

2009-2010 HAWAI‘I COUNTY CHARTER COMMISSION

5th Session
Friday, July 17, 2009
County Council Chambers
Ben Franklin Bldg. 2nd Floor
333 Kīlauea Avenue
Hilo, Hawai‘i 96720

CALL TO ORDER:

CHR. HAITSUKA: Good afternoon, today is July 17, 2009, and it’s about 1:42 p.m. We are at the County Council Room at the Ben Franklin Building in Hilo. I call this meeting of the Hawai‘i County Charter Commission to order. I will now call the roll.

ATTENDANCE:

Present: Mr. Ed Haitzuka, Chair
Mr. David Fuertes, Vice Chair
Ms. Jamae Kawauchi, Commissioner
Mr. Joseph Kealoha, Commissioner
Mr. Alapaki Nahale-a, Commissioner
Mr. Todd Shumway, Commissioner

Absent: Ms. Daphne Honma, Commissioner
Ms. Casey Jarman, Commissioner
Ms. Susie Osborne, Commissioner
Mr. Scott Unger, Commissioner

Also Present: Ms. Deanna Sako, Deputy Director, Finance
Mr. Michael Ben, Director, Human Resources
Mr. Ronald Takahashi, Deputy Director, Human Resources
Mr. Paul Ferreira, Deputy Chief of Police
Mr. Darryl Oliveira, Fire Chief
Mr. Burt Tsuchiya, Director Data Systems
Mr. Quirino Antonio, Deputy Manager, Department of Water Supply
Mr. Mike Kagami, Deputy Prosecuting Attorney
Mr. Bill Brillhante, Deputy Corporation Counsel
Mr. Joseph Kamelamela, Deputy Corporation Counsel
Ms. Colleen Schrandt, Legislative Auditor (2:50 p.m.)
Mr. Levi Hookano, Legal Specialist
Mr. David Hirt, Council Aide (*videoconference, Kona*)
Ms. Karen Eoff, Secretary

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

CHR. HAITSIKA: Next on our agenda is Statements from the Public on Agenda Items. We have Margaret Wille to speak on three agenda items. Good afternoon.

MARGARET WILLE

(At this time Margaret Wille came forward to address members of the Charter Commission)

MS. WILLE: Good afternoon, my name is Margaret Wille, I live in Waimea, I'm an attorney, and I have been practicing for about 30 years. I have lived here on the Big Island full time since 2002, and I first started coming here in 1970 when my parents and brothers were living here.

I wanted to first touch on David Frankel's testimony. I believe he's going to speak a little bit on issues related to the public trust doctrine, so I just wanted to make a comment about that. You have a handout here, and on the last page of that handout is a page from the Kohala Community Development Plan (CDP). I was on the South Kohala CDP Steering Committee and was involved in writing this. I just really want to support what I think he is going to say, and to just make it clear that the law really has changed since the last Charter, because of this one case which involved the Public Trust Doctrine. It basically said that the Hawaiian Constitutional section regarding the Public Trust Doctrine, to protect that the natural resources be held for the benefit of all people, is not only the responsibility of the State, but of the County. I'm not sure exactly how this weaves into all of the provisions of the Charter, but I think it is sort of a decision-making framework. I started thinking about it as I was reading through the different agenda items and thinking about what you really do. You are looking at different entities and what their rights, powers and responsibilities are. There is really one entity that is implicitly there, and is mentioned here and there, but isn't really identified in terms of what its powers, rights and responsibilities are; and that is the public, or the community, or the public trust.

I started thinking that maybe we ought to have another article on the public and the right to be heard, or how it really fits, and pulls it together. I'm really just bringing that up and I would like you to read this. I think I'll read just one paragraph out of the South Kohala CDP. "It is on the basis of this constitutional Public Trust provision that decisions involving land and water must be guided by the 'Precautionary Principle' when we weigh our private wants against the ability of the environment to accommodate those wants. The precautionary principle requires long-term vision and mandates that government entities favor caution and conservation in any case in which information is uncertain."

At the same time, in terms of the government representing the public, or the public trust, it's also what are the rights of the public to know what's going on, be involved in the processes, know that there's not conflicts of interest, and know that they are hearing what's going on. As all of our lives get more complex, and how few of us have the opportunity to come here and talk to you, I have been thinking about how we could do some sort of live broadcasting of some of the hearings, such as this one. I put some young people in Honoka'a--if you look at the page that's a picture, just sort of looking at how--if one had the camcorders hooked up

to a laptop, everyone in this county could be watching this presentation. Again, this is just about how do we educate ourselves to participate in civic life in this County, and I think in doing that, pulling ourselves together. You read in the paper a lot about splitting the County, and it's because people don't feel connected. This is just one way to look at how we could all be connected on a practical level. I'm not sure if that fits into some of the things David Frankel is going to speak about regarding the Public Trust.

What is in the Sunshine Law's policy is that in a democracy the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. That is my comment on the public and the public trust. It's not adding something in or out, but just thinking about that in terms of the bigger picture of the Charter, and what we are all doing here.

