

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

MINUTES

Online Only via BlueJeans Link

June 30, 2020

CONVENE: 9:01 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair
Councilmember Riki Hokama
Councilmember Tasha Kama
Councilmember Kelly T. King (left at 10:02 a.m.)
Councilmember Alice L. Lee
Councilmember Tamara Paltin
Councilmember Shane M. Sinenci
Councilmember Yuki Lei K. Sugimura

STAFF: Shelly Espeleta, Legislative Analyst
David Raatz, Supervising Legislative Attorney
James Forrest, Legislative Attorney
Richard Mitchell, Legislative Attorney
Kasie Apo Takayama, Legislative Analyst
Pauline Martins, Committee Secretary
Jean Pokipala, Council Services Assistant Clerk

Kate Griffiths, Executive Assistant to Councilmember King
Davideane Sickels, Executive Assistant to Councilmember Kama
Lois Whitney, Executive Assistant to Councilmember Kama
Sarah Pajimola, Executive Assistant to Councilmember
Rawlins-Fernandez

ADMIN.: Gary Murai, Deputy Corporation Counsel, Department of the
Corporation Counsel
Sananda Baz, Managing Director, Department of Management
Stephanie Chen, Deputy Corporation Counsel, Department of the
Corporation Counsel

OTHERS: Mark Sheehan
Plus (2) other people

PRESS: *Akaku Maui Community Television, Inc.*

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CHAIR MOLINA: . . . *(gavel)* . . . GET Committee meeting for June 30th, 2020 is now in session. I'm your Committee Chair, Mike Molina. Let's do our roll call this morning. Let's go out to Kahului and express a wonderful good morning to Member Kama. Good morning.

COUNCILMEMBER KAMA: Good morning, Chair. Good morning, Councilmembers, and it's a beautiful day in the neighborhood of Kahului, Maui.

CHAIR MOLINA: All right. Right on. Good to hear that. Good morning, Mr. Sinenci out in East Maui.

COUNCILMEMBER SINENCI: Aloha kakahiaka kakou. Today we're at 200 High Street. Aloha.

CHAIR MOLINA: Aloha. And good morning to Ms. Paltin in West Maui.

COUNCILMEMBER PALTIN: Good morning. We got a little mask going on over here.

CHAIR MOLINA: All right. Sounds good. And, of course, Mr. Hokama. Good morning.

COUNCILMEMBER HOKAMA: Good morning, Chairman. I...I got to utilize our transportation services. I was home and Lanai has been hurting quite a bit because of one employer, basically, the hotels, but yeah, we look forward to a safe and a reasonable adjustment as we restart our economy again, Chairman. So thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama for sharing that with us. Now let's go to South Maui and Member King, good morning.

COUNCILMEMBER KING: Good morning, Chair. Nice to be here. And I'm also at 200 South High Street but social distancing from Councilmember Sinenci; we're more than six feet apart.

CHAIR MOLINA: Okay. All right. Very good. And let's go out to Molokai. Good morning, Committee Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair. My Molokai nui a Hina.

CHAIR MOLINA: Thank you. Good morning. And out to Member Sugimura from Upcountry Maui. Good morning.

COUNCILMEMBER SUGIMURA: Good morning, everybody. I'm also at the County building, and I just wanted to really thank the community. Over the weekend, they did about 733 food boxes for the Filipino community at the Community Center, and it was just amazing, the donations that came from the Farm Bureau, the...I think it was...from the Food Bank and other organizations that really supported the many people who drove through and drove past, and it was a amazing day. But anyway, good morning. Thank you.

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CHAIR MOLINA: Good morning, and thank you for that update. And we'll...I believe Chairman Lee will be joining us in progress, so. Good morning to all. Mr. Murai from Corporation Council, good morning.

MR. MURAI: Morning, Mr. Chair.

CHAIR MOLINA: Good morning. And also, later on we'll be having... or he may be here, the Managing Director, Mr. Baz; and of course, my wonderful hardworking committee staff, Ms. Martins, secretary; Shelly Espeleta, legislative analyst; along with Kasie Apo Takayama; Jean Pokipala, support staff; and Mr. James Forrest, our legislative attorney. Thank you all for being here. And we have two items on this morning's agenda, and we're going to start first with public testimony. Those wanting to testify or can provide video testimony should join the online meeting via the BlueJeans meeting link at [bluejeans.com, 551273481](https://bluejeans.com/551273481), as noted on today's agenda. Testifiers wanting to provide audio testimony should participate via phone conference by dialing 1-408-915-6290 and entering the meeting code that I mentioned to you earlier. Oral testimony will be limited to three minutes today. And if you are still testifying beyond that time, I'll kindly ask you to complete your testimony. And when testifying, please state your first and last name, and if you are testifying on behalf of an organization or if you are a paid lobbyist, please inform the Committee of that. And please be mindful of the use of chat during the meeting. Chat should not be used to provide testimony or chat with other testifiers. And like to remind everyone along with the administration and the public to please be patient with us if we run into any technological issues during the meeting. So with that being said, like to proceed with public testimony on our two items. Ms. Espeleta, please announce our first testifiers.

MS. ESPELETA: Mr. Chair, there are no testifiers signed up to testify today.

CHAIR MOLINA: No testifiers, okay, for our two agenda items. Okay. All righty, did we have any written testimony for our two items as well, Ms. Espeleta?

MS. ESPELETA: Yes, we did receive written testimony on the record.

CHAIR MOLINA: Okay. Very good. Very good. I see Chairman Lee has joined us this morning. Good morning, Chairman.

COUNCILMEMBER LEE: Good morning. I'm sorry I was late. I was having trouble with my WiFi again.

CHAIR MOLINA: That's okay. Looks like you've got it rectified. That's great.

COUNCILMEMBER LEE: Yes, yes.

CHAIR MOLINA: Okay.

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COUNCILMEMBER LEE: Ready to go.

CHAIR MOLINA: All righty. Okay, Members. Well, you've heard that we have no testifiers for our two agenda items this morning. If there are no objections, Chair will close public testimony for our two agenda items. Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR MOLINA: Okay. So ordered. All right, Members, let's go ahead and proceed with business. Our first item, Members, there's been a request made by Member King. On our agenda, we have listed the Item GET-10(27), which is the proposal to allow the Council to remove Corporation Counsel, which has been introduced by Committee Vice-Chair Rawlins-Fernandez. Member King has mentioned to me earlier that she does have a...what...is it a 10:00 appointment, Ms. King, or 9 --

COUNCILMEMBER KING: Yes, I do. I have a 10:00 medical appointment, and then...which is kind of nearby in that Maui Lani area, but I'll be back after that. I just don't know how long it's going to take.

CHAIR MOLINA: Okay. Thank you. Committee Vice-Chair Rawlins-Fernandez, would you object to taking Member King's proposal before yours? I believe it shouldn't take too much discussion.

COUNCILMEMBER KING: It's pretty straightforward.

VICE-CHAIR RAWLINS-FERNANDEZ: No objection.

CHAIR MOLINA: Okay. Thank you so much for your consideration, Member Rawlins-Fernandez.

10(18) PROPOSED CHARTER AMENDMENTS (MAYORAL TERM LIMITS) (CC 19-28)

CHAIR MOLINA: So Members, without any objections, we're going to take up GET Item 10(18), which is the Mayoral term limits that's been introduced by Member King. Member King, you have the floor. Please provide the Committee a brief description of this proposal.

COUNCILMEMBER KING: Okay, Chair. The proposal is the same as the one that we passed in the previous meeting for term limitations, removing the word "consecutive" from the description of term limitations for the Mayor. We did...we did this same motion in the past for the Council. So it's pretty straightforward.

CHAIR MOLINA: Yeah, thank you, Member King. Members, do you have any questions for

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Member King on this? Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. I just was wondering if we could have input from Corp. Counsel about how we know when the effective date is by eliminating this "consecutive" word. Is it clear to the lawyer people? Like, is it a clean slate for Mayor Victorino after this passes that he has two more consecutive terms, or is it he finishes that and he's done? Or, you know, just a little clarity for the folks voting on it and what not.

CHAIR MOLINA: Okay. Very good question, Member Paltin. I think that parallels the question I asked with regards to the Council term limit. So basically, would a person who had previous service as a Mayor, if this law is enacted, would those terms count towards the term limits or is the slate wiped clean? Mr. Murai, can you give us an opinion on that? Do we need to insert language if that's the intent?

MR. MURAI: I'm sorry, Mr. Chair. You know, when...when Councilmember Paltin was speaking, her audio was breaking up. So if I may restate so I'm making sure...make sure that I got the question correctly? I think her question was, how do we know when this two...the two terms start? Was that it, Member Paltin?

COUNCILMEMBER PALTIN: Or like, when --

CHAIR MOLINA: Member Paltin?

COUNCILMEMBER PALTIN: -- when it starts clean, like, you know, Mayor Alan Arakawa had three terms as Mayor. So would this be a clean slate start after we pass this that he could have another two consecutive terms? Or do we need to insert, like, a date, like... or, I mean, what is your interpretation of how previous mayors...if...if they could then go ahead and...would they get a clean slate and, like, for example, just Mayor Arakawa. We didn't have this Charter Amendment in place at that time. So would he then be able to go and run for mayor in two years and do just a straight eight is my question?

MR. MURAI: Okay. I think...okay, I think I understand your question. In other words, in... in the hypothetical you're posing, if a former mayor...if...if...assuming this amendment passes and is adopted by the voters, can a former mayor...does he get another two terms; is that your question?

COUNCILMEMBER PALTIN: Yeah, yeah.

MR. MURAI: In other words, when does this take effect? If a former mayor had already served two terms, is he precluded from running again, should this become law? The answer is, is that in my opinion, it's not...it's not clear. It could be made...you know, the way I...I see this is this implies that every citizen gets two terms as mayor in that person's lifetime. And I think that's the intention of...of this amendment. Whether this would apply to a former mayor who's already served two terms, in...in my opinion, it's...it's not

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crystal clear. That's something that perhaps could be clarified, but I...I think what...what I do agree with is that clearly, the intention of this amendment is to limit two lifetime terms. How...how a court would interpret that, I can't...I can't say, you know, right now on the spot. That's something that, well, may...may need some more research.

