

**2009-2010
HAWAI'I COUNTY
CHARTER COMMISSION**

3rd Session
Friday, May 8, 2009

County Council Chambers
Ben Franklin Bldg. 2nd Floor
333 Kīlauea Avenue,
Hilo, Hawai'i 96720

CALL TO ORDER:

CHR. HAITSUKA: Good afternoon, Commissioners, Commission Staff, Administration Members and Members of the Public. Today is May 8, 2009 and time is right about 1:31 p.m. I'd like to call this meeting to order of the Hawai'i County Charter Commission. We are at the County Council Room at the Ben Franklin Building in Hilo. I will call the roll now.

ATTENDANCE:

Present: Mr. Ed Haitzuka, Chair
Ms. Daphne Honma, Commissioner
Ms. Casey Jarman, Commissioner
Ms. Jamae Kawauchi, Commissioner
Mr. Joseph Kealoha, Commissioner
Mr. Alapaki Nahale-a, Commissioner
Ms. Susie Osborne, Commissioner
Mr. Todd Shumway, Commissioner
Mr. Scott Unger, Commissioner

Absent: Mr. David Fuertes, Vice Chair

Also Present: Mr. William Takaba, Managing Director
Mr. Lincoln Ashida, Corporation Counsel
Mr. Kenneth Goodenow, County Clerk
Ms. Charmaine Shigemura, Executive Assistant to Mayor
Ms. Nancy Crawford, Finance Director
Mr. Michael Ben, Human Resources Director
Ms. Bobby Jean Leithead-Todd, Planning Director (2:40 p.m.)
Mr. Ivan Torigoe, Environmental Mgt. Dep. Director (3:45 p.m.)
Mr. Lane Shibata, Audit Analyst (2:10 p.m.)
Ms. Brenda Ford, Councilmember (via videoconference, Kona)
Mr. Jon Henricks, Legislative Specialist
Mr. Peter Sur, Hawai'i Tribune Herald
Mr. Levi Hookano, Legal Specialist
Ms. Karen Eoff, Secretary

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

CHR. HAITSIKA: We have two speakers today; two members of the public to give testimony on agenda items. First up we have Mr. Patrick Kahawaiola'a. Good afternoon, sir.

PATRICK KAHAWAIOLA'A

(At this time, Patrick Kahawaiola'a came forward to address members of the Commission)

MR. KAHAWAIOLA'A: Good afternoon. Aloha Chairman Haisuka and members of the Charter Commission. I am Patrick Kahawaiola'a, a native Hawaiian as defined under the Hawaiian Homes Commission Act, 1920, as amended July 9, 1921 and the current President of the Keaukaha Community Association which represents, according to the 2000 Census, 1457 native Hawaiians in 479 households residing on lands having the status of Hawaiian Home Lands in Keaukaha, in the district of Wai'ākea, South Hilo.

When a review such as this of the Articles of the County Charter becomes available, it provides our community an opportunity to address this body for clarifications on at least one definition that continues to be one of the everlasting issues of concern, that numerous County officials before have wrestled with and came to no definitive conclusion, to address the concerns of native Hawaiians who live and work on lands having the status of Hawaiian Home Lands.

As a beneficiary of these lands that were set aside for the express purposes of the Hawaiian Homes Commission Act, and incorporated in the Hawai'i State Constitution through the Admissions Act, that among other things, the encumbrances authorized to be placed on Hawaiian Home lands by officers other than those charged with the administration of the Act, shall not be increased, except with the Consent of the United States.

The immediate question now is in Article 1-2; the geographical limitations of the County. Does that definition encompass lands having the status of Hawaiian Home Lands? Confused? Yes, we are. Article 1-2 intimates that all lands on the island of Hawai'i belong to the County of Hawai'i. Can the Charter be amended to read "...except lands have the status of Hawaiian Home Lands." At your last meeting Commissioner Jarman asked for some clarification on how far around these islands can the County of Hawai'i claim is under its control. So for us, the final question lies in Article 2-1, the Powers of the County. In part it says, "The county shall have all powers possible under the constitution and laws of the State of Hawai'i..." And Article 2-2, the Exercise of Powers, says, "All powers of the county shall be carried into execution as provided by this charter or, if the charter makes no provision, by ordinance or resolution of the county council."

Notwithstanding the Memorandum of Agreement (MOA) between Mayor Kim and former DHHL (Department of Hawaiian Home Lands) Chairman Soon, the question does arise, does this county charter, through its Articles of powers and exercise of the same, apply to lands having the status of Hawaiian Home Lands? Is the MOA a legal document? Was it adopted and approved by the Hawai'i County Council?

On behalf of all native Hawaiians on Hawaiian Home Lands, we need clarifications or directions through your County Charter, the County's law book, that you are now the officers charged with the administration of those lands called Hawaiian Home Lands and you received that authority through the consent process of the United States Congress. If the County concludes that it does have these authorities and powers as the Charter says over lands having the status of Hawaiian Home Lands, then as native Hawaiians we would request the consent of the United States giving and or conveying such authority to the County of Hawai'i to increase that encumbrance by officers not charged with the administration of the Hawaiian Home Commission Act.

I do thank you for allowing me an opportunity to come before you. I see where it was not an agenda item, however---and that was based on an unresolved question as I sat here at the last meeting because I'm interested in finding out the answer to the question that Commissioner Jarman asked of the Corporation Counsel, which had to do with Article I and II. That is the reason for my testimony. Again, I thank you for the opportunity for allowing me to share those concerns, though small they may be, about the ongoing question that lies between the County and the Department of Hawaiian Home Lands and its beneficiaries. Thank you.

CHR. HAITSUKA: Do we have any questions for Mr. Kahawaiola'a?

MR. NAHALE-A: I don't have a question, Mr. Chairman, but a comment. I want to thank Uncle Pat for bringing this issue to our attention. One thing about Uncle Pat, he is always very well read and articulate and does his homework. I think he raises an issue that has long been a question in the Hawaiian community. It's the kind of thing that a lot of folks haven't wanted to touch, but maybe it's time that this body look at it and try to bring some resolution and guidance for other officials. Thank you for bringing it to our attention.

MR. KAHAWAIOLA'A: I appreciate your comments, thank you.

CHR. HAITSUKA: Thank you, Mr. Kahawaiola'a.

MS. OSBORNE: Thank you for bringing this to our attention. I'm wondering, do you have what you have shared with us in writing, that we could have a copy? I'd like to have something clear about your request in writing so I could digest it more.

MR. KAHAWAIOLA'A: I appreciate that. As a Hawaiian, I just read the first part of the agenda and didn't realize that on the back it says I need 14 copies. I would be more than happy to leave this copy here with your secretary. Thank you.

MS. OSBORNE: Mahalo.

CHR. HAITSUKA: Thank you. Our next testifier on the agenda is Mr. Mike Ben representing the Department of Human Resources of the County of Hawai'i. Mr. Ben.

MICHAEL BEN

(At this time, Human Resource Director, Michael Ben came forward to address the Commission)

MICHAEL BEN: Good afternoon Chairman and members of the Charter Commission. My name is Mike Ben, I am the Director of Human Resources for the County of Hawai'i. I wanted to make a request. Generally speaking throughout the Charter, not particularly on a specific agenda item, but throughout the Charter, you will find references to positions being civil service or not being civil service, or being classified, or not being classified. Case law has established that the Hawai'i Revised Statutes pertaining to civil service law trumps the Charter. There are numerous instances in the Charter where references are inappropriate because civil service law says otherwise. A prime example of this would be the Band members. It says they are not civil service, however, under civil service law they are in fact civil service and we've had to make changes to that effect. So, you'll find this throughout the Charter and what I am requesting is that those references be removed from the Charter. Thank you.

CHR. HAITSUKA: Any questions? Ms. Jarman.

MS. JARMAN: Do you know which---I mean, have you looked at the Charter to know which ones specifically? I also noticed that---are you going to be here later so we can talk a little bit about that provision about the Clerk being able to appoint necessary staff with---you know that whole issue with the Clerk appointing somebody who is civil service versus not civil service, and sort of comparing that with the appointment of the agency heads. Would you be able to be here for some discussion on that today?

MICHAEL BEN: If you wish.

MS. JARMAN: If you have the time, I think it would be helpful to have your input.

MICHAEL BEN: Okay. I don't have---I didn't go through the whole thing. I quickly went through the articles you were reviewing today. So, Article IV, Section 4.5 paragraph (a) there is reference about "Appoint and remove a deputy or assistant and a private secretary and such positions shall be exempt from civil service law and classifications." That is one particular provision. Moving on to Section 5-1.3 subparagraph (b), again, "All positions in the mayor's office shall be exempt from civil service laws and classifications." Specifically, the civil service law says they're exempt, but they must be classified; so they're all classified.

MS. JARMAN: Thank you.

MICHAEL BEN: One more on your agenda today is the County Bands that I just referenced. That is in Section 6-8.4. There are others in here, but I think they are not on your agenda today.

CHR. HAITSUKA: Thank you, Mr. Ben. I believe we have one person testifying in Kona. Ms. Ford.

BRENDA FORD

(At this time Councilmember, Brenda Ford came forward to address members of the Commission.)

MS. FORD: Yes sir, thank you. Are you covering Articles III and IV today? Is that all?

CHR. HAITSUKA: We are covering portions of Article III that we have not covered previously in our previous meeting, all of Article IV and then in our New Business, we are covering Articles V and VI, hopefully.

MS. FORD: I would like to testify on a few things, I don't know what your time limits are. In Chapter III, Section 3-8 (e), there is a section that reads, "A motion to reconsider made at the time any bill fails to pass final reading shall not be voted upon until after 24 hours." I would ask that this be stricken in its entirety. I personally have been part of a vote after 11 hours and 45 minutes when we were all totally exhausted with fatigue and unanimously made the wrong vote because of tiredness. We suspended the rules and went back and voted again and made the correct vote as each person chose to make that vote. This disallows for human error, when human error is just based on a misstatement or exhaustion, or whatever else is going on. There is no reason not to have reconsideration the same day if the Council or the Council Committees choose to do so. So I ask that this section be stricken.

Then in Section 3-11, Emergency Ordinances, the second paragraph, the middle of my page four, hope it's yours. It says, "The affirmative vote of all council members present or by two-thirds of the entire membership shall be necessary for adoption of such ordinances." Now this has to do with emergency ordinances. I understand what this is trying to say, but it's very clumsily worded. It's trying to say that if we are in an emergency situation, and perhaps all nine council members cannot be present because of the emergency, then whoever can get together requires a unanimous vote. But, if we can get a quorum, a regular quorum, then it requires---and in this case it would require a super quorum of six people; if we can get at least six people then they can vote. I understand what it is trying to say, but it is not worded very well, and I hope you can clean up this language to express it more clearly.

Farther down, two paragraphs down, it starts out "Every emergency ordinance, including any amendments made after adoption, shall automatically stand repealed as of the sixty-first day..." I would like to ask that you do some investigation on this. It is my opinion that 61 days may be too short a period of time. We're still dealing with issues two years later. I realize that the 61 days has to do with an immediate emergency to life, property or health, but sometimes 61 days just doesn't do it when we sit out here in the middle of the Pacific Ocean and we have to rely on other islands and other states on the mainland. I would ask you to investigate 61 days, if that is sufficient.

Of course, Section 3-17 which is titled County Reapportionment Commission. I've sent a voluminous amount of information to you, and I am prepared to discuss that or answer questions, whatever you would like as you go through it.

On page 13 Chapter 4, Planning Department---what I am about to discuss has to do with several departments. Some departments actually have qualifications for the director or the manager, the head of the department, and other departments do not. They seem to be rather arbitrary. In the Planning Department, there are no qualifications to have any kind of a planning background for that position.

MR. NAHALE-A: Ms. Ford, what chapter are you on?

MS. FORD: I'm on page 13, Chapter 4, Planning Department. I'll speak just generically about departments rather than point you to a specific section. There are no qualifications other than having five years training in a responsible planning position or a degree in planning. Those are good qualifications, but sometimes that doesn't take place. Sometimes we get people who have no qualifications. I'm not trying to oust anybody that might be in an appointed position during this term. This would take place in a new administration. I would like to point out, when you go through each section, that qualifications in some departments are absolutely necessary. For instance, the Department of Environmental Management on page 14 doesn't have any real qualifications for somebody who is trained as an engineer in waste management or wastewater management; the same thing for Research and Development. Public Works, on page 15, asks for a professional engineer, which is a great qualification. I'm not so sure that a civil engineer wouldn't be equally qualified for that position. Anyway, I'd like you to take a look at the qualifications as you go through these sections, and try to set some up. We are now in the 21st century, and we need to get people who really know their area of expertise quite well and can deal with it. That's where I'll stop for today.

CHR. HAITSUKA: Alright, any questions for Ms. Ford?

MS. FORD: There's one other thing. In the section on recalls, I would like to suggest that the percentage for recall petition be dropped from 25 percent of the total persons who registered. I think the percentage should be lowered, and it should be of the voters in the last general election. For instance, in this County we had slightly over 100,000 people who are registered; but, Hawai'i State and Hawai'i County has one of the lowest turn-outs in any kind of an election in the Country. If you had to do a recall, it would be very difficult to meet these kinds of standards with the apathy that's in the County. When you look down on impeachment, which is in Article XII, Chapter 2, in order to impeach an elected official, "...malfeasance, misfeasance, nonfeasance, or maladministration..." you only need one hundred qualified voters in the County. Something's really wrong when there is possibly a criminal act involved, and it only takes one hundred people to get them up on impeachment charges. You have to get 25 percent of registered voters in a district, or registered voters in the County if it's a County election, in order to deal with a recall situation. These two things are really quite out of context with each other. They're two different issues, but one is extremely difficult to do and the other one is so easy as to be ridiculous. With that, I do end my testimony. Thank you.

CHR. HAITSUKA: Any other questions? Thank you, Ms. Ford. Is there any one else from the public here to testify?

APPROVAL OF MINUTES

CHR. HAITSUKA: Let's move on to the approval of the minutes for the April 9, 2009 meeting. Do we have a motion to approve the minutes?

Ms. Jarman moved to approve the minutes of the April 9, 2009 Hawai'i County Charter Commission meeting. Seconded by Mr. Kealoha.

