER KING: Or you represent yourself?

MS. THOMSON: I'm not speaking on behalf of the Mayor.

COUNCILMEMBER KING: Okay.

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MS. THOMSON: Our office's opinion is in writing and I think that everyone has it from Peter Hanano.

COUNCILMEMBER KING: Okay. But is that correct, you believe that we don't have the authority to make that vote that we took?

MS. THOMSON: My opinion is, so again we're getting off topic and for Sunshine purpose...

COUNCILMEMBER KING: No, Ms. Thomson, it's not off topic because this whole thing centers around the idea of do we have the, does the Council have the authority in this position. Regardless of whether it was this case or another case. And so, the request, you know, as we outlined it with Ms. Lutey, and I'm really disappointed she's not here, was to, how are we going to resolve that. Whether we, you know, we all want to know, regardless of how we voted on that particular case, we all need to know do we have the authority or not. So, that's the relevant issue here and that is why she agreed to write this testimony, this Resolution and why she told both myself and David Raatz, and I think I'm not sure if Keani was in that meeting as well, that she would support it.

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: Thank you, Chair. So again, Peter Hanano's memo went point by point over the settlement agreement terms. Some of those terms are Legislative powers. Some of those terms involve Executive powers and some involve both. So, you know, if this isn't today has not been agendized to go over the settlement agreement again, but I think that his memo is very, very clear in terms of which powers are implicated by which portions of that settlement agreement. And today's Resolution is simply a response by myself in response to your request to draft a Resolution requesting special counsel, which is what I did.

COUNCILMEMBER KING: Chair, I think we're going round and round because I understand, I've seen the memo from Mr. Hanano and the fact is that the Council took a vote. The vote is, his memo is in opposition to the way we voted and the way we believe that we have that authority and if all they're going to do is continue to reiterate those memos, I don't know how we're gonna get to where we agreed to go, to be at with Ms. Lutey. And, you know, the decision was, you know, this is the way you get representation. Because clearly there's two different opinions on whether we have the authority per our Charter and so that needs a declaratory ruling. Much the same as we voted to hire special counsel to determine if the Mayor, per the Charter if the Mayor can put a director who's been denied by the Council into an interim position. So, it's kind of, it's all about the interpretation of the Charter and, you know, for...what we talked about was needing that to be a declaratory ruling in court. And we have no representation to take the County Council's side. So, that was the whole purpose of this Resolution and I don't know how else to get there without Ms. Lutey being here to, you know...

CHAIR MOLINA: Answer the specifics, I guess.

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COUNCILMEMBER KING: Right. And say the same thing she said to us in that meeting.

CHAIR MOLINA: Yeah. Well, first of all, for the record is Ms. Lutey here or she called in sick or on vacation, Ms. Thomson? Do you know what her status is?

MS. THOMSON: I can call her office and see.

COUNCILMEMBER LEE: Mr. Chair?

CHAIR MOLINA: Yes, Ms. Lee?

COUNCILMEMBER LEE: It's really irrelevant what she thinks. It's our decision.

CHAIR MOLINA: Yeah.

COUNCILMEMBER LEE: Yeah. So, she doesn't get to vote on this. So, I think we ought to proceed because we're running out of time. We just have an hour or two left.

CHAIR MOLINA: Yeah. I was just thinking maybe she could be, provide additional responses in addition to what Ms. Thomson and Mr. Kushi could provide, so.

COUNCILMEMBER KING: So, Chair, I'll just make one more comment. Then I'll yield the floor. But I think it's highly relevant because she was in that discussion when we talked about the need for this. And so, yeah, no she doesn't get a vote, but that's why we have resource people to help us. Because that's their area of expertise. And so, I would appreciate, Ms. Thomson, if you could give her a call and find out if she can be here.

CHAIR MOLINA: Okay. Well, we'll leave it up to Corp. Counsel and Ms. Lutey if she wants to call. Maybe we can have Staff do that. I don't want to stop the meeting for this. We need to move on. Okay. I have a quick question, so I don't know, Ms. Thomson, if you can answer this. The special counsel, assuming if a special counsel is approved for this, what areas will they be exploring? What specifically will they be looking at? Can you give us a rough idea? And I want to see what, you know, what our monies would be paying for should this be approved.

MS. THOMSON: Thank you, Chair. And I think that would be very important for this body to completely understand what you are asking an outside attorney to help you with. And, normally special counsel resos do have the name of the attorney that's been selected through the procurement process to represent, you know, whether it's the Council or the Mayor, and you know, an office or an employee. So, those are a couple of things that I do think should be considered as you get further in the consideration of this Reso.

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CHAIR MOLINA: Okay. Thank you very much, Ms. Thomson. And welcome to the Chambers. Also, to, well first of all, Councilmember Sugimura, I forgot to recognize your appearance earlier.

COUNCILMEMBER SUGIMURA: Good afternoon, Chair.

CHAIR MOLINA: Good afternoon. And also, Ms. Lutey. Thank you. Your timing is perfect. So...

MS. LUTEY: Well, I was watching it.

CHAIR MOLINA: Okay. All right. And just for the record, the Mayor apparently does not want to settle am I correct? Just want to get it into the record because if the Mayor does agree to settle, then going through this process makes it moot I guess right? So, from what I've heard the Mayor is going to publicly, since the Council took its vote to settle, he's still taking the position of this matter going to the Supreme Court. Am I correct?

MS. THOMSON: So, again I mentioned earlier--thank you, Chair--I can't speak for the Mayor. And I do not have information that he has made a final decision. I think we all have the same information that's been in the press that he has been meeting with members both of our own County, as well as neighboring counties and professionals in the field in order to make his determination and I know that he has been monitoring the events here at Council as well.

CHAIR MOLINA: Okay. Thank you, Ms. Thomson. Okay. Ms. Paltin, questions for Corporation Counsel, following Ms. Sugimura.

COUNCILMEMBER PALTIN: Thank you, Chair. I was wondering about what you just said that if the Mayor feels one way then this is moot. I thought that we just wanted to know, and it wasn't about the injection well case, was that a mistaken...

CHAIR MOLINA: Yeah, well actually, the focus of discussion should be on whether, you know, to, the need to hire special counsel to help resolve this conflict regarding the letter that was sent to us from Mr. Hanano that said if the Mayor and the Council do not agree on whether to settle or take this matter to court, then the ball is in the Mayor's court to administrate to decide whether they want to settle. So, the authority is given back to the Administration. So that's the determination that...

