

October 15, 2026

MEMO TO: Kauanoë Batangan, Councilmember

F R O M: David Raatz, Director of Council Services **David Raatz**

Digitally signed by David Raatz
DN: cn=David Raatz, o=Office of Council Services,
email=david.raatz@mauicounty.us, c=US
Date: 2026.10.15 14:01:22 -10'00'

SUBJECT: **COUNCIL INVESTIGATIONS** (PAF 26-256)

Introduction and background

You have asked for an overview of the Council's power to conduct investigations.

Legislative investigations are common at all levels of government. For instance, the National Civic League's Model City Charter includes this provision:

Section 2.10. Investigations. The city council may make investigations into the affairs of the city and the conduct of any city department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Failure or refusal to obey a lawful order issued in the exercise of these powers by the council shall be a misdemeanor punishable by a fine of not more than \$_____, or by imprisonment for not more than _____ or both.

A copy of the Model City Charter is available on the National Civic League's website:

<https://www.nationalcivicleague.org/model-city-charter-9th-edition-article-ii-city-council/>

The Levin Center for Oversight & Democracy provides resources for legislative investigations, including the attached article, titled "Eyes, Voice, and Teeth: Subpoenas in State Legislatures." Housed at the Wayne State Law School, the Levin Center quotes the United States Supreme Court on legislative investigations:

It is the proper duty of a representative body to look diligently into every affair of government and talk much about what it sees. It is meant to be the eyes and voice, and to embody the wisdom and will of its constituents.

The article also notes that a legislative body's authority to issue a subpoena—a legal order to appear and testify under oath—can facilitate executive-branch cooperation in investigations, even if the authority is not executed. “This is because of the second benefit of subpoena authority: its softer power as an incentive to comply with an information request.”

Here is a link to the Levin Center's article:

<https://levin-center.org/eyes-voice-and-teeth-subpoenas-in-state-legislatures/>

The U.S. Congress website has an article called “Investigations & Oversight,” which includes this statement:

Congressional investigations not only help legislators make better policy decisions, but they are central to the system of checks and balances.

The article also notes that investigation is an inherent legislative function and a common basis for committee hearings:

Hearings are most commonly held for three reasons: to consider pending legislation; to investigate issues that may require legislation in the future; and, to investigate and oversee federal programs.

The article, which describes the origins of congressional investigations and the use and alleged overuse of subpoenas, is available here:

<https://history.house.gov/Institution/Origins-Development/Investigations-Oversight/>

In contrast to criminal investigations, legislative investigations do not include the ability to impose sanctions for wrongdoing. Instead, legislative investigations are intended to provide information that will lead to better legislative decisions, including on appropriations and the structure of government.

Charter grant of Maui County Council's investigative power

Section 3-6, Revised Charter of the County of Maui (1983), as amended, lists this Council power:

3. To conduct investigations of (a) the operation of any department or function of the County and (b) any subject upon which the council may legislate.

This language has been in the Charter since the mayor-council form of government was approved by the electorate at the 1968 General Election.

The Council's investigative power can be executed in a variety of ways. We will group them as:

- Routine investigations;
- Investigations conducted by standing committees, including through the use of subpoenas; and
- Investigations conducted with the help of working groups.

Routine investigations

Much of the work conducted by Councilmembers and the Council's standing committees may be characterized as investigatory and justified by Charter Section 3-6(3), even if the work is not labeled that way.

Writing to County agencies to seek advice and data, conducting Rule 7(B) meetings, and questioning executive-branch officials in public meetings while considering legislative action on bills or resolutions are frequent Council activities that we would describe as routine investigations.

Investigating the Administration's work and policies is inherent in the fulfillment of legislative duties.

Investigations conducted by standing committees, including through the use of subpoenas

The most formal type of legislative investigation that can be conducted is based on the adoption of a resolution appointing a standing committee to investigate specific issues, including though the use of subpoenas, if needed.

In the attached correspondence to Councilmember G. Riki Hokama, dated August 12, 2013, "SUBPOENA POWERS OF THE COUNCIL," Legislative Attorney Kirstin Hamman outlined the legal basis for the Council requiring officials to answer questions under oath.

Ms. Hamman's memorandum made the following points:

- The State Legislature has shown express legislative intent that the county councils are authorized to issue subpoenas.
- The Council's subpoena power extends only to County officers or employees and is only enforceable by termination.
- Exercise of the subpoena power must be based on terms set by resolution.