CHR. HAITSUKA: Any discussion? Go ahead, Mr. Unger.

MR. UNGER: I just want to make it real clear about---there was some confusion last meeting regarding at-large seats for our County Council. I just want to make it really clear that I am not a proponent of that. I apologize if I insinuated that any body else on this council was a proponent of that. What I was really trying to do is to get a clearer definition from Levi on the ad-hoc committees, and if it is ever applicable to expand an ad-hoc committee to maybe consider two similar issues. I used the example of the term limits and ad-large seats. I'll blame Lincoln Ashida, because he initially was the one that brought that up, but he used the term "as an example." I failed to do that, so I do apologize and I do want to make it really clear that I am not a proponent of at-large seats.

CHR. HAITSUKA: Thank you, Mr. Unger. Is there any other discussion on the approval of the minutes from the April 9, 2009 meeting?

MS. KAWAUCHI: Mr. Chair, I just have a correction to page one. I believe that under the also present section, that Ms. Ford was present by videoconference, but her name was omitted from the list.

CHR. HAITSUKA: Any further discussion? All in favor of approving the minutes of the April 9, 2009 meeting as modified with adding Ms. Ford on to the persons who were present at the meeting, say "aye."

The motion to approve the minutes of the April 9, 2009 Hawai'i County Charter Commission meeting, as corrected, was carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi, Kealoha, Nahale-a, Osborne, Shumway, Unger and Chair Huitsuka.

Noes: None.

Absent: Commissioner Fuyertes.

COMMUNICATIONS

CHR. HAITSUKA: Next on our agenda is Communications. We have three memos from the Commission's attorney. The first memo dated April 16, 2009 deals with Section 1-2 of Article I of the Charter.

MR. HOOKANO: Mr. Chair, if I may. Those aren't on the agenda, especially the one regarding Section 1-2. Those sections aren't on the agenda, so it wouldn't be appropriate to talk about that particular memo at this time.

CHR. HAITSUKA: Okay, then we have no Communications at this time.

UNFINISHED BUSINESS

1. DISCUSSION OF ARTICLES III-IV, HAWAI'I COUNTY CHARTER

CHR. HAITSUKA: Next on our agenda is Unfinished Business. On the Unfinished Business portion of our agenda we needed to conclude the discussion on Articles III and IV. When we adjourned the last meeting, I believe we concluded the discussion on Section 3-17, but we had skipped Sections 3-13, 3-14, 3-15 and 3-16. Before we move on to discussing those sections, is there any discussion on anything we covered regarding the articles and sections we covered in the last meeting?

MS. JARMAN: Did we discuss Section 3-6?

CHR. HAITSUKA: I believe we did, because I have notes to that effect.

MR. HOOKANO: In the minutes of last meeting, on page 40, is when they begin discussion on Section 3-6.

MS. JARMAN: Okay, thank you, Mr. Chair.

CHR. HAITSUKA: Let's move on to Section 3-13, Adoption of a Pay Plan. Is there any discussion on this section? If there is no discussion, let's move on. Did anyone hear from the County Administration or the public to give testimony regarding this section? Let's move on to Section 3-14, the County Code. Any discussion on this section?

MR. SHUMWAY: I have a question on that. It says the Code would be available at the Office of the County Clerk for inspection. Is it available online? Or could it be available online?

MR. GOODENOW: Hello, Ken Goodenow, County Clerk. It's not in the Charter, but we do provide it online. Actually, our County Code specifies that the Code has to be updated every six months, and we put out a revision of the Code. We try to update it as it happens online.

There is always a small delay, but we put on it “This is not official.” We do revise the Code every six months, I believe.

CHR. HAITSUKA: Thank you, Mr. Goodenow. Any other discussion on Section 3-14? Let’s move on to Section 3-15, the General Plan. Any discussion?

MR. NAHALE-A: Yes, Mr. Chair. It is obviously one of the more important sections of the Charter, and how it’s implemented has major impact in the County. I’m curious, since no one is here is the assumption that it is working fine and there are no issues or concerns? Last meeting the issue we brought up was that as we are going through these, section by section, we were hoping our County officials would come and let us know, right now; if there’s an issue with the General Plan we wanted to know at this agenda.

CHR. HAITSUKA: Mr. Hookano, I believe that notice was sent out to all department heads. Is that correct?

MR. HOOKANO: Yes, the memo was sent out letting the department heads know the schedule of the Charter Commission, on when they will be covering the articles of the Charter. With this General Plan section, it falls under the Legislative Branch, Article III. We have Kenneth Goodenow here, the County Clerk, which is kind of his section.

CHR. HAITSUKA: Mr. Goodenow.

MR. GOODENOW: Ken Goodenow, again. I can comment as to how the process works, but of course, as to policy questions, that’s best left to the Planning Department and other departments. The way it works now, I don’t see any problem with the way it works. Basically it follows in the---in the State law it says that zoning has to be done in compliance with a long range plan. So, even if it weren’t in our Charter, we would have to do it. The General Plan has been adopted. The only way you can amend the General Plan---those provisions are all in the General Plan. It’s kind of a self contained document. There maybe have been complaints---I have the Code back there, I can tell you exactly. For instance, when the Council initiates an idea, it gets referred to the Planning Commission. They review it and they have so many days to get back to the Planning Director. Then the Planning Director makes recommendations to the Council. It seems to be a pretty comprehensive system, but the policy questions are best left to the Planning Director. As far as the Clerk, it seems simple to execute; it’s a clear process.

MS. JARMAN: Mr. Chair.

CHR. HAITSUKA: Yes, Ms. Jarman.

MS. JARMAN: Since the Planning Director probably spends more time with the General Plan than anybody else in the County, she may not have thought about it being in this section. Maybe that’s the reason she’s not here. So, maybe we can schedule this---when are we doing the Planning Department? Oh, it’s today. Do we know if anyone from Planning

Department is coming in later? Anybody know? We could talk about it when we come to that.

MR. GOODENOW: I would concur with that suggestion.

MS. JARMAN: But, if she doesn't show up, then I guess we won't have the benefit of their expertise. Thank you.

MR. UNGER: I have a question. You mentioned that there is a General Plan in place right now. When was it drafted? When was it put together?

MR. GOODENOW: When they passed the State law that required it, they had so long to do it. I believe the first General Plan was 19---then they failed to update it in accordance with the law. Then they updated it in 2006; but the Planning Department would know more.

MR. UNGER: When you say, "they" updated it, who's "they?"

MR. GOODENOW: The Council. They have a process for revision, and it's every 10 years. Lincoln, help me here; I'm drowning. There is a time period and they go through the major process. In fact, if you give me second, I'll walk over and get the Code and look it up. It's outlined very clearly in the Code.

CHR. HAITSUKA: Any discussion in the meantime on Section 3-15?

MS. HONMA: I have a quick question. Does this plan also include the enforcement of these things here? Or, is it just the plan itself; this is just what we want.

CHR. HAITSUKA: Maybe Mr. Ashida can answer that question.

MR. ASHIDA: I'm sorry, what is the question?

MS. HONMA: Does the plan include enforcement of whatever they decide in the plan. Is there enforcement for it, or is it just this is what we want to do and this is the plan.

MR. ASHIDA: The first thing to understand is that the General Plan is nothing---I don't want to say nothing more than, but it is essentially an ordinance. When the Council passes a General Plan, they are simply passing an ordinance like they pass any other law for the County. In terms of enforcement of the General Plan, when individual developments come before the Council for zoning or rezoning, they need to comply with the requirements of the General Plan. I don't know if that answers your question. I suppose if the Council is confronted with legislation or an up-zoning or a down-zoning that is not consistent with the General Plan, then they shouldn't do that. I don't know if that answers your question.

MS. HONMA: It's kind of like with historical sites or with public access to the shoreline, or dealing with native Hawaiian plants or whatever. If they come across these things or they want to purchase the property and develop it for something and don't give public access to

the shoreline, or if they come across a historical site and don't preserve it. Where does the enforcement come with that?

MR. ASHIDA: There's a lot of different State, County rules and regulations concerning what you are talking about. It's not simply isolated to the County. You're talking about when you come across burials, for example. There is a Burial Council that is responsible for listing that. So there are a sufficient number of safeguards in place and a pretty good process that currently exists to ensure that all of these concerns are properly looked at and there is transparency in the process. As a matter of fact, I would say that actually some of the criticism you hear is that it takes so long, because of the processes that are in place; the E.I.S., the E.A.'s, the Environmental Assessments that may be necessary. I think that's what you're asking. How do we be sure that things aren't out of hand and this is all complied with? The General Plan is just actually a part of a larger land use system throughout the State of Hawai'i.

MS. HONMA: Thank you.

MR. NAHALE-A: As a follow up to Ms. Honma's question, and I'm not a planning expert, but I'll take the risk of embarrassing myself.

MR. ASHIDA: I do that every day, Alapaki, so don't worry about it.

MR. NAHALE-A: The way I look at the General Plan, it's the big picture. If you read the items here that Ms. Honma talks about, it is stuff that I think we all agree that we want for our island; which is why for us, as a commission, it's critical. It is guiding all the other land use decisions. They have to fall within this framework. From the public's point of view, I can get involved with how our land is being utilized one time, when our General Plan is being reviewed. Then I can have faith that all the safeguards that you talked about are being carried out, because there is this guideline. It means that a general public guy doesn't have to track every land use issue that comes before the Council or the Planning Department. We have some faith that there is an overriding vision. I'm not sure if I put you on the spot, but you talked about the other safeguards being in place and there is a sense that it is too slow to some degree.

MR. ASHIDA: No, I'm not suggesting I feel that way. I'm simply saying that is some criticism that is brought by certain parties that may have varying interests---different interests.

MR. NAHALE-A: I think that's the conversation that I'd like to hear from the Planning Department. Is this section adequate to give the public confidence that this vision of land use on our island is being followed? Is it too restrictive? Is it just right? That's the kind of sense I would like to get from this section. Because, if it's just words, then we should take it out. If it's covered in the State law, then take it out.

CHR. HAITSUKA: I haven't seen the General Plan in a long time. I think it comes together with a map that shows the different districts with various types of districts for resort, rural,

that kind of thing. My reading of that, and it was quite a while back, was that it is more of a general policy type of document that says we want these types of things here and we want certain infrastructure for that type of development. I agree with you, Mr. Nahale-a, that we need to look at, as a Commission, whether or not what's in the Charter is effectively carrying out what that document is supposed to do. The people who could probably tell us that are probably the people who use it the most. It would probably be the Planning Director. I don't know if the Council has any concerns. People who also use it would also be developers, but I don't see any of them here. I think that's the kind of input that we need, whether or not this particular section needs to be revised.

MS. KAWAUCHI: Mr. Chairman.

CHR. HAITSUKA: Yes.

MS. KAWAUCHI: In my mind, I'm thinking about the General Plan and this provision as it's included in the Charter as opposed to ordinances that are passed. In furtherance of this particular section, which is the General Plan, as it is reviewed every so many years, and any additional ordinances which may be passed to enhance or to limit the sections in the Charter. The question I have is if the section, as it is written now, covers what the County is obligated to do pursuant either to State land use policies or land use laws we are obligated to follow? Then from here, if it does, is there a need to expand in a general sense so that further ordinances may be passed to support what's in the Charter? Or, can it just be left as it is, because it's inclusive enough? I just offer those thoughts.

CHR. HAITSUKA: Thank you. Mr. Goodenow.

MR. GOODENOW: The only thing I would add is to verify that it calls for it to be updated every 10 years. I think Commissioner Kawauchi brought up an interesting point in that it wasn't always done. Sure, it's not a good thing to say that ordinance got overlooked or whatever, but if it was in the Charter maybe that would be---you'd have to really talk to the Planning Director. But, as far as the process, I don't see any problems with the process or how that operates with the Council.

CHR. HAITSUKA: Thank you. Any further discussion on Section 3-15?

MS. KAWAUCHI: In follow up to Mr. Goodenow's last comments, is it the desire of the Commission to request that the Planning Director be present? Is that the desire of the Commission?

CHR. HAITSUKA: Mr. Hookano, do you know if the Planning Director---?

MR. HOOKANO: When that section comes up for discussion today, we have our Managing Director here. They are taking care of that now.

CHR. HAITSUKA: Thank you. In answer to your question Ms. Kawauchi, we can perhaps revisit this when the Planning Director is present. Any further discussion of Section 3-15?

Moving on to Section 3-16, Mandatory Program Review, is there any discussion on this section?

MS. JARMAN: Mr. Clerk. I wish Colleen were here. To your knowledge, has the Council ever adopted procedures and details to implement this section? Could you explain to us how the Council has interpreted this provision?

MR. GOODENOW: Basically, the Council is part of the budget review process. They look at every department. They have the director and all the staff come in and ask them questions. They consider that as complying with this section. We have adopted procedures in that our rules might reflect the program reviews. It is part of our calendar. I guess that's all my comments on that. That's all we do.

MR. ASHIDA: Mr. Chairman, may I add something to that?

CHR. HAITSUKA: Yes.

MR. ASHIDA: Thank you. He's absolutely correct. This was a section of the Charter that was actually---Curtis Tyler, when he served on the Council, he brought it up often. He said that his contention was that the County was not doing this. He looked at the terms "critically review" and he was---Mr. Tyler's belief was that you would almost need a performance and a financial audit every four years. Actually, in practicality, what happens, as Mr. Goodenow says, is because the Council participates in that budget process, they review, and I will attest to my personal experience, "critically" review the budget as submitted by the Administration. The reason that I think that is compliant with the section as it is written, is if you look at the language that says, "...and unless the council shall favorably authorize its continuation at current or modified levels, the program shall be terminated." The way the Council does that is by effectively de-funding any program, any position, anything that they feel in the Administration's budget that they don't want anymore. That is their power; that is their authority.

They express---perhaps the single most important power that the Council has in our government is the ability to---they hold the purse strings. They express their policy through the passage of ordinances, which the budget is also an ordinance. So I think it comfortably fits the language as it is. I think there was a lot of wisdom in whoever crafted this language, because it recognizes both the extent of the authority as well as the limitation of the Council's authority. Primarily, it has to do with the funding mechanism. So that's my point, counterpoint, and here comes Goodenow. He probably wants to say something.

MR. GOODENOW: No, I agree 100 percent with that analysis.