The second thing is the Prosecuting Attorney, and I also wanted to make some comments at the same time about the Corporation Counsel. I realize that is not on your agenda and you would not be able to discuss that at this meeting, but I would like to make comments on those two attorney positions that are discussed in the Charter. My comments each go back to the whole idea of creating more integrity, more trust, and more transparency of the different functions of the government to the public. Under Prosecuting Attorney, I would just like to suggest something be put in here to address the point that it is really the Prosecuting Attorney that is the one that is charged, and has the responsibility, to enforce the Sunshine Law. State Office of Information Practices issues opinions, but they don't enforce, they don't investigate. I would just like to see something in here that would stress that some of that responsibility is investigating and enforcing the Sunshine Laws; Sunshine Laws meaning open meeting provisions and complying with the rule that there not be private meetings and decision-making, rather than open meetings where the public can hear what is going on.

Similarly, in the second sheet that I have here, under Corporation Counsel, these are really comments to testimony that was given on May 8, 2009. Reading the minutes, I think that it was Commissioner Jarman who addressed the issue of the conflict of interest of the Corporation Counsel, between the Mayor's Office, or the Executive Branch, versus the Legislative Branch. She raised a couple of proposals; that perhaps the Corporation Counsel should not be part of the Mayor's cabinet, and therefore part of that very small hui team, and more independent, since it really sways the relationship to be very cozy on one side versus more distant to each of the Council Members, who, in theory, that office is representing equally. One of her other suggestions was really perhaps the second in command, which is now called the Assistant Corporation Counsel, perhaps that person should really take primary responsibility for matters dealing with the Council. What I wrote up here is really sort of incorporating that idea, just one way of doing it. There was some talk about maybe this person shouldn't be called the "assistant." I put in "associate" just to address that minor point. I think this is really the division that goes on in a couple of the other Counties. This isn't anything personal to Lincoln Ashida, in my mind it is a very structural and systemic conflict that is there. So, you would have the "Associate Corporation Counsel" have primary

responsibility relating to proposed legislation, or other matters specific to the Council, rather than being under the Corporation Counsel.

I'm going to give one quick example that I saw, which was when the discussion of impact fees and fair share contributions came up before the Council. Those are issues that happened to be involved in the Hokulia road case, on the issue of undue accommodation of developers in terms of eminent domain. It was also the case in terms of dealing with fair share contributions. I'm not going to get into what those are substantively, but just to say those were issues involved in a legal case. The same Counsel or Deputy Corporation Counsel was advising the County Council on drafting, on whether they needed to be in compliance with the State impact law. It was my opinion that the County does need to be in compliance with the State law. I think that the Deputy Corporation Counsel person was put in an untenable position. How I would advise in a lawsuit is very different from how I would advise legislators who are trying to draft something and not be worrying about whether they are going to court, or taken to court, which was my concern, and continues to be my concern. I know that Corporation says, "I don't feel conflicted," but the public sees the conflict. I, as an attorney see the conflict. I just want to stress that the whole issue of conflict of interest goes to that integrity and trust that the public has in the different branches of government.

Let me just say, lastly, on that same point, I also bring up the issue of there's a provision the Council can authorize outside counsel for special matters presenting a real necessity. I believe that what Corporation Counsel, Mr. Ashida, said was, it is there in theory but it's really not used unless we document or find that there's a direct conflict. I just think that one should look at that a little bit more. I think right now, what's going on, just say that you all are Corporation Counsel, and there is conflict going on between groups on the County Council, who are you representing? Who are you representing, the Chairman of the Council's position? How are the minority members being represented? So, I just was trying to look at what is a practical way that one can sort of look at how to deal with these systemic, structural issues of conflict of interest, and do it in a way that some of the other counties and other localities deal with them. Thank you very much.

CHR. HAITSUKA: Any questions for Ms. Wille? Thank you Ms. Wille. Is Mr. Frankel here to testify? Is there anyone in Kona to testify?

MR. HIRT: Good afternoon, Mr. Chair. We have two testifiers here in Kona today.

CHR. HAITSUKA: Can the first person approach the microphone and state your name please.

SUSAN DURSIN

(At this time Susan Dursin came forward to address members of the Charter Commission)

MS. DURSIN: My name is Susan Dursin, and I'm from Captain Cook. I would like to thank you for taking my comments today, and also to thank you for serving on this Commission. I know it's not widely recognized the amount of time and effort that this kind of service entails. I am aware of it and very appreciative, so thank you.

I'm here today to talk about Article XI, Initiative and Referendum. As a past president of the Hawai'i County League of Women Voters, I worked on the revision of this article. As you are aware, it was occasioned by the 2% Land Initiative, and the snags that the effort ran into. When that was resolved and it went on the ballot, the County Council asked us whether we would clarify the language in that article to avoid the frustrations and the pitfalls that group had encountered. So, over a period of about 16 months, we worked on it, taking every clause and every phrase apart and really considering it carefully. What we were interested in was presenting was a chronological kind of presentation, where people mounting an initiative could pretty much follow it step by step. That became a pretty considerable revision. As I say, it was really carefully considered. We sought help and input from many, many different sources, and came up with a final product that went to the ballot in 2008, and was approved by the voters. I have to say that it was approved very recently. It was rewritten and approved so recently that there really haven't been a lot of changes in the situation that would entail changes in the language. I would ask you to look at it, but to leave it very much as it is. In fact leave it entirely as it is. The League of Women Voters had supported this heartily, and other elements of the public were very much in support. As you can see, the voters passed it. Thank you.

