

COMMITTEE C  
CHARTER COMMISSION  
MEETING MINUTES  
MAY 7, 1992  
COUNCIL MEETING ROOM

PRESENT

Sherrilee Dodson  
Dolores Fabrao  
Victor Reyes  
Allan Sparks  
Anne Takabuki (Chairman)  
Lloyd Yonenaka  
Susan Nakano-Ruidas (Staff)

GUEST

Dave DeLeon

[NOTE: The minutes have been  
edited per Chair Takabuki's  
request; they are NOT VERBATIM]

I. CALL TO ORDER  
Chair Takabuki called the committee meeting to order at 2:01 p.m.

II. PUBLIC TESTIMONY  
None.

III. COMMITTEE C OVERVIEW/DISCUSSION OF RECOMMENDATIONS FOR AMENDMENTS  
TO ARTICLES 9 THROUGH 15, MAUI COUNTY CHARTER  
Chair Takabuki announced her intention to begin the meeting with  
Article 10, Code of Ethics and go through Article 13, going back to  
Article 9 if time permits. Article 9 is the budget; some of the  
outstanding issues on that include the biennium budget and the mechanism  
requested on trying to have CIP projects of the council implemented; and  
also lapsing.

Chair Takabuki: Article 10, Code of Ethics...starting with 10-1, Declaration  
of Policy. This stems from something Jim Smith brought up at a couple meetings,  
where he requested that it be clarified that the code of ethics does apply to board  
and commission members. We also talked about the creation of some authority that  
would oversee all the actions of the boards and commissions -- I don't know how that  
would ever work, but we can also discuss that.

Number one, proposals to clarify application of the code of ethics  
to board and commission members -- under Article 13, an officer is a member of a board  
or commission so it does apply...I think he had a point that it's not really set forth  
in the code of ethics. I have no problem with including some kind of phrase in the  
policy statement. Any comment?

Reyes: Just one thing...at one of the public meetings there was a comment  
that if those boards and commissions are not really key decision making ones, like street  
naming and things like that, some of the disclosure forms are intimidating and those  
should be waived for those types of commissions. I just want to make sure that it is  
noted again...I think it makes sense. Now, the mechanics of that...how we're going to  
separate boards and commissions that are not key decision makers versus key decision  
makers where these disclosure forms would apply...I don't know, but I think it's worth  
noting...the point is well made.

Chair Takabuki: The way it would apply under the current Charter, the only boards  
and commissions that this code specifically applies to are those established by the  
Charter; so, if it's an outside board or commission established by ordinance, that  
requirement to file is established by council. If you would say all of those boards and

Chair Takabuki: (Continued) commissions listed in the Charter have substantial authority, then all of them are subject to the code of ethics as listed in the Charter; and the other boards and commissions are dealt with by council ordinance. It's a little confusing... The comment was that having to file this [disclosure form] may be discouraging...and it may be, but at least it's confidential though; it's not as if anyone can look at it, it's only the board of ethics. And the other thing, to me, filing it really protects you because you have brought something to the attention of the board, and should anything later develop...either you would have disclosed it... You can look at it both ways...it might be a hassle, but in the long run it might protect the person filing the disclosure.

Reyes: It's just taking into consideration some people's philosophy... it might be a good person to serve in that particular board or commission, and if it discourages the person...we might miss or lose the service of that person.

Fabrao: You're going to have to determine which ones would have to and which ones would not have to [file a disclosure form]...some would be covered under the Charter and some would come under the council. Somewhere along the line there might be an instance where there would be a conflict if you didn't disclose...it would be kind of hard to distinguish which ones would have to and which ones wouldn't have to, I think.

Getting back to the original question, Mr. Smith was quite explicit about adding in the board of variance and appeals, the board of water supply, the planning commission, liquor control adjudication board and police commission...I just have that as a note. He wanted to elaborate on these employees and boards, but I don't know if you want to do that...

Chair Takabuki: I don't know if we'd want to list it right there...to say all boards and commissions established by this Charter should do it.

Fabrao: It's all encompassing that way.

Reyes: Right.

Chair Takabuki: If there's no objection to number one, let's move ahead to number two. The proposal here relates to the time required within which the board must render an advisory opinion...this comment came from some prior members of the board that I knew and also from some attorneys that staffed the board. The problem there is that they've often had a difficult time with the thirty day period, with having meetings only once a month and having quorum problems, and a lot of other different difficulties. They have had difficulty with rendering during that period, and under the Charter if you fail to do so, then it's deemed a filing of no breach. So, what we'll suggest is that that be extended some...not much, but some...just to allow a little more time to have maybe that second meeting if they need to have one, or you can bring in the person and you can talk to them, find out more information, and you have time to actually render it. I don't think it's unreasonable to add fifteen days, but I would also think that we'd need to note that in cases where the issue has to be dealt with in a shorter time, the board should do so. Say you're trying to get an opinion on something that's going to happen three weeks from now, you cannot wait forty-five days because the event occurs... so with that stipulation, I wouldn't have a problem with a forty-five day opinion period.

Yonenaka: Yeah, that's no problem.

Fabrao: Yup...if we went with your recommendaton to...

Chair Takabuki: We need to state either in our report or somewhere that if it requires a faster type of action, that it should be done so.

Chair Takabuki: (Continued) Under 10-3 Financial Disclosure...the amendment would be to put the language in such a way that it would include commissions and boards established by this Charter...to clarify that. What happened here is somewhere along the way...I guess the Charter was written very specific as to what boards were covered...but as boards change, like when the Molokai Planning Commission was added and a few other commissions were either changed or added, that language becomes outdated. So, the thought was that it should be general...that any kind of board that is established by the Charter, and any new board also, would be included under this requirement to file financial disclosures. So, it's really just a clarification.

Reyes: I think it goes along the lines as number one, so that makes sense.

Chair Takabuki: Number four, Prohibitions...this one comes from the board of ethics and what he [Reverend Kaneshiro] was suggesting was that subsection 1.d. be amended so that representation before a department would not always, in every case, constitute a violation; and the reason for that is that some people are with non-profits and are having difficulty appearing before an agency, or even accepting an appointment, because it would restrict them. And, I think the point is well taken, but I just wasn't sure of the exact language...so that we need to work out; but the concept, to me, doesn't seem to be wrong...as long as we keep it narrow enough, so that it really only applies to those who are involved in some kind of non-profit or some agency or other organization that really wouldn't pose a conflict.

Yonenaka: This is from the board?

Chair Takabuki: Yes; they wanted to narrow that item d, because right now it would prohibit any of us from going before another agency...

Reyes: So is this more of a clarification of the intent of that subsection?

Chair Takabuki: If that be the intent, I guess it would be...unless when they adopted this they meant it to be that broad, but I can't imagine that. It has nothing to do with a particular board or agency that you're serving on...to me, it really shouldn't be a problem.

Fabrao: If you had any kind of a business and you were serving on a board that does not make any decisions about that business, there shouldn't be any conflict...am I getting it correct?

Chair Takabuki: I think he's addressing it more to a...not really a business interest...it's an outside interest, such as serving on a charitable organization...That's the way I read the minutes...that he wanted to narrow it to non-profits. [See minutes of April 2, 1992.] The reason we brought this up, he says, is because people who serve...and we're looking at not only employees, but on behalf of those citizens who serve on boards and commissions...and he goes on to say he'll use himself as an example. "I serve on the board of ethics, but according to the current wording, if my church, Pukalani Baptist Church, were to need to ask for a variance or need to have some kind of approval, I would not be able to appear on behalf of my church...even though I have nothing to do with the planning commission or the building inspection. And so what we wanted to do was very similar to what the state does...that you cannot appear if you having something to do with that body..." but in other situations, that you could, basically.

There's another one..."We have other situations where a member of one of the boards, say he's self-employed, a one man business, so he's serving in a

agency on one of the boards



STATUS REPORT OF COUNCIL'S APPROPRIATIONS AS OF JANUARY 16, 1992

DEPARTMENT	APPROPRIATION	STATUS
<b>Department of Planning</b>		
Planner V, Long Range Planning	21,912	pending, filling existing positions first
Clerk Typist III, Long Range Planning	12,456	pending, filling existing positions first
Desk	440	pending
Executive Chair	325	pending
Desk w/ return	650	pending
Steno Chair	290	pending
(2) pcs & (1) printer	10,000	pending
File cabinet	320	pending
<b>Department of Police</b>		
Sergeant, W. Maui Crime Reduction Unit	22,976	pending, need to hire and train
Police Officer II, W. Maui Crime Reduction Unit	18,832	pending, need to hire and train
Police Officer II, W. Maui Crime Reduction Unit	18,832	pending, need to hire and train
Firearms Replacement, Phase I	60,000 ?	
Equipment for Police Box, Lahaina	3,200	port. radio contract will include one for Koban
Vehicle, W. Maui Crime Reduction Unit	18,500	pending
Mobile Radio, W. Maui Crime Reuction Unit	3,000	processing contract
Portable Radio, W. Maui Crime Reduction Unit	2,500	processing contract
<b>Department of Fire Control</b>		
Fire Fighter I, Kahului	16,600	processing papers
Fire Fighter I, Molokai	16,600	processing papers
Meal Allowance	702	pending
Uniform Allowance	400	pending
<b>Department of Human Concerns</b>		
Transportation Services	460,000	implemented
Child Care Program	20,000	implemented
Community Development Corporation	150,000	pending, contracting Marvin Awai
Homeless Shelter Grant	75,000	implemented, Maui Catholic Charities
Lae 'Ula O Kai Program	8,000	pending, discussion with Parks
MEO Headstart Summer Pilot Program, Molokai	40,000	implemented contract
Maui Youth & Family Services, Maui & Molokai	112,420	implemented
Spay-Neuter Program	40,000	implemented contract with Maui Humane Society



STATUS REPORT OF COUNCIL'S APPROPRIATIONS AS OF JANUARY 16, 1992

DEPARTMENT	APPROPRIATION	STATUS
<b>Department of Parks &amp; Recreation - Gen. Fund</b>		
Qualified Rehabilitation Facilities		
Lahaina Restoration Foundation	359,835	implemented
Lanai Recreational Facilities, R & M	41,500	implemented
Moku-ula Restoration, Lahaina	100,000	haven't started
Paia Community Center, refrig & stove	100,000	pending further review
	1,400	implemented
<b>Department of Parks &amp; Recreation - Golf Fund</b>		
Waiehu Golf Course, 2 yr Master Plan	100,000	haven't started
<b>Department of Public Works - Gen. Fund</b>		
Maunaloa Cemetery Maintenance	3,000	pending purchase of equipment
Seaweed Removal Program	100,000	cleaned Kahului Harbor & will use funds as needed
<b>Department of Public Works - Sewer Fund</b>		
Wainee St. Sewer, between Dickenson & Shaw	100,000	Corp. Counsel deemed not maintenance type job
<b>Department of Public Works - Solid Waste Mgt. Fund</b>		
Molokai Recycling/Composting Program	77,000	pending development of goals/implementation
<b>Capital Improvement Projects</b>		
Hana Community Center Renovations	50,000	ongoing project
Iao Theater Acquisition	650,000	pending in court
Kahului Park behind Maui High	50,000	land owned by State, threatening to take back
War Memorial Pool Removable Shading	50,000	pending development of specifications
Drainage at Front Street and Shaw Street	101,380	haven't started
Luakini Street Drainage, b/w Hale & Prison	145,000	haven't started
Napili Fire Station	20,000	implemented
Police Box on Front Street	20,000	working with Kiwani's, community svc. project
Police Station Roof Improvements	100,000	pending development of scope of work
Lanai Gym Improvements	250,000	haven't started
Kaunakakai Gym Parking Lot	21,000	haven't started
Skateboard Park, Molokai	50,000	hired coordinator
Skateboard Park, County-wide	100,000	hired coordinator

STATUS REPORT OF COUNCIL'S APPROPRIATIONS AS OF JANUARY 16, 1992

DEPARTMENT	APPROPRIATION	STATUS
Paia Road Improvements	100,000	haven't started
Makawao Road Improvements	200,000	haven't started
Baldwin Avenue Improvements	500,000	pending, contract consultant
Makawao Avenue Sidewalks	80,000	pending, \$ will relocate utility poles
Waiale Road/Mahalani St/Eha St Design	300,000	pending, contract consultant
Lahainaluna Road Shoulder Swales	110,000	haven't started
Lanai Road Improvements	300,000	haven't started
Molokai Road Improvements	550,000	haven't started
Molokai Misc Roads	279,600	haven't started
Maui Community Arts & Cultural Center	1,000,000	pending bond authorization
S. Maui Beach Acquisition/Development	1,400,000	pending bond authorization
Kihei Town Road Improvements	2,000,000	pending bond authorization
Kihei WWRF Odor Control Improvements	75,000	pending bond authorization
Honolua Watershed Project	250,000	pending bond authorization
Central Maui Office Building, Kihei Parks Development, Napili Regional Park, Waiehu Sewer Plant/Transmission Lines	1,400,000	pending bond authorization
Composting/Recycling Facility, Lahaina WWRF Expansion, Wailuku-Kahului WWRF Expansion	11,000,000	pending bond authorization

Chair Takabuki: (Continued) capacity on one of the boards, and he has to appear because of some business maybe, he has to go for a building building permit...right now, he can't; he'd have to hire someone to represent him." So there is, in some cases, a business connection that would be restricted.