CHR. HAITSUKA: Mr. Nahale-a.

MR. NAHALE-A: I'll go on record saying that I'd be inclined to propose when we get to that part of our work, to omit this section. I think if that's the interpretation, which I think is

a very practical and sound interpretation, it's unnecessary. It just keeps us more in doubt and in question that giving us clear---

MR. GOODENOW: As Clerk, I'd have no objection to that.

MR. ASHIDA: No objection.

CHR. HAITSUKA: Ms. Jarman.

MS. JARMAN: I know that the current Legislative Auditor is off island, but it might be interesting to have her perspective on this at some point in time. Maybe we could put this on the agenda for the next meeting that we know she can attend and ask her perspective. I am of a mixed mind about this. I would like to hear what she has to say.

MR. NAHALE-A: A quick question, Mr. Chairman. If the Council wanted to request a critical review of some more specific nature, they could just do so, correct?

MR. ASHIDA: One of the Charter Amendments that passed in the 2008 General Election, or 2nd Special Election, was wide sweeping changes to the Office of the Legislative Auditor, which now performs more of a performance based audit, aka or i.e. Marion Higa-type reviews. I'm not very certain how those requests get initiated, but I would imagine that they can come from any source. They can come from the Council---I don't think from the Administration's side, we'd be prohibited from going to the Auditor saying, "Hey, we have concerns about this, would you take a look at it." I'm not familiar with the process, but that can occur. But, Mr. Nahale-a, it doesn't occur on a schedule basis as is currently expressed in Section 3-16.

MR. NAHALE-A: I would be interested to know what the process is, because, obviously, not anybody can request it, and I would imagine the Council could pass a resolution directing the Auditor to do it. So, somebody could get reviewed every week.

MR. GOODENOW: Our staff is getting the provision, but just from my recollection, the Council, by resolution, can cause to be conducted---it says here "The Legislative Auditor shall conduct---" well, hang on. I know that the Council can do it, and she can do it on her own.

MR. NAHALE-A: While you are looking that up, my understanding is that the General Plan, it's every ten years. That's by ordinance, and it's the broad governing land use document for our County, and we're saying everything that gets County dollars has to be reviewed every four years. It just seems like a real disconnect to me in terms of Charter philosophy, in terms of what are we going to direct in this big document and what are we doing to direct in ordinance. Specifically, Mr. Goodenow talked about the scheduled reviews. Those are the kinds of things I would rather not have in the Charter; it is very difficult to implement.

CHR. HAITSUKA: Any further discussion on Section 3-16?

MS. JARMAN: I've asked to see if one of the Legislative Auditors is here that could answer the question about how they go about deciding which audit they are going to do.

MR. GOODENOW: Here's the language from the Charter Amendment. "The legislative auditor shall conduct or cause to be conducted: (1) The annual financial audit of the county, as required in article X, Financial Procedures, section 10-13, Post audit. (2) Performance and/or financial audits of the funds, programs, services, and operations of any county agency, executive agency, or program, as set forth by the legislative auditor in an annual audit plan that shall be transmitted to the county council and the mayor and filed with the county clerk as a public record. (3) Follow-up audits and monitoring of responses to audit recommendations by audited entities." So I guess they have to follow this plan.

MS. JARMAN: Excuse me, Mr. Chair. A representative from the Legislative Auditor's office is here now. Maybe he can answer the questions. Lane.

CHR. HAITSUKA: Can you introduce yourself, sir.

MR. SHIBATA: I am Lane Shibata, the Legislative Analyst for the Legislative Auditor. The Legislative Auditor is not here. She is attending a workshop in the mainland. I can try to answer as best as I can.

CHR. HAITSUKA: Ms. Jarman, do you recall what the question was?

MS. JARMAN: It was Alapaki's question. Do you want to ask about how they determine their---

MR. NAHALE-A: We are reviewing Section 3-16, Mandatory Program Review. The Charter is mandating a schedule that every funded program gets reviewed. The interpretation was that that's the budget process. I'm fine with that; my question was more that if the Council wanted to have a program reviewed critically, they had some other process to use. So, we wanted to know what that process was.

MR. SHIBATA: If the Council wants to review any department or program of the County, the Council could request---put in a resolution to have the Legislative Auditor's office go in and do an audit of whatever program or department.

MR. NAHALE-A: Would you be mandated to honor that request?

MR. SHIBATA: Yes, probably what the Legislative Auditor would do is look at our schedule and see if we could fit that audit into our schedule and our plan.

MR. NAHALE-A: So, your interpretation is the Auditor has some---they can push back the request---can't schedule it in for six months, eight months or---

MR. SHIBATA: I guess it depends if she has the ability to fit that into our plan, our schedule, she would be able to do that.

MR. NAHALE-A: On that note, for me, the balance---this section right here is just a budget review process. As being interpreted, I think it is unnecessary. If the concern was to be able to have programs reviewed more critically, then we may have to talk about giving the Council some authority to mandate something be done by a timeline. In my mind, that would be a two thirds vote kind of a thing. It would have to be something a little heavy. If that's the intention of this section of the Charter, that we can get critical reviews, then I think it needs to be amended; otherwise, removed.

CHR. HAITSUKA: Mr. Ashida.

MR. ASHIDA: Thank you. Is Mr. Shibata saying that in order to have the Legislative Auditor's office do anything, it requires a resolution or initiation by the Council? Is that what you said?

CHR. HAITSUKA: Mr. Shibata.

MR. SHIBATA: The Legislative Auditor's office comes up with an audit plan. We submit that to the Council to have it approved. In this plan it shows what departments or what audits we need to conduct throughout the year. If the Council feels that there is a need to come up with a resolution to have us conduct an audit---if they submit a resolution and that resolution passes, that allows us to go into that department. We would also have to look at our scheduling to see if we can fit that audit into our plan.

MR. ASHIDA: I guess, Mr. Chairman, I'm astounded by this revelation, because when I voted for this when this was presented to the voters my understanding was that the Legislative Auditor's office is independent. To me, it is skewed enough that they are hired exclusively by the Council, that the Administration has no input in the hiring of what may be argued as a political appointee. If the Council has to pass a resolution in order for an audit to occur, then they could effectively block an audit of themselves or any agency on the legislative side. What if the Administration or somebody wanted to say, "We think the Council should be audited to see if they're wasting taxpayer resources by spending meeting time deliberating on issues which they really have no jurisdiction over." Then the Council could say, "No, I don't think we are going to pass a resolution to do that." Maybe that's beyond the scope of this, but since we are in a mandatory Charter review year, now what the voters passed in 2008 is fair game. By all means, please notify me when that's going to be heard by this Commission, because I have some serious, serious issues and concerns by what I heard today.

CHR. HAITSUKA: Alright, thank you. Mr. Hookano, that section is one of the sections we haven't included in our---

MR. HOOKANO: That's right. That section falls under---that Charter Amendment amended Article III, so that's actually under discussion today. I think at the last meeting our Secretary, Karen Eoff gave you guys that amendment. It was covered during the last meeting.

CHR. HAITSUKA: I don't recall seeing the amended Charter section. Could be in our---

MR. HOOKANO: If not, we could run you off some copies of that right now. Mr. Chair, you might want to call a brief recess at this time.

RECESS: At 2:28 p.m., the Chair called for a five minute recess.

RECONVENE: The meeting was reconvened at 2:38 p.m.

CHR. HAITSUKA: Alright, let's call this meeting back to order. We left off discussing Section 3-16, and I think we are going to move on to discussing Ordinance 08-81.

MR. SHIBATA: Before you folks move on, I would like to clarify---maybe I misunderstood the question, but the question was asked on how we would conduct our audits. We go through a risk assessment program, because we are now independent, we do this risk assessment program. We assess all the different County departments to see what kind of risk is involved in each department. Then we come out with which department is the most risky, and we go in and formulate our audit plan throughout the year. If the Council comes up with a resolution and they want us to audit a department, the Legislative Auditor would look at our scheduling and if it's one of the programs we have on the list, it depends on where it falls, and if it's one that is scheduled, then we would fit that in. If it's one that is not scheduled, we would look at that and if it's in that plan for that year, we would just follow our schedule. The Auditor would follow that plan, just follow her schedule.

MS. JARMAN: Can I ask him a question, Mr. Chair?

CHR. HAITSUKA: Yes, Ms. Jarman.

MS. JARMAN: So, the audit plan that is submitted to the Council does not have to be approved by the Council?

MR. SHIBATA: It doesn't have to be approved by the Council, but---

MS. JARMAN: So if the Council doesn't like the audit plan, the Legislative Auditor is free, legally, to follow her audit plan.

MR. SHIBATA: That's correct, yes.

MS. JARMAN: Then if the Council passes a resolution, the Auditor is free to ignore the resolution if it doesn't fit in with the plan.

MR. SHIBATA: That's correct.

MS. JARMAN: So, she truly is independent.

MR. SHIBATA: Yes.

MS. JARMAN: If there were a resolution from the Council, she would give it the respect from the Council and take a look at it and see how it might fit into the plan.

MR. SHIBATA: Correct.

MS. JARMAN: Thank you.

MS. OSBORNE: Just one more question. When the audit occurs, how comprehensive is that? Is it just a financial audit or is it a financial and program audit?

MR. SHIBATA: Right now we are doing performance audits. We have hired a separate CPA firm who does the financial side. Our performance audit depends on the scope; what we're looking at, how many programs the department has.

CHR. HAITSIKA: Alright, just for clarification purposes, now we're talking about the Ordinance 08-81---I think that's where all this discussion falls into at this point in time---which amended Section 3 of Article III of the Charter. I understand that Ms. Ford had some comments. Ms. Ford.

MS. FORD: Thank you very much. I wrote this Charter Amendment, so I'm pretty familiar with it. Lane and Ms. Jarman have adequately explained the independence of the Legislative Auditor. The Auditor is to be independent from the Council and the Executive Branch and to be free of any type of political mechanizations. I don't mean that to be in a negative sense. We granted the Auditor complete independence from us; and while the Auditor would undoubtedly treat any resolution from the Council with respect, she or he can ignore it. We wanted the Auditor to have that ability so they would be truly independent. The minute the Council can order the Auditor to do something, like we have been able to do in the past, the Auditor is no longer independent. The Council would then have the right to say, "You will do this, or you won't do that particular department." That's not what we want. We need someone like Marion Higa at the State level to do this. The language that I put into this Charter Amendment came directly from the Association of Local Government Auditor's website. They had model language, which I copied almost identically, to make sure we were doing this the right way. The Auditor can do financial, performance and process audits. I'm afraid that you might be confusing the Legislative Auditor's job with this Section 3-16, which is something a little bit different. I'd like to talk about that if you think I have sufficient information on the Legislative Auditor's position.

CHR. HAITSIKA: Alright, go ahead.

MS. FORD: The mandatory program review says that every department or agency is going to be critically reviewed every four years. That has not happened in the past. The Legislative Auditor is the agency that would be able to do this type of thing. I would be personally averse to having this information stricken out of the Charter. We have a problem in this County of not looking at things from a critical standpoint. The budget that we look at

as a Council is just line items. It doesn't tell us how they are doing as a performance; we don't know if they are following a process, we don't even know if they have standard operating procedures within those departments. All of those things would be involved in a performance or process evaluation or analysis by the Auditor. That would entail a critical review. The Council looking at a line item on a budget, there is no way for us to tell from a line item that just says "x" thousands or millions of dollars, whether or not the department is adequately handling the money that is entrusted to them to do the job. This particular part of the Charter, in my opinion, should stay in. A critical review would look at not just the financials, but the performance, the processes that are going on and make sure that everything matches and there is a complete justification for what the department is doing. Thank you.

CHR. HAITSUKA: Ms. Ford, do you know if the Council adopted any procedures or details to implement this particular section of the Charter?

MS. FORD: Not to my knowledge and certainly not during my term. I will say that several Council Members before me have complained about the lack of a critical review of every program in the County and we've had many members of the public who have complained about this quite vehemently over the years; long before I ever got on the Council.

CHR. HAITSUKA: Thank you. Before we leave Ordinance 08-81, I want to ask Mr. Ashida if he had some comment.

MR. ASHIDA: Oh, it's open mic night. No, I really have said my peace.

CHR. HAITSUKA: I'm wondering if we need to further amend this ordinance to make it clear.

MR. ASHIDA: You're talking about amending the provision regarding the Legislative Auditor that's going to be reviewed today? I probably have some suggested changes, but I would be really hard pressed to coherently give them to you now.

CHR. HAITSUKA: Perhaps you could give them to us at a later time.

MR. ASHIDA: I will. Thank you.

MR. HOOKANO: Mr. Chair, if I may interject at this time. Regarding the Mandatory Program Review, the Council has passed rules and regulations regarding the process for that. That's contained in Rule No. 22 of the Council's Rules of Procedures. You guys don't have that in front of you now, but I can say that the Council has, in fact, that in place. That rule mentions that "The Council, through its Committee on Finance, shall review the operating and capital budget and program information submitted by the Mayor pursuant to Article X, Hawai'i County Charter." So this is the rule that implements Section 3-13.

MR. GOODENOW: Ken Goodenow, Clerk. Lincoln and I kind of concurred on that point. We do interpret that to cover what this means. I don't know if the Auditor wants to interpret

it otherwise, but I would agree--as far as even if the Auditor did think every four years---it would have to be changed. It is almost absurd to interpret it in that matter. That would be my legal opinion.

MR. HOOKANO: Additionally, in that same rule for the Council it says that, "Further research into a program or issue may be conducted by:...(b) The Office of the Legislative Auditor pursuant to adoption of a Council resolution."

MS. KAWAUCHI: Mr. Chair, I wanted to clarify. Mr. Hookano has advised us that the Council has adopted rules and procedures, and I thought I heard him say it was pursuant to Article X. Is it also pursuant to Mandatory Program Review which is Section 3-16? When were those adopted? Do they also include, as well, the new ordinance that was voted on at the last General Election?

MR. HOOKANO: The Council's Rule No. 22, not the Commission's Rule No. 22. The opening line says, "In order to comply with Section 3-16, Hawai'i County Charter, relating to Mandatory Program Review." It goes through that and it mentions Article X, which is the Financial Procedures of the County. That's where things about the Operating Budget and the Capital Improvement Project Budget are discussed in the Charter. This rule was adopted by this Council's term during their first meeting, December 1, 2008. So it was adopted this term after the Charter Amendment passed last term.