CHR. HAITSIKA: Are there any questions for Ms. Dursin? Thank you very much, Ms. Dursin.

MR. HIRT: Our next testifier is Debbie Hecht, representing herself, also to make comments on Article XI, Initiative and Referendum.

DEBBIE HECHT

(At this time Debbie Hecht came forward to address members of the Charter Commission)

MS. HECHT: Aloha Commissioners, thank you. My name is Debbie Hecht; I was one of the people who worked with Sue Dursin on writing this part of the Charter that was approved by voters. To give you a little background on our research, we went through all the Ninth District States to look at all their legislation on initiative and referendum. We also looked at all the islands to see what they had done on initiative and referendum. It turns out that on the State level, there is no provision for initiative and referendum. We were asked by the Council, as Sue said, to look at the problems after the 2% Campaign, and we worked closely with the League of Women Voters. We also worked closely with the Elections Office, and the County Clerk at that time, and also talked to each of the Council Members to make sure they had input on it. I just wanted you to know the procedure that we went through to accomplish this. It was a total rewrite of the Charter. We tried to put it in chronological order to make it easy for a citizens groups to follow, because most citizens groups do not have lots of money when they start an initiative or referendum, and so we wanted to make it very clear, and not in legalese, so they would understand how to go about this process. I would also ask you to leave it alone, so we can see how it might work in the process.

I had another comment on Financial Procedures, which is Article X. When we were going through the budget process this year, I noted that the Comprehensive Financial Report was

not included to the Council Members for their information. This report did not come out until two weeks after the budget was approved. This report is basically a report that sums up each of the Special Funds. For instance, the gas tax is one, and they didn't have it here so I couldn't really look at it to give you. I think that along with the other reports, I believe that are in Section 10-2, where it says Preparation and Submission of Budget and Capital Program--I believe that in Section (a) it says, "No later than March 1 of each year, the mayor shall submit to the county council"--he submits an operating budget, an operating program, capital budget, capital program, and an accompanying message. I think this is very important information for Council Members to have to look at, to really understand the scope, and to really understand what is in the special funds that they can use to fund certain programs. I would ask that to be a number (6) in 10-2 (a). That would be the Comprehensive Financial Report. Thank you for your time. Again, I hope that initiative and referendum will stand as it is.

CHR. HAITSUKA: Any questions for Ms. Hecht?

MS. HECHT: Could I say one other thing, sir?

CHR. HAITSUKA: Sure.

MS. HECHT: I'll be here, and I think Susan Dursin will be here, if you all have questions on why Initiative and Referendum was written a certain way. I will also leave my phone number in case there are further questions from Commissioners. It is 989-3222. Thank you.

APPROVAL OF MINUTES

CHR. HAITSUKA: Thank you very much. Next on our agenda is Approval of the Minutes for the June 5, 2009 meeting. Do we have a motion to approve the minutes?

Ms. Kawauchi moved to approve the minutes of the June 5, 2009 Hawai'i County Charter Commission meeting. Seconded by Mr. Shumway.

CHR. HAITSUKA: Any discussion?

The motion to approve the minutes of the June 5, 2009 Hawai'i County Charter Commission meeting was carried by the following vote:

Ayes: Commissioners Fuertes, Kawauchi, Kealoha, Nahale-a, Shumway and Chair Huitsuka.

Noes: None.

Absent: Commissioners Honma, Jarman, Osborne, and Unger.

COMMUNICATIONS

Communication 21:

CHR. HAITSUKA: Let's move on to Communications. We have Communication 21, which is written testimony from David Kimo Frankel, dated June 29, 2009. Is there any discussion on Mr. Frankel's communication? Mr. Shumway.

MR. SHUMWAY: I just have one question. His points about serving on the board and conflicts of interest etcetera, aren't those things covered by committee rules? Do those things go in the Charter? Doesn't each Commission or Board have their own rules about conflicts of interest? I don't know what the answer to that is.

CHR. HAITSUKA: Mr. Hookano, can you answer that question?

MR. HOOKANO: The conflicts of interest for the boards and commissions are usually governed by the County's Ethics Code. What this proposal is saying is, you can't get appointed to the board in the first place based on your employment or fiduciary duties. I think, if I'm reading this correctly, is what this recommends. It would be different from a conflict situation, because you wouldn't even be on a board.

MR. SHUMWAY: But, the Code of Ethics doesn't cover that at the time of appointment.

MR. HOOKANO: The Code of Ethics relates to financial conflicts.

MR. SHUMWAY: But that's what some of this is.

MR. HOOKANO: The Code of Ethics does say specific things in relation to financial relationships on the items that come before the board. So, it's kind of covered in there.

CHR. HAITSUKA: Is there any further discussion on Mr. Frankel's communication?

Mr. Nahale-a moved to file Communication 21. Seconded by Ms. Kawauchi and carried by the following vote:

Ayes: Commissioners Fuertes, Kawauchi, Kealoha, Nahale-a, Shumway and Chair Huitsuka.