COUNCILMEMBER PALTIN: So you don't have any suggestion as to how it can be made more clear?

MR. MURAI: Well, the...the problem with this is that I think this would be considered...this may be considered, like, an ex post facto law. In other words, is it fair to someone who had already served who is now precluded in the future from running again?

COUNCILMEMBER KING: Chair?

MR. MURAI: So in other words, a law today prohibits someone who's already served, you know, in the past. And I...I think that's what you're trying to get at, right? You know, is that...would this law preclude someone who's... if this were passed today, for example, would this preclude someone who's already served from running again, or do you get a fresh two terms after the passage? That part --

COUNCILMEMBER PALTIN: Or even...even for this case right now. Say our current Mayor is in right now, so say he gets elected to another four terms. Can he then take a break and then get...I mean, not another four terms...another four years, can he then take a break and then do another four after? I guess, you know, just...for me, I'd like it to be super crystal clear to the folks who are voting and the folks who are implementing when it takes effect, who it applies to, and...and, you know, because people might vote on this and then they say, eh, I thought I voted that we wouldn't have this guy again or something, you know, or lady again.

CHAIR MOLINA: Member Paltin, if I could --

COUNCILMEMBER PALTIN: So, I mean, I'm all for it.

CHAIR MOLINA: Yeah. If I could interject. I'm glad you're bringing this topic up because myself, Mr. Hokama, and Member Lee, there was a...as it relates to Council terms, if my colleagues recall. In 2018, we were challenged about running again. I believe Mr. Lester filed that complaint or challenge to the County Clerk because the language was not clear. There was no specifics other than, as the current law is, you serve five consecutive terms, sit out one term and then you're eligible again, so which is why I believe we need some language that provides specificity as far as eligibility because if we leave it open-ended like this, this is where you're going to get future challenges again about this, whether it'd be for Mayor or whether it be for Council. So I...I definitely appreciate you bringing up this question. We had Member Kama, followed by Member King.

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COUNCILMEMBER KAMA: Thank you, Chair. So I just wanted to ask probably Chair...Member King. What was her intent when she...she...she submitted the document? Because I think knowing what's in her head helps us to figure out what direction we want to go into. And then the other question was because the effective date is January 2nd, 2021, so help me to understand, where does the current Mayor...where does his tenure begin? Does it begin with a clean slate like...like Member Paltin said? Or does...do the first four years count or no? So thank you, Chair. That's my question, Member King.

CHAIR MOLINA: Okay. Member King?

COUNCILMEMBER KING: Thank you. Thank you, Member Kama. So my intent was that it would apply to--oh, someone's...my intent was that it would apply to--is every...is anyone getting feedback from --

CHAIR MOLINA: Is everybody muted? I hear some echoing.

COUNCILMEMBER SUGIMURA: There's feedback.

COUNCILMEMBER KING: Wonder if that's me? So my...my intent was that it would apply to all mayors, previous and current. And so I think one of the ways that we can do this is by...and Mr. Murai actually said those words in his...in his comments. But if we...under the...the paragraph that gives the change where the word "consecutive" is taken out, if we put the words in there "in his or her lifetime" so that it would read, "A Mayor shall not serve more than two full terms of office in his or her lifetime", then that makes it clear that that's the full two terms, you know. If they want to...if they...if they get elected and then they...and they get unseated, then they have a chance to come back again later on, which we've seen that happen, for one more term. But it would be full...the intent was to have two full terms, period.

CHAIR MOLINA: Okay, Member Kama, does that answer your question?

COUNCILMEMBER KAMA: Yes. And then so...so if we count the time for our currently seated Mayor... so does he start with a clean slate? As of January 2nd, 2021, you start all over, or do you include the past four years in which he'll be serving? Because, you know, he...because by the time that election comes up when this goes in, he would have already served another...I mean, he'll be at the end of his first term, right?

COUNCILMEMBER KING: Right.

COUNCILMEMBER KAMA: This thing kicks in.

COUNCILMEMBER KING: Right. So --

COUNCILMEMBER KAMA: So...

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COUNCILMEMBER KING: -- just put in the words, "A Mayor shall not serve more than two"...and take out the word "consecutive"...and then say, "full terms of office in his or her lifetime", then that makes it clear that it's the total two years. The...the total of two --

CHAIR MOLINA: Two terms.

COUNCILMEMBER KING: -- terms in their lifetime.

CHAIR MOLINA: Two terms, two terms.

COUNCILMEMBER KING: Two terms.

COUNCILMEMBER KAMA: So when you're...so you're talking, actually, about eight years total, no matter where he begins; but it's still total eight years?

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: Correct.

CHAIR MOLINA: Thank you. All right. I believe...

COUNCILMEMBER KAMA: Thank you, Chair.

CHAIR MOLINA: Thank you, Member Kama. I believe Member Rawlins-Fernandez had a question? Oh, I'm sorry. Member King, I think you were next. I apologize.

COUNCILMEMBER KING: That's just what I wanted to say because I think that...

CHAIR MOLINA: Oh, okay.

COUNCILMEMBER KING: And if Mr. Murai could maybe comment on whether that would be clear...that would give the clarity that we're looking for?

CHAIR MOLINA: Mr. Murai?

MR. MURAI: Yes, it would give clarity. As I said, the only thing that is not crystal clear in my mind is whether...well, let's put it this way. Almost anything is potentially subject to challenge. I suppose, you know, looking for the boogeyman in the closet, you could say that a...a former Mayor who'd already served two terms may challenge this, and say, this is not fair to me, you know, but that...that's hypothetical. I...I do think, though, that the clarification that...that Member King proposed does add a lot of clarity, and certainly, this discussion, which is part of the record, clearly establishes what the Committee's intentions were. You know, and while I have the floor, I just wanted to

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comment on one thing that Member Kama mentioned when she said, so the intent of this is so...is so that no one person serves more than eight years, and I did want to point out that I suppose it is possible...because this references specifically full terms...it's possible that someone could serve a partial term as Mayor, which would not count towards the...the two full terms. So it's possible for someone to serve nine, ten, eleven years if they had a partial term.

COUNCILMEMBER KING: Correct.

MR. MURAI: That's all I have.

COUNCILMEMBER KING: Yeah, if something happened in the middle of the Mayor's term. Thank you, Mr. Murai. Mr. Chair, can I also ask for the opinion of David Raatz, who wrote the proposal? I think he's on the line.

CHAIR MOLINA: Mr. Raatz, are you available? Okay. Maybe at a later point, if he's not available now...oh, there he is. Okay. Mr. Raatz, can you respond to Member King's question?

MR. RAATZ: Sure, thank you. I'm sorry, I didn't get the precise question.

COUNCILMEMBER KING: So the question is on the Mayor's terms, can you clarify that, you know, there's a question about whether this applies to...if it goes into effect January 21st [sic], 20...or January 2nd, 2021. Does that mean that everybody starts with a clean slate? And so my...my thought was to add the words...in the sentence that says, "A Mayor shall not serve more than two"--and then we're taking out the word "consecutive"--"full terms of office in his or her lifetime", would that give the clarity we need that it applies to everybody, the total two years [sic], so that we don't have a... mayors past coming back and running for office again?

MR. RAATZ: Got it. Thank you, Councilmember and...and thank you, Chair Molina. So a couple things. As written, there is a definition in the resolution of "full term" as being two years or more --

COUNCILMEMBER KING: Okay.

MR. RAATZ: -- to address the issue Mr. Murai just brought up. So it's not actually, in my mind, intended to apply retroactively as it's currently written. So I think if that's the body's intent, we should be clear about that in the resolution and say that it will have retroactive effect. In its current form, we read it as applying prospectively and providing a, quote, clean slate so that Mayors who have previously reached the limit would be able to start counting again as of January 2nd, 2021. And I... just briefly, on the...on the idea of adding the word "lifetime", I don't think that's necessary. I mean, there are basically two types of term limits: either those that are intended to be lifetime, or those that are with...that have the reference to "consecutive". And by taking out the word

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"consecutive", as we have in this resolution, you'd be imposing, in our view, the lifetime limit. So really, the only question is when that...when that counting of the two terms would start. And again, right now --

COUNCILMEMBER KING: Okay. So we --

MR. RAATZ: -- it would start at...I'm sorry. Go ahead.

COUNCILMEMBER KING: If I understand you, then that doesn't clarify what we were trying to clarify if we put in "in his or her lifetime" because that...that was the intent, was to clarify that this is total terms and applies to everybody retroactively. So we have to put in language to say that it applies retroactively?

MR. RAATZ: Chair, yes, if I may. Thank you. Our understanding is there's never a presumption that any new law will apply retroactively. So if that's the intent, we would suggest that that be expressed very clearly within the resolution. And I would suggest that it's probably the effective date, which is not in the codified portion of this proposal, that is where you'd want to make any adjustments because again, right now, January 2nd, 2021 is the effective date. That's when the clean slate concept applies. But if you don't want a clean slate, and if you want to have it apply retroactively, I would suggest in that clause on the effective date, we can adjust that language. We can work with Corporation Counsel on that. Thank you.

COUNCILMEMBER KING: To say something like, this is effective immediately and applies retroactively?

MR. RAATZ: Correct.

COUNCILMEMBER KING: Okay. Is that...Mr. Murai, does that make more sense?

MR. MURAI: I would agree with Mr. Raatz.

COUNCILMEMBER KING: Okay.

CHAIR MOLINA: Okay. Thank you for that inquiry, Member King. We have Committee Vice-Chair Rawlins-Fernandez with a question.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. And Mahalo, Member King for introducing this. Most of my questions were answered in Member King's discussion there. I just was hoping to...to have Member King repeat exactly where the amendment would be in the current resolution.

COUNCILMEMBER KING: Chair.

CHAIR MOLINA: Member King?

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COUNCILMEMBER KING: Okay. Thank you. So what we're looking at is in the resolution, under number 7, where the effective date is, that we would change the language to say, "The amendment proposed by this resolution will take effect immediately upon passage of"... "on the ballot" or some such language, "and will apply retroactively".

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So that...that will be the only amendment, and you wouldn't --

COUNCILMEMBER KING: That would be the only amendment.