Reyes: So it's more like a clarification where there's really no conflict, because the intent of this is to prohibit situations where there is an existing conflict of interest, and what it's trying to do...for those specific cases...when a person by technicality would be prohibited from doing so...I would tend to say it makes sense.

Chair Takabuki: The way it's stated does basically apply to two situations...and if it's related to an official action taken or expected to be taken, then that would be a problem; but if it's not related, then I think what we're trying to say is that it's not an issue.

Reyes: Let's say we agree with, I think we have to be careful with the language because there are different grades...one extreme is there is no conflict, and the other extreme is there is a conflict...what is in between? That's a gray area...how are you going to define that if you change the language? That's the only thing I have a problem with if you change the language.

Chair Takabuki: You're right; we're going to have to be very careful. But, the concept seems to be acceptable?

Reyes: Yeah, yeah.

Fabrao: I have difficulty reading this...it says revise subsection 1.d. to prohibit...so, which prohibits? Subsection 1.d. prohibits...

Chair Takabuki: Right now it prohibits such a wide range of activity, so what the board was saying is they only want to prohibit certain kinds of activity, and not all. They phrased it as a prohibition because that's the way the Charter is written.

Reyes: I think what confused Dolores is the words 'to prohibit.'

Chair Takabuki: We have to be careful how it's phrased because 10-4 is prohibitions. Anything you put in there is prohibit, right...anything you put in there is a prohibition. Or, we could add to that at the bottom to say that provided that certain situations...and clarify which situations are not deemed to be a violation. I guess we'll just have to work up language later, but the concept...is there any objection or thought about the concept?

Fabrao: No, just that the language needs to be very specific.

Chair Takabuki: Right; so I'll make a note of that. The next one is also from the board of ethics...they wanted to expand subsection e. to include county time, facilities and equipment.

Reyes: Instead of just property or personnel.

Chair Takabuki: Property, to me, is broad...and I think Bob had a point in the minutes that if you start to narrow it, you might really confuse the issue. For instance, if you say equipment specifically...I don't know if you are really narrowing instead of leaving it overly broad. Right now equipment would fall under county property anyway...so that's kind of an issue, whether that would be more of a problem to be specific.



Reyes: Right now we're not aware of all potential situations and we might loosen the net and have a problem later on.

Fabrao: What was his rationale for wanting to include this specific...

Reyes: Time...

Chair Takabuki: Well, he said... Time, I can agree with; I don't have any problem with that...

Fabrao: Because property, equipment, facilities are all property...and so only time would be... You don't need to put equipment, I think. Time, property and personnel...that would be all-inclusive.

Reyes: Because if you narrow it down to equipment, like you said, we don't know what situation would arise in the future, and we have created a problem rather than...

Chair Takabuki: Yeah, I was concerned about including facilities real specifically, because that draws attention to use of a community center, or something like that, which is a clear facility; but, does that mean a person cannot use it for personal use like any other citizen...because they are an employee? That doesn't make sense. So, I would go along with you, Dolores, that we should probably just include time.

Reyes: Yeah.

Yonenaka: Yeah.

Chair Takabuki: Okay. Number six is also a board of ethics recommendation, relating to lobbyist registration. All they are asking for is some recognition in the Charter that they should receive and file these registrations. I think that's fine to receive and file, but my thought was that perhaps they should go another step and make sure there's some format to it. We wouldn't want to put in the Charter what a lobbyist is and what kind of forms they must file...that's getting too specific; but I think somewhere along the way it probably should be stated that there's an expectation that there will be some requirements established.

Yonenaka: Do they have an ordinance yet?

Chair Takabuki: There is an ordinance right now, but it doesn't set forth specific requirements...it's very vague.

Yonenaka: And who do they file with?

Chair Takabuki: They're supposed to file with the ethics board under the ordinance. But, nobody's drawn attention to it, so I think Maile was saying she's only seen a couple. In fact, they didn't even know what to do with it when they got it...

Reyes: You mean there's only a few lobbyists in the county?

Chair Takabuki: I'm sure there's more than that!

Yonenaka: There's a lobbyist right there [referring to Fabrao].

Fabrao: What is a lobbyist? Do we have a formal lobby-lobbyist? Are they

Fabrao: (Continued) formal positions? A lobbyist is anybody who wants to go and try to influence...

Chair Takabuki: Who tries to influence an official. You can lobby as a private citizen, that's not a problem...but if you represent someone else and you come to the council and try to lobby them, then you would have to register.

Fabrao: Was there anything specific that happened that they thought they should have this put in the Charter?

Chair Takabuki: No, I just think they were a little surprised to get one or two lobbyist registrations and didn't really know what to do with it. And, there are no guidelines for it; so, it's hard to say a lobbyist, once they file, is complying... You might even say why file, if you don't have any requirements; because in Honolulu, if you look at their ordinance, they have certain amounts of compensation levels, or how much you paid for lobbying that you have to disclose, you have to disclose the reasons for it, the relationships...I mean, there's a whole format for it. And here, in Maui County, we have nothing...you just basically file that I'm a lobbyist and work for so and so, but you don't have to file how much you were paid in the course of being a lobbyist; all those other things that all the other counties have. I don't know...are we big enough to require that? Probably.

Fabrao: I guess this "pursuant to requirements established by ordinance" ...if it's already in the ordinance and it's not specifically written down as to the specific requirements, I guess if the matter comes up the council could always address it. Then this would be enough...

Chair Takabuki: I think so; to leave it open so they can set these requirements, but there should be something...it shouldn't just be register, file and then it's forgotten. Some counties require you to file annually, an update...disclose...

Reyes: Right now the procedure is technically if you're a lobbyist you have to register, and it's received by the board of ethics...but it's under an ordinance rather than the Charter.

Fabrao: The thing is they don't know what to do with it.

Chair Takabuki: Yeah, and all they've done, I think, is just filed it without really determining if it says much of anything...because there's no guidelines. Do we have a Maui County Code around here?

Dave DeLeon: I can get you one.

Chair Takabuki: Yeah, could we look at it? We might as well look at the ordinance real quick...

Yonenaka: So if we say we're going to add this section to include within the board's authority receipt and filing of a lobbyist's registration, then we'll leave it up to the council to set the ordinance.

Chair Takabuki: I think so.

Yonenaka: I think that's fine; even if it's junk, at least it's something...

Fabrao: Well at least it's something that leaves room for expansion...

Chair Takabuki: Right; then they can change it as the situation warrants.

Fabrao: It's kind of like being prepared for the eventuality. Obviously they are concerned about it, because ethically, they don't know what to do with it. I wonder if there's been any kind of problem though...

Chair Takabuki: I guess the whole idea is to know when someone comes up to the microphone, or testifies, or takes someone to lunch...that you know where they are coming from...

Fabrao: I just wonder sometimes when I lobby the council members, because I'm on the Charter Commission -- of course, I don't talk about Charter issues -- but, I talk about Lanai issues...I'm just wondering if sometimes they're thinking she's in conflict asking me this... I'm just a common citizen; I want to follow rules and regulations because that's what our lives are all about, but also at the same time, I don't want to have my thinking hampered...because of a possible conflict of interest...

Yonenaka: Is there any problem with ethics if a person is a lobbyist and is not registered, or doesn't disclose that when he talks to people?

Chair Takabuki: I don't know if there's any real penalty...

Yonenaka: If the person is a lobbyist and it is known that he has filed, if the person buys a round of golf for somebody, is that an ethics violation? As an individual you can do whatever you want...I mean, I could take the mayor and go golfing, but if I was a lobbyist...could I do that?

Reyes: That's probably the reason why you only have two applications filed right now.

Fabrao: There probably could be a Mr. So-and-so who could raise an ethical issue of that, but that's why I'm saying...we're serving in different bodies, in different commissions and boards...we all have ethical standards regarding our own work, but also at the same time we don't deliberately go in conflict of those standards that were set up for our own kind of work... So then, we're also still citizens then, so we shouldn't be hampered by all of that...if we're trying to do the common good...

Yonenaka: I think this is good, because it says here the ordinance should set up the definition of a lobbyist; and I think that will be interesting...that will be good.

[NOTE: MAUI COUNTY CODE WAS RECEIVED FROM DAVE DELEON]

Reyes: Is there a definition of a lobbyist there?

Chair Takabuki: No; it just says all lobbyists shall file...

Yonenaka: [Reading from the code] Lobbyist registration...this is the code 2.56.040 -- Prior to appearing before an executive or legislative body all lobbyists shall file a certified statement with the Board of Ethics, setting forth the name, mailing address, business telephone number and subject matter of the lobbyist. Lobbyists shall report any change in information contained in the certified statement within ten days of such a change. A lobbyist shall file a notice of termination within ten days of ceasing activity as a lobbyist. As used herein, Lobbyist means any person who engages



Yonenaka: (Continued) himself for pay or other consideration for the purpose of attempting to influence legislation or administrative action of the county. This is Chapter 2.56, Code of Ethics...and that was ordinance 1167.

Fabrao: So the criteria is for pay.

Yonenaka: Yeah, I think that's the definition.

Reyes: Boy, that consideration is pretty broad... You should have registered, Lloyd; and, you too, Dolores...

Chair Takabuki: Okay, are we pretty set on this lobbyist registration then? Shall we go along with that language to have requirements established by ordinance, and then leave it up to the council whether they want to go with a general one like it is now, or if they want to set different standards...requirements...

Yonenaka: Actually, according to that a big business owner is a lobbyist... an employee is a lobbyist...unions is a lobbyist...everybody that speaks is a lobbyist, if you take it to the consideration... But, that's okay; let's leave it up to the council.

Reyes: I don't know if including this in the Charter would solve the problem, or create more problems...

Fabrao: But just this general language...pursuant to the requirements established by ordinance...does not connote it's going to cause any more problems, it just leaves it open for the council to go ahead and set guidelines.

Yonenaka: Does any other Charter include a definition of lobbyist? Because I don't think that's a Charter provision, that's why.

Fabrao: Because it's adding a new section, that's why...

Chair Takabuki: It's adding on...either that or add on to the scope of powers... So, under 10-2, the board shall...and put that **after** e.?

Fabrao: Probably g. ~~te~~ Oh no, why couldn't that be...

Reyes: How about d.? Prescribe forms for the disclosures provided for in this section and implement the requirements of this disclosure provision...because this deals with disclosures anyway...including the receipt and filing of lobbyist registrations. Would that make it cumbersome? Instead of adding a new subsection, or sub-subsection... instead of adding g. or extending it to g., does it make it cumbersome? Because d. right now provides for disclosures... I don't want to make the Charter too long... Anne, you're a lawyer...

Chair Takabuki: Yeah, why don't we take a look at it... As long as the concept is okay, and then we'll try to see where it fits best...it might be that we could add it to one section. What we could do...Victor, you brought up the point that maybe we don't even need to address it in the Charter... Why don't we just say that the concept's okay, if it's appropriate for the Charter, and then have Paul or corp counsel, or whoever's going to do the final revision...determine whether it's okay, if it's a problem, or if it shouldn't be mentioned. I don't see it in here...I don't think it poses a problem so much...it just draws attention to it; and, if that's the idea, that it is important enough that it should be in the Charter, then we should put it in...

Chair Takabuki: (Continued) Reverend Kaneshiro, when he came to the commission, said that he thought that it was required of the board to receive and file lobbyist forms...somewhere else in the Charter, but it doesn't appear specifically in this code. So his thinking was that it was in there already, but it should be in their section...or in the Article 10. But in reality, it's in the ordinance and it's not in the Charter; and, should it be in the Charter? I'll make a note that we should double check with the attorneys...

Fabrao: It doesn't have to be a real big statement...it just needs to mention lobbyist somewhere with the disclosure thing...because that's what they are disclosing -- that they are lobbyists.

Reyes: My problem with that is the way a lobbyist is defined, as Lloyd read...it's so broad, and it doesn't make much sense...

Chair Takabuki: I think that's the point, too...council should look at the definition and try to make good exclusions that make sense...

Reyes: Once you put it in the Charter, then...

Chair Takabuki: They'll be forced to look at it. So, what is the consensus then?

Fabrao: I feel the lobbyist should be mentioned somewhere in the Charter, since they are concerned about that; and if it's already addressed in the code...or ordinance, then it would seem like it's kind of after the fact, but it should be [included] because they have that question...it should be somewhere mentioned. If it's not a new section, in addition to or add to one of the subsections of 10-2.

Reyes: That's the same issue as the salary commission reviewing the salaries of appointed positions and the elected positions, and I think that we discussed that last week...and we decided to just leave it the way it is...give them their prerogative to withdraw it at a later time. The rationale that it's already in the ordinance, why don't we put it in the Charter, so the salary commission has really a way to handle these salary problems within the county...and, if it's the same thing as is being followed here...should we or shouldn't we?

Chair Takabuki: I don't think there is any harm in putting it in, personally. I know on the salary commission, if we had put that language in we would have been taking away the discretion of the council to come back and look at that issue...they did delegate their authority to the salary commission, but if we specified that the salary commission then has that authority, then we've wiped out the council's ability to ever deal with it again.

Reyes: It's the same thing over here...right now it's under an ordinance...where if you put it in the Charter...you create bigger teeth than the mouth...