COUNCILMEMBER PALTIN: Well, it was my impression that it wasn't about that at all, but about seeing who has the authority to settle in any case, not in...

CHAIR MOLINA: Yeah, this has broader ramifications to resolve for future...

COUNCILMEMBER PALTIN: So, then it wouldn't be a moot point if the Mayor decided to settle because we'd still want to know if this comes up in the future.

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CHAIR MOLINA: Yeah. I'm sorry for my, maybe I didn't use the right words. I should have specified moot for this case only, but as far as for future cases, this has some ramifications. Let me get Ms. Thomson, she wants to make some clarification?

MS. THOMSON: The Hawaii Supreme Court has already analyzed this. The question generally on Charter provisions and Executive authority and Legislative authority and a combination of both in...of the context of settling lawsuits. So that's the Harris case and as I first mentioned by David Raatz back sometime in early summer and also in Peter Hanano's memo goes into great detail on the Harris case, as well there are a couple of other relevant cases. So, I don't see that just a general, I mean, if the Council wants to go that route, you know, you're certainly free to do that, but having the State Court's opinion on the separation of powers within the County Charter, you know, that's the general matter, but you have to apply it to the specifics of, you know, of a case, you know, what exactly is being implicated in a settlement agreement. Some of the things are within the Legislative branch to okay and approve. Generally, those are monetary. And then, others are in the Executive branch. And the Charter in my opinion is very clear.

CHAIR MOLINA: Okay. Ms. Paltin?

COUNCILMEMBER PALTIN: I didn't, sorry I didn't understand. 'Cause I thought that we wanted clarity and you're saying that this won't bring clarity, or?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: Well, it potentially could. But I think, that it would...if you read that Harris case, the Hawaii Supreme Court was actually very clear in terms of how it analyzed Legislative powers and Executive powers.

COUNCILMEMBER PALTIN: Okay. Thanks.

CHAIR MOLINA: Thank you, Ms. Paltin. Ms. Sugimura, followed by Member Rawlins-Fernandez.

COUNCILMEMBER SUGIMURA: I just, the discussion today is important and going into this discussion I just wanted to know if I could pass something out and play a radio spot that's relevant to our discussion.

CHAIR MOLINA: A radio spot, could you...

COUNCILMEMBER SUGIMURA: So, this is _____. Okay. This is verbatim. It's a...Staff...

CHAIR MOLINA: Okay so this is a....

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COUNCILMEMBER SUGIMURA: This is a Maui County, Maui Council Approves Water Pollution Settlement by Mayor but Mayor May Have Final Words. So, this came out September 20th from Hawaii Public Radio. And it basically has, Mr. Kushi is on the radio spot. Kelly King's on the radio spot. As well as Isaac Moriwake from the Earthjustice. Basically, analyzing our final Council meeting that we had where we voted to settle. So, I think it's relevant to the conversation as everybody questions who has authority and I wanted to...

CHAIR MOLINA: Can you maybe cite the areas of this documentation where it has relevancy to our discussion on Supreme Court authority?

COUNCILMEMBER SUGIMURA: Okay wait. This is the spot.

HAWAII PUBLIC RADIO SPOT: Performs and attributes --

COUNCILMEMBER SUGIMURA: Sorry.

HAWAII PUBLIC RADIO SPOT: --...(inaudible)... October 26th and 27th. Tickets at bluenotehawaii.com. Historically how it's been played. I came up with a technique where I can actually.....

COUNCILMEMBER SUGIMURA: Sorry. Let me get...

CHAIR MOLINA: Members, first of all any objections to the playing of the radio spot? As far as relevancy to the matter...

COUNCILMEMBER KING: I object, because I think...

CHAIR MOLINA: Ms. Chair King?

COUNCILMEMBER KING: I thought you were saying that this is not about, I mean Corp. Counsel said and we've said it's not about the specific case, it's about the idea of...

COUNCILMEMBER SUGIMURA: Well, I think that's what...

CHAIR MOLINA: Okay.

COUNCILMEMBER SUGIMURA: I still have the floor, Chair.

COUNCILMEMBER KING: No, he had just asked if...

COUNCILMEMBER SUGIMURA: I still have the floor.

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CHAIR MOLINA: I did ask Chair King for...but okay so again the focus is the hiring of special counsel and --

COUNCILMEMBER SUGIMURA: And why, right?

CHAIR MOLINA: --not to delve specifically in the injection well case, so.

COUNCILMEMBER SUGIMURA: So, the reason why I passed out that news release item which was September 20, 2019 and I think it's what got us here. I don't want us to pretend that we're not talking about what we really are talking about, Chair. In that, there is a question as to during that Council meeting where we had an interpretation given to us from Office of Council Services on who has authority and then Corp. Counsel gave us an interpretation and what this news release has in there is verbatim what Mr. Kushi said about, you can make...I wish I had, can I have a copy of the news release? Thank you. Where Mr. Kushi says....

CHAIR MOLINA: Can you tell us what paragraph so the Members can all follow? Is that the...

COUNCILMEMBER SUGIMURA: He says you may, you pass whatever you want today, a resolution, but it's for the Mayor to withdraw the appeal. It's an Executive function. This is what our opinion says. If he agrees with the resolution, he will tell my office to withdraw the appeal, Kushi testified before the Council. And then further which I think to me makes it even more relevant is that Isaac Moriwake, an Earthjustice attorney representing the community group suing Maui County gave his interpretation of the opinion outlined by Kushi equating it to a bureaucratic nitpicking. And he says the act of withdrawing the appeal is solely an Executive function and so only the Mayor can do that. In other words, Council can "settle matters definitively, but actually filing the papers to the court saying we're going to withdraw the appeal is something only the Mayor can do," Moriwake told Hawaii Public Radio in a phone interview following Friday's vote. So, I think it's really relevant. I'm sorry I didn't have my, you know, my sound thing so you could actually hear their words. But I think we all remember what Mr. Kushi said. It does talk about in here, you know, Kelly King also was interviewed talking about why she thinks this is an important decision. And, I think it's totally relevant. If you want me to get my staff to get the radio spot on the computer, I can. I'm sorry I didn't, you know --

CHAIR MOLINA: Yeah, this is sufficient.

