

CHARTER COMMISSION
MEETING MINUTES
AUGUST 3, 1992
COUNCIL COMMITTEE ROOM

PRESENT

James Cockett
Sherrilee Dodson (Vice Chair)
Dolores Fabrao
Annette Mondoy
Robert Nakasone (Chairman)
Victor Reyes
Allan Sparks
Anne Takabuki
Jamie Woodburn
Deborah Wright
Lloyd Yonenaka
Susan Nakano-Ruidas (Staff)
Paul Mancini (Commission Counsel)

GUESTS

Dave DeLeon
Brian Perry (The Maui News)
Ralph Masuda
David Craddick
Larry Jefts
Ed Tanji

I. CALL TO ORDER

Chair Nakasone noted all commissioners present and called the meeting to order at 3:15 p.m.

II. COMMUNICATIONS

The following Communications were accepted by the Commission:

- A. 92-69 Transmittal re: authorization for use of checks instead of warrants, submitted by Howard Kihune
- B. 92-70 Commentary from 9/31/92 Maui News re: Water Board, written by J. Hunter
- C. 92-71 Letter dated 8/1/92 supporting creation of Lanai Planning Commission, submitted by F.A. Reilly
- D. 92-72 Letter dated 8/1/92 supporting creation of Lanai Planning Commission, submitted by R. McOmber
- E. 92-73 Letter dated 8/2/92 supporting creation of Lanai Planning Commission, submitted by M. Evans

III. PUBLIC TESTIMONY

- A. Ralph Masuda, representing Lanai Company.

Masuda: I'm here today to reiterate my position as stated back in June, the first time that I came in front of this Commission, to testify against the formation of a Lanai planning commission...to be placed on the ballot. My concerns at that time was how would the makeup of a Lanai planning commission be solved or resolved, especially when the company employs, I think, about a thousand people on that island; and whether or not the minority of the people on Lanai can best serve in the interests of that entire island. There was a statement made that it is not the responsibility of this Commission to really know how a planning commission could work, or what the makeup of the planning commission can be on Lanai. And, I think that that is really a wrong attitude to take; I think there are major projects, major problems perhaps, that could not be resolved with a Lanai planning commission -- especially if there are employees appointed to and not confirmed as members of that planning commission. Your legal counsel here, I believe at that time, also said that in his tenure as the county's corporation counsel there was an opinion issued that an employee that served on a planning commission could not vote on or take action on an application by his employer, or her employer. If

Masuda: (Continued) there is a way that members of this Charter Commission can show that the planning commission makeup will be fair on the island of Lanai, then I don't think the company would object to a Lanai Planning Commission. We feel that upon nomination of people from Lanai...and by the time this commission gets together with its rules and regulations and the confirmation process, it'll be a waste of a year where we really can't do anything on that island...if any kind of permits require a planning commission approval. And then comes the legality of the makeup of that commission. And, these are just some of the things I'd like you to think about before making your final vote. That's all I have to say.

Chair Nakasone: Okay; questions from the members?

Reyes: Mr. Masuda, considering the desires of the people on Lanai and considering your concerns and worries...how would you feel if the planning commission is called the Lanai and Molokai Planning Commission?

Masuda: You mean have one commission for both Molokai and Lanai?

Reyes: Right.

Masuda: Would that mean another Charter amendment?

Reyes: We have not approved...the Lanai Planning Commission's not been approved, so there would not be another Charter amendment. It's just a question.

Masuda: Well, I have not really given any thought to it, but...I really can't answer that, Mr. Reyes. You have two different types of situations on Molokai and Lanai; you have a more diverse base as far as employers on Molokai than you do on Lanai, I think... I don't know Molokai too well. I know that it took about a year to get the Molokai commission really rolling...to get its rules and regulations. It has its own rules and regs and it also has its own special management area of rules and regulations. And, I think it does present a problem to applicants when they do apply if they are from Maui... if they go over to Molokai, it's a different rule. And, I think if you have a Lanai Planning Commission you will have another set of rules, also -- you'll probably have three sets of rules in this county for a same type of permit.

Reyes: But what I'm trying to address is the possibility of having a single Molokai and Lanai Planning Commission, based on the unique situation of the two islands, maybe...

Masuda: I think every community or every district has its uniqueness, and there's a possibility that every district on this island may be asking for its own planning commission also, you know. I feel that...I think that to place something on a ballot for the people to vote on is good, but I think also that if it doesn't work it's going to take another amendment and another vote in another two years before you possibly maybe can even remove it from the Charter. And, what do we do in that two years or longer? If it doesn't work, what do we do? Do we stand still and not do anything, or what happens then?

Reyes: Well, I'm seeking an answer to this...

Masuda: To Molokai and Lanai? Well, I think I made a suggestion that you add members from Lanai to the Maui Planning Commission, rather than join the Molokai Planning Commission.

Fabrao: Mr. Chairman, I would like to address this concern I have to you. I was approached at the post office and I was literally told that "you guys got me into

Fabrao: (Continued) trouble."

Masuda: That I got you...?

Fabrao: No, that I got certain people into trouble...

Masuda: Oh, I don't know...

Fabrao: Because they signed that petition. Now if you remember, Mr. Luna of your company asked for the list of approximately 300 names on the petition for the planning commission...which to me, even though it's a small number of the people living on Lanai... we didn't canvas the whole community; had we had, you would have gotten more signatures. But, isn't it bordering on intimidation if the union approaches their people and says "well you can't vote on the planning commission for any issue anyway." Now, I'm concerned about things like that and that's the reason why I believe that there are some people in the community who are nonemployees of the company...

Masuda: That's right.

Fabrao: And also employees of the company who have expressed their desire to have a planning commission so they can have some home rule, so they have some decision making empowerment, so to speak, because the company has not been open to that. I'm working towards an equitable kind of compromise, but I don't think we can get that with the company the way it's going now. And so, I'm just expressing that concern to you...that if a person is approached...and of course that's public documents when it comes to the Commission, and that anyone could ask for those lists...but to use those lists as a form of intimidation or to have them not participate in the community, it's like saying don't be an American. You're exercising your right as an American to come and speak before this Commission -- I think those people have a right also to express their wishes, whether it's through a petition or orally. And, they've talked to me orally that I'm glad you're doing what you're doing, and so that's the reason why I'm serving here. That's all I wanted to say.

Masuda: I don't know anything about company intimidation or company threats, or anything like that, you know; I'm not a full time resident of Lanai, I am a resident here on Maui... I do have a Maui office here for the company. Whether or not there has been...I don't know whether there were threats made or what...but I have also heard from people that signed that petition...they said that they didn't know what they were signing. I don't know whether or not they were coerced into signing the petition or not, so it works both ways -- I'm not sure, you know.

Fabrao: Let me assure you there was no coercion.

Chair Nakasone: Any further questions? If not, thank you. Okay, members of the Charter Commission...you all have this document [referring to the posted tentative final proposed Charter amendments]. Today we scheduled the final action of the tentative approved amendments to the Charter...to take final vote on all the amendments that's gone through this Commission. And, according to our rules, the amendments will need eight votes to be placed on the ballot. Any questions? Okay, Paul, do you have anything to say?

Mancini: Let me just indicate what I've passed out to you. I, with the help of Sue, drafted the introductory section of the report...made up of the background of the Commission; how you were organized; your subcommittees; how you went through your vote process; the Commission's record...what it's comprised of; and your report which follows this. The only thing we couldn't get was the date you were confirmed by the council, but I'm sure the

Mancini: (Continued) county clerk can give us that. The second document is some revisions we talked about last time to the recall section. If you recall in discussing the issues with Daryl, we were talking that the fifteen day withdrawal was after the filing of the petition and not the filing of the affidavit, so I made that change. And, under Section 10-6.2. we were talking about ninety (90) days on the withdrawal versus thirty (30); if you recall, Daryl has to file with the lieutenant governor's office sixty days in advance, and we were discussing the fact that even sixty days isn't adequate because it must be filed...so I changed the draft to ninety. None of this was voted on but it was discussed. And then on the special election on the recall, it had been discussed utilizing the 180 day period for a special election...that is, if there was no general election within 180 days after the council has the petition, then there would be a special election right in the language. I don't believe any of that was voted on, but those were the general discussions and I know the Commission was looking to vote on them, so what I did is I did the redraft so at least you'd have it to consider it...if you are going to consider it, it would be in the redraft form. That's all...

Chair Nakasone: Okay, what's the pleasure of this Commission? Do you want to go according to the summary sheet?

Woodburn: Does this summary sheet follow Paul's report fairly closely, or not? Maybe we can use this [summary sheet] as our guide and refer back to this [draft report] if we need some explanations.

Chair Nakasone: Sure. Okay, a motion is in order for Article 3, item 1.

Dodson: I move to amend Section 3-1 to provide that there should be a council member residing in each of the following proposed county council residency areas: the island of Lanai; the island of Molokai; West Maui; Makawao-Haiku-Paia; Hana-Keanae-Kailua; Pukalani-Kula-Ulupalakua; South Maui; Kahului; Wailuku-Waihee-Waiehu.

Fabrao: I second the motion.

Chair Nakasone: Discussion? Al?

Sparks: I couldn't help but notice that you had some quandary about how you were going to define the boundaries while I was gone, and so I went and talked to Paul's secretary and dug out of the closet the one that I left with him that everyone was looking for while I was gone...which is the one on your right there -- that did it by census tracts. The one on the left is the one that Daryl did trying to get close to the same thing with precincts. See, when I had talked to Daryl before, he convinced me that census tracts were better because they're more permanent; so, that's the way I went. Then he found out that there are not written descriptions of census tracts, and he's in the habit of using written descriptions to explain where people live in terms of precincts. So, he felt they needed written descriptions...so that's why you went back to census tracts [sic]. I just had a brief conversation with Daryl...as I was reading your minutes, I was wondering why the hang up about written descriptions, because I've seen...in making this map on your right... I've seen the census tract maps, and the smaller versions of the census tract maps, and the maps themselves are very clear -- I don't think there's any way anybody could be confused as to where they lived if they looked at the census tract maps and submaps of the census tracts. So, why not just reference the maps, which are in the keeping of the county clerk? I just had that conversation with Daryl, and he's still a little nervous about doing it that way. And so I guess actually, it probably makes not a great amount of difference which way you do it, the basic concept of residency areas is pretty much the same on both of them.

Sparks: (Continued) There's a couple of small differences in these maps I want to point out. In this one, defining Kahului here, this line actually tends to run between major populations -- right here, I think, is Papa Avenue [sic - Kanaloa] -- so that's where the zoo is on one side and the stadium and so forth is on the other. There's not much problem going down neighborhood streets because you're going between neighborhoods. The same thing here -- you're just including this whole below Sand Hills area and so forth, so the lines on the census tracts don't go through population areas or neighborhoods; on a precinct map it's not quite the same way...in some cases...there's a little blurb here where Sand Hills ends up being part of Kahului, so I think in that sense the census lines are a little cleaner and less confusing. Also, Waikapu gets divided by the census tract which is...I can see why he wants written descriptions...if you're going right through town, you have to be very clear where people on one side of the street are in one precinct and the Waiehu side another. But, that doesn't happen in this census tract here -- you include all of Waikapu in this part here. Again, the lines are between population areas. The one problem I have with the census tracts is this line here divides a census tract, so in my mind, you can clearly define the areas by referencing the numbers of the census tracts...with the exception of this line which would have to be defined by some quick written description; and I don't think it would be difficult because there's a major gulch in here, I think it's Kakipi Gulch...or maybe there's a different name for part of it...you could just reference east of that and west of that. The precincts seems to be cleaner there because the lines are about exactly in the same place, and there's a precinct line that you can follow. Another minor difference is where Puunene...actually it does fit in Kahului here anyway...this is pretty much all open space. I think that's about all the differences...by way of information. We do need to decide which way we're going to do it; I guess the county clerk is much more comfortable with written descriptions.

Chair Nakasone: Okay, any further discussion? Paul?

Mancini: Initially my draft was by census tract, and then Daryl came in and the last version you had is by precinct, after Daryl's testimony. Now my recollection, and maybe Allan indicated the same thing, that initially Waikapu was a part of Wailuku; and now under the precinct version is part of Kihei-Makena-Maalaea.

Sparks: It looks to me like it's divided -- some of it on one side and some of it on another.

Mancini: That's how he described it; he said there were two major changes...he said Waikapu moved into Kihei-Makena-Maalaea, and Dairy Road going into Kahului rather than being part of the Haiku district. It seemed to make a lot of sense...not having Dairy Road being part of Haiku.

Sparks: All of this is Puunene, and Dairy Road is in Kahului here, as it is in here.

Yonenaka: Yes...well, not necessarily Dairy Road but the cane fields.

Sparks: The cane fields...there's a difference...there's more cane fields in this one, but then so what? So that's not a significant difference...

Mancini: Those were the two that he indicated...Waikapu and the Dairy Road; it sounded like you were saying it was...there are other changes.

Sparks: Yes, I think there are...as you go between what we consider Kahului and Wailuku, there's some differences here...and that might be easily fixed...there's a little

Sparks: (Continued) precinct here we could just put in the yellow instead of the orange, and I think that would more evenly balance the populations anyway...but, it's a little late to fix things isn't it?

Chair Nakasone: No, it's not late. [LAUGHTER]

Woodburn: Our amendment's based on precincts, right? Which is what the county clerk would prefer?

Fabrao: Yes.

Yonenaka: The left map.

Woodburn: Why don't we just do that?

Sparks: I think that's the only difference now...this definition gives you a larger population...I think you have in front of you somewhere...but this are in terms of registered voters too, so you have to watch out for that.

Reyes: Mr. Chairman, do you recall whether or not when the county clerk provided us with the new scheme, he also included the tentative numbers based on the last voter registration, and would those numbers correspond to what Al has proposed? Because the way I look at it now, the numbers still remain the same based on the census tract...and then now on the description of the areas...we're now talking about precincts. I think those two are different, and I think we should do some technical...there's some technical inconsistency there.

Sparks: Yes, not all these numbers are going to be the same if you go to precincts.

Dodson: The way the motion is on the floor...if we go to precincts then, the list that Daryl gave us the last time, that has the numbers, we can just adjust that; this is just a draft.

Mancini: The point is a correct one because we took...we revised it to identify that in the amended section...the precinct numbers; he indicated we had two changes, but not terribly significant relative to Waikapu and Dairy Road. Whether the approximate population stays the same in all of these is not clear, because the approximate population was identified on the census tract. For example, Lanai and Molokai there's no question that their population is going to stay the same; West Maui probably is the same population... There are a few areas where the population may change; the easiest thing would be to just strike the population figures in the report, and then you won't have any discrepancy at all. I don't think it makes too much sense to write in the registered voter count, because I'm not sure that that's significant at all.

Sparks: But that changes all the time, too.

Mancini: And my note was to delete the population from the report if you voted to go ahead with the precincts.

Sparks: Even with the census tracts we might not want the population in there.

Chair Nakasone: I think your census tracts...I don't think we should identify with the population question.

Mancini: In my final report, depending upon how you vote, I'll adjust it.

Chair Nakasone: Okay, any more discussion?

Fabrao: Just a question, Mr. Chairman; my understanding is there's approximately 3,000 people on Lanai with a defacto of another 500 -- this figure of 2400 is from the 1990 census...so it's more than that now.

Wright: That's why we're taking it out.

Chair Nakasone: Yes, that's why the question of whether to delete the populations.

Takabuki: I just wanted to state, Mr. Chairman, my concern in the creation of the small residency area which is Hana-Keanae-Kailua, with a population of a little over 2000. And, looking at the last voter count from the last election, I see there's less than 900 people that voted...so it does concern me very much that there is such a small pool from which one council member would be elected.

Chair Nakasone: Further discussion? Al?

Sparks: I also am concerned about what Anne just mentioned; but on the other hand, I'm also concerned about adding in the more...we could add in another precinct there and add in another 5000 people, but as Jamie's pointed out in the past, that's quite a different kind of residence area...and so the nature of the community would change, and you'd be more than likely to have a representative from that pool...who resides in Haiku, let's say, is supposedly the neighbor of the people in Hana... So, I'm torn; it's too small a pool, on the other hand it is a fairly distinct, unique rural kind of community.

Cockett: I find no fault in the approximate population for Hana-Keanae-Kailua; it reminds me of Lanai...it's a small population base, but they represent a large area. So, whoever's elected from that area, I think, should be someone from there instead of adding Haiku in, or any other area that might take away from Hana-Keanae-Kailua.

Chair Nakasone: Any other discussion? The Chair wants to make some comments also on this. I supported the concept that we try to establish more residency requirements, than having a multi-seat in Central Maui; and I assumed that we were going to work out single seat residency requirements for Central Maui -- split that three multi-seat. And, I have received a lot of calls regarding the question of why one Central Maui seat was taken away and given to the East Maui...which now amounts to three. And, we had some testimony suggesting that we retain that one at large seat, based on the Kahului-Wailuku seats, and combine Hana-Keanae with Haiku; so you have a one-to-one race in all nine seats...not like before where you have Central Maui with three seats...multi-seats. So, I support the idea of having a one-to-one competition in terms of all the nine seats, but I cannot support the question of the pool of people that you can get from a population of 2200-plus; and, I think the argument of Lanai-Molokai is because of the islands being unique and separated. I certainly can accept having a representative...representation from both islands; but I cannot support this based on I believe there should be a combination of Makawao with Hana classification.

Woodburn: If that were to be done, the seat that would get freed up would go where?

Chair Nakasone: There'd be one at large seat...

Sparks: No residency required seat.

Chair Nakasone: Yes, no residency requirement. Any further discussion?

Yonenaka: On that no residency requirement seat, as confusing as it is now, wouldn't that make it a little bit against what we had thought about in terms of having residency requirements? I mean, the basic idea behind this...our proposal is that we want people to live in certain areas.

Chair Nakasone: Right.

Yonenaka: Say, okay, we do it except one of them can live anywhere -- that doesn't seem to jive with the whole concept that people should live in different areas. And, looking at the Hana...I realize the numbers are small, but I think Hana is almost classified as a Lanai or Molokai; and I'm sure if you go to Hana, that's the first thing they say. I understand both...you know, your point of view and your concerns, but I think Hana is really... it is probably one of the biggest areas on Maui, and I think that in the long run it's critical that somebody reside there. There's going to be, I think, in the long run somebody who needs to make these decisions in the Hana area, simply because of the amount of land they have. And, I realize your point of view, but at the same time, it is all elected at large anyway.

Chair Nakasone: My concern is the pool of candidates; that's my concern.

Yonenaka: Yes, and I agree; but that's like saying there's 900 people in Hana and none of them are worthy of being on the council.

Chair Nakasone: No, it's not that.

Yonenaka: I know, but what I'm saying is that I think...we've got a small pool on Molokai, we've got a small pool on Lanai; you have a small pool a lot of places, and if you look at it in terms of how many people actually run for office...

Cockett: Mr. Chairman, just a reminder to all of us here; you recall way back when we first started, we were very eager in taking and having all the debates on one man, one vote concept where we do elect the districts...rather the areas we discussed, whereby we talked about combining Molokai, Lanai, and possibly Hana or West Maui. That was a good concept, but I believe we didn't have enough time to even pursue that thinking; I think, in the future, we need to do that...and where we are now is a step towards that...maybe ten years hence that might come about, but to consider an at large seat I don't think is in the best interest of all the districts.

Reyes: Mr. Chairman, since we...almost all of us...think and talk like true district, but we don't act like true district...[LAUGHTER]...would there be...to advance Jim's comment...how about if we go to a...since we're concerned about equal representation, but not really going to a true district...how about if the residency areas are divided into more or less equal population base, rather than what we have...along the same line that Jim has talked about...

Chair Nakasone: Well, we're going in the direction of single seat districts....

Reyes: But not a true single seat district; you still have...now you will have more equal pools for candidates from each residential area.

Chair Nakasone: Are you asking me a question? [LAUGHTER]

Reyes: You're asking for comments.

Chair Nakasone: Oh, okay; any more discussion? Al?

Sparks: I guess I don't agree with Victor's idea there; the advantage of this system is that you don't have to have equal populations...you can define residency areas fairly close to distinct communities. Our problem is that some of those distinct communities are awfully small in population, therefore the pool of candidates is awfully small. And, one of the spin-offs of that has been in the case of Lanai, where you have one person in office for thirty-plus years because nobody else on Lanai can muster that effective of a campaign where most of the voters are over in the central area on Maui. We've dealt with that a little bit by our...I think we dealt with that a little bit by our limitation of terms; so, it might not be such a big problem in the future for small areas like Hana and Lanai. It's like somebody said a long time ago, there's no perfect solution here; but let me remind you that even though it's a small pool of candidates in a place like Hana, the voting muscle remains with where the voters are...and most of them are in other places in the county, and so whoever comes out of this small pool of candidates...this small pool in Hana, is going to have to pay a lot of attention to the concerns of the rest of the county -- that's another advantage of the at large system.

Wright: Yes, I tend to agree with Al to the extent that I thought what we were trying to get to was sort of the best of both worlds; we have a unique geographic area, and within that unique geographic area more geographic divisions, and to avoid the inadequacies that would, in my opinion, come from a true districting situation at this time...where perhaps some of these unique areas would have to be combined...it was sort of a middle ground. If someone lives in that area, they have to be able to muster enough votes from the community at large to be a true representative of the entire community; but at the same time, they would have to live in that area and perhaps be more aware then of that area's needs. And, it seemed to be sort of a compromise for the best of both worlds, at least for the time being; and, that's why I guess, even though there is a small pool, I would be concerned about us saying that Hana is not as unique as Lanai or Molokai or South Maui, or something like that, when it's very clearly defined geographically in a very unique way. So, because of the fact that I thought that was our goal as far as going to this situation, I guess I would favor the motion as it is posed at this time.

Chair Nakasone: Any further discussion? Al?

Sparks: Yes, maybe I'm missing something here, but as I look at Paul's written descriptions of our residency areas I only see six and there should be nine.