VICE-CHAIR RAWLINS-FERNANDEZ: -- we wouldn't add that lifetime language?

COUNCILMEMBER KING: No, I think that's...what I heard from Mr. Raatz is it's clear.

VICE-CHAIR RAWLINS-FERNANDEZ: Unnecessary. Okay. All right. Mahalo for that clarification. Mahalo, Chair.

CHAIR MOLINA: Thank you, Committee Vice-Chair Rawlins-Fernandez. If I could get some thoughts from Mr. Murai or Mr. Raatz. First of all, I appreciate Member King using that language, the term, I guess, "retroactive". Like myself and, I believe, Member Paltin had the question about would previous mayoral terms count towards these two terms upon the enactment of this law because I had drawn up some suggested language for consideration, and it states as follows: "Previous Mayoral terms before the enactment of this law shall not be counted as part of the two-term limit." So with Member King's proposal, does that satisfy...at least I'll just say it from my intent? Because to me, it's a matter of principle. I don't think an individual should be punished, you know, or be handcuffed when you got a new law like this, if it's not spelled out clearly, from being eligible to run again because even though it's a hypothetical, as Mr. Murai said, it's real because it happened to myself, Member Lee, and Mr. Hokama in the 2018 election because the language wasn't really clear. That's why it left it out there for challenge. So I think it's incumbent upon us to insert specific language to reflect the intent of what this body wants with regards to this law, so...so there's no question in the future. That is spelled out in the law; the slate is wiped clean for anybody, irregardless of whether you are a two-term Mayor, one-term Mayor, whatever; you are now eligible for up to two more terms. Does that language or suggested language, satisfy, or is...is that consistent with what Member King is proposing? Mr. Raatz or Mr. Murai? Mr. Murai?

MR. MURAI: Chair, if I may...if I may? Mr. Chair, if I understand you correctly, what...what you have in mind is, I think, the opposite of what this reso would accomplish. What this reso does is if...if passed, it would apply retroactively to a former Mayor who had already served two full terms. In other words, that person would not be eligible to...to run again, period, effective passage. What you had in mind of starting with a clean slate, in other words upon passage, you get two...two more terms, and that's it.

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CHAIR MOLINA: Of eligibility, right?

MR. MURAI: Right, that's...that's correct. Now, I would defer to Mr. Raatz on this because I think he's put a lot more thought into it than I have. But again, earlier I'd mentioned that, you know, if this is retroactive, it may be subject to challenge because, you know, in other words, you did something once that was...was legal and appropriate, and now a new law has...you know, it has come up in the future that has disqualified you. So I...I...I've not researched this enough to say whether that's a legitimate.. or how...how much to be concerned about that, but...but that is...that would be a consideration. But then, you know, again, I...I...I'd defer to Mr. Raatz because like I said, he's obviously put a lot more thought into this than I have.

CHAIR MOLINA: Okay. Thank you, Mr. Murai. Mr. Raatz, any thoughts?

MR. RAATZ: Thank you, Chair, and...and thank you, Mr. Murai. We actually, unfortunately, don't have specific research results on any case law regarding retroactive application of...of term limits. I believe it's not unprecedented, so it, you know, if the body wants to go that direction, we can, prior to first reading, have a definitive answer on that. We did understand that the impetus behind this proposal was to try to match the limitations on the Mayor as to the greatest possible degree as the...the limitations on Councilmembers based on the proposal that was approved last week. So that's how we drafted this proposal. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you. So Members, with that being said, my recommendation would be, one, to either forward this to the Charter Commission for further review, or the Committee has the option of discharging this to the Council. And in the meantime, there's time in between the first, you know, Council reading on July 10th to come up with some definitive, you know, I guess background on, you know, as Mr. Raatz had mentioned, to find out if there's some history with...with the issue of retroactive because I'm thinking of former Mayors Apana, Arakawa, Tavares, and Lingle. If...and you never know what the future holds. You may someday decide to run again and, like, in the case of, for example, Mr. Arakawa, who was...what is it...three-term mayor? He would automatically be disqualified. And I think Mayor Lingle also was a two-term mayor. They would be disqualified. So irregardless of the personalities and the politics, I think it's a matter of principle. I feel, it's...we should have much clearer language about, you know, and not...basically language that does not punish a person for having previously served and to have the slate wiped clean. So they could be eligible for up to two terms. So maybe because you're silencing voices if we don't put any specific language and it punishes a person. So that's my opinion. Any thoughts, Member King?

COUNCILMEMBER KING: Yeah, Chair. The original intent of this was to clarify the existing language because many people...and people who were even involved in creating this language have told me it was never the intent to have that be consecutive and then have, you know, the Mayor come back later on. So I don't see this as punishment. I see it as allowing the voters to clarify the language in the Charter to what they want. It wasn't...it

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wasn't made to be, you know, against anybody, but I do think that it could...it could... my thought is if it...if it's effective this coming January, then it...it would apply to the current Mayor because he's still in the first term, and this...so it would apply...he would have two full terms if he wins again, and that's the two full...that's the two terms. So I don't think, you know, but it wasn't meant to be a punishment on any particular person. It was meant to respond to...to what the community has been asking for is a chance to vote on this and clarify the language that's in the Charter because many people never felt like, you know, I mean, there were people on both sides of it that felt like that word "consecutive" . . . (inaudible) . . . was not good. And so, you know, I think it was...I think it's...it's a different situation with a Mayor than the Council because the Mayor has four terms. And because of the fact that we've already had this situation too, where we've had somebody, you know, be unseated after the first term, then come back for two full terms. So, you know, ever since then, people in the community have wanted clarity on this term limitation issue. So I just...I...I just would hope that the...that, you know, and I'm happy...if you want to defer it to the Council, the full Council, that's fine with me, but I just think I...I don't want it to be seen as any kind of punishment on anybody in particular. It's part of the system that we operate under that we've had a lot of...or I personally have had a lot of complaints about.

CHAIR MOLINA: Okay. Thank you, Member King.

COUNCILMEMBER KING: Thank you.

CHAIR MOLINA: We have Member Hokama, followed by Member Paltin.

COUNCILMEMBER HOKAMA: Thank you, Chairman. Interesting conversation. We had this same conversation in '78 in -- at our constitutional convention regarding limitations on the Governors, State Legislators. And so what we came out is what we currently have, right? Only the Governor has limitations. But what I wanted to say was that, you know, you're talking about a very small group of individuals that would be...actually qualify, as Mr. Molina stated. And at the end of the day, the voter will decide whether or not they want that candidate to serve again. I can tell you one thing in my discussions at...what's interesting going home because I am happy that they utilize our communication system to know what's going on with our County. They're more concerned about what we should be doing with this pandemic than dealing with issues that we...they know that Charter Commission is going to deal with next year. And, you know, of course I'm biased because I'm a sitting Member, yeah. I don't think we should be using this forum because it appears the Council is trying to unbalance the current structure of our County Government. We're supposed to be equals with administration. We shouldn't be a higher level of Government in this structure. We should be holding them accountable, but we are creating legislation that is so narrow for a preferred outcome, it concerns me. This is one area that we're telling the people, you know, we want the best directors; we need experience; we need knowledge with all this. But in the realm of legislation and in governance, we only want rookies because anytime you get experience, that's not going to be good enough anymore: your time's up; we don't

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need you with experience and knowledge; we're going to change. I find it interesting of what we want is certain things, but then the same thing is not an attribute or a benefit with the other side of the Government. I share that because I think, at the end of the day, the Charter is still a working and structurally sound document. Trying to amend it now is not what I think we should be doing. I'm trying to figure out how we can get people safely to Lanai so a whole island gets back to some more reasonable semblance of normalcy. That's what they want us to be working on, not what we think should be done right now to try and create a stronger Council over the administration. So I...I just share that, Chairman, because I appreciate...I think we need to hear all sides of the issues. This is another point of view that people have shared with me. And I can tell you that, as I said before, I appreciate our communications outreach because people are paying attention, and they're listening to the rhetoric. Thank you, Chairman.

CHAIR MOLINA: Thank you, Mr. Hokama. Member Paltin, if you'll forgive me, I believe Member Sugimura had her hand up before you. If you wouldn't mind yielding the floor to Member Sugimura, and I'll come right back to you after?

COUNCILMEMBER PALTIN: . . . (inaudible) . . .

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

COUNCILMEMBER SUGIMURA: Thank you. So I wanted to share that I have a concern that if you look at the past experiences yourself, Chair, and looking at Mr. Hokama and Ms. Lee, as we tried to do and was successful to pass, you know, term limits for...or limitations on Council, I think the same thing applies to past experiences for Mayors and what they have achieved for the County and moving it forward. So I think this is...I think we still need the checks and balances. I like what Member Hokama said about our body being, you know, equal to in terms of strength in...in moving the County forward, but not getting so off balance that we're trying to limit everything and change the Charter so that it becomes a...a Council-powered County, that I think that the Administration has a job, and I think that we have a job too. So I do not believe in this, as I voted against the...the Council version of this proposal, and I believe that we have opportunities with experience and knowledge that we're...I'm grateful that we have, you know, and...and, yeah, we have this pandemic going along...going around, and that is probably top of mind for everybody else. I don't think it's new to any of us, but I...I will tell you that what we're doing is...is maybe distracting for other important items. But thank you, Member King, for bringing this forward, and I will wait for the vote. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Sugimura. We have Member Paltin, followed by Member Sinenci.