Noes: None.

Absent: Commissioners Honma, Jarman, Osborne, and Unger.

UNFINISHED BUSINESS

CHR. HAITSUKA: Next on our agenda is Unfinished Business, and we do not have any unfinished business.

NEW BUSINESS

CA-1 RE: Department of Water Supply

CHR. HAITSUKA: Let's move on to New Business. First up we have a proposed Charter Amendment, CA-1, from the Department of Water Supply. Mr. Antonio.

(Note: At this time, Quirino Antonio, Deputy Manager, Department of Water Supply, came forward to address the members of the Commission.)

CHR. HAITSUKA: Mr. Antonio, you are the Deputy Manager of the Water Department. You are here to give testimony on this Charter Amendment.

MR. ANTONIO: Yes, I'm here representing our Manager, Mr. Milton Pavao of the Department of Water Supply. Basically what this amendment is, is a matter of making it more consistent with the other counties, Maui, Oahu and Kaua'i, where the manager of the departments are "Manager-Chief Engineer." It also reinforces the requirement that the manager be a registered professional engineer.

CHR. HAITSUKA: Thank you. Are there any questions for Mr. Antonio? Thank you, Mr. Antonio. Is there any discussion on the Charter Amendment, CA-1? In speaking with our attorney, the procedure for handling these proposed Charter Amendments is to refer them to the Commission Attorney for a legal review. From there we'll bring it back again, after he has had a chance to review them, for a first reading. So, this is just an initial review, and then we'll send it to Mr. Hookano, if that is what the vote is. Is there a motion to send CA-1 for legal review to Mr. Hookano?

Mr. Shumway moved to send CA-1 to Commission Attorney, Mr. Levi Hookano, for review. Seconded by Mr. Nahale-a and carried by the following vote:

Ayes: Commissioners Fuertes, Kawauchi, Kealoha, Nahale-a, Shumway and Chair Huitsuka.

Noes: None.

Absent: Commissioners Honma, Jarman, Osborne, and Unger.

CA-2 RE: Data Systems

CHR. HAITSUKA: Next on our agenda is CA-2, Data System. This proposed Charter Amendment moves Chapter 2, Data Systems from Article V, to Article VI. It is just a reorganization of the Charter itself. Is there any discussion on this Charter Amendment? Do we have a motion to refer CA-2 to the Commission's attorney?

Mr. Fuertes moved to send CA-2 to Commission Attorney, Mr. Levi Hookano, for review. Seconded by Mr. Shumway and carried by the following vote:

Ayes: Commissioners Fuertes, Kawauchi, Kealoha, Nahale-a, Shumway and Chair Haitzuka.
Noes: None.
Absent: Commissioners Honma, Jarman, Osborne, and Unger.

CA-3 RE: Fire Department

CHR. HAITZUKA: Next we have Charter Amendment CA-3, relating to the Fire Department. Do we have someone from the Fire Department who wants to address this particular amendment?

(Note: At this time, Darryl Oliveira, Fire Chief, and Bill Brillhante, Deputy Corporation Counsel, came forward to address the members of the Commission.)

CHR. HAITZUKA: We have Chief Oliveira and Mr. Brillhante.

CHIEF OLIVEIRA: I guess all I would share would be that we support the proposed amendments, and that it aligns, or puts our department under the proper article, since we are under a fire commission at the present time. As with some of the language changes, this is a housekeeping measure.

MR. BRILHANTE: Mr. Chairman, that is correct. Currently the Fire Department comes under the Executive Branch type agencies, and it should correctly be held or identified under a commission. I think, since the last Charter Amendment, there was the creation of a Fire Commission, and now they have the responsibility for the appointment of the Fire Chief. That is why it is a housekeeping matter, just to be consistent throughout the Charter.

CHR. HAITZUKA: Alright, thank you. Do we have any questions for Chief Oliveira or Mr. Brillhante?

Mr. Nahale-a moved to send CA-3 to Commission Attorney, Mr. Levi Hookano, for review. Seconded by Mr. Shumway and carried by the following vote:

Ayes: Commissioners Fuertes, Kawauchi, Kealoha, Nahale-a, Shumway and Chair Haitzuka.
Noes: None.
Absent: Commissioners Honma, Jarman, Osborne, and Unger.

CA-4 RE: Mike Ben's Proposals

CHR. HAITSUKA: Gentlemen, since I have you here, next on our agenda is a proposal from Mr. Ben in which he recommends certain amendments to the Charter. One of them effects the Fire Chief. Are there any comments on that proposed amendment? Have you had a chance to review that proposed amendment?

CHIEF OLIVEIRA: Yes, and I'll support the change or proposal as it was submitted.

CHR. HAITSUKA: We have Mr. Ben here. Mr. Ben, do you wish to add anything further to your proposed amendments? No? Then is there any other discussion? Thank you Chief, thank you Mr. Brillhante. Do I have a motion to refer CA-4 to the Commission Attorney?

Mr. Shumway moved to send CA-4 to Commission Attorney, Mr. Levi Hookano, for review. Seconded by Mr. Fuertes and carried by the following vote:

Ayes: Commissioners Fuertes, Kawauchi, Kealoha, Nahale-a, Shumway and Chair Huitsuka.