Chair Takabuki: Well, it's consistent...I don't think we're changing the scope of authority, because they already have it.

Reyes: If it's for consistency, I agree.

Yonenaka: Yeah, I don't think we're doing anything unusual. I would assume the definition for lobbyist, and possibly even requirements, may change over time. And, I think we should give that flexibility to the legislative side...

Reyes: See that's my problem now...because the way a lobbyist is defined and you put it in the Charter...I have a problem with that.

Yonenaka: I don't think the Charter was intended to define...

Chair Takabuki: A lobbyist...I agree.

Yonenaka: But I think it would be okay if we just put in receipt and filing of lobbyist registrations.

Reyes: As long as there's consistency, it's okay with me.

Fabrao: That's what we were trying to work at...

Yonenaka: And all we're doing is finishing it.

Fabrao: Because the Charter itself is only one little book...look at the ordinance! The ordinance is the working material of the Charter...

Chair Takabuki: Okay, then...at this point we're saying let's put something in there...in accordance with what the board said.

Reyes: Yeah.

Chair Takabuki: Seven was the one, according to the Reverend, they had really wrestled with and some people on the board of ethics said maybe they shouldn't be getting into this area. They weren't sure whether this was within their authority to require... that a person who's an officer or even an employee, whether they must disclose their position or where they are coming from when they come to a group type of meeting.

Yonenaka: I wasn't quite clear when I was reading that stuff...it says when appearing in public at public meetings... I think if anyone speaks at a public hearing maybe they should disclose it. Appearing is, again, a definition...

Fabrao: You mean just being there, but just being there doesn't say anything...

Yonenaka: Yeah, but there are times when being there is saying a lot.

Fabrao: Yes...

Chair Takabuki: That's true; that's a good point...

Yonenaka: Although I think that would be...I mean, you can't regulate that. I think if we had something that said if a person speaks at a public hearing, and they are officers of the county...

Fabrao: They should identify themselves.

Reyes: Look at it this way...isn't this proscribing a rule or a procedure during a public meeting? I mean, do we have to control...does the Charter have to control the rules or the procedure during a public meeting? You can't, right?

Chair Takabuki: I think you're trying to proscribe the person's conduct when they go out in public, but I...



Fabrao: Especially if they are serving in a special capacity...even though it's their off time... Who's that person who always identifies himself and says 'I'm speaking for myself now'...

Reyes: That's Walker...because his position is very sensitive, he always...

Fabrao: He's the republican party head, or something like that.

Reyes: Republican leader; but, he's aware of his position...for county employees or officers...you'd need a training for them that whenever they speak at a public meeting they should identify themselves.

Fabrao: But, you know, if you're an employee, you don't have that kind of power anyway to proscribe or to say that they are speaking for the department...so I don't see what they are trying to...

Reyes: That's what I was trying to say with my comment...if you tried to put this in the Charter, you might be inclined to say this is how public meetings should be. If there is anyone who is a county employee or officer they have to identify themselves. That becomes a procedure of public meetings, and I'm not sure...

Fabrao: I don't think I like that, but I do know that in any kind of meeting, for instance you have a department of education meeting, any official who is there... like Lokelani Lindsey, when she speaks it's authoritatively from the school and it's in a public meeting...so those kinds of things, it's a given. So, I don't know why we have to put it in the Charter...

Chair Takabuki: What if she goes to a community association meeting and she's there and people don't know whether she's speaking as the D.O.E. or... I think that was what they were wrestling with...whether they were overstepping or not; but sometimes the public does need to know where you are coming from. So it's trying to make it narrow enough so we're addressing the problem, but yet not requiring everybody, like Victor says, to go up and say 'I work for the county public works department'...you know...

Fabrao: Maybe you could just specify for department heads or anybody...

Reyes: If you put it in the Charter, if someone is crazy enough, you could have the kind of frivolous...'hey, Charter violations, Charter violations.'

Fabrao: They could easily get one on you just for one innocent thing.

Chair Takabuki: I can go along with them saying that anyone who has substantial discretionary authority should disclose, but not make it must...because there will be cases, like Victor was pointing out, where you might just inadvertently not do it; and someone shouldn't be able to say 'you're in violation of the Charter...you should be impeached'... I can go along with narrowing it, but that's a good point; you don't want to have it too broad.

Fabrao: Or too specific, either...

Chair Takabuki: So if we make it more like should, but not must...or shall...

Fabrao: Why put it in the Charter then if it's going to be a should? Just as kind of a reminder, like a please note kind of thing?

Chair Takabuki: I guess if you come from the viewpoint that the ethics code is to promote the public's faith in what government officials do, then I guess there's a good reason for putting it in the Charter...if it does really promote that. Would you feel better if an official comes before you and says 'well, I work for this department but I'm here as a private citizen;' you would feel better, right? If that does promote more confidence in government, maybe there's a reason for it.

Fabrao: I guess it would depend on what kind of language you put in there. Because you say add a new section requiring any elected or...

Chair Takabuki: That was what the board proposed...to require, but in the recommendation I'm saying if we put it in, it shouldn't be so black and white...it should be more flexible, so that a person wouldn't be violating the code of ethics if they "forgot" or something, to disclose... I don't know; I think it's a good point that they brought up -- it's just how do you deal with it?

Reyes: Would you like to defer that to the whole commission on how we should...

Chair Takabuki: I think we have to make a recommendation ourselves...

Fabrao: In concept I like it, but not so restrictive as to...

Chair Takabuki: Maybe we should approve the concept again...and then wait for the actual language to make sure that we're all in agreement. But, the concept sounds okay?

Fabrao: Yeah, the concept is good.

Reyes: Yeah.

Chair Takabuki: What do you think, Lloyd?

Yonenaka: Yeah.

Chair Takabuki: Do you think it's being overly burdensome on the employee or official?

Yonenaka: I think it'll take a page and a half to describe the exact situations we want to...

Chair Takabuki: If someone has substantial or significant authority, then it should apply to that, but not to any employee, right? And the other part is whether they must or they should disclose...and I think we're saying they should, but if they don't...it's not going to be a violation of the ethics code.

Fabrao: If you put...requiring any officer or employee of the county with substantial discretionary authority... Then I can see...

Reyes: Like Dave...Dave is always with us; under this provision, Dave would have to identify himself at each meeting...

Dave DeLeon: I don't have substantial authority...

Fabrao: Yes you do...a direct line to you-know-where!

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Chair Takabuki: But for instance, see, if Dave came on this table and started to talk to us...is he talking as Dave DeLeon, executive assistant...or as Dave DeLeon, private citizen? So, wouldn't we want to know? If he's talking for Mayor Lingle... The provision that we're looking at is the board said that they wanted to make sure that somewhere in there it should be done in all cases...that someone with substantial authority should disclose it. Although, usually by practice, the chair would say please state your name for the record and who you represent...

Fabrao: I think that would do it...substantial discretionary authority; good language from our attorney...

Yonenaka: Yeah.

Chair Takabuki: So, we're in agreement on seven then...we'll look at the language, but the concept's okay.

Number eight...this came from Councilmember Hokama, and it had to do with his case...his particular court case, where a complaint was brought against him and I believe it was said that he was not in conflict, and that he could vote. What he's asking here now is to try and clarify that...

Dave DeLeon: There's always the Lanai provision... Can you imagine what would happen if for instance on the Lanai Planning Commission, you tried to find nine guys, or eight guys or even seven guys who don't work for the company? Because almost all requests would come in from the company...and you've got to have some employees on it, or it wouldn't be representative of the community... You're going to run into that sometime.

Chair Takabuki: That's a good point...

Dave DeLeon: I mean, the Lanai Planning Commission will have substantial authority and they'll be doing other things that the advisory committee can't do now... As a reporter I ran into that, I think it was in '83, when Goro was pushing for the development of the hotels there; I was ready as a reporter to jump all over him as an employee of the company...I hadn't realized--how are you going to get somebody elected on Lanai who isn't an employee of the company...

Fabrao: You can find seven and nine who don't work for the company...

Cockett: If they don't work for the company, who would they work for?

Chair Takabuki: State, county...

Fabrao: Private industry...probably entrepreneurs...

Dave DeLeon: You've got construction people now...

Fabrao: School teachers...there's enough.

Chair Takabuki: I don't know about this one, how we would phrase it. I can see the concern, but I wouldn't think we'd want to in every case say it's not a prohibition...I think there would be good cases where it wouldn't be a problem, but I don't know if in every case it should just be exempted. That was my only concern.

Yonenaka: Yeah.



Dave DeLeon: There's a statute of authority here in this also...remember what happened to the mayor; her husband was working as a representative...and her position as the wife of an important employee of the company who was overseeing the corporation was challenged. The board ruled that she would be in conflict...which was ironic, because she was planning to vote against the company.

One other case was Velma Santos...she was challenged because her daughter worked for Hawaiian Airlines, and she was the chair of the planning committee...she actually got a ruling that she would not be in conflict.

Chair Takabuki: Different households...I think that was the difference there.

Dave DeLeon: So it's kind of complicated...

Chair Takabuki: Right...it really depends on the particular facts and circumstances, so to me, I don't know if we can say blanket that any time...just a regular wage earner, it's not a problem... I don't know exactly how to phrase that, if we're willing to go along with something like this.

Fabrao: If a person, like on the planning commission, even if the person is an employee of the company and doesn't have discretionary authority, how would that affect anything? How would that person be in conflict?

Yonenaka: I think the board of ethics did a good job...there's bound to be changes, and part of their job is to realize that they have to make some difficult decisions. I don't think we can really give them a guideline in this area that will work carte blanche with anything and everything. If we put this in, I have a problem because it is carte blanche...and anybody...as long as they don't have authority, will not be in violation basically... I don't know what kind of language you could come up with...

Reyes: If you do that, then we close out the duties of the board of ethics; they don't have to have hearings because nobody's in violation, right?

Yonenaka: There would be some times, probably, when a person who does work for them and doesn't have decision making authority...he is in a conflict of interest, because their job may depend on...

Reyes: So, I think the way it is now, gives the board of ethics that basic function to determine on a case by case basis...

Yonenaka: You're right; I agree...so, what are we going to do with eight?

Fabrao: We did not even address this...we can or cannot...we don't have to put it in the Charter...

Chair Takabuki: No, we don't have to...it was just a point brought up, and the other thing is we didn't really hear from Goro...I didn't call him in, which I could or should have done...

Cockett: I have a hard time comprehending this...we're talking about wages earned for work performed, in other words, he's on the payroll but doesn't have decision making authority...wages depends on your service to your company -- if you're union, that is a different story -- but there are alot of private enterprise that are not union, and their performance on the job has something to do with how they step out into the company...

Fabrao: That would be in conflict with the personal life of that person... let's say if he's working and he doesn't make the kind of decision the company wants, he might lose his job or...

Cockett: If his paycheck comes from that company...

Fabrao: But he wouldn't be in conflict per se in decision making regarding the company's position or what kind of decision they're going to make about anything...

Cockett: But if it benefits the company...

Reyes: But, Dolores, the decision doesn't have to be for the company... in this case now, he's turned against the company...

Fabrao: Well, you turn against yourself in actuality...

Reyes: So I think that's the purview of the board of ethics to decide on a case by case basis.

Fabrao: I think so too. So, I'm saying we don't need to address any one of these. I have a problem with that one.

Cockett: I was just looking at this thing where Smythe was on the planning commission and Mike White, Kaanapali Beach Hotel was up there for their permits...and of course they got it, but the whole thing is kind of difficult for her, in my opinion...

Fabrao: The only thing that I could see that they could do is abstain from voting on any of those issues that relates to their employer or place of business...I think that could be done...they could excuse themselves from making a vote.

Cockett: I agree.

Fabrao: That's what usually happens anyway...it's supposed to be; it's not necessarily always so, but it's supposed to be.

Cockett: Let me just make a clarification here...her position as a wage earner was nothing, she was just a cashier, but she was an ILWU person in authority...

Fabrao: Did she abstain from making any votes?

Cockett: I don't know...

Chair Takabuki: But back to how this affects the Lanai situation...where you would have, like Dave brought up, the planning commission...you might have eight people, nine people all working for the company, or even six...

Yonenaka: They'd have to abstain and then you wouldn't have a quorum, so you wouldn't be able to pass anything anyway...

Fabrao: That's not a good argument for

Fabrao: That's not a good argument for us not to get a planning commission for Lanai...

Yonenaka: No, we're not saying you shouldn't have, but what we're saying is that we have a problem...

Chair Takabuki: But, there is a problem...but, look at it this way...if the company does employ 90% percent, then to have a fair cross section, you're going to have to have a lot of people from the company. But, are they not going to be able to vote? Or, should every one of them have to come in for an opinion?

Cockett: Where's the language for all the conflicts? For instance, the husband's been with the company...what about the wife, maybe she's there also and maybe the son...with that close a community, that's all ohana...

Fabrao: That's a big problem, I admit that; but the bigger problem is if we go the other way...

Chair Takabuki: I think that's what Lloyd and I were saying...we shouldn't be blanket, but should we try to find somewhere where we could sort of address it, without excusing every case?

Fabrao: But that's what I'm saying...we might as well take the ethics commission's job away from them...so that it's on a case by case basis...because if you do put something in like that, that's blanketing...it's saying everything...

Chair Takabuki: I don't want to be blanket, but should we draw attention to the issue at least...