COUNCILMEMBER PALTIN: Thank you, Chair. I just wanted to go on record. I...I don't mind either way of which it is that it starts clean slate or that it is retroactive. I just wanted clarity so people know what they're voting on. And it's not the case where, you know,

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they come back and they're like, I thought this, you know, and...and then I'll be, like, I thought that and, you know. So either way, I'm...I'm for it. And I think, you know, by doing the same to each side...to the Council and to the Mayor, it's not unbalanced. And, you know, even with all the lifers we have in the Hawaii Senate and Representatives, they're not doing that great a job in my opinion, you know, those experienced guys. They...they weren't able to continue meeting like our Council was with all these rookies on it, you know? So, you know, there's all sorts of perspectives, and I...I like having a blend of folks, you know. And so I kind of think that's what the Constitution folks thought, you know, when they said, "of the people, by the people". They didn't mean, like, these eight guys who have a lifetime of experience. They wanted the people that had knowledge of what's going on in the ocean, what's going on in the land, what's going on in business, what's going on in education, you know. They wanted people that knew the challenges of life to be helping to guide in leadership. And, you know, even in just these two years, I wouldn't say I'm entrenched, but I'm a little bit jaded on what can be done and what can't be done. And...and it is experience, but you cannot lose that fight from the people on the outside, like, you know, do this, do that, do this and...and just give it a try, you know. Even...even with the experience that you have that it's going to be hard, but you still got to give it a try because then you lose touch with the people on the outside that...that don't know all of the challenges. So it's...I think it's a good thing, you know. They...they let you keep going for five terms if you want, two terms for Mayor if you want, but I think the limits on both sides are important and that we need to embrace it so that we're embracing our challengers and saying, you know, right on, that you're stepping up and...and these are the things that you got to look at, and these are the things that, you know, we need more. We need more leaders; that's all there is to it. Even though there's nine of us, that's not enough. We need more leaders in our community; we need more leaders in our school; we need more leaders in business. You know, we can never have enough leaders in Hawaii to help shape the parts of our future. So whether it turns out to be retroactive or moving forward, I support it. I just would like clarity, and I would like it to be made clear to everyone so that they don't come back and like, you know, I thought this. So that's...that's my only point. I'm not against either way of it, I just think that that it needs to be really made clear to everybody.

CHAIR MOLINA: Okay. Thank you very much for your thoughts, Member Paltin. And you know, the Chair did impress upon you...all of you earlier that we wanted to keep these...this discussion somewhat tight. We've already gone on close to forty minutes. So I'm going to recognize Member Sinenci; and then at that point, after Mr. Sinenci's comments or questions, I'm going to ask for a recommendation or throw out a consideration. Member Sinenci, you have the floor.

COUNCILMEMBER SINENCI: Thank you, Chair, and thank you for all the comments. I especially appreciate Member Hokama's comments, but I agree that we've...we've also put these...this Charter amendment upon us as well, upon the Legislature. So I, too, think that it's equitable that...what we are proposing, we're also able to, you know, do it to ourselves as well. So I just wanted to say, you know, the...the...our electorate is at home during this pandemic. So I think given this additional time...we've been given this

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time to go back and just to go look at these little nuances in our Code that we can somehow fix and...and answer some of those questions that...that some residents have had about it and just make clear, like a lot of the other Charter Amendments, on...on...on what it...what we're really trying to say in the Code. So I think this election will probably be one of our most engaged now that everybody's home and they're looking into all of this and...and...and receiving their ballots at home. So I support, you know, giving...giving the electorate some things to mull over during...on the ballot. So thank you, Chair.

CHAIR MOLINA: Okay. Thank you very much, Mr. Sinenci. All right. Members, the floor is open for any considerations. If not, the Chair will offer one, but I'll leave the floor open if someone would like to make a consideration. Member King.

COUNCILMEMBER KING: Chair, I...I'm happy to have this discharged to the full Council if we can get a commitment from Chair Lee to put it on the July 10th agenda. And then I can work with Mr. Raatz on, you know, doing some of that research that we talked about...about language for retroactive.

CHAIR MOLINA: Okay. Thank you. Chair Lee, any thoughts on that? And, by the way, Members, this is pretty much...we're at our drop-dead deadline because we moved the second July Council meeting up to July 24th. So pretty much this is it as far as Charter Amendments and decision-making. We have to get everything approved by the July 24th council meeting. Chair Lee, any thoughts on Member King's suggestion or recommendation?

COUNCILMEMBER LEE: Yes. Just...just to follow up on what you just said, keep in mind that if it doesn't pass today, it has to pass first reading on the 10th. Yeah? So we would discharge this item and then deal with it. My hope is that we have so many of these Charter Amendments, I mean, now is the time to air this out, vet it, not wait until July 10th. So if you have concerns, please express them now. And if anything needs to be referred to Council and then discharged, that's fine, but let's not make it a marathon kind of a discussion on that day. Thank you.

CHAIR MOLINA: Okay. Thank you for your thoughts, Chair Lee, and we certainly appreciate we don't want to do Committee work in your Council meeting. So Member Kama, followed by Member King.

COUNCILMEMBER KING: Oh, I was...I was...I thought I still had the floor.

CHAIR MOLINA: Oh. Oh, no. I think Chair Lee had the floor. If you don't mind, I'd like to recognize Member Kama, and I'll come back to you, Councilmember King. Member Kama?

COUNCILMEMBER KAMA: Thank you. Thank you, Chair. So Chair, if things don't make it onto...in the Committee, or they don't make it at Council, do they automatically go to

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the Charter Commission?

CHAIR MOLINA: Good question. I think it would be...probably not. We would have to take a formal vote on that just to refer it to the Charter Commission. So say if something died at first reading, I'm not sure if we can then...well, we could, I guess, ask for a motion to send it to the Charter Commission. Maybe...can we get an opinion from Corp. Counsel?

MR. MURAI: Mr. Chair, I believe an affirmative action to refer it to the Charter Commission would be appropriate. I suppose the Commission could decide to take it up on their own, but I don't think it's a automatic thing where should it not...should it fail in the Council that it becomes part of the Charter Commission's charge.

CHAIR MOLINA: Okay. Thank you, Mr. Murai. Member Kama, any other questions before I recognize Member King?

COUNCILMEMBER KAMA: So yeah. So thank you. So my...my hope is that if it doesn't go through, that...that you as a Chair would remember, or at least put it on your agenda, that or...or to ask the membership if this is something that we want to pass on to the Charter Commission if it doesn't get passed in Committee or at Council. If that's something you could kind of attach to your agenda, you know --

CHAIR MOLINA: I'll certainly keep it in the back of --

COUNCILMEMBER KAMA: -- so you don't forget. Thank you. Yeah.

CHAIR MOLINA: Okay. I'll keep it in the back of my mind if we get...get to that point.

COUNCILMEMBER KAMA: Thank you. Thank you.

CHAIR MOLINA: Member King, followed by Committee Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER KING: Yeah, Chair, I have to leave soon, but I just wanted to say that if...if...it sounds like the Chair would like us to take the vote today. And I'm willing to go with the recommendation to make it, you know...make it effective as of 2021 and with the same stipulations we had for the Council Charter Amendment limitations. So, you know, basically your intention was to have it, you know, the slate wiped clean as of 2021 and start from there, and I think we can do that without making any changes with just the Committee reports which is what we did in the previous one for the Council. So it would be the same...it would be...basically be the same legislation for the Mayor that it was for the Council.

CHAIR MOLINA: Okay. All right. Thank you. All right. Okay, Committee Vice-Chair --

COUNCILMEMBER KING: But I think we...all have to take the vote, so.

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CHAIR MOLINA: Okay. Okay, all right. Thank you. Committee Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Just for clarification, was that a motion, Member King, or are...are we still discussing what --

CHAIR MOLINA: I...I...I believe...I believe we do have a...well, there's a recommendation, but it wasn't formalized as a motion.

COUNCILMEMBER KING: I'll make it as a motion. Yeah, I'll make it as a motion.

CHAIR MOLINA: Okay. Is there a second for Member King's motion? And let me clarify, the motion is to discharge the Committee or...or defer it and have it referred to the Council for first reading?

COUNCILMEMBER KING: Oh, no. My...I...no, Chair. Chair, no. My motion was to take a vote today in Committee --

CHAIR MOLINA: Oh.

COUNCILMEMBER KING: -- as per...that was requested by Chair Lee and to clarify that this would be effective 2021, that it would be, as you said, as...as...starting with whoever's in office at the time, and as we did for the Council, make it a clean slate.

CHAIR MOLINA: Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: Second.

CHAIR MOLINA: Okay. There's a second. All right. Now floor is open for discussion. Member Rawlins-Fernandez, I recognize you since you had a question...if you had anything else.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I'm happy to defer to the movant if she wants to say a few more words, and then I can share my . . . (inaudible) . . .

CHAIR MOLINA: Okay. Member King, any further words before we call for the vote?

COUNCILMEMBER KING: Well, I think this...this is in line with what we did for the Council for the term limitations, and I think it's...it's even and fair. The...the comment that was made earlier about the Directors I think is very different from the Mayor because the Directors have very clear qualifications in ordinance; the...us as elected officials don't. We don't have to...we don't have to have degrees; we don't have to have specific experience in a specific area; and you know, we're politicians. And so this is something that the electorate should decide. The electorate is the body that decides who the politicians are and what the rules are. So anyway, that's...I...I think it's a...it's fair...it's fair as it's currently...as I'm proposing it; it's...it's in line with what we did...we passed

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out of the Committee for the Council. So I just hope that Members will support it as an equal...an equal piece of legislation that applies equally to the Chair...to the Mayor and the Council.

CHAIR MOLINA: Okay. Thank you, Member King. Any other discussion before the Chair calls for the votes? Committee Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Really quickly, I echo what Member King said that basically which...that's how this differs from directorship. Directors have specific qualifications. The Mayor and the Councilmembers do not. We do not require degrees or years of experience. That is left up to the electorate to determine whether they feel that we're qualified for this job or not. So I voted in favor of the similar legislation removing the word "consecutive" for Councilmembers. And so for that reason, I think that it will be balanced in that way. Like Member Paltin, I was looking for clarity, and I think that this will be clear in that sense that it's from now moving forward and not retroactively. I think this does provide that balance for both the legislative and executive branch and not trying to give Council more power than the Mayor, that I think this is important work; this is the work that our electorate elected us to do, and that we are responsible for multitasking and doing a lot of jobs simultaneously. And I would hope that we're all doing this work, deliberating on Charter Amendments, handling our Committee work, subject committee -- subject matter committee area, and handling whatever it is that the community is needing due to the pandemic because I know a lot of Councilmembers are juggling all of that. I am one of them. So I...I don't think this distracts from that work. I think we should be doing all of that work. And I lastly want to agree with Member Paltin's statement that there's never a shortage of...there's never...there will never be enough leaders. I think we should always raise up the next generation and continue to have that kind of foresight because what happens then if you keep the same people in office until they pass on from this earth? Then we have failed in raising up the next generation of leaders. And so, you know, for that reason, you know, I...I strongly support this legislation, and I thank Member King for introducing it. Mahalo, Chair.