Noes: None.

Absent: Commissioners Honma, Jarman, Osborne, and Unger.

ARTICLE IX: PROSECUTING ATTORNEY

CHR. HAITSUKA: Next on our agenda is discussion of Articles IX, X and XI of the Hawai'i County Charter. Starting with Article IX, the Prosecuting Attorney, I believe we have Mr. Kagami here.

(Note: At this time, Michael Kagami, Deputy Prosecuting Attorney, came forward to address the members of the Commission.)

CHR. HAITSUKA: Good afternoon, Mr. Kagami.

MR. KAGAMI: Aloha. With respect to Article IX, the only changes that Jay (Kimura) would like to propose relates to the functions of the office. Currently, Section 9-3 reflects the more traditional role of the Prosecutor; charging someone, going to court, doing the trial. He would like to see Section 9-3 expanded to reflect the more non-traditional role which is education, prevention; working with the communities to reduce and prevent crime. I'm not sure how the Commission works. Do you folks come up with the language, or do we?

CHR. HAITSUKA: I think if you have proposed language that you could submit to us, then we can consider it. The other thing is that we had some testimony from Ms. Wille that

related to the Prosecutor's Office, and we can forward that to you, and perhaps we can get your comments on her proposals.

MR. KAGAMI: Sure. Other than that, we really have nothing else to say.

CHR. HAITSUKA: Are there any questions for Mr. Kagami.

MR. NAHALE-A: I have a question. You know on those non-traditional roles, are those core functions that are covered by general funds? I know you guys do a great job getting outside grants to do a lot of that work with the communities. I'm curious as to how that is viewed in the office. When you get a grant, do you then expand services, for example? Or, is it something you do no matter what, and the grant just supplements.

MR. KAGAMI: It can be both. The grants can fund positions within our office that will focus on these types of non-traditional duties. Outside of that, if we don't have grant money, we do go out into the community without specific grant funding for it. We go into schools, and we participate in certain types of programs with the kids. We also work with community groups to look at the different issues in those communities like drug problems and neighbor disputes. We are trying to prevent crime too. It's not just prosecute and punish for us. It's trying to prevent and make the community safer without having to go that route where we have to go into court. So, it's both ways.

CHR. HAITSUKA: Any other questions for Mr. Kagami? Thank you, Mr. Kagami.

MR. KAGAMI: Thank you.

CHR. HAITSUKA: Article IX, Section 9-1, Election and Term of Office. Any discussion? Let's move on to Section 9-2, Qualifications. Any discussion on Section 9-2? Let's move on to Section 9-3, Powers, Duties and Functions. Any discussion?

MR. NAHALE-A: I'll offer a comment on that. I think the idea of expanding the role in the Charter is a good one. I would like to see those functions be a core part of the office. I think they've done a great job in that area, so I would be inclined to try to codify it more and say it has to be done. I'm curious though, how it gets funded. In my mind, if it's in the Charter, then it has to be a core function with staffing, and there are expectations that role is done.

CHR. HAITSUKA: Thank you, Mr. Nahale-a. Mr. Shumway.

MR. SHUMWAY: I was just going to add that I agree with what he said, and I would like to see if you guys could put together some language. It would help us, rather than talking in generalities, to be more specific. I think it's a really good idea, and it would be nice to see it in specific language. I would just ask those guys to do that, if they could.

CHR. HAITSUKA: Thank you. Any further discussion on Section 9-3?

MR. NAHALE-A: I guess a question too is, I'm curious, if we get a grant to do this kind of work, the position is out of the Prosecutor's Office. I know that Research and Development does grants sometimes too, I know grant writing is done by lots of different departments. Not that I want to get involved in micro-managing, but if we have civil service positions that are dedicated to those non-traditional functions, I think that's where codifying it in the Charter will ultimately lead us to. That's my assumption; that's the difference by putting it in the Charter, that there will be some civil service positions that do it all the time.

CHR. HAITSUKA: Mr. Kagami.

MR. KAGAMI: I just want to say that even though the position may not be within our office, we do house people that work with us in the job we do, and we house the position within our office. Currently we have a United States Parole Officer that is housed within our office, although he does not do our job or anything related to the State function. Currently, we house a Domestic Violence Coordinator that's a grant position that we also house within our office. So we do that, just for your information.

CHR. HAITSUKA: I'm hoping that the language that you can come up with will be a little bit more general. I don't think we want to impose any type of obligation other than specific duties that you can perform. It seems like more of a pro-active role.

MR. KAGAMI: The way I read Section 9-3 is to be as broad as possible, so as not to limit what we do.

CHR. HAITSUKA: Thank you. Mr. Fuertes.

MR. FUERTES: (inaudible)

CHR. HAITSUKA: Thank you. Are there any further questions? Thank you, Mr. Kagami. Let's move on to Section 9-4, Staff. Any discussion on Section 9-4?

MR. NAHALE-A: Just to have it on the record, your request to get some feedback on the testimony that was given today.