Woodburn: You're missing page 4 then...back up one page.

Sparks: Okay, that's in his draft, but on the amended section...

Mancini: In the residency areas you've got Lanai and Molokai...

Reyes: You've got six plus Lanai and Molokai...that's only eight, so Wailuku-Kahului has been combined...number 3.

Sparks: I think he missed Wailuku...and Lanai and Molokai.

Mancini: Lanai and Molokai would be in the body, because you've got composition of

Mancini: (Continued) nine...one member would be from the island of Molokai and one member from the island of Lanai; that's that residency area. Then you create the other ones... you've got east, west...you've got Wailuku -- Wailuku-Kahului is broken...that's the problem. Number 3 should be broken into two.

Dodson: You don't need to define Lanai and Molokai with census tracts...

Wright: Or precincts.

Mancini: There should be seven, and 3 should be broken into two.

Sparks: I think there's one missing there...all of the major Wailuku area.

Woodburn: That's it, isn't it? You just break those two and the others are how they are described.

Mancini: That's right; that would make it seven and seven plus two is nine.

Wright: So, Wailuku and Kahului has to be broken.

Sparks: So what we are really voting on is this definition.

Chair Nakasone: Ready for the question?

Sparks: If I were here earlier and had time, I'd probably already have noticed the change right there.

Woodburn: Well, you weren't. [LAUGHTER]

Dodson: Call for the question.

Chair Nakasone: Okay, roll call.

[Staff: We'll go in alphabetical order.]

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	No.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	No.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Chair Nakasone: Okay, nine yes and two noes -- MOTION CARRIED. Item 3 shall be put on the ballot.

Dodson: I'd like to move to amend Section 3-2, relating to the terms of the council members, to provide that the terms of office shall begin on the first working day of December, and a council member shall not serve more than five consecutive two year terms.

Yonenaka: Second.

Chair Nakasone: Discussion?

Yonenaka: Are these going to be bunched together? This is actually two amendments, isn't it? Or is it considered one?

Dodson: The motion is for both of them, yes. Moving things along here...

Chair Nakasone: Do you want to separate the questions?

Woodburn: We received some testimony...what was it...from Kauai or from Honolulu that said that they were going with the January 1 and that it didn't seem to be that much of a problem...

Yonenaka: No, that was Big Island...they were against the December one because they wanted a longer Thanksgiving vacation. [LAUGHTER]

Chair Nakasone: It was from Kauai...the council chair.

Sparks: And Kauai has the first week in December now, right? But they don't like it because that hurts their Thanksgiving vacation.

Yonenaka: And it runs into...they have to start working before Christmas vacation...

Sparks: Which just supports what we thought...[LAUGHTER]...there's a dead period there where...

Dodson: This confirms our rationale.

Sparks: I was reading through the minutes and I noticed that Mayor Lingle had some concerns about it, too; basically about a new mayor coming in and having enough time to get their team together. I was thinking about that; I think that's a valid point, but it happens like once every...probably once every eight...but maybe once every four years...and there's all those other years in between that you're talking about... So, somebody really has to hustle when they come in as a new mayor...

Chair Nakasone: I understand the mayor of the Big Island said there wasn't a problem in terms of the transition...in December.

Sparks: The other thing is suppose they don't have all their team selected once they are sworn into office...we have all these acting sixty day periods that we talked about before...wouldn't that cover it and keep the county operating okay?

Reyes: The hold-overs.

Woodburn: But this is just for council anyway.

Wright: Right now, this vote.

Takabuki: But we would do the same for the mayor...

Cockett: On page 17...his or her election...that they begin in December; and I think

Cockett: (Continued) the discussion was, in fact, to get a good working team for the incoming mayor, that they would need more time to select the best appointee.

Dodson: Well, we're discussing the council right now.

Cockett: I understand that, but...

Sparks: But it obviously makes no sense to separate the two actually; they should all be starting at the same time.

Cockett: That's right, so my recommendation would be that we stay with the January change.

Chair Nakasone: Well, but there's a motion on the floor to approve the recommendation ...the amendment right now.

Fabrao: Excuse me; I wanted to clarify this...you have two points on that motion, and if one gets shot down, the other one would be shot down too.

Dodson: And then one of them can be made separately afterwards.

Chair Nakasone: Let's separate the questions, if there's no objections...separate the questions A and B -- no objections? Okay, discussion on A...

Mancini: The December start date? I had one thing you might want to consider...I'm assuming you're going to vote on that issue, and you may want to vote on the mayor on the question because it may make some consistency...if you affirm this and do adopt it, it makes sense to deal with the mayor at the same time. If you reject it, it may make some sense to reject the mayor at the same time.

Chair Nakasone: Is there any problem having different effective dates? [LAUGHTER]

Woodburn: Yes, that would really screw things up.

Mancini: From a practical standpoint, I suppose you could conclude there is some problem, but it is possible to have the mayor sworn in after the council and vice versa.

Chair Nakasone: Would there be any objection to a...

Sparks: I was just going to amend Sherri's motion then to add the mayor's with the council's...

Chair Nakasone: Article 7...on the second page.

Sparks: Starting on the first working day...if she'll accept that amendment, then we can do what Paul suggested.

Dodson: Yes, I'll accept that amendment.

Chair Nakasone: Okay, any objections? Okay, so ordered. Now we're on the question of the effective date of office...

Dodson: For both the council and the mayor.

Chair Nakasone: For both the mayor and the council, right. Any discussion?

Dodson: Question.

Chair Nakasone: Question; roll call. The chair wants to make sure everybody understands the question...we are on the item 2 of A...which is the term of office, the effective date that the council and under Article 7...office of the mayor...it has the same effective date. Okay? Roll call.

Cockett: Question...the effective dates are going to be the same, but is it going to be the new date or the old date?..

Chair Nakasone: We are voting on the new date.

Mondoy: We're talking December now.

Dodson: December First.

Cockett:	No.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	No.
Nakasone:	No.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	No.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Chair Nakasone: Four noes -- MOTION LOST.

Okay, we're on 3-2.b. and this deals with five consecutive two year terms. There's a motion on the floor; discussion? No discussion? The chair wants to respond to this... [LAUGHTER] I still believe that we do have a limited term, which is identified by the voter's choice, and I cannot see that we are telling the voters that they cannot vote for this person because he has limited terms. If he is serving or she is serving the public... why should the person be taken out of office? I still believe we are restricting the rights of the voters...of their choice to represent themselves. So, any more discussion? [LAUGHTER]

Wright: So then why do we have a term on presidents of the United States?

Chair Nakasone: I don't believe in that either. [LAUGHTER]

Wright: They only have to sit out one two year term, so I don't think it's that restrictive of anything.

Reyes: I was going to say the same thing, Mr. Chairman.

Sparks: My reading of the voting public is they want this limitation on their rights to vote because they can't seem to do it any other way...given all the powers of incumbency when it comes around election time.

Chair Nakasone: Well, I can't agree with that...we've had members of the House, State

Chair Nakasone: (Continued) or council that have served only a couple of terms and they were voted out; I think a good example is the Big Island...where an incumbent mayor has been voted out, so...

Sparks: The voters still have that power to do that before the ten years is up if they want; we haven't taken any of that away from them.

Chair Nakasone: No, you're not; but you're setting a limit -- that's the difference. Okay, any further discussion? Roll call.

Cockett: Do you want to repeat the motion...just for clarity's sake?

Chair Nakasone: The motion is to limit the council member's terms to five two year terms.

Fabrao: Five consecutive two year terms.

Cockett: I concur with that motion. [LAUGHTER]

Woodburn: That's a yes. [LAUGHTER]

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	No.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	No.

Chair Nakasone: Okay, MOTION CARRIES. Okay, 3-2.b. will be put on the ballot.

Dodson: I'd like to make a motion to amend Section 3-3 to state that to be eligible for the office of council member a person must be a resident of the county for at least ninety (90) days prior to the filing of nomination papers, and a resident of the residency area from which the person seeks to be elected at the time of filing.

Yonenaka: Second.

Chair Nakasone: We all understand the motion? Discussion? None? Roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Dodson: Unanimous!

Chair Nakasone: Okay, MOTION CARRIED. Item 3-3 will be put on the ballot.

Dodson: I'd like to make a motion to amend Section 3-5 to relocate this section in the Charter to be adjacent to other Commissions and Boards.

Chair Nakasone: No objection to...

Dodson: Can I have a second? Wake up, guys. [LAUGHTER]

Yonenaka: Second.

Chair Nakasone: Discussion?

Woodburn: This is just housekeeping, right?

Mancini: This wasn't just housekeeping; we added to the salary commission that fact that they would set the salaries of elected officials...

Dodson: No, that isn't part of this motion...

Mancini: Oh, you're separating the two...

Dodson: I learned my lesson -- I'm separating them now.

Mondoy: We're only on a.

Dodson: Only on number 4 a.

Chair Nakasone: If no further discussion, roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIED. Number 4.a. [Section 3-5] will be on the ballot.

Dodson: Okay, I'd like to make a motion to amend Section 3-5 to provide that the salary commission shall set the salaries of all elected officials and appointed directors and deputies, provided that the salary commission shall consult with the commissions or boards which have appointing authority.

Yonenaka: Second.

Chair Nakasone: Discussion?

Woodburn: Consult with means they could also overturn or make other recommendations?

Dodson: Not necessarily, no.

Yonenaka: The salary commission will set the salaries of all.

Woodburn: I know, but let's say there's a commission that sets the salary of a director or recommends a salary...that's just advice only?

Yonenaka: Yes, advisory only.

Chair Nakasone: Questions or any further discussion? If none, roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIED. Item 4.b. will be on the ballot.

Dodson: I'd like to make a motion to amend Section 3-6.4. to provide that voting on motions shall be in accordance with council rules, except that a roll call vote shall be taken if one (1) member so requests. This relates to the council.

Mondoy: Second.

Chair Nakasone: Discussion? None? Roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIED. Item 5 will be placed on the ballot.

Dodson: I'd like to make a motion to amend Section 6-2.3., relating to the appointment of officers to provide as follows:

- (a) the mayor may appoint acting department heads with full authority of the office temporarily held;

Dodson: (Continued)

- (b) the mayor shall submit the name of the nominee(s) for corporation counsel and/or prosecuting attorney within sixty (60) days of taking office, or upon creation of a vacancy;
- (c) the council shall act to approve or disapprove the nominee within sixty (60) days of the mayor's submittal of the nomination;
- (d) if the nomination is disapproved, the mayor shall submit the name of a new nominee to the council within sixty (60) days of the disapproval, and the council shall act to approve or disapprove within sixty (60) days of submittal of the name of the new nominee;
- (e) any disapproved nominee shall not continue in the nominated position; and
- (f) if the council does not act within sixty (60) days, the nominee shall be deemed approved.

Yonenaka: Second.

Chair Nakasone: Discussion? Okay, if no further discussion, roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIED...on Article 6, it will be placed on the ballot.

Dodson: Okay, I'd like to make a motion to amend Section 8-3.2. relating to the qualifications of the prosecuting attorney, to delete the requirement that the prosecuting attorney shall have been engaged in the practice of law in the State of Hawaii for at least three (3) years.

Fabrao: I second the motion.

Chair Nakasone: Discussion?

Reyes: Mr. Chairman, I thought I recalled seeing in corporation counsel and prosecuting attorney -- the practice for both within the state should be considered. In the motion, you only are considering the prosecuting attorney. Do you wish to consider both?

Dodson: No.

Wright: Because that is both...

Reyes: Because we don't have the prosecuting attorney and the corporation counsel in...

Wright: No, it's not on that list but we did say that that was going to come up for consideration in some manner.

Dodson: Yes, I'll bring it up next.

Wright: Okay.

Sparks: I got a little bit lost...we're on...

Dodson: We're on just the prosecuting attorney...that he shall not have to be engaged in the practice of law in the State of Hawaii for at least three years.

Chair Nakasone: Okay, discussion? If none, roll call.

Reyes: Mr. Chairman, when we were...I just want some clarification just to make sure with what I'm going to vote at is the right question I have. When we were presented with the proposal to delete the requirement that the prosecuting...that the nominee for prosecuting attorney must have practiced law in the State of Hawaii for three years, we were told that that is redundant because in the previous provision...by being...let me decide the right phrase, Mr. Chairman...by being in good standing before the Supreme Court of the state means that the person should have been practicing law in the State of Hawaii.

Wright: No, absolutely not; it does not mean that.

Dodson: You can apply one day and be in good standing the next.

Reyes: Okay, what we're saying here is we will not have...by deleting that requirement...we will be amending this section...this portion...

Dodson: No, to be a prosecutor you have to be licensed in the State of Hawaii as an attorney, but you do not have to have practiced here for the past three years.

Reyes: And, you are deleting that provision?

Dodson: The requirement that you have to have practiced in the State of Hawaii for three years. In other words, somebody can come into the state, take the bar, two months later be appointed as prosecuting attorney.

Wright: Victor, we're not changing that section around...being in good standing is not synonymous with how long you have practiced; it just means that you are in good standing with the Supreme Court...there are not outstanding reasons...such as suspension of your license, or things like this...why you are not entitled to continue practicing, or you would not be considered fit to practice. But, it is not synonymous with any length of time that you have been licensed in the state at all, that's what Sherri said...you could apply, be admitted to the state and on the next day get a certificate of good standing for that one day. All it says is, you know, you are certified at that time as being in good standing in the State of Hawaii...it's not the same thing.

Reyes: Okay, in that case, Mr. Chairman, I'm opposed to the amendment because I believe that a person who should be appointed as prosecuting attorney in the county should have at least practiced for three years...practiced law in the State of Hawaii.

Sparks: I'd like to make sure my rationale on this is still on the table somewhere or other...I thought prosecuting attorneys deal with criminal law or fairly general laws that aren't that different from state to state, therefore we could open up the applicant pool to other states without sacrificing any expertise that's necessary for prosecuting under criminal laws...criminal codes. But that that same rationale didn't work for corporation

Sparks: (Continued) counsel where they are dealing with local state laws; is that fairly accurate rationale? At least in...does that make any sense...that rationale?

Dodson: Your rationale. [LAUGHTER]

Wright: Some lawyers would like to talk...someone just did, but what I would like to say is this...I don't agree that there's a difference in that requirement between prosecuting attorney and corp counsel, there may be some but generally speaking, if you have practiced law in other states, it is not difficult to go to another state and learn the local law -- you have a statute book. If anything, it's much easier in Hawaii than in other states; you have a very few number of statute books compared to other states where they fill shelves. There's not a large body of case law in the State of Hawaii either, so it is not at all difficult to have practiced for ten years in Montana and come here and start acting as a prosecutor -- there's nothing tough about it. You would be more concerned with a person's qualifications, their standing, and their job history than whether or not they have been licensed in Hawaii...or practiced law in Hawaii for three years to be a prosecutor. So, I agree that you should not narrow your pool on some rationale that doesn't, to me, make any sense. And, it's one of those things where you're talking about for the top guy here -- that's mainly an administrative position anyway. The people who are under him, the deputy prosecutors, come all the time from other states having just gotten licensed and they're the ones that are trying the cases...so the ones that are actually doing the legal work in the sense of having to be familiar with the statutes, don't have that requirement and are hired frequently while they're still residing in another state. So, I think it's sort of a false...I can understand people's concern, but I think it's sort of a false impression that somehow this is essential to do the job when it's really not essential to the job at all; first of all because it's administrative, and secondly, because the people who are on the majority trying the cases are hired from other states all the time, and don't have three years of practice in the State of Hawaii at all. So, I don't see the logic behind it from the practical aspects.

Sparks: I know this isn't the question before us, but it's so closely related...do you make the same argument basically for the corp counsel?

Wright: Yes, I would, because it's like any other place...anytime you're faced with a legal question, if it's outside of your area of expertise you go, you look at the statute, you look at the case law, you look at the decisions that went before -- there's nothing unique about that. I can see more of a reason for corp counsel to have some background, but generally speaking, unless you get more specific, just having practiced law in the State of Hawaii for three years is not going to give you the background in the type of law that corp counsel necessarily has to have. So, unless you defined it stricter and say they have to have practiced law in the State of Hawaii for three years in this area of law...then I don't think you're still...I still don't see that you're achieving anything by that requirement. So, it's one of those things where someone expressed a problem saying well, they should be licensed in the state for three years because of the planning regulations and some of the ordinances, and this is very important, but being licensed in the state for three years doesn't give you that background anyway. So, the problem is that you're either going to say that's a false rule...we don't need that, or you're going to define it even more detailed saying they have to have practiced in particular areas...otherwise, to me, you have nothing that really means anything -- so either get more definite, or do away with it.

Sparks: I'm just wondering if we have any legal advocates for the other position...before I vote on this.

Wright: Ask Paul how he feels...he can tell you. [LAUGHTER]

Mancini: What I thought the amendment was looking to do was give the mayor and council opportunities to appoint someone who may have come here for a short term but have such great legal talent that it was impressive to them. Say the attorney general of the United States moves to Maui... [LAUGHTER]

Sparks: Or wants to, if you give him a chance... [LAUGHTER]

Mancini: Well, you've got another issue there...Hawaii doesn't have any reciprocity, so if you're not licensed here, if you're licensed in another jurisdiction, you can't practice here. You have to take a bar examination here, so there is a chilling effect in the lack of reciprocity in this jurisdiction. So, it's unlikely that someone would be a candidate for either of those offices unless they've been here for a period of time, because they will have had to take a bar examination here. So, that is the argument on one side...if there's this unusual talent available, and therefore it creates a greater opportunity for the appointing authority to look at a greater pool of people. The other side of the argument is that from a practical standpoint, these appointees...in order to be appointed... would have to be in the confidence of nine council members and the executive...the mayor... and to be here for such a short period of time, it may be unlikely that they would have gained that confidence also; so you've got the political process to take into consideration. I think those are the two issues...whether, one, to take over the job of prosecuting attorney and corp counsel needs the requisite experience...I would say that I probably agree that corp counsel...it is a broader perspective of issues...it's a different type of job. Prosecuting attorney...basically it's pretty straight forward; corp counsel's office has a wide variety of type of cases you take...you're defending the county in civil action, you're defending condemnation actions, you should know tort law, you're taking care of all the county's contracts, collective bargaining is a big part of your responsibilities, each of the agencies have different bodies of law...no attorney practices in any one of those fields exclusively -- there's a wide variety of laws...even three years in any one of those fields even becomes questionable. So, I don't know if I've answered your question...

Reyes: I think that's what I heard, Paul, that for a person...it would be unlikely to be practicing law in the state if he is in good standing with the State Supreme Court... To me, what it says...what we have here is specific, and by making the nominees not to have practiced three years of law in the State of Hawaii would make it a little bit more weak, because of that rationale that the person would likely be practicing anyway. Why don't we keep it the way it is, and make the person to have practiced three years in the State of Hawaii? To me, you're adding more ambiguity because you are assuming that the person would have practiced anyway.

Wright: No, you're not. You can be in good standing and not practice in the state. If I took a bar, I passed the exam, I got a certificate of good standing, I was still living in Texas; I was practicing law in Texas before I moved here. But, it has nothing to do with whether you've actually practiced.

Reyes: That's right.

Wright: So, I mean, you're not adding any ambiguity because that's a totally separate certifying. As Jamie said, it's sort of like getting a tax clearance.

Reyes: Well, maybe ambiguity is not the right word, but it seems that you're making it more weak...by...

Wright: No, it doesn't change what that means at all. That means something totally different from the amount of years that you've practiced.

Chair Nakasone: Okay, any further discussion? Ready for the question? Roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.
Reyes:	No.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIED...Article 8, item 1 will be on the ballot.

[RECESS/RECONVENE]

Chair Nakasone: Okay, the meeting shall reconvene; we're on item 2 of Article 8.

Dodson: I'd like to make a motion to amend Section 8-2.2., relating to the qualifications of the corp counsel, to delete the requirement that the corporation counsel attorney shall have been engaged in the practice of law in the State of Hawaii for at least three (3) years.

Fabrao: Second the motion.

Chair Nakasone: Discussion?

Dodson: It's not on your summary sheets.

Chair Nakasone: It's still under 1...the prosecutor's office.

Reyes: Mr. Chairman, I would oppose it for the same reason I voiced my opposition for prosecuting attorney.

Chair Nakasone: Any further discussion?

Fabrao: Question.

Chair Nakasone: Roll call.

Cockett:	Yes.
Dodson:	No.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.
Reyes:	No.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.

ROLL CALL CONTINUED:

Wright: Yes.
Yonenaka: Yes.

Chair Nakasone: Okay, MOTION CARRIED...item 2 that applies similar to the prosecutor's office will apply to the corp counsel; okay, that will be put on the ballot.

Dodson: I'd like to make a motion to amend Section 8-3.3.a., relating to the staff of prosecuting attorney, to provide that investigators of the department shall have the powers and privileges of a police officer in the County of Maui.

Yonenaka: Second.

Chair Nakasone: Discussion?

Woodburn: I need some clarification...[LAUGHTER]...can somebody bring me up to speed on what the rationale for that was?

Chair Nakasone: Paul, you want to?

Mancini: Yes; we heard extensive testimony from a number of investigators and the prosecuting attorney himself, that this was needed. There was a statute which he made reference to which gave authority to the attorney general to provide for investigators but that was not adequate, and there was a previous statute which had been repealed. Other counties have added it to their Charters since the statute has been repealed. The prosecuting attorney's concern was that he would be putting investigators into a situation that really required police powers -- making arrests, asking compelling witnesses to go to court to take action -- and these investigators did not have those powers...they didn't have the ability to be armed, didn't have the arrest powers... And, Larry indicated that he would not put these investigators into those types of positions unless they had the police powers, and consequently, their effectiveness was curtailed. The only concern that's been expressed, almost inadvertently, is that you're setting up two situations of police powers...one in the police department, and one in the prosecuting attorney's office. Apparently there was a controversy in Honolulu where the prosecuting attorney's office had investigators with police powers and they sometimes didn't see matters consistent with the police department, and either jealousies or at least conflicts arose. There's concern that that doesn't happen. You have to be somewhat aware that that situation occurred where you had an elected prosecutor...you had a police chief that was appointed by the police commission...so you didn't have a certain coordination that you have in this jurisdiction, which I think was Larry's point...I don't think he articulated it that way, but you do have in a sense a mayor that oversees both departments here, so that's a major, major difference.