COUNCILMEMBER SUGIMURA: --get it worked out before. But I think it's verbatim what Kushi said, I'm sorry. Edward Kushi said. And the thing that I thought was really relevant is what Isaac Moriwake from Earthjustice said. You know we're taking down this path of spending a lot of important time dissecting and analyzing this because it's important for our County and yet when I saw this, and I actually heard it on the radio and I downloaded this, I just thought, okay, Isaac Moriwake from Earthjustice is

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confirming what our Corp. Counsel just told us. Or had told us that day. So, I think it's very relevant. Thank you, Chair, for letting me bring this up.

CHAIR MOLINA: No. Chair appreciates your thoughts on this. Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. So, back to the Resolution. Okay. So, Ms. Thomson or Ms. Lutey, whoever, under the Hawaii Rules of Professional Conduct that you're held by what happens or I guess I should say, are we your client? Is the Council part of your client?

MS. THOMSON: Yes. Pursuant to the Charter, the Council, the Mayor, the County departments and County employees, officers and --

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

MS. THOMSON: --I may be leaving a couple classes out, but yes. Collectively the County of Maui is our client.

VICE-CHAIR RAWLINS-FERNANDEZ: Right. Okay. So, the Council is part of the client. Under the Hawaii Rules of Professional Conduct, what happens if your client is left without representation?

MS. THOMSON: I don't know that the rules directly address whether a component of a client...so, what you're suggesting is that a constituent or a member of the client organization believes that it's not adequately represented. I believe that's what you're getting at? And I'm not certain the rules directly address that.

VICE-CHAIR RAWLINS-FERNANDEZ: So, your client is left without representation right now? And so --

MS. THOMSON: No, I didn't say that.

VICE-CHAIR RAWLINS-FERNANDEZ: --that was the discussion that we had with Ms. Lutey in Chair King's Office. And, Ms. Lutey called the Office of Disciplinary Counsel for guidance and what was the advice that the ODC gave you, Ms. Lutey, regarding whether there was a conflict between the Council and the Mayor?

CHAIR MOLINA: Ms. Lutey?

VICE-CHAIR RAWLINS-FERNANDEZ: Would you be able to represent either of us in this case?

MS. LUTEY: If you file a declaratory action or some other litigation against the Mayor, then no. There would be a direct conflict. I put that in writing on October 4th.

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VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, in order to take this action, we would need special counsel because Corp. Counsel would not be able to represent the Council?

CHAIR MOLINA: Ms. Lutey?

MS. LUTEY: Thank you. If this body intends to sue the Mayor, our office cannot represent the Council or the Mayor.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, you're saying that the Mayor would also need special counsel --

CHAIR MOLINA: Ms. Lutey?

VICE-CHAIR RAWLINS-FERNANDEZ: --because Corp. Counsel would not be able to represent the Mayor either?

MS. LUTEY: If the Mayor wanted to request special counsel which he has not, yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Well, the suit hasn't been filed yet. So, after the suit is filed, I mean, unless he's gonna represent himself, pro se, he would need counsel and Corp. Counsel would not be able to represent him. So, he would need special counsel.

CHAIR MOLINA: Ms. Lutey?

MS. LUTEY: He hasn't made that call yet.

VICE-CHAIR RAWLINS-FERNANDEZ: Logically.

MS. LUTEY: That's his own...

VICE-CHAIR RAWLINS-FERNANDEZ: Those were the options, right? What are the options?

MS. LUTEY: That's his call.

VICE-CHAIR RAWLINS-FERNANDEZ: Pro se? What are the options? I understand it's his call. But what are the options?

MS. LUTEY: You just said it.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Thank you. So, pro se or hire special counsel, right?

MS. LUTEY: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Because Corp. Counsel cannot represent him.

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MS. LUTEY: Yes. I put that in writing.

VICE-CHAIR RAWLINS-FERNANDEZ: Thank you.

MS. LUTEY: You're welcome.

CHAIR MOLINA: Ms. Fernandez, continue if some more questions...

VICE-CHAIR RAWLINS-FERNANDEZ: Yeah.

CHAIR MOLINA: Okay. Continue.

VICE-CHAIR RAWLINS-FERNANDEZ: Two more questions. Okay. So, under the Harris case in response to Member Paltin's questions you say that it's outlined clearly. And it talks about the terms of settlement and whether it falls exclusively under the Legislative authority or the Executive authority. And under the settlement terms, they do not exclusively fall under the Executive authority. And that's something that our OCS attorneys provided us in the memo that was at the last GET meeting.

MS. THOMSON: We stand by our advice in writing.

VICE-CHAIR RAWLINS-FERNANDEZ: I'm saying that, that was information that was provided by our OCS attorney and that's, that would be correct.

MS. THOMSON: I'm not going to give you an opinion on...

VICE-CHAIR RAWLINS-FERNANDEZ: I didn't ask you for your opinion, I just said was that what we received? That is what we received. Yes.

MS. THOMSON: Well, that may be best directed to your OCS attorneys if you're asking about their advice.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. I'm going to ask our OCS attorney.

CHAIR MOLINA: Okay. Mr. Raatz, can you respond to Ms. Rawlins-Fernandez? Not Mr. Raatz, Mr. Rapacz.

VICE-CHAIR RAWLINS-FERNANDEZ: Mr. Rapacz.

MR. RAPACZ: Thank you. Close enough, Chair.

VICE-CHAIR RAWLINS-FERNANDEZ: Starts with an "R."

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MR. RAPACZ: Yes. That was our office's advice. That we essentially, and without going into the merits of every aspect of the argument, we disagree with Corporation Counsel's opinion. We think that it expands the Mayor's authority beyond what's in the Charter and the Code. We think that issue needs to be resolved by a judge and we recommend obtaining special counsel.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. So, basically using Corporation Counsel's logic, would the Council ever be able to settle anything? Under the Harris case, the Harris case that was decided out of Supreme Court says, outlines that the Council has exclusive authority under certain terms to settle a case and that's if there is funding attached. That the Executive branch would have exclusive authority if there's no funding attached. And if there is both, then the Council and the Mayor would have to agree in order to settle. But in the seven terms that were outlined in the settlement offer that none of them fell under Executive authority, but what's being held up right now is the filing of the paperwork which is the Mayor is saying is his exclusive authority. So, the Council would then never be able to settle anything because the Mayor would then have to file the paperwork which is totally administrative and that's, he should be doing it as a following in good faith in following policy that is passed by the Legislative branch. Is that correct?

CHAIR MOLINA: Mr. Rapacz, you got that?