CHAIR MOLINA: Thank you, Committee Vice-Chair Rawlins-Fernandez. Okay. Seeing no other discussion, the Chair will then call for the vote on the motion to pass the proposed resolution, which is --

COUNCILMEMBER HOKAMA: Mr. Chairman.

CHAIR MOLINA: I'm sorry. Mr. Hokama, you have a comment on the motion? Go ahead.

COUNCILMEMBER HOKAMA: Thank you. I...I appreciate all my colleagues' comments, but couple things, yeah? I see this more, you know, from a...what do you call that...structural thing, yeah? I...I can see the merits. But in the reality of a multi-island county like ours, historically and even for the State, on government sector, you know, my...my point is the only reason why Hawaii or this County got anything was because

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of seniority and experience. It is something that is counted on, and it works, and it is all the way from the Federal structure to the State structure and the County structures. Without the experience, you think we would have gotten the money from any of our projects from the Federal Government without Inouye's stature and the role he has with years of experience? So my thing is, I understand the difference between the theory and the practice, especially on a multi-island county like ours where one size doesn't fit all. You cannot just look at...you know, look at the Districts. We have limitations. I wish Lanai had a thousand more leaders. It ain't real. Okay? So my thing is, look at our County as well as the proposal, and see how it fits in the reality from the theory of what we trying to achieve because as I said, Members, my experience is theory is one thing, actual is another. Thank you.

CHAIR MOLINA: Thank you for your thoughts on that, Mr. Hokama. Chair then, seeing no one else wanting to comment on the motion...oh, I see now. Member Kama, go ahead. Member Kama, you need to unmute. There we go.

COUNCILMEMBER KING: You need to unmute it. You're muted, Tasha.

CHAIR MOLINA: You need to unmute yourself.

COUNCILMEMBER KAMA: Thank you.

CHAIR MOLINA: Thank you. There you go.

COUNCILMEMBER KAMA: So I just wanted to...to reiterate that, you know, one of the things that's always very helpful in our culture is, you know, looking to the kūpuna for their wisdom, for their experience. And when we talk about what we're doing with this particular piece of legislation, is I look forward to looking for the wisdoms of our people. And if we don't allow the wisdom, or the wise to come back, sometimes it's a detriment to us. So I just wanted to just put that out there, that I'm not going to be able to support this legislation. Thank you, Chair.

CHAIR MOLINA: Thank you, Member Kama. Members, any other comments on the motion? We have Member Lee...Chairman Lee, followed by Member Sugimura.

COUNCILMEMBER LEE: Mr. Chair, I just want to say that I...I do support the motion with reservations because just...just forget me as an individual. I...I'm just talking in general about anybody who has experience. Imagine having all new members and maybe one or two experienced members on the Council. I mean, it's like having a senior working with eighth graders, honestly. The process is so immense; Government is not like business. It is a beast of its own with many, many, many, many layers, and it takes years to understand that and develop relationships to be successful. So Mr. Chair, I...I just want to let you know that, you know, we have to be careful about talking about peoples' age and experience because that's a form of discrimination. So let's stay away from that. And then the other thing is, I...I just want to make sure that people

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understand that actually, what Mr. Hokama said about...and even on Molokai...the pool is smaller, but we've...we've let it be that way so that each island could have their own representative because, by right, we're supposed to, you know, combine areas and we haven't. So, you know, I...just keep that in mind. That's going to be a huge issue in...in the future. And...and I'd hate to be one to have to tussle with that, but again, I'm going to be voting in favor of this. I just want to say one last comment. I'm amazed at how much a number of you are preoccupied with trying to restrict the powers of the executive branch because that's the perception. Whether you're trying to do it or not, that's the perception, and that's my perception. Now...and I find that very odd. You know why? Because you guys will probably be...one of you is going to be the next Mayor. So, you know, be careful. Be careful what you do to yourselves. Keep the balance. Okay? Thank you.

CHAIR MOLINA: Okay. Thank you for those words of wisdom, Chairman Lee. Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. Thank you, Chair. So I'm going to vote no as I did with the other Charter Amendment to change the Council's terms. And I...again, I stand by experience and...yeah, you can just see it, you know, with Ms....Member Hokama, Member Lee, Member Molina. You can just see the differences between the way, you know, that they're able to deal with the Council, the Community and, you know, our rules and regs and whatever. And...and it's...it's...their years of experience counts. And I'm going to vote against this because I can see the same thing happening with the Mayor, and I...I believe that the Mayor's experiences counts to develop a better Maui County. And, you know, who knows? We may have Mayor Apana back as a Mayor or, you know, we can have lots of experience that, you know, we may or may not be able to...to have move forward if we pass legislation or...or actually, if we change our Constitution so that it works against a better community in the end. So I'm going to vote against this measure. Thank you.

CHAIR MOLINA: Okay. All right. Thank you, Member Sugimura. All right. Chair's going to end discussion from the floor, and I'll take my last...I'll take Chair's privilege to give my thoughts. Good arguments on both sides. The experience of...you know, experience cannot be shortchanged, and so is the enthusiasm of youth. But at the same time, I...for me, it's about a matter of principle. Because the language was not in this resolution as of today, I'm going to...I'll support it out of Committee with reservations, and I look forward to any...whatever the language is that's being proposed by Member King at first reading, should this pass out of Committee. So that's my...I call it a hang up. It's...to me it's about principle. I...I'd hate to see somebody penalized because of previous service and their eligibility taken away to run for office in...in the future. So that's where my reservations are at right now, or hang up, but I will support. So Members, Chair will call for the vote. All those in favor of the motion to move the proposed resolution to establish stricter term limits for the Mayor to first reading on the County Council signify by saying "aye" and show your hands.

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COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: Those opposed?

COUNCILMEMBER HOKAMA: No.

COUNCILMEMBER SUGIMURA: No.

COUNCILMEMBERS VOICED NOES.

CHAIR MOLINA: Okay. We have seven ayes; two noes: Members Hokama and Sugimura.

COUNCILMEMBER KAMA: Chair?

CHAIR MOLINA: The measure passes on to first reading at the...oh, excuse me. Three?
Member Kama, are you a no?

COUNCILMEMBER KAMA: Yes.

CHAIR MOLINA: You're a no?

COUNCILMEMBER KAMA: Yes.

CHAIR MOLINA: Okay. For the record, we have three noes, Members Kama, Hokama and Sugimura. The measure advances to the full Council.

**VOTE: AYES: Chair Molina, Vice-Chair Rawlins-Fernandez,
 Councilmembers King, Lee, Paltin, and Sinenci.**

NOES: Councilmembers Hokama, Kama, and Sugimura.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: FIRST READING OF RESOLUTION.

CHAIR MOLINA: All right. Thank you very much, Members, for the very spirited discussion on this matter. Chair is aware of the time, it's just after 10:00. I'm sorry, Member King?

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COUNCILMEMBER KING: Just...I just need to leave because I'm late for my appointment.

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: And so if you want to recess this meeting, I'd be happy -- I'll be coming back as soon as possible, so.

CHAIR MOLINA: Yeah.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR MOLINA: All right. Thank you. Anyway, as the Chair was saying, I'm aware of the time. What the Chair's intent will be is to recess this meeting now and then open up our June 23rd recess meeting, recess that, and then reconvene the June 30th meeting after we recess the, you know, recess the June 23rd recess meeting. If everybody got a clear understanding of that. Okay? All right. Okay. So Members, we will recess today's June 30th, 2020 meeting subject to the call of the Chair. Meeting in recess.

RECESS: 10:02 a.m.

RECONVENE: 10:09 a.m.

CHAIR MOLINA: Okay. June 30th GET Committee Meeting is now back in session. Thank you, Members, for that recess.

GET-10(17) PROPOSED CHARTER AMENDMENTS (ALLOW THE COUNCIL TO REMOVE CORPORATION COUNSEL) (CC 19-28)

CHAIR MOLINA: We are now on the second, excuse me, the first item which is on the agenda, which is the Charter Amendment proposal from Committee Vice-Chair Rawlins-Fernandez which is to allow the Council to remove Corporation Counsel, which is GET Item 10(17). The Chair will recognize Committee Vice-Chair Rawlins-Fernandez to give the Committee a brief summary of the proposal. Member Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. So GET-10(17) allows Council to remove Corporation Counsel. The purpose of this Charter Amendment is to restore equity and remove possible bias for the Corporation Counsel, who is in...who is charged with representing both the legislative branch and the administrative or executive branch equally as a neutral entity. Currently, Corporation Counsel is nominated by Mayor, approved by Council, which work for impartiality purposes. However, the Council's approval...after the Council's approval occurs, the Corporation Counsel is only beholden to the Mayor since only the Mayor can terminate a Corporation Counsel's employment. In order to restore and maintain balance and ensure that the Corporation Counsel is allowed to freely advise both County branches based upon their true legal opinion, there

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needs to be neutrality and objectivity that is not directly tied to fear of losing their position. This Charter Amendment will open up opportunities for Corporation Counsel to be able to honestly provide sound legal advice based on findings and facts and will dissuade the current challenges they are faced with choosing loyalty as a means to job securities. And this Charter Amendment will allow Corporation Counsel to push back against political pressures and loyalties and arm them with the ability to remain neutral and advise the County branches without fear of retaliation that currently exists. It will allow the Corporation Counsel to do their job better by arming them with true independence, as was intended. Okay. Would you like me to read what the Amendment is?

CHAIR MOLINA: Sure. Yep. Go ahead, Member Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So in the Charter under Section 14-1.2 reads "Neither the Council nor its Members shall give orders to any County employee or County officers other than those appointed"...and currently, it says, "pursuant to Section 3-7 or Article 5", and we'd be striking that and inserting in its place, "in the Office of the County Clerk, the Office of Council Services, or the Department of Corporation Counsel." And that is only a change in naming the offices and department because Section 3-7 and Article 5 are those offices and departments. Section 3-7 is the Office of the County Clerk and the Office of Council Services, and Article 5 refers to the Department of Corporation Counsel. So what this Amendment does, doesn't really change anything except name the offices, rather than naming the section and articles in the Charter itself. And then the second amendment is to 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 Council by resolution or may be removed by, one, the Council by resolution, or two, the Mayor with the approval of the Council." So we would be inserting the Council by resolution, so that first part, which would give the Council the ability to not only approve Corporation Counsel but to also terminate Corporation Counsel, giving Council and giving the legislative branch and the executive branch equal powers in that sense as we're supposed to be separate but equal branches. Mahalo, Chair.