Wright: Paul, didn't we hear too...didn't all the other counties already add this to their charter, or was there only a few? I think all the other charters have been amended to include this already. And, one of the things that he mentioned, which I wasn't aware of everything that the investigators do, but apparently they even have to accompany prisoners from the mainland...and they would have to do that unarmed...and, serve subpoenas on material witnesses, and things like this at night or when they can get them served with the subpoenas, and right now it's kind of frightening. I don't like the idea of giving more guns out, I mean, that's not something that I think is real enchanting; at the same time, I don't think it's fair at all for these investigators to have to go into dangerous situations when they don't have this authority...they said that when they make an arrest now it's a citizen's arrest, which is a scary thing to be doing also. And, at least at the

Wright: (Continued) present time, all of the investigators that came had extensive police experience, or had come from the police department before they became investigators. And, I think, Paul, in your draft...didn't you put something about that we'd been assured that they would have the training and all that kind of stuff?

Mancini: If you recall, I put it in the draft before we got the assurance...and we received a letter from personnel services which I think stated there would have to be some changes with regards to the job description, maybe compensation; then we received a letter from the chief of police basically saying it was workable, but also identifying the past problem in the City & County of Honolulu. If you pass this, it was my idea in the report to expand the report to deal with the situation that we expect basically the mayor and managing director to oversee this, to make sure that what happened in the City & County of Honolulu doesn't happen here.

Fabrao: Mr. Chairman, I have several comments, if I may. There are two things that I wanted to say, Jamie...the police officers cannot always accompany the investigators in cases for transport to the mainland and vice versa; and the other thing is too, that they have to sometimes be protectors for witnesses and victims...and how can you protect them if you don't have that kind of power?

Cockett: I'd like to add just one more thing...that normally the investigators are picked from the police department with police experience, and they are moving up into that area.

Chair Nakasone: Any further discussion? Well, the chair has some comments on this also...I asked the prosecutor about why that particular statute was repealed, and he didn't quite come out with a good answer to me. And, I had calls also regarding the concern of the public of giving this authority to the so called prosecutor's office. And, it seems very unusual to have the investigators accompanying prisoners from out of state; and, I understand from the police department that usually doesn't happen...not with the investigators. So, there's some conflict in stories I've heard, and if I'm not mistaken, the City & County of Honolulu has it by ordinance -- not by charter, correct? Right, Paul?

Mancini: I thought Anne could do that.

Takabuki: I asked the question, and Larry said that...I thought he said that it was not City & County, but another county was trying to do it by ordinance, but when he talked to the attorney general it was preferable to do it by Charter. But, if it can be done by ordinance, I would think, personally, that would be a better vehicle...because you can narrow it and be as specific as you need to be; whereas in the Charter, it's very broad. So, I don't know; that's a legal question whether you can accomplish it through an ordinance as opposed to a Charter amendment.

Reyes: Is the concern here...is the same concern that I have with the police powers be limited in the performance of the investigators duties? In other words, we don't want an investigator who has a police power all of a sudden acting like a police officer.

Chair Nakasone: Well, that's the problem; you're going to have police powers in two separate departments.

Woodburn: There may be a way through ordinance, and that's not addressed in this statement...you know, this is just dispensing the authority.

Dodson: I think the investigators are still under...they are still employees of the prosecutor's office, and I thought that when they came to tell us that part of the requirements to be an investigator is that you have...what was it...four years or something of police background, so police officers are really the only ones who are eligible...whether they be in this state or another state. And, they are under the prosecutor, so I mean, whether they work eight hours and then outside of that eight hours they go out and make all kinds of arrests...I don't see it happening, because they've just got this badge all of a sudden, they do carry badges anyway. I thought an important thing she said...that one woman that came...said they can't even be issued handcuffs because they're not police...they don't have police powers; and when you're accompanying...if you're going to bring a witness back from the mainland, I certainly hope you have a pair of handcuffs.

Fabrao: Mr. Chairman, one more statement...I think from what I understand is that the investigators...the police officers do the initial investigation, and then the investigators come in and carry through the job to prosecution, and that's where I think they're...

Mancini: Going back to the qualifications...if you recall, the director of personnel service sent us the minimum job qualifications...and the training and experience requirement is graduation from an accredited college or university with major work in police science and sociology, psychology, public administration and related fields -- and, three years of investigational or law enforcement experience, six months of which shall have involved full time criminal investigative experience, or an equivalent combination of training and experience. So although there is no specific requirement that you had to have been a police officer in the past, you've got those broad categories of qualifications.

Mondoy: So, the difference being that one would carry...they would like to be able to carry firearms, handcuffs, what else...

Chair Nakasone: Well, they'd have the full authority of a police officer.

Dodson: Arrests, instead of making citizen's arrests.

Sparks: When you asked why this got deleted by state law, what answer did they give?

Chair Nakasone: They really didn't give an answer. I believe it is because of the incident in the City & County of Honolulu, where the prosecutor's office had like a separate police department, you know, doing their own thing and not really working with their police department.

Sparks: I've got a vague memory that when they first came to us...it came about as kind of an accident in Honolulu...that statute change, but maybe I'm wrong.

Wright: It was a long time ago; the repeal of the statute you mean?

Sparks: Yes, the repeal of the statute was for some other unconnected reasons and this got caught up in it, but maybe I'm wrong.

Fabrao: That's my recollection, also; in the beginning when we talked about this...they were doing some kind of housekeeping chore, and that inadvertently got mixed up with it...then they discovered it, but it was already too late.

Sparks: But, that could have been told to us and still not have been the whole truth.

Fabrao: May I make one more comment, please? There's concern about too many powers

Fabrao: (Continued) being spread around in the two different departments...the police have their power and also the prosecuting attorney's people; I think because they're going to be ...they are both under one administration that there should be and maybe it could be addressed in our report...that that's one of our concerns, and that they could work at getting some kind of protocol going between the two departments...in so far as where investigative work is concerned.

Cockett: To further that...with the set up here on Maui, they'll both come under the mayor -- the commission and the prosecutor, whereas in Honolulu...the prosecutor is elected, so he has his own little world over there, so consequently there's a different program.

Chair Nakasone: But you can expand that, Jim, to say that the mayor appoints the prosecutor, so by the same token you have the same problem.

Cockett: I don't think it will be as drastic as Honolulu.

Takabuki: Just a question for you, Paul...if we pass this language as is, would it still be possible to narrow by ordinance if necessary, and exclude whatever specific things might not be necessary for the investigators?

Mancini: I don't quite understand the scenario that you're referring to.

Takabuki: Well, I think there might be some...and it seemed to me that one of the investigators said...that we're here before you to ask you how to shape our powers -- I think Ernest [HueSing] came up here and said last time that he wanted guidance from us. And so, I guess, the question is are there certain powers that don't necessarily have to be conveyed to the investigators? In which case, maybe they shouldn't have the full broad powers, but they should have certain ones that they need; but if we pass this language, does it just blanket them and give them everything?

Mancini: Well, the powers are in the specs of the job set up by personnel services; the state statute delegates the county the police enforcement powers...that's how come they have their own police departments. And the power that I think is being asked in the Charter is to take some of those powers and not only give them to the police department, but have them exercised by the investigators.

Takabuki: Okay, so then they would have all the powers...completely.

Mancini: Well, when you say all the powers, it gets difficult for me to envision all the powers of a police officer...or, you could be talking about the power to arrest, you could be talking about the power of having firearms...the police department has various divisions that does various things; these investigators basically are obligated to investigate -- that's what their job assignment...job classification's require them to do...not to exercise those general duties of a police officer. You have examples of duties which are in the job specification here, so they are limited to those in the job specs.

Reyes: That's the same thing...would it be redundant, Paul, if we add something like in the performance of their duties? In other words, they can't...we don't want to have a loose cannonball...but again, if the police power is given specifically in the performance of their duty as an investigator...can that be okay?

Mancini: I understand what you're trying to say...you can certainly state that...make it clear what your reservation is, and I could state the reservation in the report...that you

Mancini: (Continued) have no intent of making police officers out of investigators. You are merely attempting to give them the power to arrest and the power to carry firearms... we may ask Larry and an investigator to come in here...because those are the only two things that they mentioned, to my recollection.

Dodson: And the handcuffs, huh?

Wright: So, you want to amend the motion, is that what you're saying? To say in the performance of their duties?

Reyes: That will at least confirm, you know, out thing...if it's okay, I'd like to amend it.

Mancini: You're not making them a police officer...you're giving the investigator certain powers that a police officer has...and what they've asked for are the powers to arrest and carry firearms.

Chair Nakasone: Okay, any further discussion?

Sparks: Let me see if I follow this now...so the difference would be in performance of their duties...they have to be...they could use those powers in their investigative duties, but unlike a real police officer, they couldn't use them if they on some weekend on vacation saw somebody doing something wrong...because it wouldn't be in performing their duties. Like a regular police officer, I understand, can and does things almost all the time even when they are off duty.

Mancini: Well, it's a good question...whether he would make a citizen's arrest...I'm not sure what the answer to that is.

Reyes: If it's not redundant, Mr. Chairman, I'd like to add the phrase "in performance of their duties."

Dodson: I would like to suggest that we keep it the way it is and put it in the report that it is our intent to give these investigators, in the course of their job, the powers and privileges of a police officer...and leave it out of the language.

Chair Nakasone: Is there a second to that amendment?

Cockett: Second that.

Chair Nakasone: Okay, there's an amendment on the floor. Discussions -- in performance of their duties...

Reyes: Yes, Mr. Chairman, I think it would make it more specific.

Chair Nakasone: Can you identify the section and read it out so everybody understands?

Fabrao: I understand that the amendment is to include it in the report and not in the language of the Charter.

Dodson: No, my motion is to...just the way it reads...to provide that investigators of the department shall have the powers and privileges of a police officer in the County of Maui. Victor would like to amend my motion to add the phrase...within the course of their duties...in the performance of their duties. So, if we're going to vote, it's going

Dodson: (Continued) to be on his motion to amend my motion.

Chair Nakasone: Just adding in performance of their duties.

Reyes: Let me explain...

Cockett: I rescind my second. [LAUGHTER]

Reyes: Did you withdraw it?

Cockett: Yes, I did, because I was seconding hers...not yours...

Sparks: I'll second it.

Chair Nakasone: Can you identify that, Victor?

Mancini: [Section] 8-3.3.a. on page 19 of my report...the very last sentence on page 19 it states "investigators within the department of prosecuting attorney shall have the powers and privileges of a police officer of the County of Maui"...the additional language... "in performance of their duties."

Chair Nakasone: Any advice from our legal counsel?

Mancini: I don't see that there's any problem with that...you could put it at the front -- "In the performance of duties, investigators within the department of prosecuting attorney shall have the powers and privileges of a police officer of the County of Maui." You can put it in the beginning of the sentence...rather than the end.

Yonenaka: Yes, that sounds better.

Mancini: If you happen to pass this, I'm going to expand on the explanation and also your intent not to make police officers out of investigators...and, I believe that is your intent...if you do pass it.

Chair Nakasone: Okay, the members understand the amendment on the floor right now?

Dodson: The amendment to my motion.

Chair Nakasone: Yes; any further discussion? Okay, roll call on the amendment.

<u>Cockett</u> :	Yes.
<u>Dodson</u> :	No.
<u>Fabrao</u> :	No.
<u>Mondoy</u> :	Yes.
<u>Nakasone</u> :	No.
<u>Reyes</u> :	Yes.
<u>Sparks</u> :	Yes.
<u>Takabuki</u> :	Yes.
<u>Woodburn</u> :	Yes.
<u>Wright</u> :	No.
<u>Yonenaka</u> :	Yes.

MOTION DIES. Now we're on the main motion as stated. Further discussion? If none,

Chair Nakasone: (Continued) roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	No.
Reyes:	No.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	No.
Wright:	Yes.
Yonenaka:	Yes.

Eight affirmative votes, MOTION CARRIES.

Dodson: I'd like to make a motion to amend Section 8-4.3.7., relating to the director of finance, to provide that the director of finance may issue checks in addition to warrants.

Fabrao: I second the motion.

Chair Nakasone: Discussion? All understand the motion? Roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

MOTION CARRIES.

Mancini: Just on that, I was going to expand the report...I thought Wallace Fujita wrote a rather persuasive letter on June 24, and I was persuaded with the auditor's comment...I thought we should add this to the report, so I'll add a narrative to it.

Sparks: It's a good idea.

Dodson: I'd like to make a motion to amend Article 8, Chapter 5, relating to the department of public works, to expand the title and duties of the department to read: Department of Public Works and Waste Management.

Mondoy: Second.

Chair Nakasone: Discussion? Roll call.

Cockett:	Yes.
Dodson:	Yes.

ROLL CALL (Continued)

Fabrao: Yes.
Mondoy: Yes.
Nakasone: Yes.
Reyes: Yes.
Sparks: Yes.
Takabuki: Yes.
Woodburn: Yes.
Wright: Yes.
Yonenaka: Yes.

Okay, MOTION CARRIES. Oh, we missed something...

Dodson: No.

Woodburn: Next...appeals.

Cockett: Oh, the one we missed was department of...

Dodson: Department of Housing and Human Services? No, it's down in 8...under Article 8.

Cockett: Oh, I see it.

Dodson: We're not finished with county departments yet.

Cockett: Okay.

Chair Nakasone: Okay.

Dodson: I'd like to make a motion to amend Section 8-5.4., relating to the powers and duties of the board of variances and appeals, to delete the reference to variances from the general plan, and to add words of limitation regarding variances from zoning ordinances, to read:

Hear and determine applications for variances from the strict application of the provisions contained within any zoning, subdivision or building ordinances.

Fabrao: Second the motion.

Chair Nakasone: Discussion?

Wright: I don't understand it. [LAUGHTER] I don't understand what the provisions mean... that part at all...I still don't understand that. I mean, eliminating it from the general plan -- that I understand and that I can agree with; but I don't understand the other language, so my comment is that I don't vote in favor of things I don't understand.

Chair Nakasone: Paul, can you expand on that?

Mancini: No, I'm as cloudy as Debbie. [LAUGHTER]

Sparks: We are in deep trouble. [LAUGHTER]

Mancini: If you recall on my checklist of concerns, that was one of them that I obviously have to write a report to show what your intent is...and your words of limitation...and for the life of me, I can't write the report because I don't know what the intent is.

Dodson: I'd like to withdraw my motion...and change it to read amend Section 8-5.4., relating to powers and duties of the board of variances and appeals, to delete the references to variances from the general plan, so it would read:

Hear and determine applications for variances from the strict application of any zoning, subdivison or building ordinances.

Woodburn: Second.

Dodson: So now we're just voting on just the taking out the language of the general plan.

Sparks: I hope you didn't remove my opportunity to ask a couple questions about what you just took out...because I read this discussion from a Julie Higa, and she talked a lot about standards...and that didn't clarify anything for anybody, is that right?

Wright: What standards?

Dodson: Then it should say standards instead of provisions.

Sparks: And, she talks also about the word any...that there are comprehensive zoning ordinances or others that aren't...did that make any sense to anybody?

Yonenaka: Well, I just had one question on this, and maybe Paul can answer...it's on the zoning. Is interim zoning a zoning classification that will be affected by this?

Mancini: Interim zoning is a specific section of the code. There's two parts of zoning -- there's interim zoning ordinance, and there's a permanent zoning ordinance. The interim zoning ordinance has its own provisions for variances, which are different from the permanent zoning ordinance, and different provisions for the non-conforming uses. It would be a zoning ordinance...there's two types of ordinance...permanent zoning ordinance...and interim zoning... You may, if you have property in Makawao, Hana, Molokai...there's a reasonable likelihood that property is zoned interim, as opposed to zoned under permanent zoning ordinances to the County of Maui. There is the ability to get variances, and in fact, they are probably more likely under the interim zoning ordinance, because it's supposed to be interim. Have I answered your question? Your question was is it a zoning ordinance... yes, it is...I answered it too much.

Yonenaka: So the board of variances and appeals will hear cases on iterim zoning....

Mancini: In interim zoning, I believe a use variance from interim zoning finally has to be approved by the council; am I correct? And where, if it's in the permanent zoning ordinances, it doesn't go to the council, it goes strictly to board of variance and appeals.

Wright: Al, to respond to what you're talking about...I don't know what standards she was talking about, so using the word standards doesn't clarify anything, because I don't know of anything that's termed a standard. So, if that were maybe clear...if there was something that said these were the building standards...or something like this...then maybe it would be clearer, but to me, you could use provisions, standards, whatever you wanted to say, and I don't really understand that.

Mancini: If you take a look at your first paragraph under 8-4.5. it says "in accordance with such principles, conditions and procedures prescribed by the council, the board of variance and appeals shall..." and then they grant the powers. The council then establishes

Mancini: (Continued) the principles, conditions and procedures. And to me, putting all that together, I'd say what is the criteria under which you're going to grant a variance or an appeal? And, that's done by ordinance -- the criteria is set out by ordinance.

Sparks: Then let me ask you this...in your little memo you explained those criteria...different kinds of variances...use variances...and what the criteria are for hardship, and so forth and so on. Then, this Julie Higa's suggestion...she suggested that some of that same language...it sounded like the same language we've added into this section of the Charter so that we made it explicit...what the criteria are in the Charter that they can deal with. And, I got intrigued with that, because we got into this whole conversation over the notion that they're going beyond the intent of their authority was, and...if that makes any sense, narrow it down with criteria and everything in the Charter that would maybe arraign that limitations in a little.

Mancini: If you are going to do that, then you should delete the second sentence, which gives the council the ability to do that by ordinance; in my mind, that's the intent of that second paragraph...

Sparks: Well, I guess the other part of the question is has the council done that?

Mancini: Yes.

Sparks: So, it's in effect?

Mancini: Yes, it was in my memo...if you recall, the memo indicated what they had done...in which they had lumped the criteria for use variances and area variances together, with the harder, more difficult criteria, which was undue hardship...where most of the case law on area variances is practical difficulty.

Reyes: The way I understand it from Ms. Higa's comments, standards mean that there are specific provisions...not provisions...but specific language in the code that says what those standards are...it could be...a typical example would be the set back from the...what do you call that...feet you have to have the frontage of the house...from the street...fifteen foot set back, and all of those...were what was meant, I think, by standards. Whereas the word provision meant that anything under the ordinance...which could be the intent of the ordinance, and so by taking the word provision...that means, like Al said, our concern is we want the board of variance and appeals to deal with those particular typical set back...those are the ones we want the board of variance and appeals...but we don't want them to do some zoning variance.

Mancini: Well, I think that controversy was the reason I wrote the memo to the Commission showing the two natures of variances. What it seems like you're saying is you do not wish the board of variance and appeals to grant use variances -- that's what you're saying; and, what I tried to do is just show you that it's very conventional with different types of criteria to get use variances...and I provided some cases as to where use variances were normally granted and what the criteria was. Right now the Charter nor the ordinance is broken down in language of area variances or use variances, but they tend to...I think in the interim zoning ordinance you tend to get more use variances than any other ordinance because it's temporary, and applicants find that their in a certain zone and they want a use...a typical use variance in interim zoned...is I have a retail operation and I'm sort of a non-conforming use in there, and I want additional uses beyond what I'm retailing now to add to my inventory of retailing...and they go to the board of variance and appeals and say...let me do X in addition to Y...to expand my uses -- and

Mancini: (Continued) those are usually considered. That's a typical type of use variance. But, what I hear you saying is you would like to prohibit use variances, and I guess my point is right now the legislative branch of government...if they wanted to do that...under the second paragraph in 8-5-4. could set up the conditions they felt reasonable.

Reyes: Well, I'm not saying that we want to create changes in use or modification of uses, but the proper avenue should be the council probably, rather than through the board of variance and appeals...

Mancini: But, if you were to consider that...let me be your advocate for a second... I'm advocating to you that you should do that...the first thing I would do is bring out the people that administer...like we brought Francis Cerizo, and asked him questions... how many use variances were given over the past number of years, what were the use variances for, what was the criteria they showed...if we took away this power...would we be hurting anyone from taking this power away -- what would the negative reactions have been over the last five years, if the board didn't have that power. And, if you saw none, you saw it wasn't used or you saw it was misused, then you would have enough of a legislative record, in my mind, to make an informed decision as to whether you want to create that prohibition in the Charter, because that's what it would be -- a prohibition.

Sparks: I was just reading some of the minutes and it seems like you did ask those kind of questions and got some general feel for it, wasn't that it?

Woodburn: He didn't have specific criteria that those decisions were based on though, did they?

Mancini: Well, the one we spoke most about was with regard to the building ordinance, because we were considering taking that out...and, we went into the number of variances and there were quite a few having to do with roadway improvements; but I don't think we focused in on use variances. And in the use variances, I think, the interim zone we would probably find most; but it would be interesting to see if you found any under the permanent zoning ordinances.

Chair Nakasone: Paul, it seems that the major concern about this section is dealing with this general plan.

Mancini: That's what the amendment is right now. I don't think the other one is something that we...something we have not really been able to...I think this...I can't recall whether it came from corp counsel or it came from planning...

Dodson: It came from corp counsel because we asked Guy [Haywood] how'd he come up with this and...I don't think we even got an answer from him.

Sparks: I don't remember who proposed it either, and it seemed like it might have been planning that proposed it, some wording like this.

Dodson: I thought it was Guy, and we asked him how did you come up with the provisions contained within that phrase and he said "oh, I really don't remember," or "I don't know."

Sparks: Yes, and then Paul asked how I was going to defend it if we did it, and I said "I don't know." [LAUGHTER] Because he doesn't know, and if he doesn't know, he can't explain it to me...how to do it.