MR. RAPACZ: Thank you, Chair. Yes, that's correct. I read that in the October 3rd memo from Mr. Hanano. Essentially in which he says that actually dismissing the case or filing the paperwork to dismiss the case is part of controlling the litigation. And that controlling the litigation is exclusively vested in the Mayor. So, yes. In other words, to settle based on that statement in that memo, to settle and dismiss any case would be an authority exclusively vested in the Mayor regardless of what the Council's direction is.

VICE-CHAIR RAWLINS-FERNANDEZ: So, basically under the Harris case, the Council would never have authority like Corp. Counsel said we would?

MR. RAPACZ: Under Corp. Counsel's interpretation of the Harris case, yes. That's my understanding is that simply dismissing the case as part of the settlement is an Executive function, exclusively an Executive function. And so, the Mayor would essentially always have veto authority over any Council settlement.

VICE-CHAIR RAWLINS-FERNANDEZ: So, this is dangerous precedent that we're setting really. That we should pass this Resolution to have clarity since that's something that everyone wants is clarity on who has authority. Because the Supreme Court never intended for the Mayor to have this kind of exclusive authority always. Is that correct?

MR. RAPACZ: That's my understanding and my understanding also is that the Harris case analyzed specific provisions in the Honolulu Charter and not the Maui Charter. And that the Maui Charter also has language in it that the Honolulu Charter does not have

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that says essentially that when the Charter is silent as to who has authority on something, then the Council has that authority. I don't believe the Honolulu Charter has that language that grants that sort of catch-all remnant authority to the County Council. So, I think it would be, well, we need to find out, whether Harris would be directly applicable or not. But that's something I think that a judge should decide.

VICE-CHAIR RAWLINS-FERNANDEZ: Right. So, there are some parts of the Harris case that could be applicable, but because the distinction is our Charter is stronger giving Council more authority than the Honolulu City and County Council actually has. Then, we should be going either to the judge or we should just be filing the paperwork to dismiss the case and follow what the Council says because the Council ultimately has that authority.

MR. RAPACZ: That's our office's position.

VICE-CHAIR RAWLINS-FERNANDEZ: So, basically not following the Hawaii Rules of Professional Conduct and listening to the client and following. I guess also a violation of our Charter. Our Corp. Counsel is violating our Charter right now, Chair. That's what I have for now. Mahalo.

CHAIR MOLINA: Okay. All right. Thank you, Ms. Rawlins-Fernandez. Mr. Kushi, you had wanted to provide a response?

MR. KUSHI: Mr. Chair, you know, I represent this body, this Committee. But I need to, I feel compelled to respond to that line of questioning in terms of the issue, who has the authority to settle what. And exactly what your Council Services' attorneys have said is exactly why we're in this situation. They don't understand the law. They don't understand the Charter and their position is totally wrong. This body, your Council has the authority to settle financial matters. In fact, you guys just did it yesterday in the Russo case. The Mayor doesn't have any say because the Russo case only involves money. And you guys authorize our office to settle that case. Wrong. So, this is why I think, you need, we need to get this thing cleared and go ahead and get your own attorney. And the Mayor will act accordingly.

CHAIR MOLINA: Mr. Kushi, just a quick follow-up question. Corporation Counsel hiring their own special counsel too as far to deal with this conflict, has that crossed your folks' minds as well? Because of, you know, the situation like this and potentially other situations in the future. Whoever wants to respond. Ms. Lutey?

MS. LUTEY: No.

CHAIR MOLINA: No? Because, you know, we heard it in testimony yesterday about maybe the need for Corp. Counsel to hire their own special counsel to, you know, make a determination as well. So, anyway, I'm just kind of, just asking that question because it was brought up in testimony as well.

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MR. KUSHI: Mr. Chair, are you saying that we should hire an attorney to evaluate ourselves?

CHAIR MOLINA: Well, I mean, no, not so much, well like for example, what if things don't work, if say, we don't get authority to get that special counsel, then there's a legal challenge made. I mean, should there be some kind of, you guys should also, we authorize you guys getting special counsel to give additional interpretation of this conflict? I don't know if I'm making sense, but...

MR. KUSHI: Well, Ms. Lutey is here, but I believe our office stands behind Mr. Hanano's memo and that is backed by the law. The law of the State of Hawaii. And the scuttlebutt about why we're quoting a case from Oregon is because there is no other case in Hawaii that's comparable.

CHAIR MOLINA: Okay. I recognize Member Hokama, Member Lee and then Chair King.

COUNCILMEMBER HOKAMA: Chair, thank you. If I may pose another train of thought, Chairman. You know one of the things that I always paid attention to is when we always felt that now we're going to rely on another branch, another judiciary to tell us what our intent was on our own policies. I get one problem with that. Especially since I'm still a sitting Legislative Member. So, for me, Chair, part of my discussion is, and again, I brought this up for posting earlier when it was about the reappointment or temporary hiring of nominees that have been already decided upon by Council vote. You know, we got 13 months for an election. Another option is let us carve then a new Charter language proposal that is very clear and definite of what we expect and what we want to do through the Charter. I have enough faith in the people to read and understand it if we present it accurately and fairly that they can make up their own mind and make that revision on how we will settle these things in the future by direct Charter language. I don't need another court interpretation, Chairman. Not for this Charter. Okay. Our history came from our Board of Supervisory history which everything was in one branch of government, Executive and Legislative. Okay. Then we went to this Charter. But we kept a strong Mayor's position because that was the balance that the '68 Charter Commission and Douglas Sodeani as Chairman and all of them proposed and advocated for. So, when you read those minutes it was determined to create a special strong Mayor Charter form of governance. It was deliberate. Yeah. So, I would say, if we feel there is a need to interpret then why don't we just clarify the language, Chair. Because we have the time. You already have your umbrella component I believe in your Committee. And we can pump out a Charter Commission Amendment that will take care of this very clearly and within 13 months. Thank you, Chair.

CHAIR MOLINA: All right. Thank you, Mr. Hokama. Ms. Lee?

COUNCILMEMBER LEE: I like that idea. I really do. I don't think we ought to spend a whole lot of time arguing with Corp. Counsel or OCS attorneys. It's, we're the ones that need to be convinced of how to vote on this matter. And, we all don't think alike. We have

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different ideas and we have...I think what Mr. Hokama says makes a lot of sense because that way we can once and for all, you know, make the Charter a lot clearer than it is today and take it from there. Rather than put our faith into the hands of a stranger. I'm not sure I'm willing to do that. Thank you.