MS. JARMAN: Mr. Chair, perhaps instead of deleting it entirely---Alapaki, what would you think of maybe moving this into Chapter XI, having to do with the budget, and somehow weaving it in there so that it kind of fits in with that portion; and then there's no question of where it goes or how it goes, and maybe we could wordsmith the language a little bit to make it more clear with practice.

MR. NAHALE-A: I would support that.

MR. HOOKANO: That would be Article X.

CHR. HAITSUKA: We have Ms. Leithead-Todd here, so perhaps we can go back to Article III, Section 3-15. Good afternoon.

MS. LEITHEAD TODD: Since I'm here and you are discussing program audits, I thought that if you don't mind I would like to make a few comments.

CHR. HAITSUKA: Sure.

MS. LEITHEAD TODD: I served as the Legislative Auditor for the County Council back in 1993 and 1994. I also served on the Council. We've had the rules in place which have designated the budget review as the program review go back as far as I can remember. The reason is that with good intentions, it was put into the Charter that you do a review of every program every four years. The recognition was that the Council did not have the staff or the resources to hire outside auditors to do a review of every single program. Part of the problem

has been what is the definition of a program? Generally, it's looked at as not necessarily being an entire department and how you run the department, but specific programs within a department. The step towards the independent Legislative Auditor setting up a projected list of audits, I think, was a step in the right direction.

Giving them a certain amount of independence, I think is also good. I think you need to remember that Marion Higa is frequently given requests by the State Legislature to conduct audits of various state programs and departments and does respond to those. Although she is independent, she does respond, because from year to year, certain issues come up and the Legislature feels that there are certain programs that need to be looked at. I believe that there probably should be some room in there for the Council to either approve a schedule of audits or at least have the flexibility to request an audit and have it taken under consideration, assuming they give a decent amount of time for the Auditor to respond to that.

As for the provision on every four years, since you have created an Office of the Legislative Auditor and given them independence, I think that if they are setting up a regular schedule that perhaps you don't need the language that says every four years, but instead says something that the Legislative Auditor should set up a regular schedule of audits to review programs. Recognize that they may not have the resources, because it depends on what you define as a program. If you're looking at Parks and Recreation, is Hi Pal a program? Is Elderly Activities a program? Is Meals on Wheels a program? Depending on how you define it, you could have so many moving parts that it becomes very difficult to determine whether you can do a review of that. That has been part of the difficulty in the past. You have some resources, you have the Auditor, and they set up a schedule. I think you need to give them some more independence and allow them to set up that schedule. You also need to give the Council an opportunity to request specific audits. I just wanted to make those comments because of my experience having served in that capacity.

CHR. HAITSIKA: Thank you.

MR. NAHALE-A: Quick question, Mr. Chair. For Marion Higa, does the Governor get to make requests? And if so, are those on par with the Legislature's requests?

MS. LEITHEAD TODD: I don't recall that the Governor does request, it's more the Legislature, because the Auditor is really a function of looking at State Administrative Departments, and making those reports to the Legislature. Similarly here, the function of the Auditor is to do reports that go to the County Council. The Mayor and his administrators may look at it, but this is really a function of the Council being able to look at programs that are being funded and determine whether those programs should be continued. I don't think that it's appropriate for the Administration to be soliciting that. If the Administration thinks they have problems with a program, they should be addressing those problems and not asking the Auditor to look at it, frankly.

CHR. HAITSIKA: Any further questions on this particular section before we move on? Ms. Leithead Todd, we asked you to come today, in part at least, to discuss Section 3-15, The

General Plan. We were looking for Administrative input as to whether or not the current provision in the Charter as written needs any revisions.

MS. LEITHEAD TODD: I don't believe that it specifically needs any revisions. We are required to do a General Plan by State law, because the zoning authority that is given to the County sets out that all the zoning that we do has to be within the context of a General Plan. The issues of timing of the General Plan are actually set out in the General Plan ordinance that sets out a 10-year time frame as opposed to specifically being in the Charter of the County Code. If there are additional things that the Charter Commission thinks should be addressed in the General Plan, you might want to put that in, but I think that right now the broad language there is sufficient.

MR. SHUMWAY: Mr. Chair, I have a question for Ms. Leithead Todd. In that section of the General Plan, in Part C, it does say that amendments can be initiated by the Council or the Planning Director. Is that only the Council or the Planning Director? Is that a problem?

MS. LEITHEAD TODD: We also have, property owners can initiate, but they have to comply with everything and submit it to the Planning Department. Then it goes through that process of going to the Planning Commission and then to the County Council for approval. This is when somebody has a particular use for their property that they want to use it for, but it's not consistent with the General Plan. They would have to come in and initiate an amendment.

MR. SHUMWAY: So, any member of the public could go through your department.

MS. LEITHEAD TODD: Not necessarily any member of the public. Usually, it's the property owner that has to initiate it. Other than that, a member of the public would have to go to a Council Member or to the department. That's my recollection, that it's not just the general public. Let me rephrase that, it does say, "Consistent with the County Charter, a member of the public may submit an application..." It doesn't just say property owner.

CHR. HAITSIKA: Ms. Jarman.

MS. JARMAN: Bobby Jean, is it---I'm beginning to get the feeling that the reason that Section 3-15 is in here is because the Charter is the governing document, right, for the government---for the County government. It's supposed to set out the authorities and the responsibilities of the Executive and Legislative branch. So, since the County, by State law has to do a General Plan, all this is doing is really saying that General Plan is the responsibility of the Council. Is that why that is in here? It's describing the Council's responsibility and it needs to be in here in order to legally have the authority to carry out what is in the State law?

MS. LEITHEAD TODD: I don't know that you necessarily have it in the Charter. Since the Charter has catch-all language that says you can infer any other powers that aren't specifically enunciated in the Charter, we have that authority through State law. You could do a General Plan even if it wasn't in the Charter, because that's the only way we can enact

zoning. The specific zoning authority given to us under State law requires that we do it within the context of a General Plan that is adopted.

MS. JARMAN: This basically says that this General Plan is the responsibility of the Council as opposed to the Planning Director or the Planning Department.

MS. LEITHEAD TODD: It's an ordinance, so it has to be adopted by the Council.

MS. JARMAN: Right, so I'm saying that's the main reason it's in here, right. If it weren't in here, then would the Council have the authority to adopt it, or would that be something that the Planning Department or the Planning Director would be doing?

MS. LEITHEAD TODD: I believe that the authority would still rest with the County Council. Partially, because zoning authority is a legislative function, and the General Plan is part of that zoning function. We have procedures where we initiate it through the Planning Director but it's adopted by the County Council.

MS. JARMAN: So, do you think this is necessary to be in here? Does it help to have it in here? What is your opinion on that?

MS. LEITHEAD TODD: I don't think that it hurts, but I want to refer you to Section 46-4 of the Hawai'i Revised Statutes. That's the section that refers to the General Plan. Because it's in a zoning section, and because it's talking about basically the authority of the Council in this section, I would say that this is saying that it's the County Council that adopts it.

CHR. HAITSUKA: Any discussion, Ms. Kawauchi.

MS. KAWAUCHI: Ms. Leithead-Todd, does what's in the County Charter right now mirror what's in Chapter 46? Or, does our Charter specifically describe the General Plan and what should be included within it---within our County?

MS. LEITHEAD TODD: It pretty much tracks a lot of what's in the HRS. The HRS talks about the general framework, and then it talks about all the different things that you would include in zoning. All the zoning has to be within the context of the General Plan. It's talking about areas in which we would have agriculture, forestry, industry, trade, business, where residential use would be, and where you would have particular uses subject to special restrictions. All of that is under the context of a General Plan, and the General Plan is to put it into an orderly manner. I don't think that it hurts to have this section in the Charter, but if you took it out, does it mean that the County Council or the County couldn't do a General Plan? No, because you still have that authority under State law. For that matter, you also---I believe you have some language in the County Code regarding the General Plan, which has been adopted. The County Code section is Section 2-31 that talks about the General Plan, and it also has that language about developing objective standards and principals regarding the most desirable use, it talks about desirable density of population. A lot of the same stuff that is in the Charter is in the County Code.

CHR. HAITSUKA: Any other comments or questions?

MS. KAWAUCHI: What I'm hearing is that it pretty much tracks what is in the State law under Chapter 46, but it's not exactly. I'm just glancing at Chapter 46-4, and it looks like there is more in ours that is not within Chapter 46, preservation of natural beauty and historical sites---

MS. LEITHEAD TODD: I don't have the section on the State planning, and I'm sorry that I didn't bring that. A lot of the stuff that you see here, you find in different sections of State law, in terms of what you do in terms of long-range planning. I think the only thing that isn't in the Charter is the 10-year window. That hasn't been put there and that's generally language within the ordinance itself.

CHR. HAITSUKA: Any questions, discussion?

MS. KAWAUCHI: My sense is that what's in the Charter concerning the General Plan is broader than what's in the State statute.

MS. LEITHEAD TODD: It has more in it than 46-4 has, but it's also reflected in the County Code that has a lot of that language in the Section 2-31 of the County Code regarding the General Plan.

MS. KAWAUCHI: I don't have that section of the County Code in front of me, so I don't know what that's referencing. What section is that?

MS. LEITHEAD TODD: Section 2-31 of the Hawai'i County Code, and it talks about the General Plan preparation and the contents of the General Plan.

MS. KAWAUCHI: Does that section provide the Council with the authority to adopt procedures and regulations?

MS. LEITHEAD TODD: Yes, it basically says, "(a) It shall be the function and duty of the planning director, with the approval of the planning commission, to prepare a general plan for the physical development of the County and to transmit the plan to the council for its consideration and action. The council shall adopt the general plan setting forth the council's policy for the long-range, comprehensive physical development of the County. (b) The general plan shall include a map of the County and shall contain a statement of: (1) Development objectives, standards and principles with respect to the most desirable use of land within the County for residential, recreational, agricultural, commercial, industrial, and other purposes; (2) The most desirable density of population in the several parts of the County; a system of principal thoroughfares, highways, streets, and other public open spaces; the general location, relocation, and improvement of public buildings; (3) The general location and extent of public utilities and terminals, whether publicly or privately owned, for water, sewers, light, power, transit, and other purposes; (4) The extent and location of public housing projects; (5) Adequate drainage facilities and control; and (6) Such other matters as may, in the council's judgment, be beneficial to the social, economic, and governmental

conditions and trends, and which are designed to assure the coordinated development of the County and to promote the general welfare and prosperity of its people.”

You have that catch-all language that really says that if the Council decides that there are other things that aren't already listed within the General Plan, that they can expand upon it. That's trying to give them some flexibility for changing ideas in terms of what we should be looking at.

MS. KAWAUCHI: I guess the part that I am most concerned about if this section---if it's the recommendation of the Commission to take it out is that Section 3-15 in the Charter also says that the purposes shall be consistent with proper conservation of natural resources and the preservation of natural beauty and historical sites. That does not seem to be included within Section 2-31 of the County Code and also doesn't seem to be included within HRS Section 46-4. Our Charter, which is the Constitution of our County, seems to provide for more specificity in terms of its goals and desires to preserve natural resources, historical sites and the natural beauty of our County. So, my recommendation would be, at this point, to just leave it in.

CHR. HAITSUKA: I don't think anybody is proposing to take it out. I, myself, wouldn't vote in favor of that only because it at least identifies who is responsible for adopting the General Plan and who is responsible for the process to amend it. I don't think anybody is moving to take it out.

MS. KAWAUCHI: I would agree with that, because I think that this section also---again, being here in this portion of the Charter relating to legislative authority, it kind of puts it in place that the County Council has some authority to adopt procedures, which mirrors the State law. It's a little different that what is also in the Code.

CHR. HAITSUKA: Thank you, Ms. Leithead-Todd. Let's move on to Article IV, the last section that we have under Unfinished Business. Let's look at Section 4-1, Executive Power. Any discussion on this section?

MS. JARMAN: Could I have Mr. Ben, please.

CHR. HAITSUKA: Mr. Ben.

MS. JARMAN: I appreciate your patience. So, Section 4-5, which is the Powers and Duties of Agency Heads, talks about appointing necessary staff, and it talks about the deputy or assistant and private secretary, taking all personnel actions, etcetera. Is this provision consistent with State law regarding civil service? If not, how would we have to amend that?

MR. BEN: For my purposes, the amendment just needs to remove the phrase, "...and such positions shall be exempt from civil service laws and classifications." That's the part, in my mind, that needs to be removed. In this particular case, private secretaries are classified by State law. We must classify them, because it is in direct conflict with the Charter that says they shall be exempt from classification; but the law says we must classify them.

MS. JARMAN: So, just the private secretary, not the deputy or assistant.

MR. BEN: Right, technically the rest of it complies with State law. The State law says basically the same thing; they are exempt. Because they are exempt, they are not classified.

MS. JARMAN: Only the private secretary needs to be removed to be consistent in that section.

MR. BEN: Well, the danger is, State law can be amended, and you might end up with another conflict between the Charter and the State law. As I mentioned earlier, State law, because it is the general law of applicability---the State Supreme Court says that State law would trump the Charter. So, if it was to be amended, and then there's a conflict again, not making any reference to the status of a position, whether it be the department head, or deputy department head, or private secretary, or any position---My suggestion is, you don't make a reference as to whether or not they are civil service, not civil service, they're classified or they're not classified, because State law covers that specifically. Even though you might be in compliance, you might be saying the same exact thing; State law can always be amended by the Legislature.

MS. JARMAN: So, how would you recommend wording that, (a) and (b)? Because (b) says, "Appoint necessary staff for which appropriations have been made by the council." Could you just say that? Then say, "...consistent with any State civil service laws." Leave out (a) altogether?

MR. BEN: No, I think you still need (a), because the thrust of (a) is to appoint a deputy and assistant and private secretary. That's the thrust, the phrase after that is, I don't know, adverb, adjective, superfluous.

MS. JARMAN: Which is superfluous?

MR. BEN: "...and such positions shall be exempt from civil service laws and classifications."

MS. JARMAN: Why doesn't (b) include (a)? If you can appoint all necessary staff for which appropriations have been made, why do you have to have a separate category for the deputy or the assistant or the private secretary?