Chair Nakasone: Yes, but the basic concern, Al, on this particular section is that

Chair Nakasone: (Continued)...the variance on general plan.

Sparks: But have we had a problem with them trying to vary the general plan?

Dodson: No, never.

Chair Nakasone: Not yet.

Sparks: That's just an anomaly that...

Chair Nakasone: But that could be an avenue for a...

Sparks: But there have been real complaints of the boards' actions amounting to zoning instead of variances; and, are we doing anything about that?

Dodson: I thought we were just discussing, though, that it was better handled by ordinance.

Mancini: Okay, do you recall...because I think it ought to be clear to everyone...what that old controversy was...because when Francis came here to testify, I went through my understanding of what that was all about and he pretty much sustained it...that it had to do with changes in the policy position from corp counsel to public works, indicating to public works that property which was zoned with one zoning classification...and had a community plan with another...could not be subdivided. And also that property which had an interim zoning ordinance classification could not be subdivided, no matter what the general plan was...because situations occurred for many years...for decades...someone had interim zoning, they could subdivide their property into 6,000 square foot lots. At a certain point in time, corp counsel indicated that no, if you had interim zoning ordinance, that you could not subdivide it. When that happened, after people had gone all the way through to get their property and the preliminary subdivision approval...it had a condition to change zoning...people sought both an appeal and a variance from those conditions. They appealed it because they could find nothing in the law that says that you couldn't subdivide it, and if the board rejected the appeal, then they said we'd like to vary it -- and variance was granted. What happened subsequent to that...and the council passed an ordinance, I think, having to do with the standards that we're talking about...basically saying that you couldn't...the board of variance and appeals couldn't grant a variance of that nature.

Sparks: So, it's been taken care of by ordinance.

Mancini: My recollection...it was taken care of with regard to the standards from the code. If someone has the code, I can read you the section under the code...

Sparks: Let me ask another question...at the risk of making everything even cloudier...interim zoning and the provisions for variances within interim zoning -- is that an avenue that somehow or other is easier to get use variances...if you happen to be in interim zoning?

Mancini: I can't say it's easier; it comes up on a more regular basis because of the nature of non-conforming uses in the interim zone -- you find more non-conforming uses because the property has not gone through rezoning, and you have people asking to expand or add uses to the interim non-conforming use.

Sparks: And the standards and criteria for that would be the same as they are for

Sparks: (Continued) permanent zoning, or are they somehow easier?

Mancini: I think they're...it's more difficult because a variance in an interim zone must come to the council...a use variance in interim zone must come to the council. I'm not sure about area variances... Have I thoroughly confused you now? [LAUGHTER]

Sparks: Well, I would like to know if it's been fixed by ordinance...at some point.

Mancini: I could give you, at our next meeting, I could give you that ordinance...I could give you the history, and all you have to do is read the minutes of the meeting where Francis testified...I mean it states fairly clearly...actually, I made the statement and I asked him if my statement was incorrect. And, I thought the council, at that point in time, had created a prohibition from granting variances in interim zoned...no, I thought it sustained the position that you could not subdivide interim zoned property, and you could not subdivide property unless the general plan and the zoning were consistent. And, Francis pointed out that that assumption was not correct -- they didn't create that policy; they let stand for a council's position, but they took action against the board of variance and appeals...limiting their ability to grant variances. So, what's happening now, I believe, is that rather than granting variances, people will start filing appeals again...because they didn't deal with the appeals section...but I don't think any appeals have been granted...

Sparks: You know, as confusing as this is to us and as much trouble as we're having trying to make sense out of it...can we have confidence that the council's going to make sense out of it and do the right thing? [LAUGHTER]

Mancini: If you want me to write a report up on it, I can. I mean, first you have to decide what's broken before you want to fix it...and we're still grappling with what's broken in the process.

Chair Nakasone: Well, it is broke...because of that general plan provision in there.

Dodson: The motion on the table is to take out the language of the general plan...that's it.

Mondoy: That's all.

Sparks: It was broken there, but nobody ever used that break for...

Dodson: I don't think anybody even realized it.

Chair Nakasone: I think there was an incident where somebody tried.

Sparks: Really?

Chair Nakasone: Yes. Okay, discussion? Do we all understand the motion? Question?
Roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.

ROLL CALL (Continued)

Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIED...it will be on the ballot...item 5.

Dodson: [I moved] to amend Section 8-7.3.7., relating to the duties of the fire chief, to include "provide mitigation and stabilization of hazardous materials incidents."

Fabrao: I second the motion.

Chair Nakasone: Discussion? If none, roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIED...item 6 will be put on the ballot.

Dodson: I make a motion to amend Sections 8-8.1. and 8-8.4., relating to the planning commissions, to establish a Lanai Planning Commission.

Fabrao: I second the motion, Mr. Chairman.

Chair Nakasone: Discussion?

Mancini: Could I make a comment? I think in that section I did a revision which not only established the Lanai Planning Commission, but created the requirement that members of a planning commission reside on the island...and I'm not quite sure whether that's in Sherri's motion, or it that's a separate motion, because I don't think it's separately stated here.

Chair Nakasone: On page 28...

Mancini: Yes, on page 28...and I think I have a narrative somewhere.

Dodson: No, but is that a requirement of all planning commissions? Or just the Lanai Planning Commission.

Mancini: I put it for all planning commissions.

Dodson: Oh, okay; then yes, that's what I intended. [LAUGHTER]

Sparks: On that point...I wonder if it's really necessary...if it's really wise to do that.

Yonenaka: I agree.

Sparks: I think it was left our inadvertently...I think that was clearly the intent of the Lanai Commission would be made up of...or the Molokai Commission would be made up by Molokai people. But, it may still be a nice way to leave it...in case there ever arises a situation where they want to get somebody who isn't a resident of Molokai or Lanai that could be more neutral, let's say, or unpressured to serve on that commission. I can imagine somebody who may have lived almost their whole life on Lanai...retired in Kahului, no longer was working for anybody who had any businesses on Lanai...being a very good Lanai commissioner. This way we're prohibiting any of that ever happening.

Woodburn: Wasn't part of the intent for self-direction?

Chair Nakasone: I thought that argument was for self-direction, as Jamie stated.

Dodson: Dolores, how do you feel about it?

Fabrao: From my talks with people...and they're talking with me, they do want to have that opportunity to serve on the planning commission from Lanai, because we don't want other people from other places to make decisions for us.

Mondoy: Residing...

Fabrao: Residing, yes.

Chair Nakasone: I believe that's the same argument they used for creating the Molokai Planning Commission.

Sparks: Well, obviously that was the intent of having the separate commissions...that those would be the people that reside there...and I would guess, without adding these words, that would be virtually everybody's understanding -- it would probably never happen the way I just surmised, but is there any harm in leaving that possibility open?

Chair Nakasone: We have to clarify also that the Maui Planning Commission does not include Lanai and Molokai members, okay?

Cockett: To end this discussion, in deference to Dolores; I know her feelings about creating this planning commission for Lanai. I did a lot of soul-searching on my part regarding this creation, and I'm concerned with the fact that I think it's wrong for Lanai to have their own planning commission. I even feel that it's wrong for Molokai to have theirs. I'd like to refer back to what we talked about one man, one vote...one rep from each district would be on the planning commission -- we have nine districts, and I think we should have one from each to create a planning commission for the County of Maui. I feel very strongly that way. I'm concerned that if we go ahead and do direct this commission to form a planning commission for the island of Lanai, we discussed this, what about Hana? Can they come up and have their own planning commission for Hana? We discussed that area being unique, being different; and if you can do Hana, why not West Maui or South Maui? That's my concern.

Dodson: I just have a real quick comment about that. When you say you have a problem with the Lanai Planning Commission, because then everybody else is going to want one...

Cockett: Well, that's part of my overall statement.

Dodson: Yes, but that portion of it...if they want their own, then they can go to the council, they can try to get an amendment to the Charter done that way; they can come to the Charter in ten years, and they will deal with that. The only people who have come to us this year, and said they want their own planning commission on Lanai. [Lanai] people came to us with petitions in hand, apparently at the risk of jeopardizing their jobs, because they want it badly enough; and so this concern about well what about Hana...and they have a good argument too...well, if the Hana people get together and they come before another Charter Commission, or before the council and can convince everybody that it will be good for them too, then they can deal with it at that time. But, I think that the Lanai people have asked for it now, and that's what we should deal with.

Cockett: Well, I also mentioned a remedy...if we can just get back to the fact that we had a commission...one from each district...one from Molokai, one from Lanai, one from Hana, one from the other districts and so forth -- I think that would be a fair method of really operating the County of Maui Planning Commission. I know, unfortunately, we can't do this with this Commission, but this is another reason why I'm regretfully holding back on going along with approval of a planning commission for Lanai.

Wright: I'm in favor of a Lanai Planning Commission, but I do have to say...I feel obligated...that I have received letters and comments...very adverse, not to the concept of Lanai having control of its destiny, but to the fact that they feel that the Molokai Planning Commission has not been successful and has cost a tremendous amount of money. The fear that has been expressed to me repeatedly is that this will be quite costly to the county; that because of the conflict problems...with the one employer...that it is going to be almost impossible for it to end up accomplishing what it hopes to accomplish, and that as a result, there's great concern that there will be a large expenditure of money...with an end result of things being sort of blocked from actually progressing in any direction, because of the fact that the conflicts will be so apparent...that they feel that this is not going to get any place. And, I have received a lot of comments from people saying "we don't believe, especially in this timing with the economy like it is, that it is the time to go forward on a Lanai Planning Commission, for economic reasons." You know, I feel very torn on that because I know that if I lived on Lanai, I would probably be very resentful of Maui sitting over there...the Maui people saying "well, this is what you're going to do, this is what you're not going to do." And, I would feel like they didn't understand my problems in order to make these decisions; I have no doubt about that. At the same time, I am concerned about the cost; I am concerned about how this will go forward, in effect, we sort of left it to the ethics commission...well, you guys deal with this when the conflict comes, but we know that the conflict is going to come. And so, I feel very torn; I'm sure that I'll end up voting in favor of the Lanai Planning Commission, but at the same time I have to admit that I think there's some very, very valid and strong concerns about the economic aspect and about the conflict aspect, and they have certainly been raised to me repeatedly...from the public...about that. I feel like, well, let's put it on the ballot and the public can say no, if they don't want a Lanai Planning Commission; but I do have to say that I'm concerned from that aspect, and I am concerned about it costing a lot of money in a time when there isn't a lot of money to be spent.

Sparks: On Jim's argument about now every other community will want a planning commission...that's basically what's called a slippery-slope argument -- that if you do this, all these other things inevitably are going to follow it, and that's not true; they often don't inevitably follow...so it's not a guarantee that we're going to have that problem. On the cost argument, I'd like to know a little bit more about that. I read some of the input that you guys got while I was gone and it was a little interesting because earlier when we

Sparks: (Continued) probed some people about this, it seemed to me that all we're doing is changing your advisory commission now into a real planning commission, and they meet almost as often as an advisory commission as they do as a planning commission; so, I don't see where the enormous costs might be coming through if we make this change.

Wright: I'm just saying what was expressed to me...they were concerned that it would be more costly.

Sparks: We need more facts on that if it's a real issue.

Takabuki: First of all, I want to echo some of the things that Debbie said; I've always been concerned about the conflict issue, and I don't think we've adequately dealt with it. And, I also think there will be a number of legal challenges -- and that is money in itself -- and delays that will be a problem. Something you mentioned, Al, about the cost of a new commission -- there will be a lot of cost because now you need a whole new set of rules, a whole new set of ordinances in many ways, because they'll want to have unique land use type of laws and rules for Lanai, and that's all costly; I mean, everytime you enact something there's a lot of cost associated with it. And, although it would be very important to Lanai to have their own set, and I can appreciate it, I think we really haven't dealt enough with all the consequences yet, for myself...so, I really cannot support this.

Fabrao: We're all concerned about the concerns we feel are going to happen -- I live there; I've been living there for twenty-some years, and none of you will know how it feels to live on Lanai, no matter how you say "I can appreciate how you feel about that."

I do know, to talk about the advisory...there are three letters that I brought with me, that come from citizen's in Lanai; if you haven't had a chance to read them, you should. Martha Evans has been a member of the Lanai Advisory, and she feels frustrated because their advice and their recommendations have not been listened to by the Maui Planning Commission...who are generally representatives from Maui with one representative from Lanai. There has been a suggestion that why...an alternative would be why not have two representatives from Lanai -- the rest of Maui County wouldn't buy that.

I'm speaking from gut level, as a citizen of Maui County...Lanai...and as an American citizen. I think we're all concerned about these things...these conflicts that will come up, and certainly it'll work in the company's favor if we don't put the planning commission through, but we have an autocracy there on Lanai -- we don't have a democracy. I am a citizen and I'd like to be able to express my feelings, and I am doing that right now, and I think all of you are too; but I think that the people of Lanai -- those who have put and jeopardized their lives and their lifestyle...who put their names on that petition at the risk of having the company tell the unions to get on these people...whether they are doing it or not, they have done so...whether they say they are not doing it or are doing it...I feel that the people of Lanai should be given the opportunity to vote like the rest of Maui County -- to exercise their right to vote as to say whether Lanai should have a planning commission. To let it stop here would be to say to Lanai people...go out of here; I mean, don't be an American citizen, don't live in America, don't live in a democracy...you live on an island owned by one single corporation, or one person -- you don't have a right as an American citizen to vote the way you want to.

I can understand all of those conflict issues, because I'm really right deep into it. But then to say...not to give people a chance to say what they want to say...to direct their lives...direct the way the community... And, where I'm coming from...I'm in administration also -- not very big -- but I'm also working at strategic plans and planning... Planning means that -- planning not in opposition, but together -- two people, two groups of people or three or four are coming together and planning to make the community go; we have not been given that opportunity. We are trying...as Lanaians for Sensible Growth, and other groups...Decisions for Lanai -- there are many, many issues on Lanai and the company gives

Fabrao: (Continued) the impression of wanting to address it, but they do not work with the community -- and, that's where I'm coming from.

I understand your concerns, Anne; I can understand your concerns, Victor and Debbie. Are these people who approach you...do they live on Lanai? Live and learn and love on Lanai? Promises were made to Lanaians that pineapple would not be taken away -- pineapple has not really lost any money for them...they have never been in the red...for Castle & Cooke -- it hasn't been making as much money. But, there's been greater issues on water...enough water for pineapple...the golf courses, the hotels. There were times when people were told to cut back on using their water on Lanai; now we have 300-some rooms of hotel and they're planning a second big golf course...and they are cutting out pineapple; sure, people can work in the hotel...you have to give people on Lanai credit because they've turned 360 degrees and some, to completely change from agriculture to service orientation. And, I'm a service provider, I am a nurse, but I would find it difficult to change from a nurse...or even from the plantation...to become a tourist provider. And all I can say is that we're just asking for a chance...an opportunity for this Commission to give the people of Lanai -- an Maui County -- the people of Maui County the opportunity to say yes or no...that's all we're asking for. And, if you would read these letters...somebody said you're the only one speaking for the Lanai Commission...there are almost 300-some signatures in that petition. And I said earlier in Mr. Masuda's...during his testimony...that whether it's a verbal presentation, or it's written through a petition -- which is a legitimate way of presenting a problem or situation, or a concern -- that that should be listened to, I mean, three hundred people...and we didn't even go through the whole community, we just did a two weeks venture of approaching people, and they weren't coerced. I took time...we took time...whoever sent the petitions around took time to explain what it was all about, and generally speaking they said yes. And sometimes I wondered, and this is a personal note, I wondered if I was working towards the right direction; and I feel, after a while, when people come and tell me "Dolores, I'm glad you're in there working for us..." -- I feel happy that I'm doing it. And, I can get pretty emotional about this, but also to say in a democracy...don't give the people a chance, just because the Commission says no...that's okay, I mean, same thing like the districts...that is an issue too; but Lanai is a very unique place...an island owned by one corporation, one individual...and everything is guided by that one individual -- people really have no choice. A lot of them don't want to work in hotels; they don't. A newspaper reporter...you want to be a newspaper reporter; I want to be a nurse...I don't have to work in the hotel, but I mean those people have to...they're a captured audience -- they have no choice -- there's only one employer. Does that mean then the rest of the time they don't any chance to really make any decision as to what they want...how to direct their lives...or their community? Certainly there's a lot of things, I give the company a lot of credit for cleaning up the island and so called providing the jobs, but I mean you took the other jobs away...you had to do something at that point in time. So, there's nothing more that I can say to present the cause for Lanaians. What we decide today, true...it would be like saying when the pilgrims came to the United States...or it wasn't the United States at that time...to America...would they have listened to somebody who said don't go over there -- England said don't go over there -- because, I mean, why run away from us? We can provide you with this and that. But, they ran away because they wanted to be able to make a choice, and that is what Americanism is all about. And those of us who tout the democratic ideals and the laws would be going against the basic principles that our forefathers worked for. And, I'm of Filipino ancestry, but I'm proud to be an American and I'm proud to be Filipino; I'm proud to have come from Lanai. Thank you very much.

Chair Nakasone: Any further discussion?

Reyes: Can I ask a question, Mr. Chairman? Is there any possibility that people from Lanai would compromise on the Lanai Planning Commission or some sort of planning commission

Reyes: (Continued) that addresses the needs and concerns of Lanai...more than it's being addressed by the Maui Planning Commission?

Fabrao: What would you suggest?

Reyes: No, I'm asking if there is a way...a compromise where...

Woodburn: Yes, you can put five members on the Maui Planning Commission. [LAUGHTER]

Chair Nakasone: Possibly the only other avenue they have...being an advisory...would be to have the voting power of the Maui Planning Commission to decide counter to what the Lanai Advisory would submit...they would have like a super majority in order to have it defeated. You know, that would be an avenue that they could use....

Okay, any further discussion?

Mancini: I just have a couple of questions to draw to your attention. I'm still a little unclear whether the language with regard to all members is part of Sherri's motion... Assuming that it is, I think we now have one Lanai member on the Maui Planning Commission... that would create a vacancy if this were to pass -- just make sure everyone understands that. And also, Section 1 of 8-8.4. would have to be amended, and I'll amend that, to delete Lanai from the area concerned. The Maui Planning Commission would remain concerned with Kahoolawe. So, I'll make those changes if it happens to pass.

Dodson: Yes, I think my motion did include 8-8.4. as well.

Chair Nakasone: Okay, no further discussion? Roll call.

<u>Cockett:</u>	No.
<u>Dodson:</u>	Yes.
<u>Fabrao:</u>	Yes.
<u>Mondoy:</u>	Yes.
<u>Nakasone:</u>	Yes.
<u>Reyes:</u>	Yes.
<u>Sparks:</u>	Yes.
<u>Takabuki:</u>	No.
<u>Woodburn:</u>	Yes.
<u>Wright:</u>	Yes.
<u>Yonenaka:</u>	Yes.

MOTION CARRIES. Item 7 will be put on the ballot.

Dodson: I make a motion to amend Article 8, Chapter 10, relating to the department of human concerns, to expand the title and duties of the department to read: Department of Housing and Human Concerns.

Mondoy: Second.

Chair Nakasone: Discussion? We all know the intent of the title change?

Sparks: One thought occurred to me since we were talking about costs with a new planning commission...what does it cost to change all the stationery for these departments?
[LAUGHTER]

Cockett: Use a rubber stamp.

Takabuki: Normally what they do is just x it out...they just type over it. [LAUGHTER]

Chair Nakasone: Roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIES.

Dodson: I'd like to make a motion to amend Section 9-4, relating to appropriation changes to provide that the mayor shall certify to the council on...

Wright: Under the Section 8, there's still the department of water supply which isn't on your...

Dodson: Yes, it is on my sheet.

Wright: Because we were in that chapter...that's the only reason why. We were in that article, let's put it that way. I'm worried...Annette, I know, has to leave at a certain point...I'd just as soon if we could take some of these.

Dodson: Okay, starting over again... I'd like to move to amend Article 8, Chapter 11, relating to department of water supply, to rescind the 1988 amendment granting semi-autonomy, and to bring the department of water supply back under the administration of the County.

Yonenaka: Second.

Chair Nakasone: Discussion? No discussion? Recess.

[RECESS/RECONVENE]

Chair Nakasone: Okay, the meeting shall reconvene. We're on Article 8, departments... regarding the department of water supply. The motion's on the floor, there was a second... no further discussion? [LAUGHTER] Victor, you had a question?

Reyes: It's a technical question, Mr. Chairman. When the amendment was proposed, it was consequently worded in such a way that the wording would be similar to the pre-1988 or the 1988 Charter. And to me, my question is...the voters decided to amend the 1988 Charter to create the semi-autonomous -- and to put the same words back, means that you are negating the approval of the amendment of the Charter in 1988. That's a technical question; isn't our amendment defective or at least cloudy?

Dodson: Well, I think...no, because we are not making that decision; we are not negating

Dodson: (Continued) anything. What we will decide is whether it goes on the ballot, and the voters will once again have an opportunity to vote on whether it should stay semi-autonomous, or whether it should become a county department.

Reyes: But along with the proposal for the department to go back under the mayor... that was the only portion that we tried to include in the amendment; however, because that was carried...tentatively carried...the drafting of the new section forced the council to include the provision of the 1988 provisions of the Charter.

Chair Nakasone: I don't believe there's a technical question there, I think it would...

Reyes: So what I'm trying to say then, is if we're going to go back to 1988...we're asking the voters to go back word for word, because that's what Paul...

Dodson: 1988 or 1980? Pre-1988.

Reyes: 1987.

Dodson: Pre-1988.

Reyes: To me, it's saying that in 1987 they changed it to what we have now, and an amendment is supposed to be a modification...not an exact turn around and going back to the original.

Chair Nakasone: You're amending what is existing now, so it's not a technical problem.