Cockett: Wouldn't this have some relationship...I think there's another thought on the table about elected planning commissions, and from different districts...we haven't gotten to that as far as resolution is concerned, but I think it was one of the questions that has come up, and it kind of puts this out in the forefront. If, let's say, they go and elect...then you have one from each district, you'd have nine; then you'd have one from Lanai, wouldn't you? How does that fit into this rationale? I don't know, I'm just asking a question... I'm not saying we're going to have elected planning commissioners, but it's on the table...

Yonenaka: That's why we have an ethics board...

Fabrao: Yeah, let them worry about it...

Yonenaka: And, I think that's true; I don't think we can...

Fabrao: We can't, otherwise we're going to have to do it for every single...

Yonenaka: Well, if we do, then we don't need all these other boards and commissions... I don't know if we can help them, the ethics board...well, Goro in this case; I don't know their reasoning...what their entire reasoning was in coming to that decision in saying 'okay, you can vote...it's not a conflict of interest.'

Cockett: Not to muddy the waters, but there's another thing on the table that Sparks has...whether there should be individual districts; where are we on that?

Sparks: We should come to a decision at 4:00 today...

Cockett: If that happens, maybe this other thing on the planning commission would fit in...

Sparks: Are you discussing the Lanai Planning Commission?

Fabrao: That came into it, but that's the example that we used...

Cockett: We discussed that but there's no resolution on that...

Fabrao: But the issue here is whether a...if you look in your thing, it's Section 10-4 Prohibitions...regarding wages earned for work performed not having decision making authority...shall not constitute a violation of this section... So, we're saying that it's like for Lanai -- the planning commission, for example -- how many people work for the company, and how many of those would not be on the commission, or would be on the commission...and, what would constitute a conflict...and, it's this case of Goro Hokama... of course, he's no longer in conflict because he's retired, but did he have to retire? Because he did not have discretionary authority, or decision making authority in the company in so far as the decisions that the company did make... So, all he is saying is that we should let the commission take care of these issues on a case by case basis...

Chair Takabuki: Right; I think all I'm concerned about is that if the language is restrictive in the Charter...that the board of ethics feels they have to find a certain way...that's the only thing I'm afraid of. Right now, if you look at c. it says "engage in a business transaction or activity, or have a financial interest"...wages is a financial interest, so they'd have to find first that; direct or indirect...okay, it's direct, which is incompatible with the proper discharge of official duties...which may tend to impair his independence of judgment in the performance of his duties. That second part is so vague...which may tend to impair; it doesn't say actually impair or will more than likely impair, it says tend to impair. And, that's what's difficult...

Sparks: Didn't Goro's case go to the courts?

Chair Takabuki: It did.

Sparks: And they came up with this kind of decision, right?

Dave DeLeon: No, they found it on a procedural error...they didn't go on the substance...

Chair Takabuki: So, they can't even say that this is okay because the court said so...there's no clear ruling on it. That's my main concern, that the language will cause them to have to find a certain thing...

Sparks: Let's see, in this case with this language...if you had that language and you had a case where somebody worked for a corporation, and they sat on a planning commission and that corporation had something that came before the planning commission, and you subsequently proved that that corporation told that employee which way they wanted that corporation to go...or his job was at stake, or his promotion was at stake...how would you want your ethics board to rule on a thing like that?

Reyes: As a matter of fact, the corporation doesn't even have to explicitly tell the employee...it's implied once you're an employee of my corporation.

Sparks: Well, let's take the more clear cut case first...let's say we've got it written down, they told him what he's supposed to do. How would you want your ethics board to rule on that? I'd want them to rule that that's a violation...a clear violation. Then we have all the other gray areas where they didn't write it down...where you don't have clear evidence, but it's implied...



Fabrao: Again, if you think in terms of human affairs, and even the laws of the nation, go according to the times and general consensus...that 'tend to impair' in one situation would be an impairment in this time, may not be so in this time five or ten years down the line. So, I'd like to leave it like that...I find no problem with that; but to really make it specific, we're going to get into trouble.

Chair Takabuki: Yeah, I do agree that you can't make it so specific to fit every situation; I was just concerned that this problem's going to happen again. I wish there was some way to figure that out...

Cockett: Are there any other cases like this that you know of? This one with Hokama would be a unique one, but are there any others that have problems with the ethics committee?

Yonenaka: Dave brought up the mayor's case with her husband and Maui Land and Pine...

Cockett: That's two; do you know of any others?

Dave DeLeon: You know what the problem is...most of the ethics cases aren't visible; it has to be made visible by the person who actually is making the request for an opinion. Some council members have asked for opinions but they didn't do it out in the open, there was a request for discretion, so it's a private event so we wouldn't know the outcome...it's very frustrating for a reporter. Even the ethics board's minutes aren't distributed to anybody outside the system...the only way to find out the facts of the situation is to attend the meetings. So to answer your question, there are undoubtedly cases but we just don't know about them.

Chair Takabuki: So anyway, at this point...leave it as is?

Fabrao: Yup, I would vote that way...leave it the way it is now in the Charter.

Sparks: And hopefully then, as unique circumstances come along...that's what you've got the board for, to under this language make the best determination they can.

Fabrao: On an individual basis, because this opens up a whole can of worms...it would be good from where I sit, but it may not be good in other cases and other times. And, I think that's what the Charter's all about...for the next ten years we're supposed to make it be workable, and not create more problems...

Chair Takabuki: What did Reverend Kaneshiro say about this? Does anybody recall? Or, did he say anything about it? That was one thing he was supposed to look at...what Goro had proposed...I don't know if he got back to the committee...

Fabrao: No, I don't remember that he got back...

Chair Takabuki: He didn't get back to us?

Fabrao: I don't think so.

Chair Takabuki: Okay, number nine is also raised in that same communication, wherein it's suggested that Article 10 be amended to remove the application of the code to the legislative branch, and allow them to govern their own ethical conduct. Any comment?

Chair Takabuki: (Continued) The whole article would have to be amended to delete reference to elected...well, at least elected council members...legislative branch...

Yonenaka: I'll go first; I think we should just scrap the whole thing. The code of ethics, I would assume, should just cover everyone. I think we'd have a hard time asking the public to believe us if we go with this one.

Fabrao: Yes, I agree with that.

Sparks: Are we going to ask the public to trust these people that they don't trust?

Reyes: It's right there in the declaration...elected and appointed officials.

Fabrao: I guess we don't need to address any more of that...

Chair Takabuki: Okay, Article 10 down...Article 11. Initiative. Number one, pertaining to Section 11-3. Petitions. The proposal is to reduce that 20% signature requirement, for the reasons that the number of signatures, we have heard from some people, is too much to be required and overly burdensome. So the question is...should the initiative power be more easily exercised; is it correct to make it so difficult; or, what should be the approach there?

Cockett: I think we received some recommendations at the hearing at Kahului Library...

Chair Takabuki: Right, and they very much supported reducing that.

Cockett: Yeah, two things...reducing the percentage and also the possibility of lengthening the time...

Reyes: Required to get the signatures... I have a question on the area of initiative...how different is initiative from referendum?

Chair Takabuki: I think they go together. It's my understanding that initiative is the power to propose and referendum is the power to go to the polls and make a decision. So, I think they go together.

Reyes: But, does the public know that if they want to post a referendum, they have to go through this initiative procedure? What I'm trying to say is they are the same category...maybe you should put initiative and referendum, so that the public is aware that there is another way to go to the poll or to the election if they want to propose something other than an initiative. Help me here...

Sparks: It may not say that in here; I may be wrong, but I think it used to talk in those terms. Here we just have under 11-1.1. is the initiative, you can propose... 11-2 says the voters shall have the power to propose the reconsideration by the county of an adopted ordinance...the voters shall have the power to reject the same at the polls -- that's referendum, so it's covered...you can do either; it's right there in the first two paragraphs.

Chair Takabuki: But if you think it would help to say that being the referendum power under 11-2...I don't know if that's a problem...it's just language...

Sparks: The same power that's known as the referrendum power is right here, it just isn't calling it that.

Reyes: I was just thinking about what happened on the Big Island. They wanted a district or at large...they presented it to the public; to me that's referrendum. In the Philippines, when they wanted the American bases to stay or not to stay, they presented it to the public and that was a referrendum. I think of it more as a yes or no situation.

Sparks: That's more like...

Reyes: Plebiscite?

Sparks: Anyway, it's language that says you're going to the voters to decide. I think we've covered the two situations here; the voters may want to repeal something the council's passed, and that authority is given to them right here...it just doesn't call it referrendum.

But, starting from the top...fifteen years ago when I tried to resist them from putting all these qualifiers in here; I still wonder why we have to have all those qualifiers...

Chair Takabuki: Under 11-1.3.?

Sparks: Yeah; initiative powers shall not extend to anything but capital improvements or property taxes...maybe it doesn't hurt anything, maybe there's a good reason for it...but I notice that the other Charter's don't have that stuff in there.

Chair Takabuki: None of them have that?

Sparks: I don't think so. What would happen if we didn't have all those things in there?

Chair Takabuki: Well, you might never be certain of what your real budget is...that might be a problem to administer and implement a budget.

Sparks: How do the other places work then? Nobody ever comes up with something about the budget? I really don't have a strong feeling about all these financial issues being exempted, but any emergency ordinance one does seem to be in that potential to be abused.

Chair Takabuki: On the legislative part...they could pass something, you mean, that would not be subject to any kind of change by the public?

Sparks: Emergency ordinances, by definition, they can suspend certain procedures...just do things, right? Maybe I'm just dreaming this up, but it seems like they could use that excuse to do lots of things we don't want them to do, and just keep doing them as long as they kept the emergency ordinance in power...

Chair Takabuki: They have to make a finding of any emergency, right?

Sparks: Where is that one covered? Emergency powers of the council?

Chair Takabuki: "Should the council find by two-thirds vote of its membership the existence of an emergency threatening life, health or property due to a public calamity, then they may waive the requirements"...and it stands repealed ninety-one days after.

Sparks: I guess if it's going to be repealed in ninety-one days, you couldn't get your initiative petition going in time, anyway.

Chair Takabuki: I don't recall hearing of any county having an initiative on a budgetary matter, although there may be a point where they want to exercise it relating to property tax...that's not unforeseeable.

Sparks: Back on emergencies...suppose they declared an emergency that a lot of the public didn't think was an emergency -- water, for example. Then, after ninety-one days they declared it again with an ordinance, and because it's an emergency they don't have to have public hearings for what they do, they just do it...and after about the third time, if anything like this should try to be pulled, the public should have the initiative right to do away with that...to overturn it. It's pretty far-fetched...

Chair Takabuki: It's a possibility, but as far as I know, emergency ordinances have been very, very rare...mostly due to storms and things like that.

Sparks: I'm not really agitated about that...maybe we should leave it alone, maybe it's unbroken... But, the 20% is...I'd support ten...

Chair Takabuki: I've gone recommending the middle...the fifteen percent.

Cockett: Let me ask...the 20% has been in effect how long?

Sparks: Fifteen years, and nobody's ever looked at the possibilities of...

Cockett: What was the voting population ten or fifteen years ago?

Sparks: Maybe 25,000. So that would be about 5,000 voters [required 20%].

Cockett: And it's now...

Sparks: Now it's a little over 40,000, I think, so 20% is 8,000 and 10% is 4,000...

Cockett: So we're talking about 1,000 more at the 20% [15 years ago]...so with the 15%, we're talking about 1,000 more as far as numbers are concerned... From 25,000 to 40,000 voters and from 20% to 15%.

Yonenaka: Yeah, I would recommend 15%.

Sparks: Yeah.

Cockett: That's a good number. We might get an argument, though...

Chair Takabuki: We can always hear from the public if they feel it should be 10%...

Cockett: I think it's moving in the right direction...lowering it was what they wanted...

Chair Takabuki: I think that coupled with the change in that timing for filing will really open up the door if someone does want to file an initiative...

Yonenaka: Either way, it's still a lot of work.



Sparks: We're talking about basically the difference between 4,000 and 6,000 voters at 15%...

Reyes: That's a lot of names...a lot of signatures...

Yonenaka: I think if we go 15% and extend the time to forty-five days...

Chair Takabuki: Or leave it open; the other suggestion is to just remove the limitation...that they can take either as long as they want, or as you said, make an extension of time to something that could be closer to sixty or ninety days.

Sparks: So, your committee is taking a vote right now, is it?

Reyes: You're a member of the committee.

Chair Takabuki: Yeah, you're welcome to...

Sparks: I vote no...I prefer ten.

Chair Takabuki: Any other noes?

Reyes: Is the vote being taken being linked to time extension or...

Chair Takabuki: To me, yeah...both will be dealt with; and if we don't give an extension, maybe we should come back to this. But my thinking is now, the recommendation would be to do both...to reduce it and to allow either open time or extension of time for filing. I'll go with fifteen, myself.

Cockett: Fifteen is okay, but how much time? It's 28 days now?

Chair Takabuki: Right now it's 30 days.

Cockett: Then we should go to forty-five...

Sparks: I think we should drop it altogether...

Chair Takabuki: Yeah, that's the two alternatives...drop it completely, or give them sixty...ninety days...or...

Sparks: Why do we have to give them a limit?

Chair Takabuki: I don't think you have to, and Daryl made that point.