CHR. HAITSUKA: Yes, from the Prosecutor's Office. Let's move on to Section 9-5, Vacancy in Office. Any discussion on Section 9-5? Let's move on to Section 9-6, Removal of Prosecuting Attorney. Is there any discussion?

ARTICLE X: FINANCIAL PROCEDURES

CHR. HAITSUKA: Let's move on to Article X, Financial Procedures. Do we have anyone who wishes to address the Commission, anybody from the Department of Finance?

(Note: At this time, Deanna Sako, Deputy Director of Finance, came forward to address the members of the Commission.)

CHR. HAITSUKA: Good afternoon, can you please state your name.

MS. SAKO: Hi, I'm Deanna Sako, the Deputy Director of Finance. We are just here to answer any questions you might have. We don't have any recommendations to offer at this time.

CHR. HAITSUKA: So, nothing specific as to any particular section.

MS. SAKO: There is a grammatical error in the last section, but that's kind of minor, so we've learned to live with it.

CHR. HAITSUKA: That would be Section 10-14 (g).

MS. SAKO: Yes. "The director of finance shall finance shall require..." So, I think the "shall finance" needs to come out, but, we've learned to live with it over the years.

CHR. HAITSUKA: Is that in our version? It's been corrected. Do we have any questions for Ms. Sako? Thank you, Ms. Sako. Alright, Article X, Section 10-1, the Fiscal Year. Any discussion on Section 10-1? No discussion, let's move on to Section 10-2, Preparation and Submission of Budget and Capital Program. Any discussion? Mr. Shumway.

MR. SHUMWAY: I was just going to ask if we were going to consider the comment from Ms. Hecht.

CHR. HAITSUKA: The comment from Ms. Hecht was to add to Section 10-2 (a) a number (6) a requirement of a comprehensive financial report. Is there any further discussion on Section 10-2? Let's move on to Section 10-3, Scope of Operating Budget; Operating Program; Mayor's Message. Any discussion on this particular section? No discussion, let's move on to Section 10-4, Operating Budget and Capital Budget: Notice and Hearing. Any discussion? No discussion, let's move on to Section 10-5, Operating Budget: Council Action. Any discussion? Section 10-6, Capital Budget and Capital Program: Scope; Council Action. Any discussion? Let's move on to Section 10-7, Budgets: Public Records. Any discussion? No discussion, let's move on to Section 10-8, Appropriations: Supplemental and Emergency. Any discussion on this particular section? Ms. Kawauchi.

MS. KAWAUCHI: Mr. Chairman, I wanted to know if we could go back for a minute to Section 10-7. I'm sorry.

CHR. HAITSUKA: Alright. Section 10-7, Budgets: Public Records.

MS. KAWAUCHI: I was just looking at the last sentence of Section 10-7, where it states, "The operating budget and capital budget shall be made available to the county agencies and to interested persons, upon such conditions as the council may determine." I'm wondering if, one, I don't know how that's defined, what conditions; and two, if it really requires a council determination to release copies of the operating budget and the capital budget to the public.

So, I'm just kind of questioning that section. Maybe somebody from the department can comment on that.

CHR. HAITSUKA: Would that be someone from the Department of Finance?

MS. KAWAUCHI: Yes.

CHR. HAITSUKA: Ms. Sako, is that something you can comment on?

MS. SAKO: I'm not sure why that language is there, but after the final budget is approved, or even throughout the budget measures that come before the Council, it's up to the Council to release the actual copies. The only reference that I can think of is whether they charge or not for those copies. The only clarification is that we would like to make sure who is responsible for getting the public the copies that they wish to acquire.

MS. KAWAUCHI: So, there's no question as to whether or not a member of the public can receive a copy, it's just more of how to assess costs and who is supposed to distribute that copy.

MS. SAKO: Yes, and Levi may know of other courses of action, but for Finance, we just always refer them to the Council to get the copies of the budget.

MS. KAWAUCHI: To the Council Clerk's Office?

MS. SAKO: Yes, the County Clerk's Office.

MS. KAWAUCHI: Excuse me, County Clerk's Office. I just think that section could be made to--someone could look at that and think it requires a vote. It doesn't really specify as to the procedure to obtain, it just says, "...upon such conditions as the council may determine."

CHR. HAITSUKA: Mr. Hookano, can you comment on that, as far as what the process or procedures are for releasing copies of the budget. Thank you, Ms. Sako.

MR. HOOKANO: I've never actually looked at that section so closely to have seen that. This is the first time I have seen that condition that the Council may require. But, as far as I can tell, at this time, it's the fees. It's a public record, it's a public document, and it would just be the copying fees that's required of it. I think that's contained in our County Code.

MS. KAWAUCHI: It's contained in the Code.

MR. HOOKANO: The County Code contains the fee schedule for document requests.

MS. KAWAUCHI: I'm just wondering if we should be striking the last section of that section, "...upon such conditions..." and inserting a section there that talks about how public records can be made available, with reference to the County Code for fee schedule. It just

sounds and looks as though there might be Council approval required, or they can adopt conditions to allow somebody to have it. It should be public record, that's all I'm concerned about.

CHR. HAITSUKA: Mr. Brilhante.