For your reference, we have attached two resolutions that have been adopted to authorize an investigation of this type:

- Resolution 94-103, "AUTHORIZING THE FINANCE COMMITTEE TO CONDUCT A FORMAL INVESTIGATION OF THE DEPARTMENT OF FINANCE AND THE DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT"; and
- Resolution 13-83, "AUTHORIZING THE POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE TO CONDUCT A FORMAL INVESTIGATION OF THE DEPARTMENT OF MANAGEMENT; DEPARTMENT OF FINANCE; BUDGET OFFICE, OFFICE OF THE MAYOR; DEPARTMENT OF PUBLIC WORKS; AND DEPARTMENT OF THE CORPORATION COUNSEL."

The investigation authorized under Resolution 94-103 was stymied by a legal anomaly that prevented the Council from exercising subpoena power. The

issue was resolved by Act 83 (2001), as described in Ms. Hamman's correspondence.

The investigation authorized under Resolution 13-83 was suspended in deference to the Office of the County Auditor, as described by Councilmember Hokama in the attached correspondence, dated September 30, 2013.

For a more recent example, we have also attached a copy of Resolution 23-203, "AUTHORIZING A COUNCIL COMMITTEE TO CONDUCT A FORMAL INVESTIGATION OF COUNTY AGENCIES ON THE COUNTY'S RESPONSE TO THE AUGUST 2023 WILDFIRES ON MAUI ISLAND," which was introduced in the prior Council term.

Investigations conducted with the help of working groups

The Council can use various types of working groups to help conduct legislative investigations. In the attached correspondence, dated June 30, 2014, "WORKING GROUP COMPARISON," Office of Council Services summarized for Councilmember Don S. Guzman the functions of the following entities that may be used:

- Temporary investigative groups
- Subcommittees
- Special committees
- Independent working groups
- Boards, commissions, and advisory committees

As noted in the OCS memorandum, each of these working groups has different legal bases and procedures. Some are good tools for particular issues but poor choices in other instances. Careful analysis is required for each situation. Further, the memorandum is over a decade old and the listed examples are meant to be exemplary and not necessarily exhaustive or current.

Another possible source of help for a Council investigation is the retention of an outside contractor. The Council considered this option during the 2021-

2023 Council term in the Planning and Sustainable Land Use Committee under PSLU-2(4) for the so-called “monster house” owned by Greg Brown in Napili. The attached correspondence from the Director of Council Services, dated December 8, 2022, describes the unsuccessful attempt.

Finally, Charter Section 3-9.2 empowers the County Auditor to conduct or cause to be conducted “program, financial, or performance audits or evaluations regarding County organizations, operations, and regulations” and performance or financial audits of any agency or function of the County, as the County Auditor deems warranted. The County Auditor may thus be requested, but not required, to conduct an investigation.

Specific questions

I now provide direct answers to the following specific questions posed to us. My answers are in italics:

“(1) What are the limitations on the subject matter for a Council investigation?”

The Council’s power to conduct investigations is limited to “(a) the operation of any department or function of the County and (b) any subject upon which the council may legislate,” as stated in Charter Section 3-6(3).

“(2) What is needed for Council to initiate an investigation?”

A resolution is needed to conduct the most formal type of legislative investigation, which includes subpoena power. For other types of investigations, various techniques can be employed, as described above.

“(3) What power does Council actually have? For example, can Council compel a member of the administration to appear before the body? Can Council compel a member of the public or an employee of another agency, like a State of Hawaii agency, to appear before Council? How does the Council compel the appearance of a party?”

A Council investigation, an enumerated power in the Charter, is a legislative function. Thus, the Council may invest public resources to exercise the power. An authorized Council committee can issue a subpoena to compel attendance of “those elected to or appointed or employed in the government of the State or any county.” But the subpoena power does not extend to other people.

“(4) Would an individual compelled to appear before Council have a right to request that their appearance occur in an executive meeting?”

The conduct of an executive meeting is a discretionary choice available to a Sunshine Law body.

“(5) Can an individual refuse to answer questions from Council -- either with or without invoking the 5th Amendment protections against self-incrimination?”

Invoking the privilege against self-incrimination would allow a subpoenaed County officer or employee to avoid answering questions.

“(6) Are investigations conducted by the Council as a whole or by a Committee formed by Council or through a Temporary Investigative Group (TIG)?”

As described above, various Council or Council-related entities can conduct investigations.

Conclusion

The power to conduct legislative investigations is a vital, venerable, and flexible Council function that can take different forms. But the power is limited to serving legislative purposes and is not a means of taking punitive action. Legislative investigations may be conducted with or without the use of subpoenas, tailored appropriately as explained above.

I hope this information is helpful. If you have questions or need clarification, please contact me at ext. 7664.

paf:dmr:26-256a

Attachments

August 12, 2013

MEMO TO: G. Riki Hokama, Chair
Policy and Intergovernmental Affairs Committee

F R O M: Kirstin Hamman *KH*
Legislative Attorney

SUBJECT: **SUBPOENA POWERS OF THE COUNCIL** (PIA-41)

The following is a summary of the research I have conducted to determine the extent of the Council's subpoena powers when conducting an investigation pursuant to Section 3-6(3) of the Revised Charter of the County of Maui (1983), as amended ("Charter").