Reyes: Yeah, but what I'm saying is Paul said for him to accommodate that amendment, he would have to carry certain provisions of the pre-'88 section back into the present Charter...even if it is approved by the voters.

Mancini: All I did was...[LAUGHTER]...in 1988 there was a Special Charter Commission which recommended changes to the then existing Charter to the voters. Those changes passed. Prior to those changes passing, there was a provision in the Charter which identified the department of water supply and the board as a county department. All I did was take those pre-1988 amendments, and I put them in your report.

Reyes: Put them back.

Mancini: That's right.

Wright: It's not required to be that way, Victor; it could be other language. We just ...that's just the most convenient way to do it.

Mancini: There was no other directions given.

Wright: Yes, that's right; but I'm just saying that that doesn't say it's required that it has to be that language, you know, Paul took it back to where it was before that time period. So, there's not a technical error of any kind, because you can go to any language you wanted to.

Reyes: Okay, I just pointed it out because I thought it's technical, but my main point in this is by putting it back under the mayor...it would not change the present situation...where the council and the mayor still have some say on the rules and regula-

Reyes: (Continued) tions, so it really doesn't change anything.

Chair Nakasone: No.

Sparks: And, it does.

Yonenaka: Yes, it does.

Reyes: Yes, except that it's under the mayor.

Dodson: Well, it gives the board advisory power...

Reyes: That's right.

Dodson: And not...so it's a big change.

Chair Nakasone: They won't appoint the director.

Reyes: Yeah, but when the rules and regulations are made, they will still be subject to the council's veto powers.

Dodson: Yes, that's what it was before.

Reyes: Right.

Chair Nakasone: Okay, any further discussion?

Cockett: We had a lot of discussion here and a lot of testimony on this, and some of the testimony was for full autonomy, and semi-autonomy...to stay status quo. I strongly feel that the board of water supply has not really had enough time to really make the changes that they anticipated making...making the improvements, I should say, instead of changes. I feel very strongly that it should continue under this semi-autonomy system that's in place now; and to change it at this stage, I believe, is really doing them an injustice...doing us an injustice here in Maui.

Sparks: I don't want to make a long speech on this, but there is one point that kind of impressed me, and that is the way it is now...with the semi-autonomous status...it gives the department quite a lot of freedom from what we call normal electoral politics...to do what they want to do; but it doesn't give them total freedom. Anything that they want to do with rules and rates...they're going to have to...they are forced to work with the administration because the administration can veto what they pass. So, I think that guarantees a lot of coordination and integration by the department, and from the council's point of view, it's quite a different thing, I believe, for them to within forty-five days dredge up six no votes in reaction to something that's already been done...than it is for them to sit and amongst themselves consider all the difficult needs -- especially the long term expensive infrastructure needs, and pass those difficult measures as ordinances...to spend millions and millions of dollars. I think it's generally true that elected politicians, by the nature of their business, have to be a little timid about spending millions and millions of dollars of the taxpayers monies, and increasing the rates, and so forth. However, they can not get so caught up in that if they are only in a reaction type of stance to those kinds of actions. So, I believe the semi-autonomous thing that we have now is just about the best that you could come up with, because it does give them a fair amount of freedom to initiate and plan; it doesn't give them total freedom -- they have to integrate with the rest of the county's operation. So that's why I'm supporting the existing status quo.

Chair Nakasone: Okay, any further discussion? Roll call.

Cockett:	No.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	No.
Nakasone:	No.
Reyes:	No.
Sparks:	No.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	No.
Yonenaka:	Yes.

MOTION LOST.

Dodson: Okay, I'd like to make a motion to establish a Special Charter Commission prior to March 30, 1995, but not earlier than January 1, 1995 to review the operation of the department of water supply, Chapter 11, under this Charter.

Yonenaka: Second.

Chair Nakasone: Discussion?

Dodson: I would like to establish a Special Charter Commission appointed...similar to the one in 1988...in 1995 to again look at the water department and the board of water supply.

Chair Nakasone: Discussion on this?

Cockett: What are we looking for?

Woodburn: Progress.

Dodson: Progress...I think a lot of the concerns... Let me talk about this for a minute...a lot of the concerns that have been brought up are that the department of water supply and the board have lacked in the area of planning...long term planning; and the counter argument, of course, is they haven't had enough time. So, what I would like to do is give them until 1995...which will give them a total of six years...instead of three years, and at that point, a Charter Commission can be established to see if there has been additional long term planning; see if they've carried out on that planning; see if there's still a moratorium in Kula. A lot of the problems that we have discussed...why I wanted to bring it back under the county...would then be again addressed, and if they want to use the argument again that we still don't have enough time...then there's no reason why that Charter Commission couldn't give them more time; or if that Charter Commission feels that they've been given enough time, and that they aren't doing an adequate job, then it can be discussed to bring it back under the county.

Fabrao: Mr. Chairman, I need to clarify something. Didn't the board of water supply ...the department of water supply try by ordinance to get the opportunity or to get the power to set rates...was that by ordinance they were trying to do that? Or was it a request to us?

Chair Nakasone: Well, they wanted full autonomy.

Dodson: That was addressed to us; and at that time they could also bring up the possibility...in 1995...of becoming fully autonomous. I think that at that time the board and the department will have had enough time to either prove their case to become completely and totally autonomous, to remain semi-autonomous, or a decision made to bring them back under the county.

Fabrao: My one concern...even though there is a lot of talk about political influence and all of that...my concern is that private interests will take control of the water.

Dodson: We're not discussing whether they should become autonomous, semi-autonomous or... come under the county, we're discussing whether they should be reviewed again in 1995.

Cockett: I'd like to address that; I don't think they've had enough time, and to say that they have three years...but since '88, with all the changes...I don't think it's fair to hold them to that past three years as part of the six year plan. I think three years down the road to '95 is insufficient; I'd like to see a little bit more time than that -- three years.

Dodson: Well, if you give them any more time than that, you're already getting into the year 2000 of Charter Commission.

Sparks: I think the year 2000 is soon enough also. It seems to me the difference between our county and the other counties in the state is that we like to yoyo our department up and down, back and forth in different statuses and the other counties don't -- and they all seem to be doing better with their water somehow -- they can't be just a freak of nature. To finish what I'm saying, I think the potential in your motion is just to put them under the treat of yet another yoyo change in status...sooner than is necessary. And, if they are so bad in the next year or two or three...that there's a general public outcry and they want to change their status...we don't have to put that in the Charter -- they can just go through the council and get it done that way. So, I don't think it's necessary to do it this way.

Dodson: Well, what I'm trying to accomplish in this is to address those people who have come before this Commission expressing their frustration...I mean, I wish I could find a better word for that...with the water department. The yoyoing thing doesn't necessarily... the water department themselves want another yoyo -- they want to go fully autonomous.

Sparks: Agreed, but they didn't get that, right?

Dodson: No, they didn't get that, and I think this is a nice compromise, because this means that in 1995 they don't have to worry about the council bringing this up, they don't have to worry about anybody -- they will have an opportunity to come before that commission and say "look at what we've done in the past six years. We can do even a better job if we become more autonomous." By the same token, if there is still no long term planning...if the public is still very frustrated with the process...and there's still a moratorium up in Kula, then that commission can also decide that we are unique, we are different from the other outer islands...our water department is not working effectively as those departments...as those counties...so maybe we need to do something different here.

Fabrao: Those three years will be a good time for the water department and board of water supply to get their act together, and get something really going, and show the people of Maui County that they can do something. I think it's in their vested interest to work towards that.

Cockett: I still keep getting back to her calling it a six year plan; I don't hold their feet to the fire for this past three years. I think with all the changes they've gone through, they shouldn't be beholden to what has happened in the past. I still think they need a little bit more time; I'll compromise for four years, but not three. [LAUGHTER]

Dodson: The motion is for 1995.

Reyes: Mr. Chairman, is that motion legitimate? It's not in our...

Woodburn: You can make motions from the floor, right?

Chair Nakasone: It's legit. [LAUGHTER] Unless you want to steal the chair; it's up to you.

Dodson: The vice chair will say it's legit, too.

Chair Nakasone: Okay, does everybody understand the motion? Any further discussion?

Yonenaka: Yes, one comment; I don't think the idea is to go out and lynch the water department. And, I think that's the problem we have a lot of times...the concern is that we do have some problems, and let's face it, it's not only water...you know, we have problems other where...and I think part of what we're trying to do is not tell the commission coming up -- make a decision...but just to see if...what they can do to help. If there is a problem that can be helped with the Charter amendment, then it's fine.

Dodson: I don't mean for this to be a threat, at all.

Yonenaka: And I realize both sides, but I also realize that we have probably got more testimony on this one issue than any other issue; and I think this is one way to address it...is that we understand that they're concerned about it, this is what we want to do.

Sparks: I think the reason we've gotten so much testimony is because the water department, frankly, has gotten way behind in all those expensive infrastructures that they need to do. And so, in the last three years, they've been struggling to try to get a grip on that and get some progress made. And, here we sit giving them the threat of losing the degree of autonomy that they have now because they haven't made enough progress over problems that built up over fifteen years before they got a chance to work on it. If we put that added pressure on with a commission in another two or three years, while they still may be having a lot of work to do and there still may be a lot of frustrated citizens out there -- we're adding additional pressure for them to explain to another Charter Commission why they shouldn't be changed in status. They are going to be under enough scrutiny, anyway, because the water problem is so bad...that the public is going to be pressuring everybody they can think of...the mayor and the council people...constantly during the next few years anyway, I don't think they need the additional pressure of a body of citizens like us threatening their status.

Fabrao: I believe there could be no threat, Allan; it's a good time for...if they want to remain semi-autonomous, or they want to get full autonomy...they should then work towards that goal to prove that they can do it. And I think that, any number of times...it's kind of like when you delegate something...you have a project...you have to have an evaluation period, and I see it as that...an evaluation period...to see whether they are going in the right direction or not. And maybe you have some grounds in saying that we shouldn't hold them accountable for the past three years...because there were three directors then -- maybe for the next three years there will be three more directors -- I

Fabrao: (Continued) hope not, but certainly that should be part of the process, and I don't think we should just let it go on the side...I think that we should look at it. We're not threatening them...to take away Mr. Craddick or to take away the powers of the board -- if these problems can be in some way addressed in the next three years...when the '95 commission is set up, then you'll see which direction to go.

Wright: Maybe it isn't a threat; maybe it is -- but it's a motivational factor. If something has to be done within a short time period as far as water is concerned, and that is clear from the public's viewpoint and what they see -- I think it would be too long a time to wait until the next Charter Commission, because we don't want things to get so bad...maybe something would happen anyway...another Charter Commission appointed on its own because of the problems; but I don't think it's a bad idea to have a review within a relatively short time period, and let them take a look at where things stand...because several things are going to have to happen -- it doesn't mean they have to have everything accomplished by the time this Charter Commission comes up. But, it certainly means that they are going to have to have learned to somehow diplomatically deal with the public, because right now the public's very unhappy...and, show some sort of progress...which until we asked for it and we got additional information...none of us understood that there was a plan. I mean, we...nobody got the feeling there was a plan...for a long time; then, some of us at least, became convinced that there was a plan and there was a future. But, I don't think it's a bad idea to take a look at that...because water is something we just can't wait long time periods and hope everything turns out okay.

Sparks: Part of my concern here is that with a new Charter Commission you open up exactly the opportunity for them to get full autonomous status; and, I'm opposed to that. So, I like the structure we have now; and let me remind you again that it's very, very difficult to separate out the particular day-to-day circumstances and personnel circumstances that happen in a short period of time in evaluating the relative effects of a structure over a long period of time. So, I don't see it; from my point of view, the structure is about the right compromise right now, so why open up possibilities for change?

Reyes: I was just going to ask Sherri...what's the rationale...or what's the basis for 1995; did you ask people if...how long the present plan of the water department has until they can really feel comfortable that, yeah, we've done it...or we're really making progress. Or did you arbitrarily say 1995? Did you check with them to see if they have a five year plan or a six year plan, or an eight year or ten year plan? Is it compatible with the general plan and the community plans going in that area, because their concern is they have to go along with the general plan and community plans specifically. So, what made you decide it's 1995? What I'm trying to say is, you know, it's too short a time...and like I said, I even feel maybe we should just let it go until the next Charter Review comes in 2001.

Dodson: Well, now I'm confused; are you asking me the question? Or are you...

Reyes: Yeah, well I don't see any basis for you to say 1995.

Dodson: So you're just making a comment.

Reyes: Right.

Chair Nakasone: Okay, ready for the question? Any further discussion? We all know what the question is?

Reyes: One more...so, the point I'm trying to make is 1995 might be a haphazard...if we're going to vote on 1995...it might be a haphazard date...without knowing exactly what they have as an opportunity...

Chair Nakasone: One comment that I want to make is that the report was submitted by the Special Charter Commission dealing with water...did recognize the fact that their report would be just a few years before this total mandatory review of the Charter; and, I believe that they were asking not to take an action on the water department...and let it ride for a little while more before making any decision regarding the department of water supply...and the board. I think what Sherri is saying...that the compromise is really to let it ride another...until 1995 and again review the question of whether they should be semi- or total autonomy or back with the departments. I think that's the intent of the motion. Am I correct?

Dodson: Yes, thank you.

Sparks: Just one more comment. I think the real issue for me is can we fix our particular problem with this water department in this particular county by changing the structure. And, the evidence that was compiled by the last Special Commission on water was pretty convincing that if you look at the experiences of those other places across the country...and other places in this state, where all the personality factors and the unique circumstances and recessions and so forth even out, the best experience in the long run, on the average for governments such as ours, is with a autonomous or semi-autonomous water department. I think we get confused when we start thinking that for our question...which is what's the best structure in the long term...we get all these immediate pressing frustrations and problems balled up in that question...because I think that confuses a rational judgment about this. We should look at the big amount of experience that other places have had with these two different structures, and see what evidence comes out of that.

Chair Nakasone: Well, I think a lot of the discussions that went through this Commission with regards to the department of water supply, was really not the question of structure -- I think people were concerned about the upcountry water system or moratoriums... those are all internal questions of the water department. But, if we look at the structure, I don't believe there's a difference between them being a semi-autonomous or being under a department of the mayor, because it's just a question of how efficient the administration runs the department -- it's really not a question of structure.

Sparks: Well, but it is, Bob, because there's a basic difference in structure where the department people are working for a board and a board appointed director, than if they are working for an elected official and have to get all their rules and regulations passed by normal ordinance process through the elected council. I think that is the difference... is a basic structural...

Chair Nakasone: No, I think in terms of the rules and regs right now, you're dealing with approval by the mayor...having the force and effect of law, and the council has a veto power. But, if the mayor says no, it stops right there...regardless of what the board submits.

Sparks: So on those issues they have to work very closely with the mayor, that's true; but they have the freedom to initiate and plan, and persuade...rather than that onus being on the mayor.

Chair Nakasone: But that persuasion goes the reverse, also.

Woodburn: I'm in support of the motion; I think that we should provide the voters with the opportunity to at least express their opinion as to whether or not there are problems that need to be looked at, or if they're satisfied with the performance of the department. And/or if issues surrounding water are so important to the voters that they would like to see it addressed by a special commission; I think that's all we're doing is proposing that it be put on a ballot and let the voters decide -- we're not saying that there will be a commission or there won't be -- let's just provide the opportunity.

Takabuki: Oh, I'm sorry -- are you saying the voters will decide whether there will be...

Chair Nakasone: A Special Charter Commission.

Dodson: First the voters will decide whether there will be a Special Charter Commission.

Takabuki: I'm sorry; I think what I was thinking was that unfortunately there tends to be tendency when you set up these special commissions...for these groups or entities to recommend a change, because they study and they study and they come up...if at the end of their report they come up with nothing... And in some ways, you know, there are times when I guess they feel they need to propose something different in order to have been worthwhile. So, that's one concern on my part. I think review and evaluation is good but if there is such a concern, it should be probably taken to the mayor and to the council, and worked that avenue, because that's still available. So, I'm not sure that I would want to establish a special commission.

Dodson: In answer to that, this Commission has chosen not to change it. And, I think the biggest argument was because they need more time; and I think that the 1995 Special Commission will do that. And, I have the utmost confidence in the director of the water department and the board to do as good a job at lobbying that commission, as they have done this Commission, to express their views and to prove to them that not only should they stay semi-autonomous but that they should become autonomous...if that is warranted at the time. The whole purpose of the 1995 commission is just to review; if it happens that you get eleven members on there who are so adamant about doing something, that they go and do it against, you know, the lobbying efforts and the public opinion and that kind of thing, then we've appointed the wrong commission members. But, if they are on the commission...like we came on this Commission...to listen to public testimony, to listen to the board of water supply, to listen to the department of water supply...then they will come to a logical, you know, well reasoned decision; and if that is to leave it semi-autonomous all the way to the year 2000, when it comes up again, then great -- I don't think they've wasted their fifteen months. If there is no amendment, that's great; but I think we need to address those people who have come before this Commission throughout the entire eighteen months of this Commission...and expressed concern about the water department and our situation. And, I think this is a nice compromise.

Sparks: I think Anne has a good point, and also with all the concern about water, if we put anything on the ballot about water, my guess it's going to have every chance of passing, so we're almost guaranteeing there will be a commission; and, Anne's point is that commission will feel like they want to do something. This Commission, with a whole lot of torment, just barely escaped doing something; the next commission probably will -- I don't think anything needs to be done that soon, so I've got to oppose it.

Wright: I don't think you guys give the next commission much credit for being independent thinkers at all; obviously you think because they've been appointed, they have

Wright: (Continued) to take some sort of action, and they're being appointed to study and to recommend if there's a need for change. You know, I really don't feel it's a problem. What you're saying is "I personally don't want change, therefore I'm justifying it by saying that this is a reason." I mean, that's different; but to say that the other commission won't independently study the situation, I don't agree.

Takabuki: I don't mean to say that, Deborah, I'm just trying to say there is a tendency. In the last commission they had a certain deadline and they had to put proposals on the ballot; and I think if you worked that long, and you have all this input and what not, and don't come up with something...sometimes, like I said, there is a tendency. And, I'm not saying that they would necessarily just make a change for change' sake; I don't think that's true. But, I think that does...at least the tendency exists.

Fabrao: To reiterate what Jamie said, that...let the voters decide. We put it on the ballot and let them decide if they do want a commission or not. I mean, let them make the decision; we're not making the decision that there is going to be a commission. I mean, we have to give them a chance...again, it's part of the evaluation process; I think we should give them that opportunity to say that they...or do what they say they are going to do. To wait for the next commission in year 2001 is much too long, I think, because we've given them...we're not taking away their semi-autonomous state...we're not taking that away, we're just asking a little bit more. We could have taken it away, you know, and we decided not to; but I think we do need to address the needs of those people who did come before this Commission saying there should be a change.

Sparks: I think Anne is again correct; there's other avenues for dissatisfied and frustrated voters than this commission that you're proposing. The council has a lot of investigative powers that would apply to the water department, as any other department; they could an awful lot of heat from other sources, short of having a commission -- so, I don't think it's necessary.

Cockett: I wanted to just stress my point again, that I feel that three years is not time enough.

Chair Nakasone: Well, it depends on whether you count the ballots drawn or cast.
[LAUGHTER] Okay, no further discussion? We all understand the motion...the question?
Roll call.

Cockett:	No.
Dodson:	Yes.
Fabrao:	Yes.
Mondoy:	Yes.
Nakasone:	Yes.
Reyes:	No.
Sparks:	No.
Takabuki:	No.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

MOTION DIES.

Mancini: Do we want anything in the report concerning the department of water supply?
Nothing passed...

Woodburn: Yes. [LAUGHTER]

Wright: Yes.

Takabuki: Yes.

Mancini: At least I got your attention. I guess I can relate the debate in the consideration of both issues; and, the question is do you leave it there? The other thing that came to my mind as a possible compromise is...the council under Section 3-7.3. has authorities to look into matters. To just draw the attention to all these matters in the report and let it dangle...

Chair Nakasone: Paul, do we even have to have any explanation of action taken if it's lost?

Mancini: No; my only question is is there anything you want to say in your report? Clearly nothing passed and nothing will go on the ballot. I certainly can say in the report that you studied these issues...there were split votes...and obviously would prevail with the fact that the last Charter Commission said beware that this semi-autonomous status won't have much time -- give it some time. I could leave it that that logic prevailed; we could say nothing about it whatsoever, and have no section in the report on the water department. Or, I can just try to articulate the quandary we're in, and the split vote that seemed to be reflected in the concerns that seemed to be expressed that ...let's see if I can articulate them...that water is a very important resource, and it must be given due attention, and that the issues of planning water resources should be looked at by the board of water supply.

Woodburn: I would like to encourage that the report reflect the considerations and the discussions that were involved in the decision making; I would not want to have a void in our report that would indicate that no action meant no concern and no debate... I think there's a lot of issues there.

Sparks: I think that's a good point.

Wright: Yes, I think so.

Sparks: Because it could come across as if we just shrugged it off and didn't worry about it at all; and we certainly did worry about it.

Wright: There was so much public interest that I think that we probably need to let them know about.

Chair Nakasone: No objections to that recommendation?

Fabrao: I believe that when we first started we did say that those matters of concern to us, and the testimony received and all that, that would be addressed in the report as to our intent; and even though there were split votes and nothing passed, that the negative side should be also noted -- that these certainly are concerns...that we're not just letting go.

Mancini: It's easy to say that these were the concerns...and I think I can articulate the general concerns...do we ask the board, the mayor and the council to give attention to those concerns, or do we just say these were our concerns?

Fabrao: I would go with the former...have them work on the concerns.

Sparks: Urge the mayor and the council to pay close attention.

Dodson: Yes, just say that the reason why we...even though we didn't do anything, it doesn't mean that you guys shouldn't.

Sparks: Or you could indicate that we relied on them...

Mancini: One of the things that came up during all of that discussion, of course, is the council should pass the water department plan. There was some concern as to what is the plan that was passed...and we could emphasize that greater coordination should be done between the council, the mayor and the board of water supply concerning that plan.