MR. BEN: I would defer to legal beagle.

MS. JARMAN: Mr. Ashida, do you have any thoughts on that? Could you just take out (a) and (b) would give the department head the ability to appoint a deputy or an assistant?

MR. BEN: Well, maybe technically, if I may interject here, you don't consider a department head, a deputy department head or a private secretary as staff person.

MS. JARMAN: I don't really have any strong feelings, I'm just trying to get input on this and whether or not we need to make changes; since you had particularly raised that issue about civil service exemptions.

CHR. HAITSUKA: You could probably merge (a) and (b) together. It would probably have the same effect, and take out the language Mr. Ben is suggesting.

MR. ASHIDA: Mr. Takaba is sitting back there quietly, but he has all the answers. He made a good point. Under (a) it says, "Appoint and remove..." That kind of indicates they are "at will." Appoint staff, under (b) you can appoint, as the appointing authority, but you cannot remove, especially if they are civil servants subject to collective bargaining or what have you. So, I think basically (a) is talking about appointees, (b) is talking about civil servants. Bill, that's what you were thinking, right? That's why he's the man, back there.

CHR. HAITSUKA: That makes sense.

MR. ASHIDA: Does that make sense, Mike?

MS. JARMAN: Okay, thank you.

CHR. HAITSUKA: Alright, is there any other specific discussion regarding Section 4-1? Section 4-2, any discussion? Section 4-3, any discussion? How about Section 4-4? We were just discussing Section 4-5. Is there any further discussion of Section 4-5? Ms. Jarman.

MS. JARMAN: Mr. Chair, I just want to apologize if I jumped ahead to Section 4-5. I thought we were doing the whole section, so I apologize if I did that.

CHR. HAITSUKA: No problem.

MS. KAWAUCHI: Mr. Chair, I don't have a question about any of the particular sections, I have an overall question about the section. I don't know if---and I'm just needing help with this---are the particular categories defined anywhere? For example, in Section 4-3, "agency shall be administered by an officer..." and in Section 4-5 there is reference to deputies and assistants. I just don't know the distinction between an officer---maybe that's defined some place else, and if that's true, then---

MR. ASHIDA: Mike Ben would normally come here, but he has a hard time walking nowadays, so I'll save him a trip. Mike, you just yell out if I'm wrong, but my understanding is "officer" primarily refers to appointees and employees are traditionally referred to as employees who are subject to collective bargaining. Mike is nodding "yes." I guess that section, Ms. Kawauchi, makes clear that the agency or department shall be headed by an appointee of the Mayor. Normally that's a department head, or a deputy or an assistant.

MS. KAWAUCHI: Thank you.

MR. NAHALE-A: I would guess that the language about, "...exempt from civil service laws and classifications..." was intended to give our elected officials a lot of leeway over their hires, which has been a long standing political issue. The point is that there is some case law that says State law in this area trumps County law. Maybe it's not a big enough of an issues, here, but I'm kind of a home rule fan, so it gets under my skin a little bit. I would be comfortable adding the language that Ms. Jarman suggested about being consistent, so we maintain our leeway. If State law is amended, we automatically have the flexibility that I think was intended, originally, in the Charter.

CHR. HAITSUKA: So, you mean qualifying that language with something like, "to the extent allowed by State civil service laws." Is there any further discussion?

NEW BUSINESS

1. CREATION OF AD-HOC COMMITTEE TO REVIEW ARTICLE III, Section 3-2 Composition and Terms

CHR. HAITSUKA: Okay, let's move on to New Business. We have three items on the agenda. The first item is the creation of an ad-hoc committee to review Section 3-2 of Article III of the Charter. Mr. Hookano was kind enough to prepare a memo for us on this matter. Do I have a motion to create an ad-hoc committee to review Section 3-2 of Article III of the Charter?

Mr. Nahale-a moved to create an ad-hoc committee to review Section 3-2 of Article III of the Hawai'i County Charter as set forth in Comm. 4. Seconded by Mr. Shumway.

CHR. HAITSUKA: Any discussion?

MR. HOOKANO: Mr. Chair, if I may.

CHR. HAITSUKA: Mr. Hookano.

MR. HOOKANO: With regard to this ad-hoc committee, during this meeting you have to set up the parameters of the committee. So, if you want to look at just Section 3-2 that kind of limits it to Composition and Terms. But really, you want to look at that and how it will affect other sections of the Charter. Because, if term limits change, then other sections of the Charter will probably be affected. For example, we discussed the---I think Vacancy in Office might be affected if term limits change. So, within the scope of this ad-hoc committee, they should be allowed some flexibility to see how and amendment to term limits would affect other sections of the Charter as well. They are definitely going to have to look at those sections, and how it affects the Charter as a whole in that sense.

CHR. HAITSUKA: So, perhaps we need to broaden it, the ad-hoc committee's duties. Not just to review Section 3-2, but---

MR. HOOKANO: On the agenda, it's listed that it's regarding an ad-hoc committee to investigate and review issues related to the composition and terms of the Hawai'i County Council. So that implies that it will also see how it affects other sections of the Charter. Again, I want to remind this Commission that ad-hoc committees---the Sunshine Law requirements for an ad-hoc committee is that it can be two members or as many as would constitute less than a quorum. With a board of 11 members, you can have up to five members on this ad-hoc committee. It's also a three meeting process. This meeting establishes the ad-hoc committee, then at a subsequent meeting they'll come back with their findings and recommendations and present it to everybody; and that's it, that's all that happens at that meeting. Then at a third meeting, this Commission will decide on what action it wants to take on those recommendations. So, it's a three meeting process.

CHR. HAITSUKA: As a part of this motion, do we need to identify who the members are?

MR. HOOKANO: Yes, identify who the members are. Typically, under Robert's Rules---I'm sure our parliamentarian, Casey, knows this---the first member named, unless it's otherwise stated, is the Chair of the ad-hoc committee.

CHR. HAITSUKA: I think the members have to be less than five; five or less?

MR. HOOKANO: Up to five members, less than a quorum.

MR. NAHALE-A: Mr. Chairman. Levi, you said it is a three meeting process. What are the rules governing the actual work meetings we have?

MR. HOOKANO: How the ad-hoc committee has to conduct itself? Is that what you are referring to?

MR. NAHALE-A: Yes.

MR. HOOKANO: Ad-hoc committees are an exception to the Sunshine Law. It's a permitted interaction. What it means is, those members, because their scope has been limited at this open meeting, they can discuss among themselves anything related to their duties. You guys can meet wherever you want, and it's not an open meeting. But, your findings and recommendations have to be presented in an open meeting.

MR. NAHALE-A: So, there's no requirement to keep minutes or a record of votes, or anything like that.

MR. HOOKANO: No, but whatever your findings are should reflect what went on, so that the whole Commission has an idea of what you guys discussed.

CHR. HAITSUKA: Any further discussion, questions, volunteers?

MR. NAHALE-A: I'm willing to be on this committee, Mr. Chairman.

CHR. HAITSUKA: I nominate Mr. Nahale-a.

MR. UNGER: Second.

CHR. HAITSUKA: Anyone else?

MS. HONMA: I'd be willing to be on the committee too.

MR. KEALHOA: Yes.

MR. SHUMWAY: I'll do it too.

MR. HOOKANO: You don't need five members, you can have less than five, but that's the max.

CHR. HAITSUKA: And we have another committee we're going to be discussing after this.

MR. UNGER: Can I ask a question regarding that, the other ad-hoc.

CHR. HAITSUKA: Mr. Unger.

MR. UNGER: Could it be the same members for another ad-hoc committee?

MR. HOOKANO: It could be, but during those ad-hoc committees know that you are discussing this one at this time.

MR. UNGER: You would have to officially end one meeting and start another, but it could be the same members.

MR. HOOKANO: Yes, there is no restriction on the membership in that sense.

CHR. HAITSUKA: Okay, so far, we have Mr. Nahale-a, Ms. Honma, Mr. Shumway, Mr. Unger, and Mr. Kealoha.

MR. UNGER: No, sorry.

CHR. HAITSUKA: Oh, sorry.

MR. HOOKANO: I think Mr. Unger was seconding Todd's nomination.

CHR. HAITSUKA: Okay, so we have four right now. We have Mr. Nahale-a, Ms. Honma, Mr. Shumway and Mr. Kealoha. Is there anyone else? Any other further discussion on creation of an ad-hoc committee to investigate and review issues related to the composition and terms of the Hawai'i County Council?

MR. HOOKANO: Mr. Chair, at this point you would vote to approve that membership.

CHR. HAITSUKA: All in favor of creating an ad-hoc committee to investigate and review issues related to the composition and terms of the Hawai‘i Council, whose members include Mr. Nahale-a, Ms. Honma, Mr. Shumway and Mr. Kealoha, say “aye.”

The motion to approve creating an ad-hoc committee to review Section 3-2 of Article III of the Hawai‘i County Charter as set forth in Comm. 4 was carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi, Kealoha, Nahale-a, Osborne, Shumway, Unger and Chair Huitsuka.

Noes: None.

Absent: Commissioner Fuertes.

2. CREATION OF AD-HOC COMMITTEE TO REVIEW ARTICLE III, Section 3-17 County Reapportionment Commission

CHR. HAITSUKA: Next item on the agenda is the creation of an ad-hoc committee to investigate and review issues related to the County Reapportionment Commission. Do I have a motion to create and review issues related to the County Reapportionment Commission?

Ms. Jarman moved to create an ad-hoc committee to review Section 3-17 of Article III of the Hawai‘i County Charter as set forth in Comm. 5. Seconded by Mr. Shumway

CHR. HAITSUKA: Is there any discussion?

MR. HOOKANO: It would be the same process of naming the members and approving the membership.

CHR. HAITSUKA: Are there any volunteers? Did you have your hand up Mr. Unger?

MR. HOOKANO: The recommendation may be to not form an ad-hoc committee, it’s your discretion.

CHR. HAITSUKA: The discussion is open as to whether or not we should create an ad-hoc committee.

MR. UNGER: I have a question. Looking at your rules and procedures, the memo you sent out, isn’t it part of our rules and procedures that if we’re going to move forward with an issue that might become an amendment, that we have to form an ad-hoc committee?

MR. HOOKANO: I think you’re referring to the next item on the agenda, is that correct?

MR. UNGER: Yes.

MR. HOOKANO: With that item, we remove the references to the ad-hoc committee.

MR. UNGER: So we would just amend the third memo that you have. We would amend that and take out that we have to have an ad-hoc committee to move and amendment forward. Is that what you are saying?

MR. HOOKANO: With the next item on the agenda, actually the reference to the ad-hoc committee was already taken out in that memo.

MS. JARMAN: Mr. Chair, I think it's important to have one, but, I don't want my name to be first. So, if Mr. Unger would like to have his name first, I would be happy to be second.

MR. UNGER: My concern is the time. I think that's everybody's concern, plus you live on Oahu too, right? Aren't you on Oahu most of the time?

MS. JARMAN: Yes, during meet by telephone.

MR. UNGER: Can we hold these meetings via the telephone? Do we physically have to meet?

MR. HOOKANO: No, like I said, this is a permitted action under the Sunshine Law. You guys can meet and discuss these matters how you want.

MS. JARMAN: We can even do it by email.

MR. UNGER: E-mail is good, I wasn't even thinking of e-mail. So that means if I'm first, then I'm the Chairman. What about our first committee that we talked about.

MR. HOOKANO: The first committee, Mr. Nahale-a is the Chair of that committee.

MR. UNGER: Okay, well in the absence of any other volunteers, I guess I'm volunteering for this.

CHR. HAITSUKA: Thank you, Mr. Unger, and Ms. Jarman.

MS. JARMAN: As long as my name's not first, yes, thank you.

MS. OSBORNE: I would also like to sit on this. I didn't want to be first either.

MS. JARMAN: We'll help you out, Scott.

MR. UNGER: I might be first in name, but---

CHR. HAITSUKA: Anyone else? I think we are going to have another committee, but we'll discuss that later. For this committee we have three names. We have Mr. Unger, Ms. Jarman and Ms. Osborne. Is there any further discussion? If there is no further discussion, all in favor of creating an ad-hoc committee to investigate and review issues related to the County Reapportionment Commission consisting of Mr. Unger, Ms. Jarman and Ms. Osborne, say "aye."

The motion to approve creating an ad-hoc committee to review Section 3-17 of Article III of the Hawai'i County Charter as set forth in Comm. 5 was carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi, Kealoha, Nahale-a, Osborne, Shumway, Unger and Chair Huitsuka.

Noes: None.

Absent: Commissioner Fuentes.

MR. HOOKANO: I would just like those two ad-hoc committees to know that if they want me to attend their meetings, I'll be present, unless you guys schedule it on the same day at the same time.

MR. NAHALE-A: So, your house on Friday night, we'll be meeting, first committee meeting, Levi's house.

3. AMENDMENT TO ARTICLE IX OF THE COMMISSION RULES OF PROCEDURE

CHR. HAITSUKA: The third item on the agenda under New Business is an amendment to Article IX of the Commission Rules of Procedure. Again, Mr. Hookano was kind enough to prepare a memo for us. Do I have a motion to amend Article IX of the Commission's Rules of Procedure in accordance with Mr. Hookano's memo?

Ms. Jarman moved to amend the Rules of Procedure with the contents of Comm. 6. Seconded by Mr. Nahale-a.

CHR. HAITSUKA: Any discussion?

MR. UNGER: Okay, Levi, will you clarify? I really want to be clear on these ad-hoc committees. You're saying we don't need---didn't we have a draft where you said we had to have an ad-hoc committee in order to move something forward?

MR. HOOKANO: Yes, that's correct, Mr. Unger. During the discussion of that amendment to the rules, it was brought up that it would kind of be a burden. And OIP, the Office of Information Practices, commented that because that ad-hoc committee would have had kind of a continuing existence reviewing amendments as they came in, it was more of a standing committee. So we removed references to that ad-hoc committee. Instead, the proposed

amendments would come to me and I will work with whoever introduced that proposal to draft the language. That was the first ad-hoc committee that was mentioned in the rule amendment previously, but we removed reference to that ad-hoc committee. We also have the resources of our Legislative Research Branch. They've graciously agreed to help to review the language to make sure everything is clean, ramseyered properly, so it reads properly nice and easy.