CHAIR MOLINA: Thank you, Member Lee. Chair King?

COUNCILMEMBER KING: Thank you, Chair. Yeah, and I think we should do that as well once we get this declaratory ruling. Because we can't wait until the end of next year to figure out if we're...and it's clear that from, you know, we've got another one on the books. Another reso too that we already passed to get a declaratory ruling on the interpretation. So, it's clear that the interpretations no matter what we write are gonna be taken one way by one side and another way by another side. So, the only way to really get a clear reading on it, is through the courts. But, I just wanted to speak to some of, I mean, I heard Ms. Thomson say earlier that normally resos come down with the name of the attorney in them. And I want to remind her that she just kicked back a reso for the Bank of America case to hire special counsel because it had a name in it. And she said we don't normally put those names in there. You send out an RFP and then you look for the best attorney. So, that's what this reso is attempting to do. It's following the previous advice of Corp. Counsel.

MS. THOMSON: Chair, may I address that?

COUNCILMEMBER KING: And what we have, we have conflicting interpretations of the Harris v. Desoto case because OCS attorneys interpreted one way and said, yes, we have the ultimate authority. Corp. Counsel's interpreting it another way. I find it really disturbing that they're saying because they say they're right, we don't need to go to court to clarify this. That's extremely disturbing. But I also heard and I want to thank Mr. Kushi for saying, yes, you need to hire a special counsel and go to court and clarify it. But he says there's no other case in Hawaii that is comparable and I wanted to share with you that in his research, Mr. Raatz found this article that just came out October 12th in a column called *Inverse Condemnation* and it's all about the settlement and who has the authority to settle. So, I just want to read this to you, since we've had that HPR interview read. Also, I want to say that I think the description of, I want to back up with what Vice-Chair Keani Rawlins said, the description of the Mayor's authority to sign things was ministerial. So, he was...Mr. Moriwake was referring to the fact that the Mayor is the only one that ministerially signs these documents. So, the County Council doesn't. But in this document that just came out a couple of days ago, I just want to read this paragraph. "We have been down this path before under Hawaii's law governing municipal governments." So, there are cases here in Hawaii. "Although this case was in a much different context it presented the same issue. Who speaks for the County? County of Kauai ex rel. Nakazawa v. Baptiste was a case about the definition of the "counties", as used in the Hawaii Constitution's article which delegates the counties the power to levy and collect property taxes. The long and the short of the case is that three out of five justices concluded that the term "county" means "county council". So, you

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know, there is other case law that has not been discovered I guess by Corp. Counsel that is in the State of Hawaii that relates directly to what we're trying to do here. And so, all we want to do, I think all this Council needs to do is ask for a ruling, I mean that's what it says right here. That first be it resolved. That we authorize the employment of special counsel to represent the Maui County Council in resolution of the interpretation of law described herein above. Including if necessary, litigation under the terms set forth in a meeting before this Committee and the Committee is described. But we, you know, we're being asked...we have conflicting opinions. We're being asked to take one opinion and decide that nobody else's opinion matters and so we don't need to go to court. And I think the entire community strongly disagrees even, no matter which side of the actual court case you're on. We need that interpretation. So, one of the questions I have for Corp. Counsel is if this Council denies the special counsel, what are the options, can individual Councilmembers go out and hire their own attorney outside of this Council, outside of the Corp. Counsel and outside of the County Council and Office of Council Services to ask for that declaratory ruling? Is that, is there anything that would prevent an individual Councilmember from doing that action?

CHAIR MOLINA: Okay, Ms. Thomson or Ms. Lutey.

MS. THOMSON: I think this body needs to go back to the basics that it is a Sunshine Law body, so you need a certain amount of majority votes, either a regular majority or super majority depending on the action that you're going to be taking. So, as to the effect of an individual Councilmember bringing suit against the Mayor or bringing an action for declaratory order, I don't have the answer to that question.

COUNCILMEMBER KING: Okay. So, you don't know, where would we get that? Because basically you're telling us that if this doesn't pass today, we have no legal pathway to getting that declaratory ruling for those of us who are not satisfied. So, where do you think that answer lies if you don't have it? Do you think it's OIP?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: I would appreciate the opportunity to look into it rather than giving you an opinion on the fly that I don't have the information to adequately answer.

COUNCILMEMBER KING: Okay. Maybe we need to request that information of OIP, Chair. Because, you know, we were in a meeting of the EACP meeting the other day, and I made a request to change a resolution we were looking at that was immediately motioned by one member and seconded by another member. Not myself, but we were told by Corp. Counsel that was okay. And then, I'm not sure if it was yourself or our Office of Council Services checked with OIP and they said no it's not okay. So now, you know, if we, if there's a higher authority, if OIP is the higher authority, maybe we should ask OIP what avenues. Because, I think, you know, and I'm not talking about bringing action against the Mayor. It was never my intent to bring direct action against the Mayor. I just want to get clarification. Because this whole community is torn up over

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this idea of who has the authority and why is it that we're being told, we have two opinions and we're being told by one opinion that there is a controlling body in this County that they rule and that we should just be quiet and, you know, accept their opinion. So, I don't accept that. I think the County deserves a legal answer from a court. Probably the Supreme Court if we have to go that far. And, I'm just trying to figure out how to get there. Where do we go. If someone does bring action against the Mayor and he, because Corp. Counsel is conflicted out, and he needs to hire an attorney to represent himself, I would hope that we would approve that, you know, approve that special counsel and I would hope that we would approve the special counsel for our own selves to seek the ultimate authority. Because I don't think we have the ultimate authority in this room.

CHAIR MOLINA: Yeah. Good interesting point, Chair. You know a couple of things has crossed my mind right now thinking that, you know, if, and a big if, special counsel is approved to look into this matter and they rule in favor of the Council for example, then is there an appeals process? Would the Corporation Counsel appeal? I guess they would have that right to appeal a decision made by, a ruling made by a judge in this case. I would want to know how that would work. Maybe Ms. Lutey or Ms. Thomson? I mean if say, we got authorization for special counsel, the ruling was made in the favor of the Council as far as this whole settlement issue, and you could appeal right? Could you appeal? So, this thing could just drag then, potentially right?..

MS. LUTEY: Right.

CHAIR MOLINA: And I'm not being presumptuous and saying that you would appeal, but you would have that option, am I correct?