CHAIR MOLINA: Okay. Mahalo, Vice-Chair Rawlins-Fernandez. Members, questions for Member Rawlins-Fernandez? But prior to that, is there a representative from Administration that would like to comment on the proposal prior to the Chair recognizing Members on the floor? Mr. Murai or if Mr. Baz or someone from Administration is here. Okay. Seeing no signal from Administration, okay, Chair will open up the floor for questions for Committee Vice-Chair Rawlins-Fernandez on this proposal. Don't all raise your hands up at once now. Okay? Member Kama.

COUNCILMEMBER KAMA: So I'm reading through as many of the testimonies as I can, and a lot of the testimony almost reflects that this...their...their testifiers' angst against Ms. Lutey. So while I can see that many of them are written against her, is that why we're dumping the entire Corp. Counsel? Because of one person in the Corp. Counsel?

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CHAIR MOLINA: Member Rawlins-Fernandez, would you like to respond?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I'm sorry. What do you mean by "dumping"?

COUNCILMEMBER KAMA: It seems that we're creating...we want to...we want to remove Corp. Counsel. I'm wondering if the removal of Corp. Counsel is to remove all of them or just one of them? What are we trying to --

VICE-CHAIR RAWLINS-FERNANDEZ: No, this is --

COUNCILMEMBER KAMA: -- achieve here?

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Pro Temp. Kama. So as was with the previous item that we took up, it's...it's not personal one way or the other. It...it's just a...and that's how we're supposed to pass laws, right? We're supposed to be able to remove the person --

COUNCILMEMBER KAMA: Yes, yes.

VICE-CHAIR RAWLINS-FERNANDEZ: -- and pass laws so that it's objective, and it's not something personal.

COUNCILMEMBER KAMA: Right, right. Except --

VICE-CHAIR RAWLINS-FERNANDEZ: So...so you're asking my intention --

COUNCILMEMBER KAMA: -- you get the testifiers.

VICE-CHAIR RAWLINS-FERNANDEZ: Yes. And my intention --

COUNCILMEMBER KAMA: Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: -- is not so that we can fire the current Corporation Counsel. That's not the intention.

COUNCILMEMBER KAMA: Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: This was something that I saw that needed to be fixed prior to Ms. Lutey taking the position because the intention, as I asked her in confirmation, was for them to be neutral parties, to give us unbiased legal advice because our branches, the legislative and executive branches, are supposed to be separate but equal.

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COUNCILMEMBER KAMA: Equal.

VICE-CHAIR RAWLINS-FERNANDEZ: But right now --

COUNCILMEMBER KAMA: Right.

VICE-CHAIR RAWLINS-FERNANDEZ: -- it's unbalanced because only one branch has the power to terminate Corporation Counsel who is supposed to be our chief legal advisor and chief legal representative for all of the County. So I --

COUNCILMEMBER KAMA: It seems like...it seems to be --

VICE-CHAIR RAWLINS-FERNANDEZ: It's...it's not Ms. Lutey.

COUNCILMEMBER KAMA: Oh, no. Just that your Community feels that. Your Community feels that. I mean, what our intent is, as much as we try to...to make it as unbiased and as...policy as possible, what happens is the Community gets a wind of something that's going in one direction, and that's where it's all coming from. So I just wanted to be clear that if that's not the intent, then we should say that so that they know it. It's not about her; it's about what you wanted to do with this policy.

COUNCILMEMBER PALTIN: Oh, can I have a point of information?

CHAIR MOLINA: I'm sorry. Go ahead, Member Paltin. Your point?

COUNCILMEMBER PALTIN: Between the...the conversation between Member Kama and Member Rawlins-Fernandez, I just wanted to clarify what we were talking about. Like, when you say Corp. Counsel, you're not talking about Corp. Counsel as a Department. You're talking about Corp. Counsel as the first Corp. Counsel, and then the first deputy; like the Director and the Deputy Director; but Corp. Counsel, in this case, we're talking about just the head Corp. Counsel, I guess. Are they called the Director? The Director of Corp. Counsel?

VICE-CHAIR RAWLINS-FERNANDEZ: That's correct, Member Paltin.

COUNCILMEMBER PALTIN: You're not talking --

VICE-CHAIR RAWLINS-FERNANDEZ: It's not the Department of Corporation Counsel. It's the Director of the Department of Corporation Counsel.

COUNCILMEMBER PALTIN: Okay. I wasn't sure that was clear from the...the interjection or the--whatever you guys were talking about. So just clarifying.

CHAIR MOLINA: Okay. Thank you, Member Paltin. Members, any questions for Member Rawlins-Fernandez? And also, I've been advised Mr. Baz, the Managing Director, is on

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standby. And would you guys wish to hear from Mr. Baz? Chairman Lee?

COUNCILMEMBER LEE: No, I don't wish to hear from him. What I wanted to say is I can understand the proposal. However, I'm not going to support it because there's a tendency to support...and I'm not saying...I'm not...I'm not accusing anybody. This is a general statement, is that there has been in the past, and probably be in the future, when you do not receive the kind of opinion you...you want, you tend to want to remove the...the Corporation Counsel. And although it's...it's a fairly common occurrence, these things happen. We don't always get the interpretation we would like to get. And I...I feel that we have our opportunity, at the time of appointment, to...to really, you know, to...to examine and analyze and, you know, make a decision early on whether someone is qualified, et cetera. So that vote is very important at the beginning. But I don't believe that we should create an environment of uncertainty for anybody, you know, because there will be disagreements from time to time. So as a result, I cannot support this...this proposal. Thank you.

CHAIR MOLINA: Thank you, Chairman Lee. I saw Member Hokama had his hand up. Mr. Hokama, followed by Mr. Sinenci.

COUNCILMEMBER HOKAMA: Yeah. Thank you, Chairman. You know, I...I...I would say I appreciate the comments, but I would say in my observations, my experience, whether it's good or bad, has that the Corporation Counsel, since the establishment of this chartered form of Government, has done, basically, very good work. Yeah, I mean, almost every Administration has had differences with the Council with their Corporation Counsel on...on specific issues that we had disagreements. And therefore, one of the things that is now in the Charter that assists the Council is the right and ability to get special counsel, as we've taken, you know, previous Mayors to court, and using this appropriate tool that even the Supreme Court ruled that the Council has that ability to retain special counsel within the criterias [sic] and requirements of the Charter. And so that, to me, is one of the ways the County...the Council protects itself regarding the legal issues that we may disagree with the Administration. My thing is if you feel that even this is insufficient, that why even get into the whole process at all? Why not have the discussion of whether or not the Corporation Counsel of the County of Maui should be an elected official that the people vote who they want for their chief attorney, like we were under the Board of Supervisor days, okay? We can go backwards in time if that's what the people want...so again, yeah, Chairman, it's something...to me this current form is not perfect, but it still allows the Council, through special counsel appointments, the ability to protect itself legally. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I just had a quick question of Mr. Raatz, should he still be on, and if there was a process for...for County employees that could technically be, I guess, impeached if there was any wrongdoing on their part? Are those --

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CHAIR MOLINA: Mr. Raatz. Mr. Raatz, can you respond to Mr. Sinenci's question?

MR. RAATZ: Thank you, Chair. There...there is a procedure in the Charter under the Code of Ethics for impeachment proceedings in accordance with findings that there was a...a willful violation of the Code of Ethics. I...I don't have any more detailed information. Perhaps Mr. Murai, who has staffed the...the Board of Ethics, might have more insight. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Raatz. Mr. Murai, would you like to add some comments to Mr. Raatz's response?

MR. MURAI: Thank you, Mr. Chair. Yeah, I just want to say that Mr. Raatz correctly directs the Committee to the Code of Ethics, and that's where impeachment powers lie. It's...it...someone like the Corporation Counsel, because the Corporation Counsel is an appointed official that's like a department head, could be subject to impeachment for a violation of the Code of Ethics. I believe that the Board of Ethics has prescribed jurisdiction, and that would be to act upon a violation of the Code of Ethics.

COUNCILMEMBER SINENCI: It's same for elected officials as well?

MR. MURAI: That's correct.

COUNCILMEMBER SINENCI: Okay. Thank you. Thank you for that clarification. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Sinenci. Okay. The Chair would like to go ahead and recognize Member Kama, followed by Member Hokama.

COUNCILMEMBER KAMA: Thank you, Chair. I just wanted to follow up on...on...on Member Sinenci's question about impeachment. So what is the penalty when you are impeached?

CHAIR MOLINA: Let's see. Mr. Murai?

MR. MURAI: It would be --

CHAIR MOLINA: Can you respond?

MR. MURAI: -- removal from...well, it..it's...it's...well, first of all it...to answer Member Kama's question, it would be removal from office; but it's...it's...it's a fairly lengthy process. The Board of Ethics would initiate the proceedings, but by initiating, that means going to court and petitioning the court for the removal.

CHAIR MOLINA: Member Kama?

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COUNCILMEMBER KAMA: So if that occurs to anybody that can be impeached, so who pays that...that legal bill that might be incurred in this process?

CHAIR MOLINA: Mr. Murai?

MR. MURAI: Well, of course, because it is the Board of Ethics that is the moving party, it would be the...well, I...I suppose since we are speaking of the Corporation Counsel, that would present an obvious conflict and special counsel would probably need to be retained. Now, I don't know whether the impeached officer or officer that's threatened with impeachment would also be entitled to...to counsel. That's...well, they'd be entitled to counsel. I don't know whether they'd be entitled to a County-provided lawyer, but...but certainly, each side would bear their own...is responsible for providing their own counsel. And in...if it was anyone else, I would suppose that my office could be the...could represent the...the Board of Ethics.

COUNCILMEMBER KAMA: So if it was a Councilmember being impeached, who would that legal counsel be? If it was a...if it was a Councilmember, who would their legal counsel be?