MR. UNGER: Okay, so, just to clarify---because even going back to our last meeting---everybody's sitting here, there have been some really good points brought up, we're taking notes, but yet we only moved forward with two ad-hoc committees. Now, if we want to move forward with further discussion or a possible amendment, what we do is fill out that one form and we submit it to you.

MR. HOOKANO: That would be submitted to the Commission so the Commission can debate and deliberate on that matter.

MR. UNGER: Don't you review the form first, and add language.

MR. HOOKANO: No, at that point it is all on the Commission to discuss how they want to amend that section of the Charter.

MR. UNGER: Or, if we even want to.

MR. HOOKANO: Or, if you even want to move it forward. If the Commission decides, at that point, that they don't want to move forward with it, then that's that. If the Commission decides they want to move forward with it, at that point I'll work with the introducer to draft the language of the actual amendment for the Commission to consider; so they can see it in writing, how it would look if the Charter were amended.

MR. UNGER: So, between now and our next meeting we can go ahead and fill out one of those forms. Can we submit it? Does it need to be on the agenda for the next meeting?

MR. HOOKANO: Yes, it would have to be on the agenda for discussion.

MR. UNGER: We would send it to Commissioner---

CHR. HAITSIKA: To Karen, then we would put it on the agenda.

MR. HOOKANO: Yes, it would be placed on the agenda for discussion. Within this rule amendment that you have before you, I included a deadline of October 31, 2009 because that would have been after the conclusion discussion of all the sections of the Charter. That could be amended later on if you guys feel that deadline doesn't give you enough time to review all the amendments. That was just kind of the date I chose, because it fell after the review of all the Articles of the Charter by the schedule that was proposed at the last meeting. That would be kind of the drop dead date to submit that CM, Charter Amendment Form.

CHR. HAITSUKA: After that date is when we are going to go out for our public hearings.

MR. HOOKANO: Really, you guys can choose to go to your public hearings at any time. After all the amendments are kind of through, then that might be a good time to go to public hearings to get the public's input on specific amendments. That's really at the discretion of the Commission.

MS. OSBORNE: If there's a member that's not currently present, are they able to join an ad-hoc committee, if they want to?

MR. HOOKANO: For those committees that were just formed, no. Those committees are formed and that's the membership as it stands.

MR. UNGER: Can I make just one other comment? Levi, you referred to an education campaign, saying that it's not the person who originates the amendment, it's not up to them to go ahead and come up with an educational campaign. You alluded to the fact that we could create an ad-hoc committee at some point down the road. I just think that is so important. It's nothing that we have to do right now, but when we're all said and done with our work, if this is not properly---if the information is not given to the voting public out there, as to what our goals are, and why this committee was formed, all this work that we did could just go up in smoke, because of misinformation out there. At some point an educational campaign is going to be real critical.

MR. HOOKANO: I agree, and that is totally within the power of this Commission to form that ad-hoc committee at any time to propose an educational campaign. But, they cannot, as an ad-hoc committee, go out and do the campaign. They would have to make the proposal to the Commission as a whole. The Commission would have to authorize that route, the proposal of the ad-hoc committee, and then, as a whole, the Commission would implement that educational program to get the word out. So this doesn't preclude the formation of an ad-hoc committee at a later time to come up with that proposal.

CHR. HAITSUKA: Any further discussion, questions? If there is no further discussion, all in favor of amending Article IX of the Commission Rules of Procedure in accordance with Mr. Hookano's memo, say "aye"

The motion to approve amending Article IX of the Commission Rules of Procedure to provide a procedure by which Charter Amendments may be proposed, approved, and adopted by the Charter Commission as set forth in Comm. 6 was carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi, Kealoha, Nahale-a, Osborne, Shumway, Unger and Chair Haitzuka.

Noes: None.

Absent: Commissioner Fuentes.

4. DISCUSSION OF ARTICLES V-VI, HAWAI'I COUNTY CHARTER

CHR. HAITSUKA: Next on our agenda is discussion of Articles V and VI of the Charter. I don't think we are going to get through Articles V and VI today. Last time we adjourned at about 4:30 p.m.

MR. HOOKANO: I think we adjourned at about 5:30 p.m.

CHR. HAITSUKA: I'm wondering if we should take some of these out of order if we have members from the Administration in the audience, so we can get to them. Do we have any members of the Administration here to discuss any particular sections of Articles V and VI?

MR. HOOKANO: Ms. Crawford, could you come forward and speak into the microphone.

CHR. HAITSUKA: Can you introduce yourself, please.

MS. CRAWFORD: I'm Nancy Crawford, Director of Finance. We reviewed the section on Finance, and determined that we didn't see anything that required amending. We don't feel like there's anything that is reflected here that we aren't still in the process of doing and complying with. I would be happy to answer any questions.

CHR. HAITSUKA: I think in particular you are referring to Chapter 3 of Article VI. Is that the section?

MS. CRAWFORD: Yes, Section 6-3.1 and going forward, Department of Finance.

MS. JARMAN: May I ask her a question, Mr. Chair?

CHR. HAITSUKA: Sure.

MS. JARMAN: Nancy, on Section 6-3.2, the last sentence says, "A deputy finance director shall have had a minimum of three years of training and experience in a responsible financial position." But, nowhere does it say there has to be a Deputy Director, so do you interpret that to mean in the event there is one that person would have to have that? Because, 3-1 basically says there has to be Director of Finance and the necessary staff. Then in 3-2 it tells us what your qualifications need to be and then the qualifications for this Deputy Finance Director, which it doesn't appear you need to have.

MS. CRAWFORD: I agree with what you are saying, which it doesn't say a Deputy Director is required. I find it difficult to imagine that this department could function at this time without a Deputy Director.

MS. JARMAN: Would you like Section 6-3.1 to read, "...consisting of the director of finance, the deputy director, and the necessary staff." Or are you fine with it the way it is?

MS. CRAWFORD: No, actually I would---I thank you for pointing that out, because I think it should be included as a requirement.

MR. HOOKANO: Mr. Chair, with regards to the deputy positions, that's also provided for under Section 4-5 of the Charter. We discussed that, about agency heads, "...the administrative heads of each agency or executive agency of the county shall have the power to: (a) Appoint and remove a deputy or assistant..." That's kind of a catch-all for all the department heads.

MS. CRAWFORD: I'm fine with either way.

CHR. HAITSUKA: Alright, any questions for Ms. Crawford?

MS. JARMAN: Do you think it should be required to have one or it should be discretionary? The way it is now, it is discretionary even with that other provision. I don't have any strong feelings, it's just if you have an opinion.

MS. CRAWFORD: I'm always in favor of something that keeps your options open, so if you leave it discretionary, the option is open. However, as I said, I just cannot imagine---this department has grown quite a bit in the last several years. We've added new divisions, and I find it difficult to imagine that it would function without a deputy. I'm trying to be consistent with other departments. I don't think a change is necessary.

MS. JARMAN: Thank you.

CHR. HAITSUKA: Any questions, discussion? Alright, thank you Ms. Crawford. Are there any other department heads here for any particular sections or articles covered, and you need to leave?

MR. HOOKANO: We have Lincoln Ashida from Corporation Counsel. He's staying here. We have Ivan Torigoe, who is the Deputy Director of Environmental Management. He is on his way, he's been called. Also, we have Ms. Leithead Todd from Planning, and we have the Managing Director, as well.

CHR. HAITSUKA: Mrs. Leithead Todd, do you want us to address your section now? That would be Chapter 4 of Article VI.

MS. LEITHEAD TODD: I don't have any specific proposed amendments for this section of the Planning Department, but I am here if there are questions that people have.

CHR. HAITSUKA: Are there any questions of Ms. Leithead Todd pertaining to Chapter 4 of Article VI? Mr. Hookano.

MR. HOOKANO: Mr. Chair, if I may interject at this point. Ms. Eoff is handing out what was approved at the last General Election, which split the Planning Commission into the Windward and Leeward Planning Commission.

MS. JARMAN: May I address Ms. Leithead Todd?

CHR. HAITSUKA: Yes.

MS. JARMAN: Have the two Commissions been established yet? If not, what is the plan?

MS. LEITHEAD TODD: They have been established, and the Windward Commission held its first meeting on May 1, 2009. The Leeward Commission will be holding its first meeting on May 15, 2009, next Friday. They are not fully staffed yet, in terms of the appointments, but I am expecting the rest of those appointments to come through. We currently have enough members on each Commission to hold meetings. In the context of them, a couple of questions have come up though which you may want to consider. When a rezoning request comes up that is specific to a particular region, it's very clear that it goes to that Commission that is physically responsible for that area. One of the questions we've had is, what do we do when we come to general amendments, like say we're going to amend the Subdivision Code or the Zoning Code and that would impact both sides of the island? Typically, you go forward, the Planning Commission makes recommended changes and then you take up that ordinance, with the recommended changes to the County Council. In this case, I have two Planning Commissions, so it is entirely possible that I may have two different sets of recommendations on changes. I could have two different ordinances going up, so we've been tossing around the idea; do we hold joint sessions of the two Commissions when it's something that is a very broad ranging issue such as the Zoning Code or the Subdivision Code? Or, do we try to incorporate the recommendations of the two Commissions so that it's still in one document, and then have alternate proposed amendments listed? So those dynamics have not been quite worked out yet. We are kind of hoping we won't get to that situation, but we think it's entirely possible that you'll have different sets of recommendations coming in from the two Commissions when we come to those broader legislative matters. Same thing comes from the General Plan. The General Plan would have to go to both Commissions, the way we're looking at this, and so you could have different sets of recommendations coming in.

CHR. HAITSUKA: Is that situation going to be addressed in the Rules of Practice, or do we need to address it at the Charter level?

MS. LEITHEAD TODD: We are going to try to address it in Rules of Practice, but I'm just putting that out there that there are some issues that have come up that I don't think were anticipated when the Charter Amendment went forward as to how do you do this, and how do you handle differing recommendations. I guess the concern I have is that if you are going to propose other changes, to please consider what the practical implication of those changes are. My staff is trying to figure out how we will handle that kind of situation when we have competing recommendations. Do we come up with one ordinance? You're going to have proposed amendments that may directly conflict with each other from the two Commissions.

We are just trying to figure that out, because I think it would get really messy if you submitted two separate proposed subdivision codes.

MS. JARMAN: Mr. Chair.

CHR. HAITSUKA: Yes, Ms. Jarman.

MS. JARMAN: At least for purposes of amendments to the General Plan, the Charter basically envisions that there can be two separate recommendations from each Commission. So, that part is not what you are really concerned about.

MS. LEITHEAD TODD: I'm talking about ordinances, because like the Subdivision Code and the Zoning Code when it's not an amendment that is specific to a zoning for a particular piece of property, but it is a general amendment in terms of how we process applications, how we handle appeals and stuff; and we are going to try and deal with that internally, because we think that those kinds of amendments have to be submitted to both Commissions. We then have to come up with some kind of document that then goes to the County Council, and we are just somewhat concerned about if we have conflicting recommendations, if that, in fact occurs and how do we incorporate that into the same document. They would be reviewing the same proposed ordinance.

MS. JARMAN: You have in the last sentence in Section in 6-4.5---I just want to know if you think this covers that situation?

MS. LEITHEAD TODD: I'm sorry, the Charter I grabbed this morning didn't have the updated language.

MS. JARMAN: It's on page 5. It's that first partial paragraph, the last sentence says, "The planning director shall determine which commission shall take jurisdiction over any matters when not fully established by the charter." Do you think that gives you the authority to make that decision under the circumstances that you are talking about?

MS. LEITHEAD TODD: I think that I have to convey both sets of recommendations. I think what we're going to end up doing, and I think we are going to have to address this in our rules, is maybe in these kinds of situations, we will have the proposed amendment as submitted to the Planning Commission and then attach proposed amendments from each Commission to it, but not necessarily incorporated into the first draft; and leave it up to the Council to determine which proposed amendment they want to incorporate. It just will make it kind of messy in terms of the number of drafts.

MS. KAWAUCHI: I'm kind of piggybacking off of Casey's comment. Where else in the Charter aside from Section 6-4.3 is the Planning Commission discussed? This language in the recent Charter Amendment looks pretty broad. If the last sentence that we're discussing of the amendment in Section 6-4.5 that says "The planning director shall determine which commission shall take jurisdiction over any matters when not fully established by the charter." Where, and is there an ambiguity in the Charter at this point?

MS. JARMAN: That was my thought, because it does tell you when they do have to meet together. If there is an application for a land use change or community development plan with land and jurisdiction in both, then they have to meet jointly. It has to be an affirmative vote of the majority of the members of the two Commissions. So, presumably, there will be one recommendation. Except for that, and the General Plan, for any other decision, you get to choose.

MS. KAWAUCHI: Just to clarify, if I may. One way to interpret the last sentence where it says “not fully established by the charter,” the General Plan section seems to be fully established by the Charter. It’s a question, I don’t know yet. So then if that language is in here, I guess there’s another conclusion that can be reached. That is that anything else can be left up to the Planning Director to decide to choose.

MS. JARMAN: That makes sense to me, but I was asking basically the same question. Maybe Ms. Ford might have a comment. She was part of the Council when they debated this and passed it, so she may have some remembrance of this or if this was discussed by the Council.

MS. FORD: Thank you, Ms. Jarman. It actually was discussed by the Council, and it was always anticipated that there would be a joint meeting of the two Commissions to come up with an answer. It’s also possible that if each Commission stands their ground on a particular issue that the first draft could contain both of them. This is A, and this is B, and let the Council make up their mind after discussion. There’s nothing wrong with that.