Reyes: With the U.S. Constitution, how long is the two-thirds vote...

Sparks: Ten years...

Chair Takabuki: No, look at the one they were just saying the 38th state ratified...there was something proposed in the 1800's...didn't that just come up?

Reyes: I was wondering what they were talking about... It's not the balanced budget, I know...

Chair Takabuki: No, no...the legislative body cannot vote themselves a raise during their term. And I can't remember what president, was it Taylor? They say it's been floating

Chair Takabuki:(Continued) around for ages...

Sparks: An amendment...

Reyes: A constitutional amendment...okay, that's the reason I asked, because I'd heard that and I was wondering... If that thing has been going on for years and years and years, then why put a time limit on when the 15% signature can be obtained?

Sparks: Anyway, the general point is if they can do it at the federal level, we should be able to do it without a time limit.

Chair Takabuki: Can I backtrack to number two real quickly? And, that was more of a housekeeping requirement on Daryl's part, to delete the disclosure of voter precinct; he said that's not necessary...most people don't even know what their voting precinct is, and instead ask for the printing of name and, if legal, the social security number. I think the printing of the name is not a problem, and taking out the voter precinct is not a problem, but disclosure of social security number...I don't think you can require it.

Sparks: Is it on the voting registration now?

Chair Takabuki: I think the law was passed that anything prior to the time this particular privacy act was passed...any law in existence that required it at that time could still require it, but anything new...you cannot require social security numbers; that's my understanding of how the privacy act works. So, if it was in place already... In Hawaii, of course, it's on our driver's license and that's been in effect for a long time...

Sparks: On the voter registration rolls, do they have the social security number?

Chair Takabuki: I think they do, yeah.

Sparks: So if you don't give it to them, they can just look it up any how, if you are a registered voter.

Chair Takabuki: I think so. What Daryl was proposing was it would be a lot easier to verify if it were there, and if we can require it...then he said he'd like to have it.

Sparks: Well, you know, we could put a provision like that in there and if somebody challenges it and the courts throw it out, they throw it out.

Chair Takabuki: We'll check on that...legally see if it's okay. So, number three is what we were just in the middle of discussing, and right now two different kinds of proposals...maybe a sixty day limitation perhaps, and the other is to just delete that completely.

Cockett: I was leaning towards sixty...

Sparks: I vote for zip...zero...no time limit.

Yonenaka: I'll vote sixty.

Sparks: What's the rationale for a time limit?

Chair Takabuki: We don't even know why it's thirty...

Sparks: I mean maybe the argument is it's always done this way, right?

Yonenaka: I just like the idea that if they're going to do it, get it done... To not have a time limit...what is the legal ramification if you need to get 15% of the registered voters' signatures...what if you get signatures of people who did not vote in that time, who were not eligible...what if you get signatures of people who have died? Or, have moved? Will that affect the opinion twenty-five years later?

Sparks: Well, you've got 15% of the voters registered in the last general election, so there's already built in a time limit of about two years, isn't there? Once you have a new general election, then you have a new last general election and you'd have to make sure who's on that list was registered at the last general election. So, if you stalled out, and you haven't gotten your 15% and the election happens, in a sense, you've got to start all over...at least checking those names...

Yonenaka: Why don't we put it until the next election then?

Sparks: But we already have it if we eliminate this any days thing...except, you might have a lot of names there who were on both lists...both registered voters lists. Say I sign your petition now and you don't get around to getting your 15% until the next election; then, this says last general election, so you have to do it last general election before you file it with the Clerk, you're going to have to go back and make sure my name's on the new list of...or is still on the list...

Reyes: The point is well taken, but the more I think about it putting a time limit would avoid that interpretation problem again. And, what we are trying to do with the Charter is make it clear, but if you have to go through that long process of interpretation someone down the road may find a way to... Again, it creates a problem...

Sparks: I don't think it's going to be a practical problem. Anybody that wants to do a petition type of a drive are generally hot under the collar about something, and it's in their interest to do it as quickly as they can and get it going before the next election, which is probably when we say it will probably come up. And, if they don't get the 15% done...it'll die it's natural death. I should say 10%, because I haven't given up on 10% yet.

Chair Takabuki: Al, you don't give up on anything.

Reyes: Well for the sake of synchronizing with the county election machinery, I think there should be a certain time limit...I mean, they have to know when to do the ballots and all those things. It might present a problem with the County Clerk if people know they can go forever and ever and ever...

Cockett: Most of us here are leaning towards sixty days...

Reyes: Or even 120; it's not going to present a problem with the County Clerk's office... There has to be some time limit.

Yonenaka: What does the County Clerk's office have to say about putting a time limit?

Chair Takabuki: Basically, they didn't have a problem with no time limit.

Reyes: Oh, is that what he said?

Chair Takabuki: Because, I got these proposals from Daryl...

Reyes: Okay, if that's what he said then... There'd be no problem if there's no time limit...

Chair Takabuki: But I don't know if he really thought about it if it takes two years, which last general election is it, when is it triggered, is it with the affidavit that you calculate when the last general election was... There are some interpretation questions, I would agree. I could go with a limitation, but I think for myself, I would like to see more than sixty days...

Yonenaka: How about ninety?

Cockett: Well, give us a compromise...

Reyes: Yeah, give it a real chance...don't put some time limit just for the sake of avoiding that interpretation problem.

Sparks: You know as you go further into this, we have in here now a bunch of stuff about special elections...not less than ninety days after the petition is filed; and you give the council sixty days to go ahead and pass it anyway without having to vote on it... I've got a note here to myself that the other counties just take it up at the next general election. Special elections are a special humbug and a special cost, right? And, we have them every two years anyway...

Chair Takabuki: That's the next item...

Sparks: But, it dovetails with this if you're talking about time limits. That means if it's going to be on the next general election, you have to file a certain time before that election, so the petition itself should be all cleaned up and in to the Clerk by a certain date before that next election, and then you use the next election for it, right? That's part of it; we've also got this when an initiative petition has finally been determined sufficient, the council shall promptly consider the proposed ordinance, or reconsider the ordinance or the portion thereof sought to be reconsidered. If the county fails to enact a proposed ordinance without change in substance or fails to repeal the referred ordinance or portion thereof within sixty days after the date the petition was finally determined sufficient, the County Clerk shall submit the proposed or referred ordinance to the voters of the county...and then the next provision gives them ninety days to do all that. I guess that may make some sense, but if we do that then that's sixty days prior to the time you have to file it with the clerk for the next election. So, all those procedures give you kind of a time limit...a natural time limit. When would it have to be filed with the Clerk in order to be put on the ballot? It's like our time on our Commission recommendations...about sixty days; so you've got about 120 days before the next general election...is your time limit. And, you scratch all this stuff about special elections, right? And special time limits to get your petitions in because that covers the time. So, if you start right after one election, you have more time than if you start close to the next.

Chair Takabuki: Okay, any other comments or changes in position?

Yonenaka: So, what was your recommendation, Al?

Chair Takabuki: He's no time limit...



Yonenaka: No time limit...

Sparks: No time limit and then scratch all this special election stuff, and leave this thing in here about giving it to council for sixty days... And, put some words in there that say it goes to the next general election...maybe that's all we need to say.

Chair Takabuki: So, number four on the list...is adding to at the next general election; would that be okay with you?

Sparks: Yeah.

Chair Takabuki: Can we agree on that then? Take three and four...

Yonenaka: Okay.

Cockett: Whatever...

Sparks: What is this business here? A provision to allow for special elections to be called by the council should be included in case timing...

Chair Takabuki: I guess that was just an opening or an escape clause, or some kind of allowance that would permit the council to call for one if the item were so important or needed to be dealt with quicker than would be the next general election.

Sparks: But they just need to pass an ordinance if it's that important.

Chair Takabuki: But, perhaps they don't want to...but they realize the issue has to be resolved.

Sparks: Don't give them the chance to pass the buck...they do that well enough already.

Chair Takabuki: Well, if they don't pass something like...or call for a special election, it would just go to the general election, right? So, what this does...if the particular group feels that the decision has to be made earlier, perhaps it is a matter that has to be dealt with within a shorter time frame; they can ask the council to do so and the council may just say 'well, okay, you're right...it has to be dealt with before next year, so in this case maybe it does require a special.' It's just giving them the road to do that...that's all that's proposed there.

Sparks: Okay, but it just seems to me they're the ordinance passing body... they're the legislative body and if there's something that urgent that needs to be dealt with...without waiting to go to a special election...why don't they deal with it?

Chair Takabuki: Yeah, but they're on one side and the petition's on the other side... they might just be saying it has to be decided...it's going to go to the voters, whether it goes now with a special election, or a year from now in the general, is the question. It's just to leave a little opening there, that's all.

Yonenaka: Actually if they needed a special election for something they had to deal with then they should go ahead and do it, which means you wouldn't need initiative...

Sparks: That's my point, but she's saying that they may not want to do it but at the same time recognize that a decision needs to be made. If the decision is against the council's wishes...why would they do it... It's hard for me to imagine exactly what it

Sparks: (Continued) would be that would be urgent...that they wouldn't want to do, but that they would want to let the voters do if they so desired. It's hard for me to imagine...

Chair Takabuki: How about...this is just an example...how about building some major facility for which certain funding might be available at a certain time, and say council's on one end and the voters are on another end...because it's going to mean to the voters additional fees and additional expenses that they have to contribute. And, say if there's a window of time that it can be dealt with...and, this is probably never going to come up, but it's just that if something like that came up and a decision had to be made, and both sides were firm in their different positions...

Sparks: The people wanted it and the council didn't?

Chair Takabuki: Whichever way...council wants it and the people don't; and there's no certainty to that decision...

Sparks: If the council wants it...they'll pass an ordinance and do it; why should they pass it to the public if they don't...

Chair Takabuki: But then the public might want to repeal it, right? Say the public wants to repeal it...

Sparks: Right, but you've left it in the council's hands to call a special election...

Chair Takabuki: Because they recognize that the issue has to be dealt with within this time frame...

Dave DeLeon: The Charter doesn't allow for initiative on a money issue...

Sparks: He shot down your one example...

Chair Takabuki: Well, we'll make it another example...

Sparks: There may be one, but it just seems like you're really reaching to find one realistic example where the council doesn't want to do it by ordinance, but they want to let the voters do it now instead of waiting another year to have it on the ballot...

Chair Takabuki: It's okay to leave it out...it was just leaving that little window in case something did come up, and the council felt it necessary to call for a special... Right now, say if the petition's ready to go and...

Sparks: But remember, special elections cost money...what...\$90,000-100,000?

Chair Takabuki: And, it would have to be important enough for them to call for it; we can take that out...it's not anything that has to be in there...it was just a window...

Sparks: It probably doesn't hurt anything, but I don't think it adds anything real, either. But, generally we agreed no specified time limits, but pass everything to the next general election...so they have to get their act together in enough time to do that, plus they have to get it together sixty days before that for the council...if you want to keep that provision in there. That makes a little sense...

Sparks: (Continued) if you could petition the council and they go ahead and follow your suggestion in your petition...why bother putting it on the ballot, right? You could get it done that way.

Reyes: Extending the scenario that way, if the general election is coming and the position of those up for reelection is known...you may not need initiative; you might just look at the position of the council and that might determine that...

Sparks: What they do on your petition just might affect their reelection chances, that's true. But, that's politics...that's the livelihood they chose, right?

Chair Takabuki: The runway might have been an example... Say the federal funding was available and a window...

Sparks: We'll probably be old and gray before we ever see anybody try an initiative anyway, with so many exemptions... And, make 15% instead of 10%...

Chair Takabuki: Okay, 15% -- open as far as time for filing, and...

Sparks: Leave the sixty days for the council... Maybe we ought to make it specific, you know, that they need that sixty days topped on the, I guess, sixty days that the Clerk needs... At least 120 days then, before the election...give the council their chance and then the Clerk his chance if council doesn't do it.

Chair Takabuki: Okay, in other words we're saying they have an open time period, however it must be prepared in a certain form within 120 days...

Sparks: They might get it done well before that...but if they want to get it on the next ballot, it has to make that...

Fabrao: So, 120 days before the election...

Sparks: To get it on the next ballot...maybe that's the way we ought to say it...

Fabrao: If I'm hearing this right, you're saying that this initiative...they'd have to get it in place and everything in 120 days...no, before the next general election. So let's say if you wanted something done this year and the general election is not till next year...they have to wait until next year...

Sparks: But remember, it's going to take them a while to get the...10%...

Chair Takabuki: 15%...

Sparks: It's going to take longer to get 15%...so, it's not going to be that much time; I anticipate more the problem of enough time to get it on the next ballot, rather than having a huge gap of time...

Fabrao: One thing that's an assurance is that we're not stopping initiative...

Yonenaka: No, it'll make it easier...not that much easier...

Sparks: I think we've agreed on the substance, yeah? And on the timing and stuff...

Yonenaka: Is there a provision for people taking their names off of that now?

Sparks: Yeah.

Chair Takabuki: That's also under three...the proposal is to allow fifteen days from the date of filing the petition to withdraw a signature.

Yonenaka: From the date of filing the petition...so, this is the one that would be 120 days prior...from that day on...

Chair Takabuki: So there are fifteen days; so a petition could be insufficient...

Yonenaka: Because that's the filing date, right? Let's say you take it to the limit, I mean right up until the end, you've got 120 days until election...