MR. MURAI: It...it...it could be the...the...it could be a member of my office, or it could be special counsel. I...I can't say, you know, on...right here as I speak whether the attorneys in my office would have sufficient skill or experience to handle an impeachment proceeding. It's a...it's...doesn't happen often, and I would think that it's a very specific skill set.

COUNCILMEMBER KAMA: So in the end, the cost would be borne by the taxpayers?

MR. MURAI: Yes.

COUNCILMEMBER KAMA: Okay. Okay. Thank you, Chair. Thank you, Mr. Murai, very much.

CHAIR MOLINA: Okay.

MR. MURAI: You're welcome.

CHAIR MOLINA: Thank you, Member Kama. Mr. Hokama, followed by Committee Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER HOKAMA: Yeah. Thank you, Chair, real quickly. So Mr. Murai, yeah, I'm...yeah, I understand the County options, yeah, regarding Board of Ethics. But as a licensed attorney, under your professional Code of Conduct, I mean, if it's things are going to rise to this level. More than likely, the Hawaii State Bar is going to look at debarring or taking away the license to practice of this...if it's such egregious that now

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he wouldn't be qualified to be Corporation...or her wouldn't be able to be qualified to be Corporation Counsel anyway, right?

MR. MURAI: That's correct.

CHAIR MOLINA: Mr. Murai?

MR. MURAI: That...Mr. Chair, if I may respond. That's correct, Member Hokama. You know, attorneys are unique in that on top of our obligations that arise from our employment with the County, we're also governed by rules of professional conduct, and it should...one...should an attorney be disciplined either by suspension, disbarment, in my opinion, they would not...they would no longer be eligible to hold the office of...of a County attorney.

COUNCILMEMBER HOKAMA: Okay. Thank you very much, Mr. Murai. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Hokama. Committee Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. So I think the, you know, the...the question of impeachment and all of that is...is kind of not relevant to the resolution before us. It...it...in my resolution, we don't talk about impeachment at all. So it's a little bit of a rabbit hole, but this is actually a better alternative than impeachment. As Mr. Murai explained, it's...it's a...it's a lengthy process. It's expensive, and this is easier, it's more efficient, it's more cost effective than impeachment. Impeachment can also be initiated by five percent of our electorate, not just the Board of Ethics. But I...I wanted to get back to the resolution. So in 2016, former Councilmember Don Guzman also proposed a similar Charter Amendment. So this is not a new idea. This isn't something that I'm trying to fix because of one person. If the Community has an issue with the one person that is in the position right now, then that's, you know, the Community's beef with that one person. I'm looking at this structurally, and this is one way to get us back to having that neutrality that Corporation Counsel was meant to have. In...when creating Corporation Counsel, the Charter Commission actually...let's see...in the minutes of the Charter, when Corporation Counsel spoke, they spoke against having the Corporation Counsel elected because they felt that politicizing this position would be really dangerous. And so did the prosecuting attorney at that time, that they appreciated the autonomy and unbiased ability to be neutral. And this amendment would assure their wishes at that time and would also, as I said in my opening comments, that would give them that tool to be neutral because while we offer a carrot, the...the incentive, right, they have to come to us and meet with us and convince us that they are capable of doing this job; that they are the best person. And they...they come to ask us for their, you know, our yes vote during confirmation. But after we vote yes, then we...we lose all power. You know, only the Mayor has the power...you know, only the Mayor has the stick, and he's the only one that can discipline. And so, I mean, just looking at human nature, there's incentive and then there's disincentive. And right now, we...we have no power of consequence. So if they do Council wrong, there...there's

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really nothing that we can do about it as we've seen not just in this term, but in previous terms. And...and so this would help Corporation Counsel by being able to push back against the political pressures of only having the Mayor with the stick...of only having the Mayor with that authority to fire Corporation Counsel. It would give us equal power by being able to also fire Corporation Counsel. And the other, you know, other way about going, you know...the other method of resolving this issue because as Mr. Wong said in his confirmation, like, again, like, conflicts between the two branches, executive and legislative, is not a new thing. It arises often. And how Corporation Counsel will deal with it is, you know, always tricky. And, perhaps we, you know, we could look at just allowing executive branch to have their own Corporation Counsel and Council, the legislative branch have its own Corporation Counsel. Because trying to have this neutral department without bias when only...when it's lopsided because only the Mayor has the ability to...to fire Corporation Counsel, you know, it...it...it...it's not working. That...that idea of neutrality isn't working, and...and it's...it's not only, you know, like, one thing. Again, it's...it's a whole...if...if the Community thinks that it's just because the injection well, it's not. This isn't about the injection well case. This is about looking at it from an objective standpoint and seeing the obvious imbalance because we are supposed to be separate but equal branches of Government. And so Mahalo for...for that opportunity to speak, Chair.

CHAIR MOLINA: Thank you, Committee Vice-Chair Rawlins-Fernandez. Member Kama?

COUNCILMEMBER KAMA: Thank you, Chair. The...I guess things are not as obvious to me for whatever reasons, but I thought that's why the Council has Office of Counsel Services and the Mayor has Corp. Counsel, but collectively they all work for all of us. So unless I'm not seeing something, we should continue to have a discussion about that because that's not how I see things. But Chair, that's just my comment. Thank you. Thank you.

CHAIR MOLINA: Thank you, Member Kama. Members, any other questions before the Chair opens up the floor for a recommendation? Okay. Seeing none, I'll -- go ahead, Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. For me, I just wanted to say that I would support sending this to the Charter Commission because, you know, I...I agree with things that have been said. But when you say equal and a resolution of the Council could, I guess, remove the Corporation Counsel, but the Mayor couldn't remove the Corporation Counsel without him wanting to remove it and the Council also doing a resolution together, then it seems like it's not exactly equal. Like maybe the two sides together would have a say in removing it, kind of. I guess like the Water Director, but then also, that didn't work out either, like how the Mayor removed the Water Director, but he still got paid, but he wasn't working. So I...to me, I support the idea...I don't think it's equal this way, and I don't like the way that the Water Director thing went. So I think that, you know, maybe we should send it to the Charter Commission is...is my opinion.

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CHAIR MOLINA: Okay. Thank you, Member Paltin. Appreciate that thought. That crossed my mind as well. Because to be fair, Corp. Counsel is in somewhat of a tough position. They represent both the Council and the Mayor, but who are they more beholden to? You know, they're...Corp. Counsel is picked by the Mayor, and then we have to decide whether to approve or disapprove. I'm...I'm uncomfortable with acting on this today to forward this to the full Council, I'll be honest with you, but I do want to thank Committee Vice-Chair Rawlins-Fernandez for bringing the discussion up because it is true. This term, there's been some strong disagreements between the Council and Corporation Counsel. So I think it's definitely worthy of the discussion. Whether we put it on this ballot right now, I'm not so certain because we...we have...the one blessing we have, we have the Charter Commission meeting next year, and the next Mayoral term will officially start 2023. So if we put it...if, say, the Charter Commission or the next Council can put this on the ballot for 2022, and it's passed by the electorate, then it applies in the next Mayoral term; especially when whoever the Mayor's going to nominate for his or her next, you know, Corporation Counsel. So I'm open to that option, and I...because I can kind of feel the division with this discussion today amongst Members. But before we go on, I'd like to recognize Member Sugimura.

COUNCILMEMBER SUGIMURA: . . . (inaudible) . . . Chair. So I just want to say that when you talk about Corporation Counsel, there's eighteen attorneys that represent us. And it's not like only one person. And I believe in the strengths of who has been designated to represent the Administrative and the...and the legislative body, and I think they do the best job that they are given. And I just want to say, I'm going to...I'm going to...I'm speaking against this motion. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Sugimura. And we have Mr. Sinenci, followed by Mr. Hokama.

COUNCILMEMBER SINENCI: Thank you, Chair, for the opportunity. Yeah. I...I...I hear of Member Rawlins-Fernandez that we are...we're both the clients of Corporation Counsel, but only one of us are...are...is able to terminate them. So I guess my question to Corporation Counsel is, would they think that a client should have the ability to fire its lawyer?

CHAIR MOLINA: Mr. Murai?

MR. MURAI: Thank you, Mr. Chair. Member Sinenci, yes. It's always the client's prerogative to discharge their...their attorney. The question often comes up, though, is who is your...as a lawyer, you always have to identify who your client is. There is an attorney-client relationship even with...with Government attorneys. And what would complicate that attorney-client relationship, in...in my view...is...is if a third party has the authority to...to remove that attorney and thereby, you know, possibly interfering with that attorney-client relationship.

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COUNCILMEMBER SINENCI: And so could you...you have two clients with opposing viewpoints?

MR. MURAI: That...that often comes up. And when you have two clients that do not agree, the remedy for the lawyer is to withdraw because often what happens is, you know, lawyers become...come into possession of privileged or confidential information. And let's say one of your clients agrees with you, and the other doesn't. Sometimes the result is you have to...as a lawyer, you have to withdraw from representing both of them because you possess information about the other that would cause them to be at a disadvantage should they have to go, you know, break away from you and hire another lawyer. So to get...to answer your question, yes, you know, it's the...it's the client's choice for who represents them. They can be discharged. The...the difficulty, as I said, is when...when the third party is not your client but still has influence over the attorney's relationship with their client.

COUNCILMEMBER SINENCI: Okay. Thank you. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Sinenci. Mr. Hokama?