MS. LEITHEAD TODD: Ms. Jarman, the language in Section 6-4.5 (c) basically says that each Commission meeting separately, and each Commission shall make its own recommendation to the Council. Similarly, it says “Each planning commission meeting separately shall make its own recommendations to the council on changes to the subdivision and zoning codes and any other planning or land use matters which apply generally and not to a specific area.” I don’t think I have discretion to decide that one or the other, they have to go to both; they have to go separately. I’m just saying, we’ll figure out a way to do it, but I don’t think when we did this, that we really thought about what the typical process for an amendment to the Subdivision Code, that’s a general amendment. The Planning Director makes recommendations to the Planning Commission. The Planning Commission then makes its set of proposed amendments to that proposal, and it usually goes up to the County Council with the amendments, so the draft that goes to the County Council incorporates the proposed amendments from the Planning Commission. What I’m saying, is now I’m going to have a proposed subdivision ordinance that may have two separate sets of recommendations, and typically we submit them as a draft. We will deal with it, and we will probably not submit them as a draft, and instead we will have the original recommendation that is submitted by the Planning Director and then we will attach separate proposed recommendations from each Planning Commission. That means that the draft that the Council gets will not incorporate either recommendation if we have conflicting recommendations from the two different Planning Commissions. It is a technical thing, but I

don't think it was thought of when they put this together. It just changes the way we do business, that's all.

MS. JARMAN: Do you think we should consider amending it at this time, or let you have some experience with it and then maybe come back to the Council?

MS. LEITHEAD TODD: I think we should have some experience with it and then come back to the Council. We'll try to address it through the rules. I'm just saying that sometimes you have unintended consequences or difficulty when you actually have to put stuff into practice that you adopt through a Charter Amendment. So, I'm just asking that if you're going to make any changes to the way we do business, that you give us another opportunity to come back and have my staff address what that would mean in practical terms.

CHR. HAITSUKA: Any other questions? Thank you.

MR. HOOKANO: Mr. Chair, Mr. Ivan Torigoe from Department of Environmental Management has arrived in case you want to talk to him right now.

CHR. HAITSUKA: Mr. Torigoe.

MR. TORIGOE: Thank you Mr. Chairman.

CHR. HAITSUKA: Mr. Torigoe, does your department have any suggested revisions to the sections which effects its operations?

MR. TORIGOE: At this point in time, Mr. Chairman, we don't have anything to recommend. We would certainly be interested in hearing any suggestions that the Commission may have or that may be brought before the Commission. We would like to be able to have our staff take a look at any proposed amendments. But at this time, we really have nothing to add. We will be meeting with the Environmental Commission on May 27, 2009, and we will be talking with them also to see if they have anything they would like to bring forth.

MS. FORD: Mr. Chairman, may I make a comment?

CHR. HAITSUKA: Yes, Ms. Ford.

MS. FORD: Thank you. Mr. Torigoe, before you got here I had testified about the qualifications and particularly in the Department of Environmental Management.

MR. HOOKANO: Mr. Chair, if I may interject for just a second. Remember that this is the Commission's meeting at this time. This is up to your discretion to allow this.

CHR. HAITSUKA: Alright, Ms. Ford, go ahead.

MS. FORD: Thank you. In regard to the qualifications of a Director of Environmental Management, the Charter says a minimum of five years of administrative experience in a related field. I had suggested that in the qualification for something like Environmental Management, that the Director should have a Civil Engineer or Professional Engineer degree. I know all of our Code say licensed in the State of Hawai'i, which I don't think is important. But at the very least a Professional or Civil Engineer degree would be important. Thank you for letting me testify again.

CHR. HAITSUKA: Thank you. Are there any questions for Mr. Torigoe? We're looking at Chapter 5 of Article VI, the Department of Environmental Management.

MR. SHUMWAY: I just have one thing.

CHR. HAITSUKA: Mr. Shumway.

MR. SHUMWAY: Compared to some of the other departments, the powers, duties and functions seem to be fairly---they're not very detailed, and I don't know if they need to be, or if they can be, if it would help or if Mr. Torigoe thinks it would be helpful.

MR. TORIGOE: Well, it is kind of short and sweet, isn't it? But I think that it hasn't posed any difficulty at this point. The areas that are described are Solid Waste, Wastewater and Recycling Programs and that pretty much covers it. I would be interested in hearing any suggestions. I can go ahead and ask our Director if he feels there should be any amendment to that.

MR. SHUMWAY: Okay, because I noticed that it just seems that some of the departments have really detailed descriptions, some have very vague descriptions. I think that for the purpose of the Charter, it would help to be more consistent. Obviously I can't suggest how to do that. That's kind of what I'd like to see happen.

CHR. HAITSUKA: Mr. Torigoe, perhaps if your department has any suggested revisions, you could submit it in writing to us as far as whether or not that should be further clarified; the powers, duties and functions in Section 6-5.4.

MR. TORIGOE: I can discuss that with the Director, and I can also discuss that with the Environmental Management Commission.

CHR. HAITSUKA: Ms. Jarman.

MS. JARMAN: Mr. Torigoe, I think the Council has a Committee on Energy Sustainability.

MR. HOOKANO: Yes, the Council has a Committee on Food and Energy Sustainability.

MS. JARMAN: Do you think energy sustainability is something that would work well with your department, or could fit with your department, since the Council does have a committee. I think right now it is in Research and Development, but somehow, it seems to me it might fit

better with Environmental Management. Could you just consult on that and see how people feel about that?

MR. TORIGOE: Certainly, we can do that.

MS. JARMAN: Thank you.

CHR. HAITSUKA: Any further question for Mr. Torigoe? Is there any further discussion on CHAPTER 5 of Article VI? Thank you, Mr. Torigoe.

MR. TORIGOE: Thank you, Mr. Chairman.

CHR. HAITSUKA: So, we are looking at Article V and VI. Do we have anyone here from any of the specific agencies? Why don't we start from Article V, Section 5-1.1. Is there any discussion on Section 5-1.1 of Article V?

MR. SHUMWAY: I have a question.

CHR. HAITSUKA: Mr. Shumway.

MR. SHUMWAY: I have often wondered, and this is just a question, why the Mayor's term starts so soon after the election. If you look at a National office, there is a two month window. I've always felt that this is really a short time frame, especially when you are looking at appointing directors of departments and you're in a holiday season to begin with. I think it's a challenge for the government and for the new Mayor. I'm sure there's a reason, historical background, but I don't know what it is. Before I propose anything, I'd like to know if there's information about that.

CHR. HAITSUKA: Mr. Takaba, you've been around for awhile. As far as the date---

MR. TAKABA: I haven't seen it to be a problem, except with the appointments of staff, department heads and executive staff. Normally, by December 1st not everybody will be in place, and I think that's probably the only shortcoming. Usually, Mayors want to get started right away when they begin office.

MR. SHUMWAY: It seems like a pretty serious shortcoming to me. If you've got more than a couple of departments that don't have heads, and that drags on into December and January, that seems to be a significant problem. Am I wrong?

MR. TAKABA: It could be a problem. I think that's something you may want to talk about more.

CHR. HAITSUKA: It seems like it may be a problem when you have the deadline set for appointment of certain Commissions, like the Charter Commission.

MR. TAKABA: Yes, there is a real tight time frame for that; the appointments, whether they be commission or staff. But, I think every other County is pretty much the same except Honolulu. Honolulu might be January.

MS. JARMAN: If we change that, would we have to change the Council Member's start date as well? Do you think it matters whether the Mayor and the Council start at the same time?

MR. TAKABA: Yes, it would make sense to do that for consistency and for the inauguration ceremony. A lot of things happen at the same time, and the Mayor conducts the first meeting of the new Council.

MS. JARMAN: While we have the Managing Director, may I ask him a question about his duties in the Charter, or would you rather wait until later?

CHR. HAITSUKA: I'm happy to take that out of order. What section are we looking under?

MS. JARMAN: Article VI, Chapter 1. Section 6-1.2 says, "The managing director shall have had five years of experience in an administrative capacity, and shall possess demonstrable education and/or professional experience as required of the office." What does that mean?

MR. TAKABA: That's pretty vague. I can see the administrative capacity piece, but the other part is really quite vague.

MS. JARMAN: Do you think we should just leave it in there vague? Does it add anything? Would you add something?

MR. TAKABA: Well, that's the only way I would qualify.

MS. JARMAN: I don't think so. We could take that out and you would have had five years experience in an administrative capacity. This says "...and shall possess demonstrable education and/or professional experience..." What do you think that would be?

MR. TAKABA: I think the administrative capacity is important; maybe you expand on that topic. I've seen managing directors come from different backgrounds, like finance, law, hospital administration. It's really difficult to say what specific types of experiences that this individual would need. I think if you expand on the administrative side, like managerial or--- that could go a little further. Sometimes they use it---like education, to replace this or that, or whatever. I don't know if they purposely left it vague when they created the Office of Management. That wasn't too long ago, with a Charter Amendment in 2000.

MS. JARMAN: If I was the Mayor, I wouldn't know what that meant when I was trying to appoint my Managing Director.

MR. TAKABA: Yes, it is vague.

MR. NAHALE-A: Mr. Chair, on all of these issues, in terms of qualification, I want to go on record that I'm not in favor of micro-managing the qualifications. I think that's one of the duties that the elected officials have. If they pick bad people, then they'll have to be held accountable for the work they do. I'll probably stay silent on that matter in the future. For the record, I would take all of the qualifications out, of the whole Charter, and let people manage.

MS. JARMAN: May I respond?

CHR. HAITSUKA: Go ahead.

MS. JARMAN: Having served as the County Clerk for two years, I really think, for the benefit of the staff, it's really helpful to have people who have had managerial or administrative experience. They're the ones that are there day in and day out, year in and year out; as the political winds change, they're the ones that are still there. If somebody is put in on purely political reasons, without having some sort of administrative experience, and you have somebody that doesn't really have any administrative skills, they're the ones that suffer the most. So, I'm in favor of putting in at least some requirement that at least the people at this level, the director and deputy director have some administrative experience.

CHR. HAITSUKA: Any further discussion?

MR. NAHALE-A: To clarify my point, I think, obviously you want people with qualifications. My only issue is does that belong in the Charter? As we can see, it's vague. You can justify almost any hire and qualify almost any resumé to match the language. To me, it just opens it up for folks to criticize the language and criticize appointments. I think it's a good point; obviously we need folks with the skills to manage, particularly at this high level. To some degree, elected officials are going to be held accountable for the work that's done. Also, I think, as Mr. Takaba alluded to, people can come with all kinds of backgrounds and skill sets and do a good job in government. Sometimes, if we try to micro-manage criteria from this viewpoint, the highest viewpoint, we end up eliminating folks needlessly.

MS. JARMAN: We'll just have to agree to disagree on this one.

CHR. HAITSUKA: Any further questions for Mr. Takaba? Thank you, Mr. Takaba.

MS. JARMAN: Thank you, Mr. Chair, for taking that out of order.

CHR. HAITSUKA: Perhaps we can take a quick break. I think we are going to have to table some of these sections for discussion until next time; because we do have an Executive Session we need to get into, and I think that's going to take awhile.

MS. JARMAN: Could we do Corporation Counsel though before we go into Executive Session? Or actually, I'll be here for the June meeting; it's the July meeting that I won't be here for. Okay, as long as we can do it in the June meeting.

CHR. HAITSUKA: I think we can do Corporation Counsel, if it's not going to be too long. That would be Chapter 2 of Article VI.

MS. JARMAN: We can do it after break. I just wanted to do it today, if possible, since he's here.

CHR. HAITSUKA: We can do it now, and then take a break. So, that would be Chapter 2, Article VI, Corporation Counsel. We have Mr. Lincoln Ashida here. Mr. Ashida, do you have any suggestions for us?

MR. ASHIDA: No, I reviewed it and I have no suggestions. I just wanted to point out a few unique things about the Corporation Counsel that you probably will discover as you go through the Charter in the future. So, I thought it might be a good time to bring in up now. First, under Section 6-2.2, Appointment and Removal, the Corporation Counsel is the only department head that, for his or her removal, requires the consent of the Council. In other words, the Mayor could remove Bobby Jean today without consent of the Council. No offense Bobby Jean, of course that would be a dumb move, right? But, the Corporation Counsel, to be removed, Mayor Kenoi couldn't just unilaterally remove me, it would require the consent of the Council. That's one unique feature in there.

The second, if you look at Section 6-2.6, Term of Office, the Corporation Counsel is the only one that cannot begin serving until he or she is confirmed. Other department heads, once the Mayor takes office on the first Monday in December, he or she can start appointing department heads, and they can serve on an interim basis until they are confirmed by the Council. The Corporation Counsel cannot do that. He or she must wait until they are not only appointed by the Mayor, but confirmed by the Council before they begin serving. In this past election, because I had served under Mayor Kim and Mayor Kenoi, there wasn't that hold over. But, for example, when I came in, in December 2000, my predecessor was Mr. Richard Wurdeman. He actually had to serve until I was confirmed by the Council, so I was actually the last department head to come in; and normally that's the case. Those are just a couple of unique features that I wanted to point out.

Something else on the qualifications, in Section 6-2.2 where it says, "The corporation counsel shall be an attorney licensed to practice and in good standing before the Supreme Court..." What is omitted here is the Corporation Counsel doesn't have the requirement, like a lot of department heads, about the five year or three year administrative experience. Alapaki is going, "there you go." Although I will say, I hear what Ms. Jarman is saying. I have found in my job---when I was the prosecutor, I did 100 percent litigation; it was all about the law. I'm finding, in my role now, it's all about the administration. My practice of law is---I still practice, but it's not as much, obviously, as when I was a litigator. Those are just some highlights.

The only other unique thing, interesting thing---there is the assistant corporation counsel, who is the second in command. I'm guessing that position is called the assistant because all of the attorneys in our office are called deputies, deputy corporation counsels. So, maybe that's to avoid confusion. Although at the Prosecutor's Office, Charlene Iboshi, who is the number two in charge, her title is the First Deputy Prosecuting Attorney. If I had my druthers, and this is no big deal, I'd rather it be called the First Deputy Corporation Counsel. The assistant right now is Kathryn Garson, a very able, talented, tenacious lawyer; and I'm dreading the day that I introduce her, and I go, "Oh, this is Kathy, the assistant," and the person will say, "How long have you been Lincoln's secretary?" And she's going to slug me in the stomach, and I just fear that day. So, I'd prefer First Deputy Corporation Counsel, although I don't know if there is a historical reason why it's called assistant. It works fine with the Prosecutor's, because they are all Deputy Prosecutors; and Charlene is the First Deputy Prosecuting attorney. Other than that, I am more than happy to answer any questions you might have.

MS. JARMAN: May I ask him a question, Mr. Chair?

CHR. HAITSUKA: Yes.

MS. JARMAN: I mentioned this to Lincoln, because I knew he probably wouldn't like my idea.