Fabrao: Can I make a comment, Mr. Chairman? I just regret that there wasn't enough emphasis placed on a strategic plan of five, ten, fifteen years...because I didn't get that in the testimony that they did have that kind of plan. They had a state plan, but I don't think it was their own plan.

Sparks: Well, they have both, didn't they? They had one required by the state that is...

Fabrao: He had a plan for East Maui, but not for the whole Maui. The strategic plan I'm talking about is for the whole Maui.

Chair Nakasone: Okay, there's no objections so, Paul, you're going to have some narrative?

Mancini: I'll do my best; I'll try to come up with something.

[RECESS/RECONVENE]

Chair Nakasone: Okay, the meeting shall reconvene. We're on Article 9 -- financial procedures. I understand item 1 is scratched.

Takabuki: Yes; that's the one that doesn't make a lot of sense any more, being that that second notice didn't pass...the one where the mayor would notify within five days and publish something in the paper.

Mancini: To finish the county departments -- there was one department that sort of got lagged behind, and that was because of just late drafting on it, and that's the police department. And, if you look at the new material I gave you today...the very last page of the new sections... It says submit to the mayor for an annual appropriation for the operation of the department... I just changed the language a little bit on it...I thought it flowed a little bit better with that language. If you recall, the section was to not have the police commission draft the operational budget, but they would just pass it on to the mayor...the department's budget. It might make sense, since you've finished the county departments, to address this -- I think this is the last one of the county departments.

Dodson: I'd like to make a motion to amend Section 8-12.2., regarding the police commission, to read submit to the mayor the department's request for an annual appropriation for the operation of the department.

Woodburn: Second.

Chair Nakasone: Discussion? Al?

Sparks: My question is...is there any substance to this? I understand that now the department prepares and submits the budget instead of the commission, so the language isn't perfectly consistent with what actually happens; but is there a problem there?

Cockett: I believe so. Under 8-12.2. it states that the police commission shall prepare and submit -- the preparation part is what the police department had brought to us -- that they wanted to prepare it for the commission to submit to the mayor.

Woodburn: So they're just putting the responsibility back with the department now, rather than having...

Cockett: Well, the department wanted that because they wanted to have a shopping list for the commission to approve or disapprove, and then take that to the mayor; instead of the commission preparing it themselves and telling the police department what they can have.

Sparks: Well it's fact that the commission doesn't prepare it; the department prepares it...and the Charter isn't consistent with that...is the problem.

Cockett: Not according to the testimony we had from the chief; he's the one that proposed that.

Sparks: Yes, I know, because it's inconsistent with how they actually operate.

Cockett: That's right.

Sparks: But they haven't really been called on it because of the wording here. I don't know...I'm thinking ahead a little bit about how many of these cosmetic fixes we want to do, if there's really no substantive problem.

Fabrao: My note says here...the police commission shall review and submit to the mayor a request for an annual appropriation for the operation of the department...with prepare bracketted, meaning that that would be done by the department.

Sparks: Right, I understand; I have no real problem with it, I just wondered if we are really fixing anything.

Woodburn: But we have the amendment.

Fabrao: Yes, it says submit but it doesn't say review...does it make a difference?

Woodburn: I think the commission would be submitting what the department prepared for their submission.

Mancini: I think we can add review if you want, because I missed that language...it had come up in committee.

Fabrao: If you say review, it implies that it has already been prepared by somebody else...so submit, by itself, would say that...prepare and submit -- that's the way I look at it.

Dodson: If you guys want review in there, that's fine with me.

Chair Nakasone: Any objections? Okay, the motion is review and submit...

Dodson: Yes, review and submit to the mayor the department's request for an annual appropriation for the operation of the department.

Chair Nakasone: Okay, Paul, no problem? No problem with that? Any objections to that amendment? Okay, discussion, none. Roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIED...8-12.2. amendment will be put on the ballot.

Dodson: I would like to make a motion to amend Section 9-9, relating to the appropriation changes, to provide that the mayor shall certify to the council... Wait a minute -- this one we voted down, didn't we? ...to certify to the council the amount of revenues actually received in excess of estimates, provided that any anticipated shortfall in revenues shall be considered in so certifying.

Takabuki: Second for discussion.

Chair Nakasone: Discussion?

Sparks: We skipped number 1 (Section 9-4) because we've already deleted it, is that correct?

Yonenaka: Right.

Sparks: I didn't get to vote on that; is that because I wasn't here?

Woodburn: You weren't here; neither was I.

Mancini: The lack of logic too; it was so obvious.

Sparks: It didn't even need a vote?

Wright: No, it didn't flow.

Sparks: Well, as it happens, I have no problem with your action there, so...sorry.

Fabrao: Are you still hearing discussion? It seemed to me that the testimony we received from the mayor's office...the quarterly basis was a little bit much. And also that...well, I'll leave it at that...it's just too frequently.

Chair Nakasone: Any further discussion?

Cockett: If you review pages 36 and 37, it explains what the process is; and I, of course, will speak against it.

Chair Nakasone: Okay, further discussion?

Takabuki: I think there were a lot of problems with a quarterly; I can understand that. I think from the council's perspective, though, that they did have a great concern about being able to have a handle on what kind of revenues were actually out there and available. So, while I do see the problem with the quarterly, perhaps there would have been another way to look at it...that they do, perhaps, only one certification at the close of the audit -- that would have been an alternative. Still, I know that the finance department said that they have problems in trying to keep track of that, so although it was my committee that made the recommendation, I do accept that there are problems with quarterly certification.

Chair Nakasone: Okay, no further discussion? Roll call.

Cockett:	No.
Dodson:	No.
Fabrao:	No.
Nakasone:	No.
Reyes:	No.
Sparks:	No.
Takabuki:	No.
Woodburn:	No.
Wright:	No.
Yonenaka:	No.

MOTION DIES. Maybe we should ask the chairman of the committee to make recommendations on these motions. She might reconsider and some of them just scratch.

Dodson: My suggestion is that we just go through all these; it doesn't take that long to vote them down, and we've gotten this far...

I'd like to make a motion to amend Section 9-10, relating to transfers of appropriations to [a.] provide that the mayor and the council may initiate changes within their respective operating budgets.

Takabuki: Second.

Sparks: Somebody give me a quick synopsis of what you learned there.

Takabuki: Under (a), A1, all it would do would be to allow the mayor, of course, to make changes in the operating...the executive operating budget; and let the council propose on its own, changes to their budget. Right now, technically, they have to go through the mayor to amend their legislative budget.

Sparks: It seems like a good idea, huh?

Mancini: One question is why is it necessary? And apparently there was a corp counsel's opinion that said that the council couldn't initiate an amendment to the legislative branches' budget -- we've never seen that in writing; and the mayor supported this in her letter to the Commission, and she made it make sense. What I did in drafting it was I

Mancini: (Continued) defined the operating budget in two components, because it is not now in two components -- it's just the operating budget. So, in the language where I indentified that the budget would be submitted, I said the operating budget would be submitted...both a legislative and an executive. So, you can amend either one, and at least it relates to something that exists.

Sparks: Okay, ready.

Chair Nakasone: Okay, roll call.

Cockett:	No.
Dodson:	Yes.
Fabrao:	Yes.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIES.

Dodson: I'd like to make a motion to amend Section 9-10, relating to the transfers of appropriations, [section b.] transfers of appropriations between departments, and transfers between legislative offices may be made by resolution.

Fabrao: I second the motion.

Chair Nakasone: Discussion? None? Roll call.

Sparks: How many legislative offices are there?

Chair Nakasone: One.

Takabuki: Just county clerk and council services.

Sparks: There is two.

Yonenaka: I guess there'd have to be more than one.

Chair Nakasone: Okay, roll call.

Cockett:	No.
Dodson:	No.
Fabrao:	No.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

MOTION DIES.

Dodson: I'd like to make a motion to amend Section 9-11, relating to lapsing of appropriations, to provide that the mayor shall notify the council within ten (10) days of abandonment of any capital improvement appropriation.

Takabuki: Second for discussion.

Chair Nakasone: Discussion?

Cockett: I was just reviewing these minutes that Paul had done...page 41; it's a change again, and I want to speak against it.

Chair Nakasone: Okay, any further discussion?

Sparks: Then do so. [LAUGHTER]

Woodburn: He did. [LAUGHTER]

Cockett: It was spoken. [LAUGHTER]

Sparks: What's the reason? I just need to catch up here...

Takabuki: Paul, I just have a question on this; is this something that could have been addressed by ordinance? Because it's more a reporting type function, I suppose...it doesn't release any monies or do anything other than just to report.

Mancini: Actually, you could make it part of the budget ordinance, if you want.

Takabuki: You could, right? Make it through an ordinance.

Yonenaka: Oh, good; one less.

Sparks: Don't they do some kind of report now?

Takabuki: They do quarterly reports...

Sparks: On the status of capital improvements?

Takabuki: My understanding is they do quarterly reports.

Sparks: And that indicates what's been abandoned, doesn't it?

Dodson: Well, not necessarily; it doesn't use the word abandonment, it just says where the project is in the process.

Sparks: What words do they use?

Dodson: They use words like pending; you know, no action thus far...something like that, right? I've seen it once, and it basically just spells out exactly where the project is. It doesn't say "we're never going to do this, so therefore we are abandoning," but it doesn't say "we're going to definitely do this in two months time, so therefore it is not abandoned." But they do give quarterly reports.

Sparks: So if they actually decide to abandon, then this would require them to so

Sparks: (Continued) notify, instead of just leaving it pending and hanging, and not...

Dodson: But they could leave it pending and hanging, and not use those words abandonment...

Woodburn: Until they decide to abandon it.

Sparks: Well, I guess what I'm wondering is can they decide to abandon and then for some esoteric reason I can't even imagine...and not want to say so?

Wright: Sure...even with this amendment.

Sparks: And we can't prevent it with this anyway.

Woodburn: No.

Wright: No, it doesn't prevent it.

Sparks: So, we're not going to fix it, right?

Dodson: No.

Woodburn: Make it an ordinance.

Reyes: How can we fix it?

Woodburn: Get rid of this amendment. [LAUGHTER]

Takabuki: Put it in an ordinance.

Dodson: Put it in the budget ordinance.

Chair Nakasone: Any further discussion?

Sparks: If we don't go for this, we could have again an urging in our draft report that they maybe...

Woodburn: By ordinance.

Sparks: By ordinance that they do something, but even...how's the ordinance going to fix it if they can always play games with the words that they use?

Dodson: I can see that, too.

Chair Nakasone: Well, let the council decide that. [LAUGHTER] Okay, roll call.

Cockett:	No.
Dodson:	No.
Fabrao:	No.
Nakasone:	No.
Reyes:	No.
Sparks:	No.
Takabuki:	No.

ROLL CALL (Continued)

Woodburn: No.
Wright: No.
Yonenaka: No.

Okay, MOTION DIES.

Dodson: I'd like to make a motion to amend Section 9-13, relating to audits, to provide that an audit of the accounts of the director of finance shall be made upon the expiration of the term of the director.

Fabrao: Second the motion.

Chair Nakasone: Discussion?

Woodburn: Is this the Kauai amendment?

Dodson: Yes, this is the Kauai amendment. [LAUGHTER] Preventative medicine.

Chair Nakasone: Discussion?

Sparks: I tried to read your minutes, and I'm not sure where we came out on this... what the logic and rationale was one way or the other.

Dodson: We're trying to prevent what occurred in Kauai, where months after the new director got in it was found that the old director had mismanaged a lot of money...lots and lots and lots of money.

Yonenaka: I also believe this came from Travis Thompson.

Sparks: I remember his testimony that he'd done it for his own protection.

Takabuki: But there was a concern that it is a redundant exercise; I think Paul brought that up, and it's true that it should be somehow uncovered during a regular audit -- even though it might be six months later.

Mancini: Let me make a couple of points on it, because I was concerned with this. First, it came about because the existing finance director had wanted some type of audit when he took office. I don't really believe he wanted an audit, nor did he perform an audit. An audit is a very expensive process, and it takes quite a bit of time. And, the county gets audited every year...so the books will be audited. The audits go from June 30 ending on, so if you have a new finance director who takes office in January 1 -- what is the audit auditing? The past six months is all the audits -- those past six months will be audited in due time because come June 30 of the following year, you will then commence an audit, which probably won't be done until November. I don't think it's an audit he wants, because it is, I think, too time consuming; what he conducted this time, I don't believe, was an audit. He probably brought in the auditors to take a look at the procedures. What you'd be auditing is six months, and by the time you get to audit it, you would have started the other audit -- a new audit to begin with. So, I didn't personally see a lot of logic in it, although it's not a legal issue...you could require him to do an audit, if you...

Woodburn: But they say it's expensive, though.

Sparks: What did he do that was an audit but wasn't an audit?

Woodburn: You can do a review.

Mancini: I think he had somebody do a review of the systems and did a spot check on all of the...on what was taking place during the past six months; and I think he did that under his B account...discretionary account.

Sparks: What does a full audit cost? In round numbers?

Woodburn: An example...our \$2½ million agency spends \$16,000 a year for auditing.

Sparks: This is about a \$6 or \$7 or \$8 million dollar thing...

Woodburn: Oh, no...

Mancini: The audit's an expensive thing; Bob, can you recall what the cost of the audit was when you were on the council?

Takabuki: Independent audit? \$40,000.

Chair Nakasone: It's more than that now.

Woodburn: So even if it's in one department...

Chair Nakasone: It's almost \$70,000 right now.

Wright: It's expensive.

Woodburn: Yes, it's big time dollars...and it's going to get rolled into the county overall audit anyway.

Sparks: So, even if somebody hasn't embezzled that much money, we'll make sure we lose it anyway with an extra audit. [LAUGHTER]

Mancini: Well, the audit's going to take place, it's just a question of...

Chair Nakasone: Boy, I'm glad this is on tape. [LAUGHTER] Any further discussion?

Takabuki: However though, the current language currently requires an audit upon resignation; I mean, right now if this is the logic...that it's too expensive, and time consuming and all that...then what about the other provisions? Should they just stand as they are? I mean, we would just be expanding it to include at the end of the term...if we go along with Travis' amendment...and not really preventing the other situations...resignation, removal, death of the director of finance...

Dodson: Wouldn't that end his term...if he died? Because, I mean, it says at the expiration of the term -- I'd say the expiration of his term is when he's dead. [LAUGHTER]

Takabuki: Right, but we're not going to...

Dodson: The amendment is that there shall be an audit upon the expiration of the term. Whether the expiration comes because there's a new mayor in there, or because the expira-

Dodson: (Continued) tion comes because he died, or because he resigns, or because...

Takabuki: Well, the intent was just the natural expiration in four years...that's what Travis wanted. But, you're right; they're all basically expirations of terms for different reasons.

Dodson: They expire one way or another. [LAUGHTER]

Takabuki: But we weren't talking about taking all that out, we were talking about adding some language in; so are we now voting on taking all of that out?

Dodson: No.

Yonenaka: No, just this.

Takabuki: Okay.

Sparks: So, we're already requiring an audit.

Dodson: At the end of...

Takabuki: Death, resignation or removal.

Sparks: Well, you resign when your mayor lost and another one is being appointed, don't you?

Dodson: Not necessarily. You're asked to resign.

Sparks: We're getting semantical here?

Takabuki: Your term expires December 31. The same with the mayor...the term is concurrent with the mayor.

Sparks: So in a normal turnover...a new administration and a new director...this clause doesn't go into effect.

Chair Nakasone: Well, depending...

Sparks: The one that's in there now..it doesn't go into effect?

Wright: That's right.

Sparks: You're sure of that?

Takabuki: At the end of four years...expiration of the term?

Sparks: Suppose he resigns?

Takabuki: Resignation is provided for.

Cockett: Question...after the term, say four years, he automatically resigns; is that correct?

Wright: No.

Takabuki: No, your term just expires.

Sparks: So nobody writes a letter of resignation...

Cockett: The mayor appoints him again for a second term; supposedly the mayor gets elected for another four years -- does he automatically stay on, or must he be confirmed by the council?

Takabuki: He must be again appointed.

Cockett: Oh, yes; that's an appointed job, okay. I forgot; yes, okay.

Chair Nakasone: You don't mind confirmation, though, huh? [LAUGHTER]

Cockett: No confirmation.

Woodburn: Are you saying the current Charter provides for an audit at the expiration of a term?

Dodson/Wright: [Simultaneously] No.

Takabuki: No, the current ones requires...

Wright: Not on expiration of terms.

Sparks: My question is...is resignation that same thing as when you start another term? I guess it isn't. I thought they sometimes they have them all submit courtesy resignations and accept some of them, and then technically they would be resigning.

Chair Nakasone: I think the concern here is...even the definition of the finance director's accounts...as far as the audit.

Sparks: And the finance director has what accounts?

Chair Nakasone: Well, that's what I'm...maybe there is a definition...I don't know, but it seems he could limit the audit of certain accounts -- rather than the full audit of the whole county.

Sparks: I was hoping all you guys understood this real clear...

Dodson: Dream on...

Chair Nakasone: As provided by ordinance.

Takabuki: As provided by ordinance.

Chair Nakasone: Okay, any further discussion? Roll call.

Wright: Wait...what are we voting on? To add expiration of term to that?

Chair Nakasone: Yes, right now they...

Dodson: They'd have to...provide that an audit of the accounts of the director of finance shall be made upon the expiration of the term of the director.

ROLL CALL

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Nakasone:	No.
Reyes:	No.
Sparks:	No.
Takabuki:	Yes.
Woodburn:	No.
Wright:	No.
Yonenaka:	Yes.

Dodson: Your vote doesn't count. [LAUGHTER]

Sparks: Never mind; one of these it will come right down to you and we can sweat.

[Staff: From the next vote, we'll start from the bottom up.]

Okay, MOTION DIES.

Dodson: Okay, moving on...

Chair Nakasone: Okay, we're on Article 10 - code of ethics; there's a recommendation to withdraw that proposed amendment [number one]...any objections to the withdrawal? None? So ordered. Item 2...

Dodson: I'd like to make a motion to amend Section 10-2, relating to duties and procedures of the board of ethics, to provide that the board shall issue advisory opinions within forty-five (45) days of the filing of a request.

Takabuki: Second.

Chair Nakasone: Discussion? Roll call.

Takabuki: Al has a question.

Chair Nakasone: Al, sorry.

Sparks: Just give me a short rationale here.

Wright: They asked for more time...to give their opinions, from thirty (30) to forty-five (45) days.

Sparks: So, it needs fixing from their point of view...their experience point of view?

Wright: Yes.

Cockett: Do you want my vote?

Woodburn: I thought you were going to start with Lloyd?

Yonenaka:	Yes.
Wright:	Yes.
Woodburn:	Yes.

ROLL CALL (Continued)

Takabuki:	Yes.
Sparks:	Yes.
Reyes:	Yes.
Nakasone:	Yes.
Fabrao:	Yes.
Dodson:	Yes.
Cockett:	Yes.

Chair Nakasone: Okay, MOTION CARRIED. Item 3...

Dodson: I'd like to make a motion to amend Section 10-3, relating to the filing of financial disclosure statements by county officers, to provide that the members of any board or commission established by the Charter shall file financial disclosure statements.

Takabuki: Second.

Chair Nakasone: Discussion? No discussion? Lloyd's got a question?

Yonenaka: I just thought they did that anyway.

Woodburn: No, we talked about...wasn't this the one we talked about the street sign committees and all that thing...and the disincentive that would present to some people?

Takabuki: Those aren't established by the Charter; those are by ordinance. This amendment would require all boards and commissions established by the Charter.

Woodburn: Oh, okay.

Sparks: In one place I was reading it indicated that the civil service commission was not established by Charter...but isn't it?

Dodson: No, it is.

Mancini: No, it's not true; what it should have said was...the Charter lists those boards and commissions which must file, and it does not list the civil service commission, for some reason.

Sparks: But it establishes the civil service commission...

Dodson: That's why this is going to fix it.

Sparks: But it doesn't list it under a list somewhere?

Mancini: Yes, that's correct...it doesn't.

Sparks: Where's that list?

Takabuki: 10-3.2.

Fabrao: Page 30.

Mancini: If you look on page 30 of the Charter, under 10-2, these are all the boards

Mancini: (Continued) and commissions that must file. See if you can find the civil service commission.

Sparks: Okay, so we're taking that out and just putting this in.

Mancini: Yes, I think that was an oversight...and one of the justifications for doing this is to avoid...to deal with that oversight.

Sparks: So that won't be in here anymore if we do this...

Mancini: That will be out and we'll have general language.

Sparks: Got it.

Chair Nakasone: Okay, roll...

Takabuki: Molokai Planning was not...was also not mentioned.

Mancini: Yes, I think this predated the Molokai Planning probably.

Takabuki: So, whenever there's new commissions, they are not getting caught in this section so...

Mancini: If Lanai passes...

Sparks: Or a very old one that they forgot to list.

Chair Nakasone: Okay, roll call.

Yonenaka:	Yes.
Wright:	Yes.
Woodburn:	Yes.
Takabuki:	Yes.
Sparks:	Yes.
Reyes:	Yes.
Nakasone:	Yes.
Fabrao:	Yes.
Dodson:	Yes.
Cockett:	Yes.

Okay, MOTION CARRIED.

Dodson: Okay, I'd like to make a motion to amend Section 10-4, relating to prohibited conduct of county officers and employees, to provide that county officers or employees shall not represent a private interest for compensation before the department by which the individual is employed, or agency to which the individual is appointed.

Takabuki: Second.

Chair Nakasone: Discussion?

Yonenaka: Yes; was there a problem with this on one specific board or commission?

Wright: I think there were problems with it on a whole bunch of them. [LAUGHTER] No,

Wright: (Continued) really...because we had asked Paul to get other language...we were looking at the language from different Charters, and stuff like that...because this is a problem on all kinds of ones.

Yonenaka: Well, you had the problem...