MS. LUTEY: Yes.

COUNCILMEMBER KING: Chair, can I just follow up?

CHAIR MOLINA: Yeah. Go ahead.

COUNCILMEMBER KING: Because I think this is a response to my question. But when you say you would appeal, are you asking Corp. Counsel if they would appeal?.

CHAIR MOLINA: Yeah.

COUNCILMEMBER KING: Because Corp. Counsel represents the County.

CHAIR MOLINA: Yeah. Well, that's why I wanted to know...

COUNCILMEMBER KING: So, wouldn't it have to be the client that would say I want to appeal this or I mean, this is....

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CHAIR MOLINA: No, the Mayor could appeal it...

COUNCILMEMBER KING: Right. So, but I mean I think that's what because, I mean, part of what I've said about is I just heard Ms. Thomson say earlier, I can't speak for the Mayor. But if she's not speaking for the Mayor, who is she speaking for? I mean usually when you're an attorney you speak for the client. So, if she's not speaking for the Council and not speaking for the Mayor, who is she speaking for?

CHAIR MOLINA: I think if I'm correct earlier, the question was if what position the Mayor was taking, and I guess you're, is that what you're responding by saying you're not speaking for him in that context?

MS. THOMSON: Correct. I was answering a specific question that I cannot speak for the Mayor in terms of what his final decision on as to withdrawing the case from the Supreme Court or accepting this revised settlement offer. Can I just add one quick thing too? So, many of the Councilmembers are new. This case has been going on since I started here in 2011. It was filed in 2012. The settlement agreement that we have right now, the 2015 settlement agreement that is a court order, that was approved not only by the Hawaii District Court, but by the Federal government because it's a resolution of a citizen suit. We went through two years of settlement negotiations prior to even getting to the point where we could enter into that agreement. The pathway was negotiations, you know, with Judge Kurren, who is our Magistrate Judge. And then coming before this body, the same that we did with this latest go around. The body in 2015 approved that settlement agreement. The Mayor approved that settlement agreement and it was entered thereafter. So, it's exactly the same, but fast forward four years. So, this is the same pathway in terms of procedure. So, you know our advice has remained the same. Nothing has changed.

CHAIR MOLINA: Thank you, Ms. Thomson. Chair King, I just want to recognize Member Lee first, then we'll come back to you.

COUNCILMEMBER KING: Okay. Well, she was responding to something that I said, so, I was wondering.

CHAIR MOLINA: Would you yield the floor to Chair King on this case, I know you've been waiting patiently.

COUNCILMEMBER LEE: Can you shorten some of your questions? Because, you know, a lot of us don't have a chance to talk.

COUNCILMEMBER KING: Go ahead, talk.

COUNCILMEMBER LEE: Okay. Now, I was just wondering, and maybe you can ask the question, Mr. Chair. I hear that there are more bills going to be proposed having to do with this issue. Today we're dealing with whether or not we should have a special

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counsel. Next, I hear we are going to deal with a proposal to terminate the special counsel that we already have. And then, there may be even another one. So, I wonder when and where is this all going to end? I mean, this is becoming very convoluted from a very specific issue and it's now grown into something that's becoming very unwieldy and I'm getting concerned about it. Like if anybody else has another proposal that they have planned can you let us know now, so that when we make our decision on Friday, that we have everything. All the information on the table. Thank you.

CHAIR MOLINA: Okay. Thank you. Personally, I hope litigation can stop 'cause it's ironic with the whole lawsuit. That was the whole intent for some of us to end litigation and now it looks like we're entering into more litigation in terms of interpreting the authority of who has the right to settle. The Mayor or the Council. But, yeah, I'm hoping there's not more to deal with. But without getting into other specifics, but anyway, go ahead, Ms. Lee.

COUNCILMEMBER LEE: Yeah, but, Mr. Chair, my point is, we have procedures and we have a process and we're following the process. And I don't think people on this Council should presume to speak for everybody. 'Cause when I counted last, there were at least four or five people, maybe four, who did not agree with the majority. And that's why the Charter and rules provide for super majorities in cases, in certain cases. So, when somebody speaks, they should speak for themselves and not for everybody. Because I don't agree. Personally, I do not agree at this point that we should hire a special counsel. Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Lee. Anyone else? Chair King, you wanted to clarify remarks made by Ms. Thomson? Or get a response from?

COUNCILMEMBER KING: Well, now I kind of forgotten, but I would like to respond to what was just said. That, you know, as Chair, I've been supporting the decision that was made by the Council. And I would expect any chair to do the same. You support the decision that's made in your committee even if you don't agree with it. If there has been a majority vote, that is the decision of the Council. And I believe that would hold up in court. But I don't have, I haven't been suggesting any action against the Mayor, but I have talked to people in the community who I think may bring action. And so, I think it's, and I don't want to be in a position where because we didn't support ourselves getting special counsel to clarify this matter, that we're not going to support the Mayor getting special counsel to defend himself if he needs to, because I think fair is fair. And I think we're talking about process, not this actual case. It keeps coming back to this actual case and, you know, that's what I was kind of going to protest about Ms. Thomson, because she went on and on about how the case, when the case started, admittingly with most of us weren't here, when the case first came up and the settlement happened. So, to me that's a moot point. We're not talking about that. We're talking about a disagreement. I think it distills down to, and, Mr. Rapacz, you can correct me if I'm wrong, but this distills down to a difference of opinion. We are allowed by Charter to ask advice, to use our own counsel or legal counsel in OCS as advisory which we have

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done. And we have a difference of opinion between OCS and Corp. Counsel and we need to figure out, you know, because I believe that the Charter is clear. That the Council has that authority. Corp. Counsel clearly believes the opposite. And I think the only way this is going to get settled is through the courts. It's not gonna get settled by rewriting the Charter because the Charter can be written as clear as day which we both think it is, but we have difference of opinions. So, this is not going to be the first time we need to do this and it's actually not the first time we're asking for clarification. We are in the process of putting out the RFP for the other declaratory ruling. And, you know, if we don't resolve this at some point, now is the time because we are in a crisis of the Charter. If we don't resolve this, it's going to go on and on. And you can rewrite the Charter as many times as you want, you're going to have probably as many interpretations as misinterpretations and reinterpretations. The, I just wanted to point out too that the reason why we're in, why we hired special counsel to do the previous one, regarding the appointments of directors who have been disapproved, is because we got two opposing opinions from Corp. Counsel. You know, and it was within a week. So, I got one opinion, the Mayor got another opinion. So, if you have the same person writing two different opinions, you're not going to solve things by rewrites. You have to go to court. And unfortunately, I don't like to go to court any more than anybody does, but I see that as our only option at this point. Thank you.