MR. BRILHANTE: Just to clarify, under the Uniform Information Practices Act (UIPA), any request made to a governmental agency here in the State of Hawai'i has a certain time frame and certain requirements need to be done or transpire in a certain amount of time. We don't have the opportunity to deny a request. Therefore, we are interpreting this language to say that "...upon such conditions..."--I think the reasonable interpretation would be to identify this as the financial requirements, as far as copies go. That's about the only latitude we have under the UIPA, as it relates to requests for public records.

MS. KAWAUCHI: Okay, so, in other words, what you are saying is there are checks in place that won't prevent a member of the public access to budget information, which are considered public records. Therefore, this section can only be interpreted to mean that the Council has an opportunity to set the fee schedule for photocopying.

MR. BRILHANTE: Well, not the Council. The County (Code) Charter sets the fee schedule that we comply with as far as public records requests. I hate when we use words like "only."

MS. KAWAUCHI: But, this section says, "...upon such conditions as the Council may determine." So, you're saying the Code will allow for the fee schedule, not the Council.

MR. BRILHANTE: That's correct.

MS. KAWAUCHI: Then is this section even relevant, can it be stricken without any injury to governmental operations or the Charter?

MR. BRILHANTE: That is something I would defer to Mr. Hookano.

MR. HOOKANO: The fee schedule in the Code was passed by ordinance by the Council. That is how the Council would impose the condition of fees, through an ordinance. With regards to striking this language, I would rather look at it a little closer, rather than making a decision now on how it would affect it. I can see Mr. Brilhante is correct, the open records laws from the State mandates that this is public, but the OIP, Office of Information Practices, also mandates that we charge fees for copies.

MS. KAWAUCHI: So, I'm interested in knowing whether we need that last--I hope I'm grammatically correct to reference it as a "clause"--if we need that last clause or not. If we strike it, would it have any negative affects to the County and its operations? Leaving it in, to me, leaves it to question as to whether or not the Council can set other conditions, and whether the Council's decision to set further conditions is lawful or not. That's kind of a separate question.

CHR. HAITSUKA: Do you have a comment to that, Mr. Hookano?

MR. HOOKANO: Just whether the Commission would like me to research that, or not.

MS. KAWAUCHI: Yes, I would.

CHR. HAITSUKA: Why don't we refer that to Mr. Hookano? Thank you, Mr. Brillhante. Any further discussion on Section 10-7? Section 10-8, any discussion on Section 10-8? Section 10-9, Appropriations: Reduction and Transfer, any discussion? No discussion, let's move on to Section 10-10, Lapse of Appropriations, is there any discussion? No discussion, Section 10-11, Payments and Obligations Prohibited: Verifications; Penalties, any discussion on that section? Let's move on to Section 10-12, Special Funds, any discussion on that section? No discussion, let's move on to Section 10-13, Post-audit. Any discussion on that section? Section 10-14, Centralized Purchasing, any discussion?

MR. NAHALE-A: Sorry, Mr. Chair, can we go back to Section 10-13?

CHR. HAITSUKA: Yes, Mr. Nahale-a.

MS. KAWAUCHI: Before we move on from Section 10-13, I'm wondering how the Post-audit relates to the Special Auditor function that we talked about previously. That is contained in--there was an Act that created---

MR. HOOKANO: Are you referring to Section 3-18, the Office of the Legislative Auditor?

MS. KAWAUCHI: Yes, I think so. How does this relate to--how does the power to Post-audit relate to that? Is the need for a Legislative Auditor that is a separate function from the Executive Branch, and so the Legislative Auditor functions independently, as opposed to asking for a post-audit of any work? I'm trying to figure out the necessity for a Legislative Auditor versus having this post-audit, if the functions are separate enough. Do we need both?

MR. HOOKANO: Would you like me to see if the Legislative Auditor is in her office at this time? Maybe she can answer these questions.

MS. KAWAUCHI: Is that okay with the Chair?

CHR. HAITSUKA: Yes, it's fine. Why don't we take a quick recess, about 10 minutes?

MS. KAWAUCHI: Thank you.

RECESS: At 2:35 p.m., the Chair called for a 10-minute recess.

RECONVENE: The meeting was reconvened at 2:50 p.m.

(Note: At this time, Colleen Schrandt, Legislative Auditor, came forward to address the members of the Commission.)

CHR. HAITSUKA: Thanks for coming out today.

MS. SCHRANDT: No problem, it was a long walk across the hall.

CHR. HAITSUKA: Ms. Schrandt, we were discussing Section 10-13, and the connection with Section 3-18. I don't know if you've had a chance to look at Section 10-13?

MS. SCHRANDT: I'm fairly familiar with it.

CHR. HAITSUKA: Ms. Kawauchi.

MS. KAWAUCHI: There is just a question between Section 10-13, and as Chair Huitsuka just stated, Section 3-18. Section 10-13 refers to post audits, independent audits of accounts, and transactions of the County. And Section 3-18(d)(1) also makes reference to post audits. There might be other places in both sections that overlap, so we're trying to get some information on whether or not these sections can be read as the same acts. Is there overlap in the functions of the office?