Sparks: Can you withdraw thirty days before an election?

Chair Takabuki: Yes, that's what it says...forty-five...what did it say?

Sparks: The petition maybe could be withdrawn...anytime prior to the thirtieth day preceeding the day scheduled for a vote. I mean, technically can they do that or are the ballots already put together? Why is that provision in there? Why are we trying to be so precise and imagine every possibility on something that nobody does anyway?

Yonenaka: Just in case somebody does...

Chair Takabuki: Do you want to change that to allow for a longer period of time prior to...that they should actually withdraw, or not?

Sparks: I don't think anything would be lost if we scratched it out altogether. We're just imagining that 80% of them are going to have second thoughts at the last minute...

Chair Takabuki: 80% of petitioner's committee...that's only five people, if I recall... Any five qualified voters...so four out of the five can decide they don't want to do this any more...

Reyes: And after all of those...

Yonenaka: After 6,000 signatures...

Sparks: Fly it through the council, get all those headlines and then four of them can decide not to do it...

Chair Takabuki: But, at the same time, you can't tell them that they can't withdraw it...or, they've got to pay for it if they withdraw it.

Sparks: I don't know...leave it in there and make it sixty days; maybe the Clerk would go for that. When do they print the ballots?

Chair Takabuki: They have to go through the lieutenant governor, so they must need quite a bit of time...



Sparks: Whatever time they need, change it to that...

Chair Takabuki: Okay, we'll give them thirty more days. We're out of time and we have to start the regular meeting...we'll probably need to meet another hour or so... I'm going to recess until the end of the general meeting, and then I'll decide whether we'll set another date or whether we'll continue.

[MEETING RECESSED AT 4:16 P.M. AND RECONVENED AT 6:03 P.M.]

PRESENT

Dolores Fabrao  
Robert Nakasone  
Anne Takabuki (Chair)

Chair Takabuki: We're going to start with the very last one...11-7. Results of Election. 11-6. we dealt with; our recommendation was to delete the requirement of special election.

Nakasone: That was the county clerk's recommendation?

Chair Takabuki: Right. So, results of election...that's also a recommendation from the County Clerk...

Nakasone: Isn't that a state question?

Chair Takabuki: The Charter was...when you amend the Charter there was a provision of state law, but I don't know about initiative...

Fabrao: You said you were going to find that out...weren't you going to ask somebody about the state initiative?

Chair Takabuki: Oh no, there was a law with the legislature regarding land use initiatives...and that didn't pass, right? That's still a big question mark... But on the voting, I know the Charter is provided for...and the state law is different from our Charter, yeah?

Nakasone: Wasn't that a question that Hannibal brought up?

Chair Takabuki: Yeah, he wanted to amend the Charter because we thought it should be the majority of votes drawn...ballots drawn; and that, if I recall, was consistent with state law.

Nakasone: Yeah, that's what I thought.

Chair Takabuki: Anyway, the recommendation here is to change it to read that way... that it should be a majority of the ballots drawn. Al disagrees; before he left he just wanted to voice his objection to that...he feels we should leave it in the hands of those who are informed enough to actually vote on the issue, and if we have only 50% of those pulling ballots actually voting -- fine, but still, the representative form of government works in that case, he feels.

Nakasone: But that becomes a minority decision then.

Chair Takabuki: Yeah, that's my feeling too. I don't like the idea that 25% of the people can pass an important amendment, or in this case, repeal a law. To me, the presumption should be with the legislative branch, that what they're doing was for the general good, and that 25% shouldn't really change that...that's just my opinion.

Fabrao: I go with that because I don't think...because anybody can get a petition for initiative, right? And, anybody who's negative can also get a petition going for an initiative, and so therefore, if they had enough people to vote negatively against the majority of the people who don't want the initiative, they could pass it. So you could have, for instance, like a dictator be voted in...or some kind of position that would not be acceptable to the majority of the people, but would be voted in by virtue of the... So, I would go with the majority...of the ballots drawn.

Chair Takabuki: So even if they are blank, they enter at least into the equation...

Fabrao: Yeah.

Chair Takabuki: ...toward the number to calculate the majority. Is that okay? Can we pass that one on like that?

Nakasone: Yes.

Chair Takabuki: Recall...that's Article 12. This is again from the County Clerk, and we dealt with a similar change under initiative in Article 11, which would delete the requirement of disclosing voter precinct on the petition, and require printing of name and possibly social security number. Any objection to that change?

Okay, number two...under the initiative section we changed the 20% signature requirement or recommended change from 20% to 15%...that same 20% signature requirement is in the recall section; so the question is should that also be changed? Reduced? Leave it as is? Is it really overly burdensome to be able to do this? Or should we leave it at 20% so that it's not so easily done?

Fabrao: If the people want the initiative to go through, they'll get the 20%.

Chair Takabuki: You mean recall...

Fabrao: I mean recall...you said it was the same as initiative...

Chair Takabuki: Initiative was 15%...we already reduced that. I think you stepped out at the time, but...from 20% to 15% of the voters in the last general election. I wonder what the other counties have...

Fabrao: Why would there be a different consideration for recall than for initiative? If we reduced the requirement for initiative to 15%, why not reduce the recall signature requirement?

Chair Takabuki: Well, should removing someone from office be more difficult than trying to change an ordinance or some legislative act? I mean, it could be the same, and it has been the same all this time...

Nakasone: What's the experience with the other counties?

Chair Takabuki: Honolulu had only a 10% requirement on an initiative...

Fabrao: At what point would there be a need for a recall?

Fabrao: (Continued) What would make people want to do a recall?

Chair Takabuki: What was the Honolulu experience about when they recalled those three? I can't even remember the reason anymore...

Nakasone: Oh yeah...was that Rudi...

Chair Takabuki: It was Rudi, Teraki, and Takahani, right? I don't know of any that was ever initiated here...

Nakasone: No.

Fabrao: What is the difference between recall and impeachment?

Nakasone: Well, impeachment is for certain violations...maleficance...

Chair Takabuki: Okay, Honolulu is 10%, so they're consistent...initiative and recall require 10%.

Nakasone: So, you're recommending consistency on that also? 15%?

Chair Takabuki: I would think so, yes.

Fabrao: What would be the rationale for keeping one different from the other? I don't understand...

Chair Takabuki: Let's see...Big Island is 15% for initiative; Big Island recall is different...it's not less than 25%. So, I guess on the Big Island they feel it should be a lot more difficult to try and remove an official.

Fabrao: I wonder what the rationale was for them choosing that...

Chair Takabuki: Maybe we should leave it as is. I don't know that there's any strong argument either way, whereas with initiative, I think people really felt it was much too burdensome with the time limit to be able to even address the different ordinances. This has not been raised as an issue, it was just a question mark whether we should be consistent. I have no problem leaving it the same.

Fabrao: No one's raised it yet?

Chair Takabuki: No one's raised it...the issue was consistency and whether they should be the same. Big Island is different...Honolulu is consistent; Kauai is 20% for both, for initiative and for recall petitions.

I would say leave it the same...if no change has been proposed and no one has brought it up, then I don't know that we really need to touch it.

Nakasone: No objection.

Fabrao: I have no objection.

Chair Takabuki: Okay, under number three...again, this relates to the filing period currently in the Charter where the petition must be filed within thirty days after the affidavit is presented to the County Clerk; and, for the same reasons, I suppose, that time to obtain about 6,000 signatures -- it has been suggested that it's too short and overly burdensome. For the initiative sections, we agreed to completely

Chair Takabuki: (Continued) eliminate a time limit, or time restriction. There was some talk about an extension...instead of thirty days perhaps to ninety days, but in the final analysis there didn't seem to be a strong reason to even have a limitation. There's some natural time limits by virtue of the elections being every two years, so the committee decided on initiative to just delete it completely.

The second part, withdrawal of a signature, we earlier decided on initiatives to allow for withdrawal of a signature within fifteen days of the filing of the petition. So, the recommendations are the same here.

Nakasone: You would think that on the recall, you would have a time limit if there's a petition. They have to be in office no less than six months...

Chair Takabuki: I think there was one proposal that provided that the person intended to be recalled...that his or her term doesn't end with that next general election; because then it didn't seem to make sense, that you'd be voting for the recall of that person when their term would have expired and they were up for election again.

Nakasone: If you don't set the limit, then it really doesn't serve a purpose.

Chair Takabuki: Under 12-6, that particular language regarding the election does state that provided that the term of office of that person sought to be recalled doesn't end at the next general election. So, any suggestion, Bob? Do you feel we should look at a ninety day or 120 day time limit, or something that sets at least some kind of time period there?

Nakasone: Just this provision of recall...the intent is that they are not satisfied and they want him out. This applies to appointed boards and commissions also, right? So, somehow you would think there would be a time limit in terms of submitting a petition for the election.

Fabiao: Which takes me one step before that... If people would know pretty much who's going to be running, why would they want to do a recall? Why don't they just say...

Chair Takabuki: Don't vote them in the next time?

Nakasone: That applies to boards and commissions, too...

Chair Takabuki: Yes, you're right. That was the recommendation from the County Clerk that that thirty days should be deleted. But, I think you have a good point...maybe we should set some kind of limitation.

Fabiao: He said it should be deleted, but he didn't recommend any extension or...

Chair Takabuki: No, no time period at all...no limit.

Nakasone: So, what was the argument about deleting?

Chair Takabuki: There's nothing in here, really, it's just a written memo...

Fabiao: Why would there not be a time limit for recall? Why delete that thirty days?



Chair Takabuki: From what we understand, it's too hard to get 6,000 signatures in thirty days... I guess the problem is if it took a year, by that time some feelings might have changed...I mean, some of them might have signed it on the first day...

Fabrao: Oh, I see what you mean...I see the rationale...

Chair Takabuki: A year later, they might not feel that way about that official. I guess timing would be a problem, more so in that case. Maybe a time limit is much more important for a recall type of thing...

Nakasone: I guess the reason for deleting it seems to be if that particular individual does not resign in five days, they have to call a special election...so you're saying to make it at the next general election... So, if that's the case, you really don't need that question of time element then.

Chair Takabuki: So they can take as long as...

Nakasone: As long as it goes into the general election...

Chair Takabuki: I was telling Dolores about the situation where someone signs now, and then a year later they feel differently about that particular person... There may be something currently that disturbs them or as a good reason to trying to initiate or sign a petition, but those things sometimes change over time...and the longer it drags out... Of course, they can withdraw, but then they'll have to know when the petition is submitted.

Nakasone: I don't know; I would go with some kind of time limit. Do they have time limits [referring to the other counties]?

Chair Takabuki: Thirty days...that does seem a bit short, though. And their initiative is also...

Nakasone: Thirty days?

Chair Takabuki: Let me check...that one's open. Why don't we look at...shall we leave it?

Nakasone: What? The thirty day?

Fabrao: He recommended taking it away though, yeah?

Chair Takabuki: He did; I guess his thinking was the same for initiative, but...

Fabrao: So what's the requirement for initiative?

Chair Takabuki: We recommended that there not be a time limit.

Fabrao: Okay, then why don't we just go with that for this recall?

Chair Takabuki: It seems to be that there might be other considerations on this recall. So, Dolores, you'd like to see the same kind of provisions, or no limit required?

Fabrao: Yes. The only thing I could see that would prevent that, would be if you are looking at the person's right to know if he is to be recalled. It seems to me that he should be notified or know within a certain length of time...instead of just hanging

Fabrao: (Continued) on; that seems like the only consideration...

Chair Takabuki: Yeah, that's a pretty big thing to be hanging over one's head... that you might at any time...within a year or two...that they might have enough signatures.

Fabrao: They could bounce back and say I was put through all kinds of psychological stress, and all of that emotional stress, by the recall...and then sue somebody. That's the only thing I could think of...

Chair Takabuki: I guess in most cases, as a practical matter, these petitions would be circulated quickly. I mean, you would think they'd have the momentum at a certain point in time and then after that it would just die down...so, it wouldn't be something that would drag out over a year...or, you wouldn't think. I don't know...because of the human element involved, I would tend to want more of a restriction on time for a recall type of thing than for an ordinance, because of the personal rights and nature...

Fabrao: Then go sixty or ninety days...

Chair Takabuki: Sixty would be okay with me. Thirty might be a little hard... I'd go with sixty...

Fabrao: Sixty days; I could go with sixty days.

Nakasone: Yes.

Chair Takabuki: The next one is from the County Clerk again...he wants to delete the requirement that there would be a special election that would be called...he wants to have it at the next general election...provided that the term of office of the person being recalled doesn't end with the next general election. That would mean all council members at this point...so, you would still need to have a special for any council member. It would just be the mayor, in that case, if it were an off year for her... I don't know if it makes that big a difference as long as we have a two year term...

Nakasone: Also recognize that this recall is also for other boards and commissions...

Chair Takabuki: You're right; that's true...

Fabrao: I'd go along with that recommendation.

Chair Takabuki: It's okay with me. Any objection? Okay, the last one under five is the same type of an amendment as we just talked about...majority of the ballots drawn.

Nakasone: No problem.

Fabrao: I have no problem with that.

Chair Takabuki: Good. Article 13 General Provisions. Boards and Commissions. The proposal is to amend subsection 1 to reduce the five year length of term. The recommendation is to discuss the possible change to four years, or putting in mixed terms...three, four, five year terms. Right now, every term is for a five year term unless you are fulfilling a vacancy and there's a partial term left. Some people from the public have said that is too long...