CHAIR MOLINA: Thank you. Interpretation of law is such a fascinating subject and all part of democracy. Mr. Sinenci, do you have anything to say? I know everybody has had a say. Just wondering if you have anything on your mind about this matter?

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you for the discussion. Like, Ms. Thomson said I wasn't here when the original, this went to court. For me, I voted for the settlement. And so, when it came and we heard that we didn't have that authority as the Council. And I agree that some of my other members did vote for the settlement, for whatever reasons. Like Member Lee said, everybody has their own opinions. And so, I can see where, you know, well because I voted for it, I would want that clarification from a special counsel because that was my vote. And so, naturally I would support that. And I can see where the other members that voted to go to the Supreme Court, they would side with the Administration too. But I think listening to this and having us as an independent body of the Administration, I, you know, I vote to get that clarification for us and that protection for this Council. 'Cause you're right, Chair, when we're dealing with law and we could technically be responsible for some of the decisions we make, we need to be protected. So, just my comments. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Sinenci. Member Paltin?

COUNCILMEMBER PALTIN: Thank you. That's kind of how I feel too, 'cause, you know, like sometimes people tell us every hour we're here, it costs big money 'cause everybody's salaries, they got to pay the salaries of the staff and like that. And, I don't understand why that wouldn't have been clarified before we went through all these meetings about the settlement. Because if we would have clarified this first, then why would we have

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continued to have meetings to decide to have a settlement like, I mean, if that was the position consistently, then, yeah, it kind of is a little bit of a disconnect from how we're being advised. Like there is no advice, like, you guys don't have the ultimate authority anyway, don't waste your time on this. Go work on, I don't know, something else that's pressing because you got plenty items on your agenda. So, that's one way that I feel like, I mean I kind of feel similar to Member Sinenci on that. And then the other one was like, you know, I don't know, I kind of feel like it's a thing, like after-the-fact information. Because I would've asked Mr. Moriwake questions while he was testifying. And then it's like, no sorry you can't do that. And so, I kind of felt disappointed. But, yeah, I mean I think, so because of that, the way the action flowed, it makes sense that if we spent all that time and we came to a decision, and then it's not implemented, then we owe it to the public that came and testified and took time off of work and missed school. I mean, not really missed school because you're still continuing to educate yourself about the process. But like, you know, in that case this is a role model of continuing of how the process works. If the kids are paying attention. But, yeah, I think if the Corporation Counsel didn't make that clear in the beginning before we wasted all the time, then we should seek an opinion of why we wasted all the time and then it didn't really matter. That's kind of how I feel. Sorry. But that's how I feel.

CHAIR MOLINA: No apologies necessary. Something I just want to touch upon real quick with regards to Member Sugimura's document submitted regarding the radio, what was that called again, the Hawaii Public Radio? Mr. Moriwake's words as I read it, it sounds like, there's a paragraph right after Mr. Kushi's comments or one other paragraph. Isaac Moriwake, an Earthjustice attorney representing the community group suing Maui County gave his interpretation of the opinion outlined by Kushi equating it to bureaucratic nitpicking. So, what Mr. Moriwake was saying was he was interpreting or trying to interpret what Mr. Kushi was saying. So, it wasn't like in a sense of agreement. I don't see where it says he was in agreement with Mr. Kushi. I see it as he was just well parroting maybe, if that's the word. But, anyway, just wanted to get that clarified.

COUNCILMEMBER PALTIN: Like it was out of context maybe of the proceeding...

CHAIR MOLINA: Yeah. I don't think he was actually saying he was in agreement with Mr. Kushi, he was just trying to interpret what Mr. Kushi was saying. So, okay. Yes, Ms. Sugimura?

COUNCILMEMBER SUGIMURA: But if you read it, he's saying that the Mayor has the authority to file the paper, right? So, he's agreeing with what Mr. Kushi is saying.

CHAIR MOLINA: I don't know if it says he...

COUNCILMEMBER PALTIN: The sentence right before of that says, gave his --

CHAIR MOLINA: Interpretation.

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COUNCILMEMBER PALTIN: --interpretation of the opinion outlined by Kushi equating it to bureaucratic nitpicking. So, I think that's, if you just take the paragraph afterwards, they call that taking it out of context.

COUNCILMEMBER SUGIMURA: So, the act of withdrawing the appeal is solely an Executive function and only the Mayor can do that. In other words, I mean, he basically is clarifying what Kushi said. And, if you remember we're here, checks and balances, right? We cannot make sole decisions on things. It's the checks and balances of government. So, even if I was not a sitting Councilmember, I knew that even before I got here, we only have certain amount of power. So...

CHAIR MOLINA: Yeah. I only bring it up because I was trying to look for where it says Mr. Moriwake, as you kind of presented, was in agreement...

COUNCILMEMBER SUGIMURA: I read what it said.

CHAIR MOLINA: Yeah. I just wanted to find out, but I couldn't find it, or at least in my mind, that he was agreeing with Mr. Kushi. More just like just interpreting what Mr. Kushi was saying. So, but anyway, it's trivial from my opinion. So, we can --

COUNCILMEMBER SUGIMURA: I was glad to read it.

CHAIR MOLINA: --move on from there. So, all right what Chair wants to do is we will have one final round of discussions, any questions and then we'll end discussions on this matter for today. So, we'll go first, Mr. Sinenci, any questions for Corporation Counsel, or anyone else for that matter?

COUNCILMEMBER SINENCI: Yeah. I guess one of the questions that I had was, one of the testifiers mentioned something about a letter that Corporation Counsel sent to the Supreme Court. I didn't see any letter like that or have read one. So, I was just wondering where I could locate it or where would it be posted?

CHAIR MOLINA: Ms. Lutey, are you able to respond?

MS. LUTEY: Yes. We provided a packet of all the correspondence that has occurred in the last few weeks between...oh, Member Paltin is showing you. So, it should be in your box. Everyone got one because I was getting calls.

COUNCILMEMBER SINENCI: Okay. Thank you. I got mine this morning. Thank you.

MS. LUTEY: You're welcome.

CHAIR MOLINA: Okay. Chair King?