MS. SCHRANDT: No, it is not an overlap in functions. What you have is, the way it is currently, and what this is trying to establish is, my office is responsible for procuring the independent auditor to do the annual post audit of the financials. Section 3-18(d) is actually referring to the responsibility for my office to actually go out and procure an independent auditor to perform the external audit each year. Section 10-13 is discussing the actual audit itself, the post audit itself.

MS. KAWAUCHI: Okay, so your role, the Office of the Legislative Auditor, also includes the role or the function of this post audit in Section 10-13; but, your function is also broader; it also includes other responsibilities.

MS. SCHRANDT: Yes, generally, and we were just discussing that. If you look at Section 10-13, and the fact that it is discussing kind of a level of independence. I don't think my office would actually ever conduct the post audit. What my office generally does is the more in depth auditing. The post audit is an audit simply in order for them to provide assurance on the level of accuracy or dependability of the financial statements produced by Department of Finance and by Management.

MS. KAWAUCHI: And there are two controls for that. One of them is already stated in Section 10-13 where it discusses an independent audit of accounts, and there is probably a second control for that. I believe there is some sort of regulation that disallows any type of institution from self audit, I think, on post audits. Maybe that's outside the scope of this, but that's my understanding.

MS. SCHRANDT: Section 10-13 does actually say that they cannot have any financial or personal, direct or indirect interest. I don't know how you would interpret that. I would not think that my office would attempt to do the post audit. Again, our focus is mainly to do the procurement, to make sure that they are independent. It would not be appropriate for Administration or Finance to procure the independent auditor. That is our role as far as that is concerned. We do the more in depth auditing that is not possible in an annual financial audit.

MS. KAWAUCHI: Okay, I understand. I have no further questions.

CHR. HAITSUKA: Are there any other questions of Ms. Schrandt? Thank you.

MS. SCHRANDT: I might add, the other questions that I have in regards to Section 10-13, I think that some of the language is maybe a little outdated. There could be some discussion as to whether language such as, "The audit shall include both financial accountability and adequacy of the financial and accounting system." I think that's a little outdated. There's a lot more to auditing requirements at this point, and I'm wondering if it would be better to make that language a little broader, and just state that it should be done in compliance with the recognized governmental auditing authority or standards. I don't know if Deanna has any thought on that, but I do think the language is a little outdated.

MS. KAWAUCHI: Mr. Chair, would it be possible to ask for some proposed language to be drafted and submitted to the Charter Commission for review?

CHR. HAITSUKA: Yes, I was wondering who to ask. Who would be appropriate to ask to provide that language? Ms. Schrandt, is that something that your office could provide?

MS. SCHRANDT: We'd be happy to go ahead and do that. We'll work with Finance and come up with some language.

CHR. HAITSUKA: Alright, thank you. Are there any further questions or further statements, Ms. Schrandt?

CHR. HAITSUKA: Thank you very much. Any further discussion on Section 10-13? Section 10-14, Centralized Purchasing, any discussion?

ARTICLE XI: INITIATIVE AND REFERENDUM

CHR. HAITSUKA: Let's move on to Article XI, Initiative and Referendum. Is there anybody here from the Administration to speak on that? Alright, let's go through this Article. Section 11-1, Powers of Initiative and Referendum, any discussion? Section 11-2, Definitions, any discussion? No discussion, Section 11-3, Petitioners' Committee, any discussion? Section 11-4, Initiative and Referendum Process, any discussion? Section 11-5, Initiative and Referendum Petitions: Forms and Sufficiency, any discussion? Section 11-6, Withdrawal of Petition, any discussion? Section 11-7, Results of Election, any discussion?

MR. NAHALE-A: I just want to thank the testifiers who gave information earlier on. When I was reviewing this section on my own, it seemed a little too detailed for my likes, but after hearing the background as to how it got developed, and why, I appreciate the work that went into it and I thank them for explaining the background.

CHR. HAITSUKA: Thank you very much. That concludes our New Business.

REPORTS

CHR. HAITSUKA: Next on our agenda is Reports, and we don't have any Reports.

REFERRALS FOR EXECUTIVE SESSION

CHR. HAITSUKA: Let's move on to Referrals for Executive Session, and we don't have any Referrals for Executive Session

ANNOUNCEMENTS

CHR. HAITSUKA: Next on our agenda is Announcements. We should discuss the next meeting. According to our rules, the next meeting should be scheduled for Friday, August 14, 2009 at 1:30 p.m. Does anyone know if that's a holiday? August 14, 2009, how does that look for everyone? Okay, let's stick with August 14, 2009 at 1:30 pm for the next meeting of the Charter Commission. One thing that I'm going to ask to put on the next agenda is to start discussion on scheduling the district meetings. We are getting close to the end of the year, and we need to get that scheduled.

ADJOURNMENT

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

There being no further business, at 3:01 p.m., Mr. Kealoha moved to adjourn the meeting. Seconded by Mr. Shumway and carried by the following vote:

Ayes: Commissioners Fuertes, Kawauchi, Kealoha, Nahale-a, Shumway and Chair Haitsuka.

Noes: None.

Absent: Commissioners Honma, Jarman, Osborne, and Unger.

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

Respectfully Submitted,

Karen Eoff, Secretary

Approved:

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