Fabrao: Not only that, they start stagnating... I would go with three years...I don't like the mixed...

Chair Takabuki: The only problem might be with some boards...they are very complex, and it takes a year to really get up to speed on it; that would be my only concern with a three year...

Fabrao: Well, if it takes one year to get used to...you have two years to do your work...

Chair Takabuki: So, we'd have three, three, three then...so you'd always have at least six members that would have some experience. I don't know, Bob, what do you think about that?

Fabrao: So how are they doing that? How are they selected now? They're staggered...

Nakasone: You know, the real problem is there's two sides of this question... about the five years being too long...that people cannot commit themselves for five years; and, by the same token, there's not too many people who really want to serve...and that means you have to find more people within three years rather than five years...the pool of people interested in serving becomes reduced because they cannot repeat their term...

Fabrao: And, they cannot serve on more than one commission or board at a time...

Nakasone: Right. So, the difficulty is if you shorten the term, you might have a hard time filling it...

Fabrao: Who is recommending this...oh, because it's a general feeling...

Chair Takabuki: It's a general comment that came out...

Fabrao: Well, we need not address it...

Chair Takabuki: No, it's not necessary.

Nakasone: It came out in Kihei, yeah?

Chair Takabuki: Kahului...

Fabrao: People can always say no if they are asked...they don't have to serve.

Chair Takabuki: I thought it was at that meeting we had with the council...the community council...

Fabrao: No, it was Kihei...I wasn't at that one.

Nakasone: I think it would be a problem if we reduced that to a lesser term.

Fabrao: Even with four years...what's the difference if you're going to serve five years or four years? It's still the same...what difference would it make? I would tend then to leave it.

Chair Takabuki: Kauai is three years; the other counties are five years.

Nakasone: So, you want to go four years? That's a rational decision...

Chair Takabuki: Well you know, that was what I was thinking; but you know...

Nakasone: Oh, oh...that's on tape, too?

Chair Takabuki: She's going to cut all that out...

[Staff comment: Not that one!]

Chair Takabuki: Well, I don't have any strong feelings about it, myself.

Fabrao: Me, either. We could bring it up to the commission...either go four or leave it at five. And those who are approached...maybe they could say 'well, I can only serve three years...'

Chair Takabuki: You have to serve five years...

Fabrao: Then take a five and take a leave of absence.

Nakasone: Well actually, they can resign...it doesn't matter.

Fabrao: So what's so bad about that if they have the option to resign? I would just leave it as it is...I would leave it.

Chair Takabuki: I have no problem with that. Okay, the next one...requiring geographical representation. Right now, the mayor is required to give due consideration, but it is not mandated to appoint from every geographic area. In fact, we don't even have definitions of what areas we'd be looking at. I don't know that it's ever been abused; I don't recall too many situations where this has been a problem...

Fabrao: Except for planning...

Chair Takabuki: The planning is a problem? The Maui Planning Commission?

Fabrao: That's the reason why Hana asked for a seat, and they just got one this year.

Chair Takabuki: So you mean the Maui Planning Commission has too many people from the same area?

Fabrao: Well, they have one from Lanai and now one from Hana...the rest were I think were more central...

Nakasone: It sounds like a good idea in terms of having a good cross section ...based on community plan areas; but then again...

Fabrao: The pool is small...but as much as possible, if they could... But, we can't make it so that it has to be that way...it puts too much of a restriction on the mayor or whoever will need to select those boards and commissions. But, it can happen...

Nakasone: I was considering an option on that...you have how many community plan areas?



Chair Takabuki: Eleven...something like that.

Nakasone: What you do is...they've just created their groups now, right? So, you have each group submit their own, rather than the mayor appoints...

Chair Takabuki: Each group submit directly to the council? For the confirmation?

Fabrao: No, to the mayor.

Nakasone: No, they don't need confirmation; just submit whoever they chose to represent that community plan area...and then it becomes part of the planning commission. But, this approach is good to me...

Fabrao: I like the concept.

Chair Takabuki: To mandate it, to require it?

Nakasone: That's another thing...

Chair Takabuki: Council type areas or... Most boards are nine; we're unusual that we have eleven...

Nakasone: Would it have any impact if you established an eleven member commission?

Fabrao: I would only think the cost, that's all.

Nakasone: I don't think the cost would increase...

Fabrao: You'd still have a representative from Lanai and Molokai...

Chair Takabuki: Right. I don't see that it would be a problem really...

Fabrao: It shouldn't be. Why are we stuck with nine anyway? Because there were only nine areas before?

Chair Takabuki: I don't know why it was nine...sometimes it was seven...sometimes it was five; and then at one point it was just decided to standardize it at nine; but there are commissions or boards that have fifteen, but they're unusual...

Nakasone: It was by Charter...

Chair Takabuki: That we went to nine?

Nakasone: Yup.

Chair Takabuki: But, it wasn't that long ago was it, Bob?

Nakasone: 1988.

Fabrao: I'd buy that, and then you'd have representatives from every area.

Chair Takabuki: But if we go to eleven, we'll still have some problems with the pool -- finding the people, but there'll be, on the other side, more community participa-

Chair Takabuki: (Continued) tion, and that would make the public happy.

Fabrao: And so even if you didn't go districting, if you took it one step farther...or two steps farther, because of the representation on these boards and commissions, the communities will have direct input for their areas. So, therefore it wouldn't be such a real big, big issue to go to districting.

Nakasone: Anne, how about that section there about due consideration?

Chair Takabuki: 13-2.3. Due consideration...

Nakasone: Instead of balanced geographical representation, somehow identify it with your community plan areas...

Chair Takabuki: So, at least it would make it a little bit clearer then...this is so vague...

Nakasone: At least you can identify areas by community plan areas...

Chair Takabuki: Maui County Code 2.80.050 indicates there are nine community plan areas; so we'll change Section 13-2 of the Charter to incorporate reference to these nine areas.

I had a question under 13-3. Title to Property...when I was reading through that, it requires that property held in the name of the board of water supply shall be promptly transferred or conveyed to the county. So, that was when the board went from being semi-autonomous to under the administration? Do you think, Bob? And then perhaps, when they went back to semi-autonomous, this wasn't changed? Because I wonder, can't the board hold title to property?

Nakasone: I thought they had title...just like the fifth floor, huh?

Chair Takabuki: Yeah, they bought that. So, this could have just been a transitional when the board of water supply came back under the administration...and it was not changed to reflect...

Nakasone: Yeah, because I don't see any amendment here. So, unless you go back to the original Charter...probably it was added in when the...was it 1973 or '76?

Fabrao: Maybe it was left in here by the last commission because they still had indebtedness...in some areas, wouldn't you think? It says upon the retirement of all bonded indebtedness of the department of water supply, all rights...transferred to the county...

Chair Takabuki: I think until such time as they paid off the debt, they had to have the official title to the property; but once that debt was discharged, then they could...

Fabrao: Which indicates that this was kept in there because they still have a debt...

Chair Takabuki: Yeah, they still have some debt and they still have some bonds issued...the department did have their own bonds...

Nakasone: Revenue bonds, right? But it seems like this would be a difficult thing to do in terms of title, if you have a Charter provision from autonomy to another

Nakasone: (Continued) department, you're going to be going back and forth transferring title. Being semi-autonomous doesn't necessarily give them the ownership title to properties...

Chair Takabuki: It just says under that Chapter on water that all real and personal property in connection with the water system shall be under the control... I guess it doesn't necessarily...

Nakasone: Control, yeah, but title-wise, it's retained by the county...

Chair Takabuki: That's fine with me; I was just wondering if it was an error and should have been changed, and it probably should have been. But, we could leave it the same, I guess, without any...

Nakasone: Check with corp counsel on that...

Chair Takabuki: Yeah, they should probably take a look at that.

Fabrao: Nobody's made an issue out of that so far, have they? And, I'm sure they've all looked at that...maybe they're comfortable with it.

Chair Takabuki: I really don't know if anybody looked at it...it's kind of one of those sections where you just go these are all the odds and ends...

Fabrao: But wouldn't the finance people look at that?

Chair Takabuki: But you know, when private parties...such as developers...dedicate to the county, they are dedicating... I wonder if they are dedicating directly to the board now... You know, when you have a private system or you improve something, and then you dedicate it to the county...I'm not really sure that they are transferring it off to the county and not transferring it to the department now. Anyway, it's a fine issue but I was just wondering if that was a mistake that needed to be corrected.

Can we go to Article 14 real quick? The question is just whether we should leave the current ways or procedures by which the Charter can be amended the same. Right now it can be done by resolution of the council in two readings, or petition presented to the council, whereupon the council will consider amendments. I don't know that there's any problem with it...that's the way they do it in the other counties.

Nakasone: This petition is really ineffective though, yeah? I mean they still have to go through a council action. You would think your initiatives and your recall could be put straight to the voters if it had sufficient signatures. You would think the same thing would apply to a Charter amendment by the process of petition...

Chair Takabuki: I don't know if there's even been a petition, though...

Nakasone: I don't recall one...

Chair Takabuki: But, you're right; I would think that there would be a direct avenue if you can get enough people to sign a petition. I can look at that. On the Big Island it seems that there is that more direct approach.

Nakasone: There is?

Chair Takabuki: Yeah. It says here..."upon the determination of the Clerk that the

Chair Takabuki: (Continued) petition contains the required signatures, the council shall by resolution, provide that the proposed amendments be submitted to the electors." So, even though they have to go through the process of the resolution, it doesn't seem to be discretionary...

Nakasone: To me, that's the right way to go about dealing with petitions... because right now, the council can just...

Chair Takabuki: With a majority vote...

Nakasone: Yeah; and, forget it.

Chair Takabuki: Well, any change? Do we actually want to pursue that?

Nakasone: I would think we should look into that. This thing has no teeth to it... It's just like your petition from Lanai, right? You submit it to the council and they decide whether it's...

Fabrao: Valid or invalid, viable or not viable...

Nakasone: Whether it should be put on the ballot or not, or whether the decision should be made by the council. But, the Hawaii one...it actually mandates the council to introduce a resolution that puts it on the ballot.

Chair Takabuki: Of course, they require 20% of the signatures; whereas, right now it's only 10% to get the petition before the council.

Nakasone: 20% sounds better... Yeah, put some teeth in there, so at least...

Chair Takabuki: There's a realistic avenue. Yeah, you're right; all this time I...

Nakasone: Otherwise, just take it out...

Chair Takabuki: That's true. Okay, why don't I try and get the language on that...

Nakasone: Yeah, 20%; the same provisions like the other sections.

Fabrao: Except that we changed the initiative to 15%...

Chair Takabuki: I would think you should have the Charter at 20% -- it should be much harder to amend the Charter...  
Shall we continue this mandatory ten year review?

Fabrao: I think so; why not? It's been working all this time...

Nakasone: Shouldn't we make it like the state?

Chair Takabuki: You mean that the voters have to decide that there should be a Charter Commission?

Nakasone: Yeah.

Fabrao: No; then they can decide they want one every two years, conceivably.

Nakasone: No, the council has several amendments every election practically,



Nakasone: (Continued) that they put on the ballot.

Fabrao: Then how would you get it back on track? How would you say there has to be a review if you leave it up to the people?

Nakasone: I think the question of a review every ten years should be in the Charter, but the question should be put to the people...whether they should have it or not. Instead of being mandatory, say that every ten years the voters should decide whether they should have a review of the Charter. So, next year already, if they say yes, then there's a review -- automatic. I have no strong feelings about it...

Chair Takabuki: Yeah, either way...

Fabrao: I don't know about that, because again, our forefathers thought that it was good to put in there...a mandatory review, because people's feelings change... If it's in there, it has to be addressed...if it's not in there, people tend to forget about it, and then things can go on and on and on, and you'll have more problems.

Nakasone: No; the thing is to make sure it's in the Charter and there's a question to the voters every ten years... You ask the voters 'Is there a need for a Charter Review.'

Fabrao: Oh, I see...if it's working okay, no need to have a Charter review. Yeah, okay.

Nakasone: Instead of being mandatory and going through the procedure of appointments, and setting the time element involved...

Fabrao: So, you'd put that to the ballot the general election before the ten years are up?

Nakasone: Yeah, because they are going to start reviewing in ten years again.

Fabrao: So, the next time we'd ask them would be...eight years...

Chair Takabuki: So we would put 'should there be a review in the year 2000'?

Fabrao: In the year 2000, that's eight years from now, we'd ask if they want a Charter review in 2002... How are you going to address that in the Charter? To remember it, eight years from now?

Chair Takabuki: We'd have to put in the year whatever, there shall be a question on the ballot... You'd have to put it in and innumerate it, right? But, if they say no, they don't want a Charter review, then the next time that question gets posed...unless we provide for repetitive questions to be asked every ten years; then the only other way you'd get a Charter review or Charter Commission would be if the council were to propose it.

Nakasone: Well, I have no strong feelings about it...

Chair Takabuki: Yeah...let me think about that; I was kind of in favor of leaving it like it is, but that's a point...

Fabrao: I'd like to leave just as it is...

Chair Takabuki: To require the mandatory...I think that's what the other counties do, but that doesn't mean that we're necessarily stuck with that... Well, we can give that some more thought.