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COUNCILMEMBER KING: I was just going to respond that I don't think I have anything else. I think I've said everything to say, but I just wanted to respond that there's on our County Council website, at the advice of Mr. Raatz, we put up a page on my, you know, every Councilmember has their page. So, we put up a link and it's got all of that online so that, so I'm not sure who it was that was requesting. But all the correspondence that's public is online and so anybody who wants to find anything related to that case. But like I said this is something totally different. I don't think there's anything up there other than what's on Granicus the resolution, and as far as asking for a special counsel, I don't have any correspondence on that so far.

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: Other than, I did request the resolution to be written. But I did that because, you know, after the discussion with Ms. Lutey, that she thought that was necessary, and that she would advocate for it.

CHAIR MOLINA: Okay. Thank you, Chair King. Member Lee?

COUNCILMEMBER LEE: Yes. So, I'm, I have a question for Member King. There's this whole list of letters and things. I mean, did you write to the Supreme Court on behalf of the Council?

CHAIR MOLINA: Chair King?

COUNCILMEMBER KING: I did write to the Supreme Court to let them know our position. That we took that vote and that right now we have difference of opinion between our Office of Council Services and Corp. Counsel.

COUNCILMEMBER LEE: Was that something that we voted on?

COUNCILMEMBER KING: No. We voted on the, to settle the case and withdraw it.

COUNCILMEMBER LEE: And did you get a reply?

COUNCILMEMBER KING: No.

COUNCILMEMBER LEE: So, you sent one letter to the Supreme Court?

COUNCILMEMBER KING: That's all, just informative letter.

COUNCILMEMBER LEE: Thank you.

COUNCILMEMBER KING: Yeah, no reply. I didn't ask for a reply.

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COUNCILMEMBER LEE: I have nothing more to say. I look forward to our next discussion on this.

CHAIR MOLINA: Thank you, Member Lee. Committee Vice-Chair Rawlins-Fernandez. Any final questions or thoughts?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I did want to chime in when you were having that conversation about the HPR article and discussion that it says that the act of filing, the actual filing of the paperwork is for the Mayor, which is why we're in this position right now. So, there's no dispute that the Mayor is the one who files the paperwork and that's just a ministerial in nature action. Like, it's not something that he...he should just follow through on the policies that the Council passes, which includes the resolution. And, to me, it's such a betrayal of the public to not follow through in good faith the laws and the resolutions that are passed by the Council which, you know, the Charter never meant for the Mayor to have more power than the Council. The, you know, principle behind it is that we would be separate, but equal branches. And right now, it seems that some Councilmembers are fine with giving the Mayor more power so that the Executive branch has more power than the Legislative branch. And I am so opposed to that. That wasn't the intention at all. I can't believe that the drafters of this Charter would have intended that. And as Mr. Rapacz stated in Section 2.2 that there's a catch-all wherever there's a conflict that the Council would pass a resolution to clarify that conflict and that's what we did. So, that's where I stand. I support this resolution. We're not voting today. We're discharging it to the full Council for a vote. And at that time, I will vote in favor of this resolution because that's what so many of our community members asked us to do and we as the Council passed that resolution to settle and I want to empower our Council to be that separate, but equal branch. Mahalo, Chair.

CHAIR MOLINA: Thank you, Ms. Rawlins-Fernandez. Mr. Hokama?

COUNCILMEMBER HOKAMA: No, I have my responses. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Hokama. Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. So, my comments on this issue is just that I got good faith in our Mayor and I think he's doing a pretty good job so far and it's not easy. 'Cause, you know, all the stuff that we can say, like, oh that's the Administration, he gotta handle that 'cause he's the Administration. And, I think he's smart enough and he surrounded himself with smart enough people that he'll make the right call and then we can go make the Charter changes that Mr. Hokama said and make it clear that the Council has this authority. So, I just, you know, hope it doesn't come down to that, but I'm ready on Friday if it does.

CHAIR MOLINA: Thank you, Member Paltin. Member Sugimura?

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COUNCILMEMBER SUGIMURA: Thank you. I think all of us has said a lot. We've heard a lot. We appreciate all the people who've come to testify. I look forward to hearing...today we're not making any decision, so can you also spend some time what Friday will look like at Council and what's expected from here going forward. I just want to end by saying that what we are as a total County organization is that the Council is checks and balances, as well as with the Administration. So, we cannot operate unilaterally. We can make suggestions, but it takes the checks and balance of both sides of government for a decision to stand and be upheld. So, that's it. Thanks.

CHAIR MOLINA: Thank you, Ms. Sugimura. And as far as comments from your Chair, well thank you folks all for going through this. And, again the purpose of Committee is to vet out all the questions and everything else. So, I'm hopeful at this Friday's meeting under the leadership of our Chairman, we'll just have a motion put on the floor, speak twice to the motion, and then take the vote and see what happens. So, thank you all for being here today. I appreciate it. Member Sugimura?

COUNCILMEMBER SUGIMURA: It's a little bit more than that because we're not finalizing today, so we have no Committee report. What are you sending, or what's happening, what's going to happen on the Council floor.

CHAIR MOLINA: Yes, I was going to get to that before we close. Yeah. The Chair's intent was to defer and then at Friday's Council meeting, then there would be a motion to discharge the Committee and then it goes to Council, and then we act accordingly. Motion is put on the floor and then we discuss the motions and then take the vote. So, today's intent, like Mr. Sinenci's meeting yesterday on the EMI item, to discharge, excuse me, not discharge, defer. So, that's the process. Okay. Any...everything, all good, clear as mud for everybody? Okay. All right. It's ten minutes to the hour of three o'clock. With that being said, any objections to deferring this item?

COUNCILMEMBER KING: No objection.

CHAIR MOLINA: Okay. So, ordered.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused TK)

ACTION: DEFER.

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CHAIR MOLINA: And this concludes the recessed GET meeting of October 15, 2019. It is ten minutes to the hour of three o'clock on Wednesday, October 16th. This meeting is now adjourned. . . . *(gavel)* . . .

ADJOURN: 2:50 p.m.

APPROVED BY:



MICHAEL J. MOLINA, Chair
Governance, Ethics, and Transparency
Committee

get:min:191016r:ta

Transcribed by: Terianne Arreola

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CERTIFICATE

I, Terianne Arreola, 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 the 14th day of November, 2019, in Makawao, Hawaii


Terianne Arreola