COUNCILMEMBER HOKAMA: I was very interested in Mr. Murai's response. And again, yeah, Chairman, my thing is, you know, when you look at the structure and how we process; yeah, we create the policies that we want the Administration to implement. And so, of course, Corp. Counsel works with us, approve the legislation is legal and formatted appropriately, then it goes to the EDMIR (phonetic) and admin. In their implementation of our policy, Corporation Counsel is advising them regarding the legalities of the policy as well as how to make...ensure compliance with the implementation. And so then, after they do that comes our job then, again, on the accountability side of the expenditures and success of the implementation where, again, whatever we question, we need to recall that Corporation Counsel has been guiding the Departments in the implementation from day one, including with the legislation. So they should know intent as best as anyone on assisting the Departments. So if we challenge the Departments, eventually, that has been guided by Corporation Counsel, who is working with us from day one on the legislation, I see that they're in a sticky position if we challenge it. So that's why we have the special counsel option in the Charter, Chairman. But what I wanted to bring out is, you know, again, I've...like you and maybe Chair Lee, we...we know that many times because of the Administration closed meetings, Corporation Counsel has defended the Council against the wishes of...of the Mayor or the Departments, but we really don't get to see it because they're not in an open meeting. They're in closed meetings. But I can tell you that I know certain Mayors that said to their Corporation Counsel that they should be fired, knowing they couldn't get Council support if they did make such a proposal. So I just share that because there's things that, you know, unfortunately, we don't get to see publicly that often. But I can tell you that in the past, there have been Corporation Counsels strongly disagreeing and supporting the Council's position in those upstairs meetings on the ninth floor. And so...again, it's part of the process, Chairman, and I just share that because that's the

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reality of how it really works. Thanks.

CHAIR MOLINA: Thank you, Mr. Hokama. Chair will recognize Committee Vice-Chair Rawlins-Fernandez one last time and then will offer a recommendation after Member Rawlins-Fernandez's inquiry. Go ahead, Member Rawlins-Fernandez, you have the floor.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. You know, I...I agree with Member Hokama that if you have ultimate authority, so the Mayor and the head Corporation Counsel, who have a strong foundation in fairness and justice and professional responsibility, then you will have those kinds of arguments where Corporation Counsel will stand up to the Mayor and provide unbiased legal advice that the Mayor may not like. But if you don't have those types of people in those positions, then you won't have those kinds of discussions on the ninth floor. So in theory and in past...past practice, you know, perhaps that was the situation. But in more current situations...and I'm not just talking about this term, it...it...it has been less so, you know, like when Mr. Moto was replaced by Mr. Wong. In the Maui Charter Commission Minutes, the Maui County Charter Commission Minutes on January 9th, 1992, the overview discussion of Article 8, Chapter 2, Department of Corporation Counsel procedures, Guy Haywood, Corporation Counsel at the time, "noted his unique position 'advising both sides. When you have two masters, you cannot have loyalty to one. I have no specific obligation to anyone. I have two clients with competing interests-and I haven't been disbarred!'" And so that's what he said. And then he reminded commissioners that his department is an evaluating system, not adversarial system. In 2001/2002 Maui County Charter Commission Final Report, it states the report puts a lot of emphasis on broadening the role of Corporation Counsel even further by replacing "perform such duties as assigned by the Mayor", which is what I believe the City and County of Honolulu still has in their Charter, but our Charter Commission in 2001/2002 removed that language, and replaced it with broader formulation, "perform such duties incident to the Department by"... "or required by law, neutralizing further the role of equal representation for both branches and removing emphasis from the Mayor's authority". And so this proposed Charter Amendment continues that work from 1992 to 2002, those Charter Commissions that were moving in the direction of making this Department more of a neutral Department so that the Council and the Mayor would have fair and accurate legal advice and representation. So...this Charter Amendment supports nearly thirty years of...worth of community leadership and legislative intent set forth by our Charter Commissions. And so we're just moving that intent along because from, you know, 1992, 2002, you try to work with the information that you have at the time. You do your best to put language into the Charter that you think will, you know, solve the issue that you...as you see it. And...and in 2002 it did; you know, it...it did help to broaden that role in the Charter. But now, you know, we have this opportunity to look back to see did that language achieve all that that Charter Commission had intended? And we can see in the last, you know, what, four to five years that...that it hasn't. And this Amendment will help to support that intent of the Charter Commission at that time. Mahalo, Chair.

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CHAIR MOLINA: Thank you, Committee Vice-Chair Rawlins-Fernandez. All right. Members, Chair's going to offer you a recommendation. As I mentioned earlier, I...I see some division with this issue. It does open up a couple of questions. The perception of is it personal because the Council is, you know, upset with the current Corporation Counsel? Some people feel it is; some people feel it isn't. And then also, another question is if we're going to do this, you know, requesting the authority to fire the Corporation Counsel, why not the same authority to fire all the Directors? So those questions, to me, are open. So based on that, I'll then offer as a recommendation for consideration--I will entertain a motion--to move this matter to the Charter Commission for further deliberation. It will give them time to deliberate, and it would not preclude the next Council, if that's...for example, if the Charter Commission doesn't feel that it could go on the ballot, the next Council could also vote to put it on the ballot. So basically, it's to give the public more time to weigh in on this and to look at the pros and cons. So that would be my recommendation. I would entertain a motion to move this matter forward to the Charter Commission.

COUNCILMEMBER KAMA: I move.

CHAIR MOLINA: Is that a motion? Okay. Motion made by Member Kama. Is there a second?

COUNCILMEMBER PALTIN: I second.

CHAIR MOLINA: Okay. There is a second from Member Paltin. Okay. The matter's up for discussion on the floor. I'll recognize the maker of the motion, Member Kama, first and then followed by Committee Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER KAMA: Thank you, Chair. My sense is that...that whenever we do things, especially when you change your Charter, nine people talking about stuff like this with three, four, five, six hours is not enough. The Charter Commission will have eleven people. The Charter Commission will have more time to discuss, to vet, and also to take it out to the Community, should they decide to do so. My sense is sending it to the Charter Commission at least to get more discussion, deeper dive, and come up with something that may be satisfactory to everybody. So that's my...my two cents. Thank you, Chair.

CHAIR MOLINA: Thank you, Member Kama. Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I don't oppose your recommendation because I can...I can count, too. I...I know I don't have the votes. I know I don't have six votes, so it's not going to move forward even if I were to move to pass this. So I appreciate moving it forward to the Charter Commission. I...in the previous comments, I disagree because if that's the case, then why would we take up any proposed Charter Amendments? And, you know, I think that rationale would have to be applied to every proposal. Nine people discussing a proposal to amend the Charter that are not doing a good enough job and are not involving the Community enough, then why should any?

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I disagree with that. I do work with my Community, and I do outreach to them, and this is something that the Community members who I've spoke with do support. In response to a comment that you made, Chair, about why would we not give power to the Council to fire all the Department directors, therein lies the conflict. The Departments are clearly in the executive branch. They...they are...they are not under...Council doesn't have the current ability to give direction to Department directors, whereas when creating the Department of Corporation Counsel, the intent was for them to represent both the Council and the Mayor, the legislative and the executive branch. They're not clearly within the administration, the executive branch. They are supposed to be a neutral entity, not under Council, not under the Mayor. And so that would be the difference between Council not having the ability and power to fire other department directors because they are executive branch; Corporation Counsel is not. Mahalo, Chair.

CHAIR MOLINA: Thank you for your comments, Committee Vice-Chair Rawlins-Fernandez. Any other discussion on the motion on the floor, which is to refer this matter to the Charter Commission? Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Mr. Chair, if this passes, of course, it goes to the Charter Commission. If it doesn't pass, then what?

CHAIR MOLINA: If it doesn't pass today, well, then there's other options the Members can consider. I guess filing would be a consideration.

COUNCILMEMBER SUGIMURA: I...I...I just want to say that I support the current structure of our Charter and Corporation Counsel. So I'm going to be voting against this, although I understand the intent of what you're trying to do. But I...I don't think it needs to be belabored over, and I support our Corporation Counsel and the way it's structured and their representation of us. So thank you.

CHAIR MOLINA: Okay. Thank you for your comments on that, Member Sugimura. Members, any other discussion as it relates to the motion on the floor? Okay. Seeing none. Chair will call for the vote. All those in favor of the motion signify by saying aye and raising your hand.

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: Okay, Chair counts. Okay. Will that be seven ayes or, excuse me, eight [sic] ayes? Okay. Those opposed, raise your hand.

COUNCILMEMBER SUGIMURA: No.

CHAIR MOLINA: We have one no. Okay. The measure passes. This matter will be forwarded to the Charter Commission for their consideration by an eight [sic] to one vote, the no vote being Member Sugimura.

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**VOTE: AYES: Chair Molina, Vice-Chair Rawlins-Fernandez,
 Councilmembers Hokama, Kama, Lee, Paltin, and Sinenci.**

NOES: Councilmember Sugimura.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember King.

MOTION CARRIED.

ACTION: REFER TO THE CHARTER COMMISSION.

CHAIR MOLINA: Okay, then. I want to thank Member Rawlins-Fernandez for bringing this discussion to the floor. I think it was certainly worthy of that. All right, Members. I believe this is our last agenda item. Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I just need to correct something for the record.

CHAIR MOLINA: Proceed.

VICE-CHAIR RAWLINS-FERNANDEZ: I think seven ayes, one no, and one excused, Member King.

CHAIR MOLINA: Yes. Thank you very much. I forgot about Member King. That's right. Thank you for that clarification. So the vote is seven to one with one excusal, Member King. Thank you for pointing that out. That's what I mean. You're such a very reliable vice-chair. I appreciate that, Ms. Rawlins-Fernandez. Okay. Staff, is there any other business the Chair needs to be made aware of before we adjourn the June 30th, 2020 GET meeting?

MS. ESPELETA: No, Mr. Chair.

CHAIR MOLINA: Okay. With that being said, thank you very much, Members, for your hard work. The GET Committee meeting for June 30th, 2020 is now adjourned. And when we do come back, we're going to come back for our recess meeting of June 23rd, 2020. So don't go too far away, okay? Members, would you prefer an extended break before we adjourn this meeting to take care of some personal needs, maybe five, ten minutes?

COUNCILMEMBER SUGIMURA: Yes, please.

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COUNCILMEMBER LEE: Yes.

CHAIR MOLINA: Okay. All right, Members.

COUNCILMEMBER KAMA: Thank you, Chair.

CHAIR MOLINA: All right, Members. Let's report back at 11:10 for the recessed meeting.
Okay. The June 30, 2020 GET meeting is now adjourned. . . . *(gavel)* . . .

ADJOURN: 10:58 a.m.

APPROVED BY:

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

get:min:200630

Transcribed by: Susan Leong

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CERTIFICATE

I, Susan Leong, 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 24th day of July 2020, in Wailuku, Hawaii

A handwritten signature in cursive script, appearing to read "Susan Leong", is written over a horizontal line.

Susan Leong