Fabrao: But see what you'd be depriving the people of learning about the government every ten years?

Chair Takabuki: But, if we do leave this in, do you think the timing is okay? The fifteen months?

Nakasone: Not really...

Chair Takabuki: Fifteen months seems inadequate...

Fabrao: It should be earlier...yeah, I see what you're saying. Maybe because we're doing it one year before the next general election, that's not enough time. Although, we got a late start anyway this time...three months, four months...so that's four months delay...

Chair Takabuki: When did we actually get confirmed...in May?

Nakasone: So maybe that question of appointment should be...

Fabrao: Two years before...

Nakasone: Yeah.

Fabrao: I can see that.

Chair Takabuki: So even if we leave this in, let's look at the term. And, eleven people? It seems to have worked, yeah?

Fabrao: It's a pretty good balance...

Nakasone: Did you see the City and County Charter? The make up...I think they have thirteen members...six appointed by the mayor, six appointed by the council and one is appointed by the mayor and confirmed by the council.

Chair Takabuki: That's interesting...they must do a lot of fighting!

Nakasone: That's the real checks and balances...

Chair Takabuki: I guess we need to address the next one again, but on the issue of special Charter Commissions, if we're going to actually have any, we should probably be thinking along the lines of targeting certain areas...whether we should have a special commission to reexamine water; I'm not advocating that, but that's always a possibility. Or, to look at structure and organization to see if departments are still functioning properly...since departments came up several times during this review. Or even look at boards and commissions...there could be several different areas that might need to be studied, and I think we should start thinking at least about what those concerns are... between the next ten years. Does anything stick out to you, Bob, that needs to be reviewed in detail? Maybe the departments...

Nakasone: Well, I think basically the departments... I don't know; I have some mixed feelings about a Charter requirement mandates creating a department. It seems like,

Nakasone: (Continued) if you're talking like a corporation, in most corporations the administration has that responsibility of identifying or creating departments as the need is there; and it seems like the Charter, on this area, mandates additional costs by mandating that you have to have a department. And sometimes, it's not the most efficient way of government. The question is why should we mandate creating departments? 'And there shall be...' -- there's just no control in terms of...

Chair Takabuki: So, just say at least the functions and how...

Nakasone: Yeah; the mayor would have to submit some type of organizational chart and that would be the system the county would be working on in terms of managing and operating the county. It bothers me why it is in the Charter, that creating of departments. Take the request for waste management...we'll be mandating the creation of another department; is it really necessary?

Fabrao: I see what you are getting at... I guess maybe historically, that's been the way governments and corporations...they have different departments; how would you address it otherwise then?

Nakasone: No, I think administration should have the...some authority of creating the organizational chart, and that's the one they submit...there's nothing fixed...

Chair Takabuki: That's a good point. What are we really changing by establishing a department of waste management, other than setting up another head and another deputy, perhaps; but, aren't the functions and the duties still the same? I think so; and the only good reasons that come to mind, is if we intend to branch them off separately like water, and make them self-sufficient -- now that would make sense, that they be established now so they can get on that track. But other than that, Bob's right; there really isn't any actual need to dictate how it should be structured, as long as the function is accomplished.

Nakasone: Right. You're identifying the services that you're providing and from there you're identifying your areas of responsibility; and, just like this question of housing...I don't think it's really a necessary thing...you can just change the title of Human Concerns.

Chair Takabuki: I think that's one I would want to leave too...it's just to emphasize it to show how important it is, but you don't have to create a whole new set of bureaucracy.

Nakasone: Have another director...everytime you create a department, it becomes top heavy, you know...

Chair Takabuki: Yeah; only if it's really necessary for a certain separation, for the reasons I just brought out like having to operate in a self-sufficient mode. Even the department I work for...the department of management...it's just like we're all in one office. Even when I was there, my feeling was either beef up my department, or get rid of it...because all I had was a few clerical and one person on Molokai, and finally a CIP coordinator, but I wasn't a department...

Nakasone: I don't think the intent was to be a department...

Chair Takabuki: Well, I don't know why it was established. And I think even Bill, Linda's husband, said he felt that was a mistake...if I recall, when he came to see us. They established it, but in looking back he didn't know if it was necessary.

Nakasone: What do you think? Maybe we should... Well, that's under Jim's committee...

Chair Takabuki: I mean, the function will still be there...and I think we even talked about deputy mayor, I don't know if that's the proper way to put it... It just brings out the point that some of these departments...you're right, you kind of wonder if they have to be...

Nakasone: We should put them under Articles 6 or 7...seven...

Fabrao: That's Al's committee!

Nakasone: I'm talking about the managing director...

Chair Takabuki: Because what it is is you serve as the principal aide to the mayor...

Nakasone: Right...not really a department.

Chair Takabuki: Not really...unless this is changed again; if it gets beefed up, I can see it, but if it's going to stay the same maybe Bill Crockett was right.

Back to the budget articles...there were about three or four areas that we still need to address, and a couple areas where I had to find a little more information. The first one is number one that we left open, regarding the biennium budget. I think in concept it's a good idea, but I don't know if we're going to be able to make it work if they are not receptive to it...

Fabrao: We were going to get some input from the administration and council... their feelings on that.

Chair Takabuki: Right, and from what has been said thusfar, is they both prefer the annual budget...they like the idea that they go out to the public every year. Council seems to think it's a good way of scrutinizing the functions...the operations. So, like I said, it just doesn't seem like there's support on either side, so I would have a hard time with that.

Fabrao: Was there any suggestion from any place, or did we just...

Chair Takabuki: The commission talked about it...

Fabrao: We talked about it...but not from those two bodies, right? Why don't we just leave it at annual?

Chair Takabuki: What do you want to do? It's a good concept...

Nakasone: I think it's a cost-saving idea, really...it makes them a little more efficient when you go into a two year... You're not dealing with a multi -- like the state budget, you know. And, they're always coming in with supplemental budgets anyway; even with their annual budget they come in with supplementals. Well, I have no strong feeling one way or the other. I thought it would be a method by which it would save the council a lot of time in review...

Chair Takabuki: And, they could deal with other things instead of spending so much time...both sides, administration and council...

Nakasone: Oh definitely, yeah.



Fabrao: Look at how big and wide and extensive that budget is...and they spend how many months on it...

Chair Takabuki: Probably a good six months preparing, and another three or four months reviewing it...

Fabrao: So, it's almost a whole year gone down the line, so they don't have any time to do any of the council work...

Chair Takabuki: They do, but for a good two months the emphasis is on the budget... on the council's side. I think it's a little too hard to go for without the support. Okay, number three...add a new section to require that administration expend funds appropriated for council initiated projects...CIP projects. I don't know, I haven't really come up with any other ideas or mechanisms to be able to balance that one. It's a tough one. Shall we pass this on to the full [commission]? We started to get into some discussion last time on the full commission level...

Nakasone: Yeah, we did...

Chair Takabuki: We could do that; I don't have a specific recommendation, because I'm really not sure how it would work...

Fabrao: Because we discussed that...the appropriation may not necessarily mean that the money is there...

Chair Takabuki: The authority to spend is there...

Fabrao: Yeah, but the allocation or the actual money is not there. The authority to expend the money is there...that does not necessarily mean that the money, in actuality, is in the bank to be spent.

Chair Takabuki: More than likely the money's there, because we have a balanced budget. And, unless the revenues come in on a short-fall, in most cases the money is available. But, it's just the mayor's discretion whether to spend it or not...

Fabrao: This also has to do with all the other things we discussed about lapsing, and all that...

Chair Takabuki: It's just another way of trying to approach the problem...

Fabrao: But, I have problems with this word require; even though the council has initiated any CIP projects, if there are reasonably good reasons why the administration wouldn't want to expend the funds... But then, there's two sides on the table...

Chair Takabuki: I think we should defer this then, because it is a whole lot of issues...

Fabrao: Maybe with some brainstorming we'd get some new ideas...

Nakasone: The question on this initially is... Earlier the philosophy of our Charter...basically this is a very strong mayor Charter, and most of the provisions of budgeting or processing are generally initiated by the administration. By the same token, the budget is the same thing. Everybody talks about this question of checks and balances, but when you deal with a strong mayor Charter, you really don't have that. Like the

Nakasone: (Continued) budget itself, the final option is with the mayor. The mayor has to certify excess funds available; they can hold back and not certify, even if they have those funds...you know, they can not certify so the council won't be able to appropriate that money. But, that also has to be initiated by the mayor...the council cannot initiate any amendments to the budget, right?

Chair Takabuki: Right now, but some of these things would address that.

Nakasone: If we're agreeing to this strong mayor Charter concept, we shouldn't change it at all. But, if you really want to talk about checks and balances, then you can do alot to make it checks and balances.

Chair Takabuki: Yeah; I'd agree with that.

Fabrao: Then also at the same time, we need to be careful that it doesn't go in the opposite direction...that the legislative body then becomes stronger than the administrative body...it could happen.

Nakasone: No, it won't happen...not the way our Charter is structured.

Chair Takabuki: It's just finding the right balance of powers...

Nakasone: Somehow the pendulum has swung one way only; in most cases where you see a lot of governments going the opposite directions...the extreme they have... I don't know whether the intent of this commission's to bring back the balance, or leave it at only one side...

Chair Takabuki: I think it is to bring a balance...or more balanced type of approach. It may not be all the way to the middle, but I think it's gradually working its way toward being a better balance between the two branches.

Fabrao: My only concern is that the administration is still given the... because the administration is going to be the "person/persons" that will have final responsibility, that he/she should be able to run the administration...or run the government pretty much the way it should, with these checks and balances. It's there, you know...it would still be a little bit top heavy...corporations are run that way...

Nakasone: Well, corporations are based on...operation-wise...corporations are based on a policy making body which is the board...which is similar to a council. And, you have a manager or administrator that manages the business, right? And, I look at it as similar to what government should be... And, everybody is saying that the council is the policy making body, but really they are not... When I think about it, in the structure of our Charter, they are not really what I would consider a policy making body, because final decisions still rests with the mayor. Like if a board sets policy in a corporation, and the administrator doesn't follow...that administrator is out. So, that's the difference; they don't tell you how to do it, but there's policy there you should follow.

Chair Takabuki: Well, I guess that one will still be going round and round... So, maybe the balance is... That's why I was thinking about the abandonment procedures and try to give council at least the ability to appropriate when she's not going to spend it on the projects that they want it spent on. So, that might tip the scale a little bit more in their favor...it's not going to be the answer, but right now they can't even touch the money, even if it's sitting there, as long as the mayor decides she doesn't want to let them know that she's not going to spend it. I don't know; that's just one small

Chair Takabuki: (Continued) way to at least deal with some of that.

I think we can still look at this other one...I'm just not sure about the mechanism...

Nakasone: Which one?

Chair Takabuki: The one requiring expenditure...

Nakasone: Oh, for the mayor to release...

Chair Takabuki: So, if we toss it around with the whole commission then maybe we can come up with something...

Fabrao: I think so.

Chair Takabuki: And, I guess, outside of the lapsing which is tied in again to the abandonment...and the thought there was try to clear up what the procedure is -- mayor abandons and then notifies the council, but also to require her to review and abandon within a certain period if she doesn't intend to spend it. That way, again, the monies don't just sit there until the eighteen months, or whatever required.

Fabrao: That was the one you said you were going to address the language to make it...time limits...to make it that if she doesn't make her decision by a certain length of time, that those monies then could be used by the council to...

Chair Takabuki: I don't know the time period...what would be a reasonable time period. You can't always tell that you're going to go forward with a project...definitely not within the first few months... Maybe this is another one we still have to flesh out a little bit.

Fabrao: That's what I thought we were going to do...with the lapsing...

Chair Takabuki: With the full commission? No, we were going to try and do it again in committee. At the last Commission meeting, we were going to meet again in committee and try to look at this closer and see if we could come up with something; but, not being able to do that, I'm just going to send it back to them.

Nakasone: What was it prior to this? Was it two or three years?

Chair Takabuki: The lapsing? Three; remember the real kicker on that was if any money was spent within that three years, the appropriation continued on, and, that was the big problem -- the language was vague. Now atleast, it all has to be encumbered...it cannot be just spend \$1 and the appropriation goes on and on and on.

I talked to the administration -- Georgina, the budget director -- about this eighteen month period, and she said 'no problem' -- they're not asking for it to be extended. It's not that they are always able to complete, or to let the contracts out, but her feeling was if we just give them 24 months instead, that'll just be dragging out the process a little more; it really wouldn't accomplish all that much more. So, as far as her opinion, it can stay the same.

Fabrao: What are her feelings about this lapsing in eighteen months?

Chair Takabuki: That's why we don't have to change that portion. Do you have any other questions, Dolores?

Fabrao: No.

Chair Takabuki: The rest were some fine technical points, and that's it. So, those two issues will go to the full commission...on the expenditures -- CIP -- by the mayor; council -- CIP -- by the mayor; and the abandonment procedures.  
That's it, unless anyone else has anything to add.

Fabrao: There's plenty more things we've got to talk about.

Chair Takabuki: But, that's it for me.

IV. ADJOURNMENT  
There being no further business, Chair Takabuki adjourned the meeting at 7:35 p.m.

ACCEPTED:

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Anne Takabuki, Chairman                      Date