MR. ASHIDA: I don't, so let's take a recess already.

MS. JARMAN: One of the issues that arises and one of the difficulties that the Corporation Counsel has is he has to represent the Mayor and the Council. That is consistent with our ethical rules of professional responsibility, but in theory, that is a very difficult tightrope to walk. Right now, he is appointed by the Mayor and confirmed by the Council, which is great; and the same thing if he is going to be fired. But, he actually sits in the Mayor's cabinet, and he meets with the Mayor and the department heads every---what, Monday morning? When do you guys meet?

MR. ASHIDA: That's secret and classified.

MS. JARMAN: Well, they meet, and so he has a very different and closer relationship as a result of that with the Mayor's side than he does with the Council. The Council doesn't have the same ability to meet, because of the Sunshine Law; and they don't meet. Meeting with the Chair of the Council doesn't really do the same thing, because the Chair really runs the meetings; the Chair doesn't speak on behalf of the Council. I was trying to figure out a way that we could take care of that problem. It is a perception problem, and it makes it really difficult for the Corporation Counsel to have the type of---I'm not sure what the word is. The Council just doesn't always feel that they are equal to the Mayor, and I think it is because of the way it is structured. I had two thoughts, and the first one I knew he was going to hate; and that would be that we would say that he's not a member of the cabinet. And he said, "I hate that Casey." I said, "I knew you would, but I wanted to let you know that I might throw that out."

The other idea and this is not without its problems either, would be that the Corporation Counsel would assign to the first deputy or the assistant, whoever this person ends up being called, to be the primary representation for the Council. The Council would at least feel it has an equal ear to the Corporation Counsel's office as the Mayor's office does. So, again, as the County Clerk for the Council, I worked with Lincoln for two years, and I see him to be a very ethical man of integrity, and we worked things out really well. But, there was always that perception; and Ms. Ford, as a councilmember, she may want to comment. I just thought, is there a way in the Charter we can somehow make that appearance go away? Maybe the Charter isn't the place, but I thought that since we are here, I would raise that issue and see what other people thought about it and Lincoln's opinion.

MR. ASHIDA: Mr. Chairman, first of all, with all due respect to Ms. Jarman, I do not feel conflicted. Talk about the tightrope and everything, I recognize that it is a challenge of the job. All government attorneys are placed in a position of having to represent multiple clients that sometimes may have differing interests. If not--and in the rules of professional responsibility, Mr. Haitsuka is an attorney, and knows this, there are specific rules that exempt or allow government attorneys to have or enjoy this multiple representation--you would have to hire a separate attorney for every separate department, every separate councilmember, every separate Mayor, and you are going to bankrupt the County. That's the reality. So, what are the safeguards that are in place to ensure that one side isn't getting short changed over the other? It's those Rules of Professional Conduct, if ever, ever, any client feels they are not being zealously represented by me or any deputy in my office, they have the right, they have the absolute right to report us to the Office of the Disciplinary Council of the Supreme Court. By the way, that's the office that we fear more than death itself. Don't take away the license. As an attorney---and Ms. Kawauchi I don't mean to put words in your mouth---that's a serious thing, to be investigated by the disciplinary council.

That being said, I don't think that---maybe there is a perception, as Ms. Jarman suggests, that maybe the Corporation Counsel is more aligned with the Mayor than the Council. The answer to that is, she's correct. She's correct, because the Mayor is the Corporation Counsel's appointing authority. The Corporation Counsel isn't hired or appointed by the Council and the Mayor, but he or she is appointed, hired by the Mayor. I serve, as other department heads do, with the confirmation of the Council. It gets a little complicated because under the Charter I am the legal representative of the Council, so long as they are acting within the course and scope; which means I am their legal representative. But, there are multiple safeguards in place; I already talked about The Rules of Professional Conduct, the creation of Mr. Hookano's position as a Legal Specialist for the Council. Often times and this has come to pass, if a Council Member takes issue with a decision or an opinion from my office, they seek the assistance from the County Clerk; they get a second opinion. There is another lawyer in here that can function just like I do. The only thing different between Mr. Hookano and I, is if it's actual representation, making an appearance as a party in litigation, that has to be me, because that's what the Charter requires. But, there is that safeguard in place.

Finally, I disagree with the thing about not having as close a relationship with the Administration side versus the Council. I think, for me personally, I've enjoyed very good relationships with the Council Chairs. I came in when Mr. Arakaki was the Council Chair. I think, even more than that, I've enjoyed good relationships with the Clerk. Mr. Goodenow and I have a good relationship. When I came in, Mr. Al Konishi was the Clerk at that time. So, there is that, which is perhaps not as visible. I don't know, Ms. Jarman, if you are more concerned about a perception or if it's an actual problem. Then, I think it should be addressed, definitely; but I'm not sure if it should be addressed by a Charter Amendment. But, I am concerned, because if you are saying that I have clients out there who question my loyalty to them in terms of my ability to deliver competent legal services to them, then I need to know about it; especially if Council Members are saying that.

MS. KAWAUCHI: Mr. Chair, I have a couple of thoughts. One is that from an overall perspective, your role is that you actually serve the people of the County of Hawai'i. I'm just going to throw that out there.

MR. ASHIDA: That's correct, I'm a public servant.

MS. KAWAUCHI: You're a public servant, so you serve the people. But, in your position, you may have differing views between different departments or department heads, or whoever it might be. It looks like, under Chapter 2, the Council may, by two-thirds vote, authorize employment of a special counsel, if that's needed. It seems to be in Section 6-2.5. So, that seems to be there. The language is pretty broad, it says that "...any special matter presenting a real necessity for such employment." I don't know if that covers the issues, but I'm just pointing it out.

MR. ASHIDA: The special counsel section, we take that term "necessity" very seriously, because if we went out and hired special counsel just for convenience, because you know there might be hurt feelings between say the Planning Director and the Public Works Director, we're going to bankrupt the County. We take "necessity" seriously, to mean that there is an actual conflict, and we normally check with the Office of Disciplinary Counsel first. They determine there is a conflict, and then we are in a position where we must hire special counsel, not we choose to.

MS. KAWAUCHI: That's not in here, right? The request of ODC (Office of Disciplinary Counsel) to---in other words, Section 6-2.5 doesn't state anything about ODC.

MR. ASHIDA: No, because that section will also allow you to hire a special counsel just because you need extra help, or you hire a specialist. For example, presently, we outsource our worker's compensation work. That's not paid through my office, but it's paid through the Worker's Compensation Fund through the Department of Human Resources that Mr. Ben heads. But, it's a very specialized area, so we outsource that work. So, that's a situation where I use that section, because we want to make sure that we have attorneys who know what they're doing in that area, because it is so specialized.

MS. KAWAUCHI: Just for discussion purposes, the second sentence says, “Any such authorization shall specify the compensation, if any, to be paid for said services.” So, the authorization could be zero, pro bono, to less than general compensation for any staff attorney too. You said it would bankrupt the County if you had to go and hire special counsel---I’m not trying to be argumentative, I’m just saying that appears that there is a provision that allows for the hiring of special counsel if it’s needed. It can be exercised, and it requires a two-thirds vote of the entire membership. So, there are some safeguards in there for hiring without cause, it appears. But, I could be wrong.

I also wanted to comment on two of the thoughts Casey had about appointments and separating out a Counsel within the Corporation Counsel for different purposes or reporting to different sectors of government, whether it’s legislative or the Mayor’s office. The concern I would have on that level is that it might further bifurcate issues, possibly. I’m not saying that would happen, I’m just saying it’s possible, and then you might have an issue. With Levi’s appointment, in your usual capacity, that does seem to create a separate entity for legislative or legal questions. But, it’s also not a position that is entirely separate, and I don’t think it’s in the Charter. Nor, do I know right now, if it should be. I’ll leave it at that.

The last thing I wanted to say is that I think Maui has some separation of attorneys. We talked about that at one point, I think.

MR. HOOKANO: Do you want me to take off my Charter Commission hat now? You’re right; Honolulu and Maui both have something called the Office of Counsel Services. They serve the Legislative Branch, the County Councils, relating to the drafting of their bills and resolutions, their budget. But, like Lincoln said, the Office of Counsel Services for those two counties, they don’t represent the Council in court. That falls on the Corporation Counsel, so legal representation, in that sense, all falls under the Corporation Counsel in those counties as well. It’s not like the Council has their own attorney to represent them in front of boards and commissions and in court. It’s separate, but it’s not entirely separate in that sense. The Corporation Counsel is still the official attorney for the whole County anyway.

MR. GOODENOW: Ken Goodenow, County Clerk. We have a policy whereby if Corporation Counsel issues something in writing, we are not going to contradict that. We take that as advice from our lawyers, and we’re sticking to that. But, of course, a lot of times there isn’t something, and in the process of formulating legislation, Levi does a lot of work for us. Most of the time they’re in agreement, so there isn’t a problem. When we talked about---at the last meeting---the difference between what is policy, for example, separation of powers. Sometimes it is beneficial to have one person who is going to make the call, because they are going to be representing the County in court. If you have a position where you have a difference, your lawyer is going to have to tell you what the proper advice is. If you bifurcated it too much, you would have some kind of a no-win end game, and would go to a judge every time.

MS. KAWAUCHI: Excuse me, maybe it does go back to the fact that as officers of the County, you serve the public.

MR. GOODENOW: That's right, and we are one County. We may have branches, but you don't want to lose sight too, that we are one entity, and he is the lawyer for the entity. In fact, if he thought that the entity was being somehow wronged, that is going to take priority for him. Those are just my comments.

CHR. HAITSUKA: Any further discussion or comments? Mr. Ashida, anything further?

MR. NAHALE-A: I just want to say that I take back my qualifications, because we have none for Corporation Counsel, and we ended up with Lincoln, so now I see your point, Ms. Jarman.

MS. JARMAN: Thank you, very much. I should have thought to use him as an example.

CHR. HAITSUKA: Maybe before we take a break, I think that given the time, I think we should table the rest of the discussion on Articles V and VI for the next meeting and we'll take it up as Unfinished Business.

MR. HOOKANO: I think you would need a motion for that, to place the unfinished items on the next agenda.

CHR. HAITSUKA: Do I have a motion to table discussion on the remaining items in Articles V and VI for the next meeting.

Mr. Nahale-a moved to table discussion on the remaining items in Article V and VI for the June 5, 2009 meeting.
Seconded by Mr. Shumway and carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi, Kealoha, Nahale-a, Osborne, Shumway, Unger and Chair Huitsuka.

Noes: None.

Absent: Commissioner Fuyertes.

RECESS: At 4:34 p.m., the Chair called for a five minute recess.

RECONVENE: The meeting was reconvened at 4:46 p.m.

REPORTS

CHR. HAITSUKA: The next item on the agenda is Reports and we don't have any reports.

REFERRALS FOR EXECUTIVE SESSION

CHR. HAITSUKA: We're going to move on to the next item which is Referrals for Executive Session. We have one item to discuss in Executive Session.

Ms. Jarman moved to go into Executive Session pursuant to Section 92-5(a)(4) of the Hawai'i Revised Statutes in order to hold attorney-client privilege discussion regarding Communication 7 regarding the legal effect of previous Charter Amendments on this Commission's work.

Seconded by Mr. Kealoha and carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi, Kealoha, Nahale-a, Osborne, Shumway, Unger and Chair Haitsuka.

Noes: None.

Absent: Commissioner Fuertes.

MR. HOOKANO: We need to take a short recess while we prep the room.

RECESS: At 4:48 p.m., the Chair called for a five minute recess.

RECONVENE: The meeting was reconvened at 6:09 p.m.

CHR. HAITSUKA: Do I have a motion to file Communication 7 and approve the recommendation of our attorney?

Ms. Osborne moved to file Communication 7 and approve the recommendation of the Commission's attorney. Seconded by Mr. Nahale-a and carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi, Kealoha, Nahale-a, Osborne, Shumway, Unger and Chair Haitsuka.

Noes: None.

Absent: Commissioner Fuertes.

ANNOUNCEMENTS

CHR. HAITSUKA: Next on our agenda is Announcements. We're going to talk about the next meeting. I've had some communication with some of the Commission members. They

cannot make it on the second Friday, which I think is June 12, 2009. There has been a suggestion that we move the meeting to June 5, 2009. Mr. Hookano, under our rules it says, the second Friday at 1:30 p.m. Is there any problem to make a motion to move that?

MR. HOOKANO: I think that would be appropriate, but also, because you have a lot of time between now and then, so we could call it a Special Meeting and file an agenda separately anyway. But, you can make the motion to move the regularly scheduled meeting to the first Friday of June which would be fine. Just to let you know, I won't be there for that one. I have a prior commitment for that day.

CHR. HAITSUKA: That is a concern.

MR. HOOKANO: Well, at that point, if you have questions on whatever sections are covered there, you can e-mail your questions to me in advance.

MS. JARMAN: We could have someone from Corporation Counsel here in your place.

MR. HOOKANO: Yes, Corporation Counsel could be here, because they're the County attorney.

MS. JARMAN: The 5th of June works for me and the 12th does not.

CHR. HAITSUKA: How about everybody else as far as June 5, 2009?

MS. OSBORNE: The 5th works for me.

MR. NAHALE-A: Yes, the 5th is okay for me.

CHR. HAITSUKA: Do I have a motion to move the next meeting to June 5, 2009?

Mr. Shumway moved to move the regularly scheduled meeting to June 5, 2009. Seconded by Ms. Jarman and carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi, Kealoha, Nahale-a, Osborne, Shumway, Unger and Chair Haitsuka.

Noes: None.

Absent: Commissioner Fuertes.

ADJOURNMENT

CHR. HAITSUKA: Next item on the agenda is Adjournment. Anything more before we adjourn? Do I have a motion to adjourn?

There being no further business, at 6:11 p.m., Mr. Kealoha moved to adjourn the meeting. Seconded by Mr. Unger and carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi, Kealoha, Nahale-a, Osborne, Shumway, Unger and Chair Haitsuka.

Noes: None.

Absent: Commissioner Fuentes.

CHR. HAITSUKA: The meeting is adjourned. Thank you.

Respectfully Submitted,

Karen Eoff, Secretary

Approved:

Mr. Ed Haitsuka, Chair
Hawai'i County Charter Commission