Wright: Well, I don't have it right now but, I mean, it could be a problem...and so could, as Paul pointed out, engineers and all kinds of people...

Mancini: My concern was that I'm not sure it's addressing in a comprehensive way...some complex problems. And, we looked at what the Big Island did, and we looked at what the City & County of Honolulu did. The City & County of Honolulu Charter passes it on to the county council to deal with it by ordinance. And, Anne got a copy of their ordinance which is a rather comprehensive ordinance that does deal with most of the issues; it deals with many issues. Our amendment deals with one issue and that is should a member of a board or commission be allowed to represent a nonprofit agency before another commission to which he's not a party, I guess.

Wright: The present provision is awful, okay, and it doesn't really do much good because that's where I talked about the fact that...Lloyd...what you're talking about. What it says right now is you can't represent private interest in any action or proceeding against the interests of the county, or appear in behalf of private interest before any agency. What I found is then while I'm on Charter Commission, I couldn't appear before the board of...

Yonenaka: The planning commission.

Wright: Yes, the planning commission or anything like that; my partner could -- I could sit there and be there, I just couldn't speak; I could even write out for my clients what to say, but I couldn't stand up and talk. Now, first of all, that's a terrible binding thing since I'm not on anything to do with the planning commission; and it doesn't make sense to prohibit people from appearing before that when they're not there... And, secondly, it didn't make any sense because if that fixes anything...I mean, if that ethically does anything, it's kind of dumb because I can just ask my partner to go stand there and say what I would say anyway, or write it out for my clients. So, it appears that it's too broad and so general that it doesn't really accomplish what you want, except for the fact that means I or an engineer or an architect might not be able to stand up and talk...that's all. So, the revisions we suggested...I think Paul's concerned there may not be enough to them, but sub-part a says that you can't represent a private interest for compensation before the department by which you are employed...so I couldn't come and represent a private interest, and get paid, before the Charter Commission...I couldn't come lobby here obviously. But, the problem that Paul's talking about is the fact that there are all kinds of other issues that aren't addressed by this one small change... you know, as to how things are defined...

Sparks: For example?

Wright: Like it says for compensation, for one thing; I don't know that that's real clear, but anyway...if you look at their ordinance...and I haven't looked at it for a while, but the City & County of Honolulu...it goes into a lot of detail as to what aspects you can do and what you can't do, and when that appears. This just says I can't appear for compensation -- and for me, you know from my personal viewpoint, that would be great...because it makes it clear. I just can't come to the Charter Commission and get paid for doing it by a private interest. But, I think it just isn't comprehensive enough to say when you can and

Wright: (Continued) can't do a lot of things in there...or at least that's my understanding from what Paul saying and from reading that ordinance. The City & County of Honolulu's has much more specific directions on what you can and can't do on this stuff.

Sparks: Is there anything to keep our county from passing an ordinance like that, even if we did put something like this in the Charter?

Wright: No, it would just be an expansion maybe.

Mancini: Good question; in the other charter...the City & County charter, the charter commission passed on to them, I think, the mandate to set up the procedures and guidelines. Normally this would be done...probably under...by the board of ethics...under their probably rules and advisory opinions. The council, by ordinance, couldn't do anything inconsistent with the Charter...

Sparks: Sometimes we have this provision for ordinances passed...related somehow or other. I wonder if we could have a d. here that says you shall not engage in any other activities defined by council ordinance. And, that doesn't mandate it, but it might encourage it.

Mancini: What is the City & County's charter provision?

Takabuki: I think they just had a tail on it...as provided by law.

Sparks: Yes, that kind of thing.

Mancini: Could you read it? Do you have it here?

Takabuki: I was trying to look it up...

Wright: Because, I have to tell you, I hate the way it is right now; it doesn't even make any sense at all -- I'd love to see that gone.

Mancini: I agree.

Wright: But, I'm not sure that what we're doing would take care of all the problems.

Sparks: But maybe it would take care of some of them.

Wright: Well, no...I'd vote for it rather than the way things are...because that's just dumb.

Mancini: I agree.

Sparks: It's something that needs fixing, even if it's a partial fix.

Mancini: See, what the City & County's rules do is they break up the division of requirements and prohibitions on board and commission members...are treated differently from employees. Here we lump them together, which...let's take the first sentence here -- no officer or employee shall represent private interest for compensation before any agency by which such officer or employee is employed or appointed. So, we could say under that...the director of the department of planning could represent a nonprofit agency before the department of liquor control, as long as he wasn't compensated. That, technically, if you read it, is rather an absurd situation...but technically that would be okay under that, and

Mancini: (Continued) I don't think that's your intent.

Takabuki: Paul, what they've got here is exactly the same language we have under d... that we were just talking about...with a tail that says "except as otherwise provided by law." So, that allowed them to make exceptions by ordinance.

Wright: That's kind of a dumb way to do it too, if you ask me. [LAUGHTER] To say you can't do it unless we decide otherwise...

Mancini: Well, I think probably the way it was generated was probably the same problem that we have here...we don't want to write in the Charter a very complex set of rules, which deal with some unusual situations; so, it doesn't surprise me that they did that. But let's see the other part of the puzzle here...is no officer or employee shall represent private interest for compensation in any matter that is related to any official action to be taken by the county officer or employee. Well, okay, that goes back to the director of the department of public works, on a non-compensation matter, can go before another department...department of planning, and represent an agency, an individual or a corporation as long as it's not for compensation. I don't think that's your intent.

Takabuki: No.

Mancini: The problem is you've lumped together officers and employees -- officers being more akin to board and commission members; if we have them separated in the criteria...one from the other, and obviously...for example where you find this...somebody on the police commission may have business before the planning commission, but technically right now he's prohibited from conducting that business.

Sparks: Well, we could fix that with this.

Mancini: You could probably let him do it...that would let him do it now; but at the same time it would let any employee do it, and it would let the director of the department of public works...is an officer as defined in the Charter...so it would let him do it. Because we defined board and commission members as officers...we have everyone else included in it.

Wright: Well then, maybe what we want to take out is that...we want to take out the employee section, at least to some extent...they're bound like it is now, and county officers are not bound in the same manner...because that's where our problem originally came in. You know, because the commission members is almost the same as employees...what you're talking about is where then the employees of the county...the director of one department could go and appear before another department -- and just have it be county officers can't do this.

Mancini: Well, I could state the council by ordinance shall prescribe such standards by which to prohibit county employees and officers from representing private interests before any county agency. So, you create a requirement on them to do that -- to create the prohibitions. And then, you could make this part of your report...what you have in mind.

Wright: Do you take out the existing d. or not? That says represent private interests in any action or proceeding against the interest of the county...

Mancini: See, what I don't like about the existing d. is if you represent private interest in any action or proceeding against the interest...it's included...if you can't appear you can't represent them...so I don't know... So, if you left off the second part...

Mancini: (Continued) no officer or employee shall represent private interest in any action or proceeding against the county -- I mean, that's a clear prohibition...against all officers and employees.

Wright: And then add a section, you're talking about, that would say the council shall set up the standards by which they can appear, or something like that?

Mancini: Well, the prohibition is...if the prohibition is that clear, then why would the council have to define it? Because it's pretty clear...you can't do anything under this. You could say by ordinance the council shall proscribe the prohibitions on county officers and employees representing any private interest...then they would define what's prohibited. Right now, everything's prohibited.

Sparks: Let me see if I can summarize at least my understanding here...we have this Section d in here right now, that doesn't make sense, from what I've been hearing; and, we're proposing to delete it and replace with 4.a. on our list here...is that what we're proposing? It doesn't exactly say that we're deleting it... But then, what's the problem with 4.a.? I'm not quite following all of Paul's logic...

Mancini: 4.a. as it exists now, or the...

Sparks: The one that we're proposing.

Mancini: 4.a. or 4.b.?

Wright: Well, it goes to b. -- it's listed as part a. on this list...is all.

Sparks: I'm talking about this list. Yeah, okay.

Wright: What he said is that means that the head of the department of planning, as long as he wasn't being compensated, could appear before the liquor commission on behalf of say a nonprofit corporation. We don't particularly want that to happen.

Mancini: Or a for profit corporation, as long as he wasn't being paid.

Sparks: Why don't we want that to happen?

Wright: Well, I don't think it's a good idea...let's put it this way, it does appear improper for the head of a...because of the influence factor, it would appear that someone within the county would have more influence on someone else within the county, and generally speaking, that's considered improper for...ethically, okay? Because it gives the appearance of impropriety...there's internal dealing and things of this nature -- whether it happened or not, it gives the appearance of impropriety. So generally, that is not allowed; but our amendment says as long as he's not being compensated he can do that...essentially. Because, it doesn't apply just to officers...

Sparks: With a blanket prohibition before...the provision before was, like in your case, because you're on the Charter Commission, you can't go and represent some client before the planning commission.

Wright: Right, but I'm not a standard employee...I'm not an ongoing, long term employee.

Sparks: I see, so the employee versus board and commission is the main distinction.

Mancini: If you read what the City & County has done by ordinance...it's rather comprehensive, and it deals with different levels of prohibitions -- we won't go through all of it, but it does also distinguish between agencies that exercise quasi-judicial and quasi-legislative powers from other types of agencies; and it deals with substantial financial interests in the matters before you... I'm not sure you want to go into...I could draft one that includes all of this, if you want me to do that. Anne, Jimmy and myself met on this and I started into it but at that point in time the vote of the Commission was to deal with d. as it was...that's the way we focused drafting.

Sparks: Yes, I can see where it's not a complete fix, but I think those cases you were dragging up...I don't know if they worry me all that much.

Mancini: Well, it would worry me that you're creating the ability for full time county employees and officers and department heads... I don't believe that what is stated there is your intent; if it is, at least I've clarified your intent.

Sparks: I guess this is your question...is it our intent to allow full employees and officers to lobby other agencies than their own...as long as they don't get paid.

Wright: I can tell you it's not my intent for employees of the county to be able to do that, because I think that would give an air of impropriety, and under most ethical standards...I'm of course more familiar with lawyers and judges ethical standards...and one of the standards is to avoid the appearance of impropriety; because whether or not you did something improper, you have the duty somewhat to the public to avoid the appearance even of impropriety...because of the fact that these kinds of things call into question the trust. And, I believe that's the same with the county...if they would call and question the trust in some of these department heads, and the fact that they were acting properly...and call into question whether or not there were a lot of internal dealings and politicking -- look, if I come before you and do this, well then when you come before the planning commission...I'll give you one on this -- that's what the appearance tends to be to the public, even if that doesn't happen. So, that clarifies my intention...is no, I do not want to have that happen where full time employees can go, and as long as it wasn't for compensation, appear before some other department. I don't have the same concern about temporary commissions because we don't have a long term county commitment type thing.

Sparks: It occurs to me that there are an awful lot of county employees, and I'm wondering if you're taking away some of those almost basic citizen rights to go and lobby for things.

Wright: We can't right now.

Sparks: Lobby for things that come up...like in the public works department or planning department, the planning commission that affects their neighborhood...but because they happen to be an employee of the public works department, on the road crew, that they can't go and lobby for it, right?

Mancini: Didn't Jim Smith make an argument that the mayor somehow had a problem when she came down to support a bill? I mean, I'd love to say that was taken out of context... what was happening, but I think that this is what...that prohibition is what he was looking at, and I think the word represent is...he was stretching it.

Sparks: Exactly. And, maybe I am too; in the case of an ordinary citizen who happens to be a low level employee of the department...of the county...wants to go and lobby for some thing before the planning commission...is he representing a developer, probably not, so

Sparks: (Continued) maybe this isn't too effective the way it's written now.

Wright: I don't think so, plus also when you take certain governmental jobs, you do tend to sometimes...that's one of the considerations; you give up certain rights if you want some of the security, and some of the accoutrements that go with taking a government job... that happens to federal employees too on certain things. But, I mean, that's one of the considerations -- you don't have a right to a job with a governmental agency...you know, it's not one of your guaranteed rights.

Mancini: Where I see us having the greatest problem is the urban design review board, which is made up of this series of professionals...all of those professionals have relationships in business with the county. Under the existing provision in the Charter, they're prohibited from representing any party before the county...it's impossible for them to basically carry on their commerce, sit on the board and adhere to the Charter provision.

Sparks: But at least this...what you're proposing fixes that.

Mancini: No.

Sparks: It doesn't?

Mancini: No, because they deal with compensation...they receive compensation for what they are doing.

Sparks: I understand if it's before the department for which they are employed, or which is appointed...

Mancini: Al, let me give you the scenario. I'm an engineer, right, or an architect; I sit on the urban design review board...I look at the plans that come by me every day, okay? Day two I go before the department of public works and try to get a subdivision through or a building permit; technically, am I representing a private interest? Yes. Am I representing before my agency? No. Am I representing before a different agency? Yes. Am I representing for compensation? Yes.

Sparks: Then that's okay, according to what we want to put in here, isn't it?

Mancini: No, I'm representing for compensation.

Wright: But it says a private interest before the department...

Sparks: Before the agency which you're employed by. Yeah, you can't go before the urban review board...that's clear, we don't want you doing that, but it allows you to go to the other agencies.

Mancini: Okay, then I wouldn't be able to...the urban design review board is assigned to the planning department.

Sparks: That's what I was just thinking you were talking about.

Mancini: I couldn't go before the planning department because that's assigned to the planning department.

Sparks: Which means the planning commission...

Mancini: Nor the department because the department's an agency.

Takabuki: Would it be enough to put some of this in our report as intent to give the board of ethics guidance...so when they make their opinions... You don't think so?

Wright: No, not the way it is right now. The way it is right now...the opinion that I was given did not come from the board of ethics, and in fact until Maile talked to me, I didn't realize that's where it came from. We called the board of ethics and said what can I do and what can I not do so I'm in conformance with the Charter. They went to corp counsel; corp counsel said you may not do any of this period...with the Charter as it is written. Therefore, if you go to the board of ethics and say put some better rules and regulations -- what corp counsel, I believe, is going to say is we don't care what rules and regs you come up with -- the Charter says they may not do it. So, that's why I don't think it's going to be enough...now it might be enough to say do this by ordinance... But, I'm afraid right now, because I didn't even realize until she talked to me, that it came from corp counsel that said...we called the board, the board asked corp counsel to interpret what we could do and not do...and corp counsel said no, you can't do that or you cannot speak at all. So, that's the only reason I don't think so, because that was corp counsel's legal interpretation of the Charter apparently.

Chair Nakasone: Do you want a Special Charter Commission for this section? [LAUGHTER]

Reyes: What would happen if you took out the word compensation in a. and b.? What would be the consequence?

Wright: Then let's just leave it the way it is.

Mancini: It gets closer to what's there now.

Reyes: No but this specifies by this individual's employer or agency to which the agency is appointed. In your case, you can't go to the planning commission because you're being...

Wright: But the architects could, and the problem is that would still the the people who are on urban design commission unable to go before planning commission, which is just not feasible for them. You know, if you're an architect or an engineer...that 's your livelihood...you're going to have to be able to go before planning commission and stuff...and saying...

Sparks: What do they do now?

Mancini: They just do it.

Wright: They probably violate; I'm assuming they do because they don't have any choice... it's either that or they cannot get any professionals on the urban design...

Sparks: Are there any other examples? Are these the only guys who would get hung by this new wording?

Wright: No, no; they're not the only ones.

Mancini: Well, you've got the...what's the commission that deals with appeals of code?

Takabuki: Code Appeals.

Mancini: Code Appeals...any time you have any professional...I don't think you've got any lawyers on any boards or commissions, but you do have architects and engineers and others...probably not cognizant of any problems.

Wright: Yes, they probably aren't; I wasn't cognizant until we happened to be dealing with that section, right, as I was getting ready to do something and said oh, my god, great... I'm on the Charter Commission...I'm going to violate the ethics code -- it never entered my mind that on a totally different board I couldn't go; or, I would have appeared and never thought twice about it, to tell you the truth.

Sparks: Maybe we can fix it by the wording...where it says before the department by which the individual's employed...or agency to which this individual's appointed...

Mancini: Tell me what you're trying to accomplish and I'll...

Sparks: No, but wait a minute...the agency by which the individual is appointed...in the case of the urban review board is that board, right? It's not the department -- it's the agency -- it's that board only.

Mancini: The urban design review board is an advisory agency to the planning commission.

Sparks: So what is the agency? If you're on the urban review board, what agency are you appointed to?

Mancini: That agency...urban design review board...which is advisory to the planning...

Sparks: Then we're covered...we're covered by the literal interpretation here, it's only that that they can't appear before.

Mancini: You might have it interpreted that since they are giving advice to... recommendations to the planning commission...those two are so connected...the prohibition could also be there. But, what is your objective? The objective here initially was merely to allow members of boards and commissions, and I think other employees, to act for non-profit agencies -- and if that's the only objective, I think you could probably come in with some wording to deal with that.

Sparks: Well, doesn't this wording deal with it?

Wright: No, I disagree if that's the only...that's what I'm saying...that's not what I understand the intent of that to be.

Sparks: Whether it's profit or nonprofit, it seems to me that our wording deals with it.

Mancini: I think it came from Anne's committee, didn't it?

Takabuki: Right, the board of ethics.

Mancini: And, that's what I thought you told me...that that's why it came up...

Takabuki: Correct.

Mancini: Because someone had requested the opportunity to appear for a nonprofit

Mancini: (Continued) agency.

Sparks: Well, I don't think even then they should appear before the agency to which they are appointed...or which they are employed by -- and we've covered it.

Wright: No, see I...

Sparks: Or we're not...we have not covered it because we've got compensation in there.

Mancini: Well, you haven't distinguished board and commission members...you've only got employees.

Wright: Yes, I think there still has to be a distinction between employees...like we talked about before...and board and commission members.

Sparks: Well look, an employee is employed by a department, right? So, what you've said is you can't for compensation go and represent some private interest before your department -- fine, I don't think that's a problem.

Wright: Or any other department...I don't think the employees should be representing before another department, see?

Sparks: I'm not so sure about that; I think that may not be such a big problem, but then an officer or a board or commissioner is appointed to an agency...so the urban review board people are appointed to that agency -- that board alone -- let's interpret it that way, anyway...so they can go and represent for profit or nonprofit...or for compensation or non-compensation...to some other agency.

Wright: Well, I think it should say boards or commissions instead of agency, because I think agency...I don't know how that would be interpreted as far as... To tell you the truth, because...

Sparks: Maybe that's our problem...

Wright: Because a commission could be part of an agency, so you might say boards and commissions to which they are appointed...they can't appear before those. I feel better than agency on that...

Sparks: Okay, let's do that.

Takabuki: Okay.

Mancini: Yeah.

Woodburn: Progress.

Sparks: Or board or commission to which the individual's appointed.

Mancini: This is a difficult forum to redraft this...unless somebody basically wants to set the objectives, I can go ahead and try to redraft it...

Wright: We have to agree on the objective though.

Mancini: We've got to define what you're trying to do...

Sparks: It seems to me one objective was get rid of this blanket prohibition that didn't

Sparks: (Continued) make any sense.

Wright: Right.

Sparks: And to replace it with a prohibition that did make some sense...and the sense that it makes is you can't represent for compensation some outside interest before your own agency or your own department.

Wright: But see, I don't agree with that...I agree with the agency part but not the department...so that's why I'm saying we don't have the same objective. I don't agree that employees should be able to go before another department to represent a private interest. I don't.

Sparks: I see what you're saying.

Wright: So, that's where the objective changes...

Sparks: If that's a concern, we haven't fixed that; but we certainly have fixed a couple of other things with it, so why don't we just do it?

Wright: Well, I'm not going to fix that one...I'm not going to go for a fix on that.

Reyes: How does this sound? Represent private interests before the department in which the individual is employed or board or commission to which this individual is appointed, or in any matter which is related to any official action to be taken by the County officer or employee.

Wright: No, I...it still doesn't address what I'm worried about; I don't want a department employee being able to go before another department -- I want the director...I mean the guy on the board of liquor control to come before the department of planning. I don't want the head of department of planning going before some other department head and representing an interest...actually for compensation or not for compensation...okay? That says as long as he's not going before his own department, he can do it...and I don't think it's right that he be allowed to go to any other county department. So, that's what I'm saying -- we may have an objective difference of opinion here; part of it we agree on probably which is that boards and commission people just can't go before their own board or commission...okay? That I understand and that I agree with. Do we want to define it in here or do we want to default like the City & County of Honolulu...and say let's go fix it by ordinance...take that section out and say that they'll set up standards by ordinance...The council shall set up standards for when you can and when you can't, and what you can do.

Sparks: What about the whole thing reading...to provide that county employees shall not...and then have the provisions that are appropriate for that; and then another one that says county officers and appointed boards and commissions shall not...and have three or four lines of that?

Wright: Well, I can understand that better...

Sparks: That's sort of like the ordinance, but not everything that's in the ordinance.

Chair Nakasone: Well, what's the pleasure of the members?

Wright: Well, I don't know what to do; we were going to vote on everything tonight, but on

Wright: (Continued) this one personally, if we're going to meet on Thursday...I think that Paul maybe should draft it a couple of different ways and let us vote on it then. Because, I can tell you right now, that I do want to get rid of what's in the Charter right now; I think it's terrible. But, like Victor said, maybe you could draft it so it says employees shall not do this...members of charters and commissions shall not do this...and then draft an alternative one where we default to the council or something else, and see which way... if we still feel there are problems with the one it specifies, we can say council go fix it or something. But, this may be the only one; I mean, I hate to do this because I know that Sherri's not going to be able to be here...

Dodson: That's fine with me...defer it until Thursday. [LAUGHTER]

Wright: But all I'm saying is right now I don't know that we all feel comfortable enough to vote on something.

Sparks: Well, I felt comfortable that it's at least a partial fix -- it doesn't fix one of your concerns -- but it's much better than what's in here now...

Wright: Yes, I agree.

Sparks: But if you think we still have time to make it even better...

Wright: I don't know...

Sparks: Then that's what we ought to do; it depends on Paul's schedule.

Mancini: It depends on how comprehensive you want it. It's interesting...one of the provisions in the City & County is that this provision...this no appearing before agencies for private interest..."this provision shall not apply to any architect, landscape architect, surveyor, registered engineer...as such under the provisions of the Hawaii Revised Statutes 6.4.64. who is a city employee or officer with respect to affixing such registered professional...such a person's registered stamp to any plan specifications, drawings to be submitted to the city for permit...for such persons principal residence, or that of members of such personal immediate family... So, they are dealing with the fact that you can do this for yourself and your own family.

Chair Nakasone: If no objection, defer until Thursday -- that's item 4. Okay, Article 11 - initiative.

Dodson: I'd like to make a motion to amend Section 11-3, relating to initiative petitions, to reduce the number of signatures required from 20% to fifteen percent (15%) of the voters registered in the last general election; to delete the requirement that signers of the petition disclose voting precinct; and to add the requirement that signers print name and address.

Cockett: Second.

Chair Nakasone: Discussion? None? Roll call.

<u>Cockett</u> :	Yes.
<u>Dodson</u> :	Yes.
<u>Fabrao</u> :	Yes.
<u>Nakasone</u> :	Yes.
<u>Reyes</u> :	Yes.

ROLL CALL (Continued)

Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIED.

Dodson: I'd like to make a motion to amend Section 11-4, relating to filing of initiative petitions, to delete the thirty (30) day time limit for filing of the petition; and to allow for the withdrawal of a signature within fifteen (15) days of the filing of the petition.

Cockett: Second.

Chair Nakasone: Discussion?

Mancini: I had one question; I was looking at this over the weekend...I didn't have a reason why we were deleting the thirty day time requirement -- I'm sure we had one...

Wright: To give them more time.

Takabuki: People had come out and said it was practically impossible to be able to do that...it made it so difficult to reach that required signatures.

Mancini: So it was just impossible to meet that criteria?

Woodburn: It was to gain time in which to get signatures.

Takabuki: That combined with twenty percent...which is the higher amount...we're reducing it.

Mancini: I guess I'm still....

Sparks: It's just too much of a hardship on the petitioner and there's no real purpose for it...because we're not having special elections...we're going to the next general election anyway.

Mancini: ...Okay, so you've got thirty days after you've filed the affidavit...

Wright: I don't remember all of that, to tell you the truth...

Mancini: Okay.

Chair Nakasone: Questions? Roll call.

Yonenaka:	Yes.
Wright:	Yes.
Woodburn:	Yes.
Takabuki:	Yes.
Sparks:	Yes.
Reyes:	Yes.

ROLL CALL (Continued)

Nakasone: Yes.
Fabrao: Yes.
Dodson: Yes.
Cockett: Yes.

Okay, MOTION CARRIED.

Dodson: Okay, amend Section 11-6, relating to voting on petitions, to provide that the initiative proposal contained in a valid petition be submitted to the voters at the next general elections; and a special election is not required.

Fabrao: Second the motion.

Chair Nakasone: Discussion?

Woodburn: I thought we had talked about...or maybe somebody can help me clear up...the issue about the majority of the votes cast versus a majority of the votes drawn -- where is that reflected in these?

Takabuki: That didn't make it to this final round.

Woodburn: Oh, it didn't?

Dodson: Nope.

Woodburn: Well, why not? [LAUGHTER]

Takabuki: Do you want to bring it up?

Woodburn: Oh, well...I thought it was a great idea.

Takabuki: It's based on ballots drawn, remember?

Woodburn: Well, I was in support of based on ballots cast.

Takabuki: Okay, that's as is then.

Sparks: You've got it the way you want it; just leave it alone.

Woodburn: Okay.

Mancini: Could I bring up a point on this? I took a bit of liberty...and I can't remember whether it's part of the vote...this is 11-6 under 2...and it has to do with the withdrawal again. It says "any initiative petition may be withdrawn anytime prior to the thirtieth day preceeding the date scheduled for the vote." It seemed to me that that had the same problem for Daryl...that he has to have the documents in the lieutenant governor's office sixty days...and they can withdraw it. I amended that in what I gave you today...if you look at 11-6...that I gave you today. Under 1, I amended that to sixty days...if you recall, we did the other provision for ninety days...we thought sixty days wasn't even adequate. But, this came to me when I was reading it over the weekend...the thirty days made no sense, so I changed it to sixty...but you may want to think about changing it to ninety to be consistent with the other one. This was...I don't think you

Mancini: (Continued) voted on this.

Takabuki: Neither of them, right.

Mancini: So, you might want to think about it; as I said, I took the liberty in the one that you have today. 11-6.2. I changed to ninety days.

Chair Nakasone: Discussion? Now that...Paul's notation on page 23 identifies the ninety days...

Sparks: This still goes through the council...

Fabrao: The petition?

Takabuki: Which, Al?

Wright: We didn't change any of that.

Sparks: So it means you have to get your petition completed at least sixty days before the election...

Wright: No, ninety is what we're going to change it to, even though that's not clear in...

Sparks: That's for a withdrawal...the ninety.

Woodburn: Well, Paul's recommending ninety for both.

Sparks: Are you?

Mancini: It seems to me, ninety makes sense. It's the thirtieth day now.

Sparks: So, it backs up to a time limit to the petitioners, right? I mean, there's no chance if they get inside of your ninety days...the council doesn't act on it because they can't get it on the ballot. So, your only chance is to make sure they get it done three months before the ballot, and even that might be close because...I guess the clerk could prepare it in time and then just not do it...

Mancini: What you're doing under 2 is you're deleting the special election...so it has to go on a general election.

Cockett: A little confusion here, Paul. Your number two is number three in the book, huh?

Mancini: It should be number 3.

Cockett: Okay, and number 2 is intact.

Mancini: Yeah, number 2 stays as is.

Sparks: You still have special elections in here for petitions? I thought we didn't.

Wright: It's in the Charter right now.

Mancini: We amended number 1...in the Charter now under 2...if no special election is

Mancini: (Continued) held within the ninety days, the council should provide for a special election -- that's what you want to delete.

Sparks: Yes, no special elections...they're just expensive.

Woodburn: And, we need the money for the audit. [LAUGHTER]

Cockett: Number 2 is deleted; is that correct?

Sparks: Well, that special election clause should be deleted.

Cockett: I mean it's going to be deleted from the report...it's going to be deleted from the Charter.

Mancini: The question I have is whether you want to go from the thirtieth day, under number 3, on the withdrawal...any initiative petition may be withdrawn anytime prior to the thirtieth day preceding...and I'm suggesting to the ninetieth day.

Sparks: The ninetieth day, I presume, is just to give the clerk...

Mancini: Adequate time.

Sparks: You can't back up once the clerk's in full swing with it; that makes sense. So, the other than ninety days are not being consistent, although I guess...I don't know exactly what the rationale there is because there we're just giving council sixty days... I don't know if I want to give them more than sixty days.

Mancini: No, but that wasn't changed, was it?

Woodburn: Did we have a motion?

Fabrao: Yes.

Chair Nakasone: Are you ready?

Fabrao: Can I ask for the question?

Chair Nakasone: Roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Nakasone:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIES.

Mancini: Can I just get clarification on what that vote was on item 3? It's clear for me that the initiative proposal contained in the ballot petition shall be submitted

Mancini: (Continued) to the voters at the next general election and not a special election. Did we change any of the dates? Any of the times? Do we go ninety days to withdraw?

Chair Nakasone: Yeah, ninety days.

Mancini: To withdraw...okay, that was the only thing.

Sparks: That wasn't on this list, but it's on your revisions. And, the sixty days for the council is still the same, right?

Mancini: Yes, sixty days stays for the council.

Chair Nakasone: Okay, Article 12 - recall.

Dodson: I make a motion to amend Section 12-3, relating to recall petitions, to delete the requirement that signers of the petition disclose voting precinct; and add requirement that signers print name and address.

Takabuki: Second.

Chair Nakasone: Discussion? We have a unanimous vote...any objections?

Okay, MOTION CARRIES.

Dodson: I make a motion to amend Section 12-4, relating to filing of recall petitions, to increase the time for filing a petition to sixty (60) days; and allow for the withdrawal of a signature within fifteen (15) days of the filing of the petition.

Takabuki: Second.

Chair Nakasone: Discussion?

Sparks: Is this the one where there was some discussion about not having the poor guy or woman suffer for too long a period? So you didn't want to leave it completely open then.

Chair Nakasone: Right, right. Discussion? None? Objections? Objections none.
Unanimous vote.

MOTION CARRIES.

Dodson: Motion amendment to Section 12-6, relating to recall elections, to provide that a valid recall petition will be submitted to voters at the next general election, unless such delay would defeat the purpose of the recall by allowing a full term of office for the person sought to be recalled, in which case a special recall election would be scheduled.

Takabuki: We amended that.

Mancini: I amended that in the new material I gave you -- it's on page 24...I put the 180 day period in, rather than the language unless it would defeat the purpose of the recall by allowing a full term. If you look at the language "any special recall election shall be held not less than ninety (90) days nor more than 120 days after the petition has been presented to the council, at the same time as any other election held within such period, but if not election is held within such period, the council shall call a special

Mancini: (Continued) election to be held within the time of foresaid."

Dodson: That's what I meant. [LAUGHTER]

Chair Nakasone: You all got that...any discussion?

Sparks: Last sentence...if less than 50% of the voters registered in the last general election shall vote at any recall election, the officer sought to be recalled shall not be deemed recalled regardless of the outcome of the election.

Wright: It's in the Charter right now.

Mancini: That's the existing provision.

Sparks: I can see how that works for special elections, but suppose it's not a special election...and suppose it's a general election?

Dodson: What difference does it make?

Sparks: And you have more than 50% voting on something in that general election, but less than 50% voting on this issue; have we covered that? The way you want to?

Reyes: Well, Al, if you recall you want to get the guy out...so it's saying that if it's less than 50% it's okay. In the general election if it's more than 50% it's okay.

Wright: What?

Woodburn: That's perfectly clear.

Wright: That's not what it says though.

Sparks: Shall vote at any recall election...is that recall election only that part of the general election that deals with the recall? Is that what you mean?

Dodson/Wright/Takabuki: Yes.

Sparks: So, it's ballots cast on that...

Dodson: On recall elections...

Takabuki: Right.

Sparks: Recall elections has to be 50% of the registered voters previously...not ballots drawn for the election generally.

Woodburn: No, it's previous.

Sparks: I mean, the 50%...it's not ballots drawn generally, but it's votes cast on that particular item in the election.

Mancini: You've got three ballots...number 3 is the recall ballot...you vote one way or the other.

Sparks: Right.

Mancini: Allan's question is...does the provision say that you count the 50% just for this third ballot, or the 50% that vote on all at the election.

Sparks: Right.

Mancini: The intent of this provision, I think, was only for the special recall election.

Wright: Only on the third ballot...

Sparks: Then you'd only have that ballot because it's a special; but you have several ballots in a general election.

Mancini: Well, this is a carry over from the old Charter; the old Charter relates to it only in terms of a special recall election...in which there's going to be nothing else voted on. We've then somewhat bifurcated that because we have it can be part of the general election or it can be part of a special election. The last sentence only relates to a special recall election -- we could make it relate to only special recall elections, and not have it applicable to the general election.

Sparks: If you wanted to, but you may want it to be applicable there too...so that it would be 50% of the ballots cast on that...

Takabuki: Recall question.

Sparks: Yes, on that recall question...I think that's what you want.

Mancini: I think it's better that way.

Takabuki: Yes, I do too.

Dodson: It's just as is.

Woodburn: Let's leave it the way it is.

Mancini: If 50% of the voters in the last general election shall vote on the recall question, the officer sought to be recalled...

If less than 50% of the votes in the last general election shall vote on their recall ballot question, the officer sought to...

Wright: No, shall not vote on...

Mancini: If less than 50% of the voters registered in the last general election shall vote on the recall ballot question, the officer sought to be recalled shall not be deemed recalled. It's better language.

Chair Nakasone: Okay? Objections? If none, by unanimous vote...

MOTION CARRIES.

Dodson: I move to amend Section 14-1, relating to initiation and approval of charter

Dodson: (Continued) amendments, to provide that any proposed amendment supported by a petition signed by at least twenty percent (20%) of the voters registered in the last general election be placed on the ballot at the next general election.

Takabuki: Second.

Chair Nakasone: Discussion?

Sparks: This is new, isn't it?

Wright: No.

Sparks: Something is new about it...before it was 10% and going through the council.

Takabuki: Right.

Wright: They can still do it with ten percent going through the council, if I understand it. Isn't this an addition saying that they can do 20%?

Sparks: So, it's another avenue.

Dodson: It's another avenue so they don't have to go to council.

Wright: If they get 20%, then we don't care what the council thinks...that's enough people [LAUGHTER]...really, that's what it means, that it's a high enough percentage of voter interest that it goes on the ballot regardless of what the council thinks.

Chair Nakasone: I thought it was to replace that...

Takabuki: Actually, I did too.

Wright: I thought it was supposed to be another avenue.

Chair Nakasone: I thought that was to replace that provision where they have to get that percentage of the petition to submit to the council for consideration.

Wright: See, I just understood that it was an alternative...like you get 10% and go to council, or they could get 20% and it goes straight on the ballot. I mean, I don't know...

Dodson: That's what I recall, too.

Wright: I thought it was just another avenue; I didn't think it was going to exclude the 10% and going through council. So, they have both avenues available...it's just different requirements, depending on how many signatures they can muster.

Sparks: We've got so many avenues available, you don't need a special commission. [LAUGHTER]

Chair Nakasone: Okay, discussion on the motion?

Yonenaka: I've got to get my petitions out tomorrow. [LAUGHTER]

Dodson: And it will be sooner than 1995. [LAUGHTER]

Chair Nakasone: So this is a new addition to that provision under the Charter, okay.

Woodburn: No, it's right there...it's just increasing that to 20%.

Wright: No, it's an alternative; you're supposed to leave that and add the new one.

Takabuki: Paul has to redraft it then.

Mancini: Redraft what?

Takabuki: This one on the 20%.

Cockett: 14-1...

Wright: This is supposed to be in addition to what's in here already.

Takabuki: Right.

Mancini: Oh, it's an addition to what's in the Charter?

Wright: Yes; that's what we're saying now...I don't know; I mean, that's what I understood and that's what Sherri understood...

Takabuki: I didn't understand that.

Dodson: You can make it number 3.

Wright: Yes. Leave it like that...they can get 10% and go through council, or they can get 20% and bypass council.

Woodburn: Well then, why present it to council? Then why have the first part in there about presenting it to council?

Mancini: Because the council can put whatever it wants on.

Yonenaka: If you want to put a petition on to limit council terms to just four terms, or three terms, or two terms...you certainly don't go to the council with your 10% signatures.

Sparks: Did anybody ever use the 10% and then go to council?

Dodson: South Maui seat.

Sparks: They did?

Chair Nakasone: No.

Dodson: Oh, no; that was council...

Sparks: It sounds like that's just another way of lobbying the council to do something...and supporting it with 10% signatures.

Wright: Yes, but what does that hurt? I mean, I don't think it's a bad pathway.

Sparks: It's just more verbage in here, than I think probably does anything.

Wright: I just don't like to foreclose an avenue; if you can't get 20% of signatures,

Wright: (Continued) maybe you can get 10% and go lobby the council.

Sparks: You can do it anyway without this in here...

Yonenaka: No, but they have to...if you've got 10%, they have to.

Chair Nakasone: They don't have to put it on the ballot. They don't have to pass it.

Mancini: Do you really want to do it both ways?

Wright: Maybe not, because there was a lot of misunderstanding on that.

Mancini: Well, it just seems to me that you've got to do two full provisions in there...you've got to add number three...which says about the same thing as number two, only it has 20% and it deletes the...

Sparks: I think it makes more sense to delete what we've got there now and put this in.

Chair Nakasone: Well, I believe that was the intent...to replace that avenue by which they submit a petition to the council of that 10%; and the council, according to this, can decide one way or the other...to put it on or not.

Sparks: Yeah, they can do that with or without 10%.

Chair Nakasone: Right, but with this new provision it would keep the 20% requirement and yet be able to put it on the ballot -- direct on the ballot.

Wright: Well, I'm in favor of the provision...I just didn't particularly want to foreclose other alternatives. You know, I want the 20% without having to go through council...in there personally.

Sparks: As I read it, the other alternative is simply similar to any lobbying effort any way because the council may or may not decide to go with it.

Yonenaka: But under the 10% we have right now, the council must hold public hearings...within forty-five days of receiving the petition. Or, I guess, just make a determination in forty-five days.

Mancini: Why does this go through council? Why doesn't it go directly to the clerk?

Wright: The 10% one?

Mancini: The 20% one.

Yonenaka: It does.

Wright: It doesn't go to council.

Woodburn: It says it does.

Wright: Well, where?

Woodburn: Right here...by petition presented to the council.

Wright: Oh, I'm looking at a different one...I'm sorry. Oh, I wouldn't...twenty percent shouldn't...I didn't understand it was going to go to council at all, I thought it was going to bypass council.

Takabuki: It should go straight to the clerk.

Chair Nakasone: Yeah.

Wright: I think it's a bad draft.

Mancini: It's just upon filing such petition with the council, the clerk shall examine and see...it's just a question of where you file it. You could file it with the council; you could file it with the clerk.

Takabuki: I think it should be filed with the clerk.

Woodburn: Well, the intent was to bypass the council on that one...

Wright: Yes, go to the clerk.

Takabuki: Go to the clerk.

Mancini: Okay.

Sparks: As painful as these discussions are, we find something once in a while. [LAUGHTER]

Chair Nakasone: What was the pleasure of this Commission? Do you want to replace or add to this section?

Dodson: It's adding but the new language should take out that presented to the council... it should just be the intent is...the petition with 20% voters, it goes straight to the clerk to be placed on the ballot.

Mancini: Now, do we leave in the existing one?

Dodson: Yes...with my motion, anyway.

Sparks: I'd like to amend the motion to leave out the existing one.

Dodson: Well, you know what? We'll vote on this and then you can make a motion to delete that old one.

Wright: Let's just vote on one of them, for god's sakes, and then we can vote on the other one if we need to.

Sparks: Okay, whatever.

Chair Nakasone: Okay, any further discussion? Roll call.

Cockett:	Yes.
Dodson:	Yes.
Fabrao:	Yes.
Nakasone:	Yes.
Reyes:	Yes.

ROLL CALL (Continued)

Sparks:	Yes.
Takabuki:	Yes.
Woodburn:	Yes.
Wright:	Yes.
Yonenaka:	Yes.

Okay, MOTION CARRIED.

Sparks: Now, I move that we leave out the existing Section 14-2. -- delete that section.

Chair Nakasone: 14-1.2., yeah?

Sparks: Article 14, Section 14, item 2.

Woodburn: 14-1.2.

Wright: 14-1.2., you mean.

Sparks: Oh, yeah; okay. So, 14-14...

Wright: 1.2.

Dodson: We know what you're talking about, Al.

Wright: Dash one, point two.

Chair Nakasone: Is there a second to this motion? There's no second; the MOTION DIES.

Sparks: There's plenty words in there...

Chair Nakasone: Yeah.

Dodson: I'd like to make a motion to amend Section 14-3, relating to mandatory review of the charter, to provide that a Charter Commission be appointed prior to March 1, 2001, and to allow sixteen (16) months for the submittal of a report by the Commission.

Takabuki: Second.

Chair Nakasone: Discussion?

Dodson: I hope nobody goes against this one.

Sparks: It says the Charter Commission be appointed prior to March 1...and then if you count from March 1 to August...how many months have you got?

Wright: No, no...you may be appointed but then you have to go through the confirmation process...that's why you don't end up having that much time to do it...that's why we didn't, because even though we were appointed in March, by the time we were confirmed...it took a long time before we could get started -- it was a little too short.

Chair Nakasone: We lost three months, actually.

Sparks: And so this phrase to allow sixteen months for the submittal of the report by the commission...

Wright: Tells them to get their hutt...

Sparks: It would require the council to act faster?

Wright: Give them sixteen months, is what it says. One way or the other, they have to give the next commission sixteen months -- I tell you, we were really short-changed on this one.

Sparks: If they get hung up on one or two appointments, and they don't get it done...

Takabuki: Al, we moved up the appointment date also; because right now it says prior to March 30...

Sparks: So you've advanced that a month...

Takabuki: We've moved that up again.

Chair Nakasone: No further discussion? Okay, no further discussion; roll call.

Yonenaka:	Yes.
Wright:	Yes.
Woodburn:	Yes.
Takabuki:	Yes.
Sparks:	Yes.
Reyes:	Yes.
Nakasone:	Yes.
Fabrao:	Yes.
Dodson:	Yes.
Cockett:	Yes.

Okay, MOTION CARRIES.

Dodson: Does anybody object to putting Kahoolawe in with South Maui, since we forgot Kahoolawe?

Sparks: Actually, I don't think South Maui's the best one; I put it in with this one (East Maui). It's part of the county; nobody lives there now, so it's not a problem, but we don't know within ten years whether somebody will live there. So, I put it in this one since we're concerned about the population there any way -- and it's kind of rural like that area. Anybody have any problem with that?

Cockett: I have a problem with that; I think it should go with South Maui.

Sparks: Why?

Cockett: Why? Then South Maui can keep an eye on it. [LAUGHTER]

Chair Nakasone: No objections to adding that -- Kahoolawe to... There's a motion on the floor...

Fabrao: I second.

Woodburn: What's your motion?

Sparks: Add Kahoolawe to this area as part of the residency area.

Yonenaka: To Hana.

Chair Nakasone: Okay, discussion? Objections? Okay, unanimous vote.

MOTION CARRIED.

V. NEXT MEETING DATE
Thursday, August 6, 1992 at 4:00 p.m., Council Committee Room.

VI. ADJOURNMENT
There being no further business, Chair Nakasone adjourned the meeting
at 8:24 p.m.

ACCEPTED:

Robert Nakasone, Chairman Date