I. COUNCIL'S AUTHORITY TO ISSUE SUBPOENAS

"Subpoena power" frequently, and as used in the document, refers to an entity's ability to compel the appearance of a person to testify under oath by issuing a written request to the person.

According to the attached opinions of the Department of the Corporation Counsel, the general rule is that the power to subpoena, except by a court, must be conferred by statute or Charter. Section 3-6(3) of the Charter, which confers the power to investigate, does not confer power to issue subpoenas.

Act 83 (2001) (attached) clarified that Section 78-9, Hawaii Revised Statutes ("HRS"), provides statutory authority for the county councils' subpoena power.

Prior to 2001, the Department of the Corporation Counsel consistently opined that Section 78-9, HRS, did not confer subpoena power to the county councils.

However, Act 83 amended Section 78-9, HRS, to delete outdated language that had been interpreted as limiting the county councils' subpoena power. The House Committee on Judiciary and Hawaiian Affairs explained the basis for the bill that became Act 83 in Standing Committee Report 1520 (2001) (attached):

(Section 78-9, HRS) has been interpreted to require the loyalty oath for subpoena powers. Since the requirement for a loyalty oath no longer exists, certain county councils have not been able to compel county officials to appear before the council or its committees. This bill will remove any confusion about the interpretation of this section.

RECEIVED AT PIA MEETING ON 08/14/13
COMMITTEE CHAIR (reconvene)

Because Section 78-9, HRS, provides the authority for the Council to issue subpoenas, the Council's power is limited to the provisions of that section. Pursuant to Sections 78-8 and 78-9, HRS, the Council can only compel the attendance of "those elected to or appointed or employed in the government of the State or any county, or in any political subdivision thereof, or appointed to or employed in any office or employment any part of the compensation of which is paid out of public funds." Additionally, questioning must be limited to matters "regarding (1) the government, property or affairs of the State or any political subdivision thereof; or (2) the person's qualifications for public office or employment; or (3) the qualifications of any officer or employee of the State or any political subdivision thereof".

The Council does not have the power to issue "subpoenas duces tecum," which are used to compel the production of documents or records that are within the witnesses' control. If the Council, a Council committee, or a Council member wants to obtain relevant documents or records, a request to the Administration could be made pursuant to the Uniform Information Practices Act (Chapter 92F, HRS).

II. FORM AND SERVICE OF SUBPOENAS

Subpoenas should be issued in the name of the Maui County Council and signed by the presiding officer of the Council or the committee authorized by resolution to conduct an investigation. The subpoena should contain (1) references to the resolution authorizing the investigation, and to Section 78-9, HRS; (2) sufficient notice of the general subject matter of the questioning; and (3) the date, time, and place where the witness is to appear. Committee staff has the ability to prepare subpoenas as requested.

The subpoena should be served by an appropriate law-enforcement agency (i.e., Department of Police or Department of Public Safety, Sheriff Division). There is no known precedent of the Council or a committee retaining a law-enforcement agency for this purpose. As Chair of the Committee, you could consider writing to the Chief of Police and the State Sheriff to inquire as to their ability to provide subpoena-delivery services. Please advise if you would like staff to prepare the appropriate correspondence to those officials.

III. REMEDIES FOR FAILURE TO COMPLY WITH A SUBPOENA

A) Termination.

Pursuant to Section 78-9, HRS, if a person willfully refuses or fails to appear, or refuses to testify or to answer questions without a legal basis, the person's term of office or employment shall terminate. Therefore, unless a legal basis exists to refuse to comply, a person compelled to appear before the Council and answer questions pursuant to Section 78-9, HRS, faces the threat of termination for noncompliance. Section 78-10, HRS, describes the procedures for termination

G. Riki Hokama
August 12, 2013
Page 3

of a public officer or employee subject to Sections 78-8 to 78-11, HRS, who refuses to appear or refuses to testify pursuant to Section 78-9, HRS. Generally, the presiding officer shall certify the failure to appear or refusal to testify to the employing or appointing authority. Upon receiving the certification, the employing or appointing authority shall remove or discharge the person from office or employment and no further payments of public funds shall be made to the officer or employee.

B) Contempt

In other settings (such as before a court or a Congressional committee), “contempt” is a potential remedy for failure to comply with a subpoena. Contempt can include punishment by arrest and imprisonment.

According to the leading legal treatise on municipal law, however, the power of a county council to punish for contempt must be expressly granted and cannot be implied or inferred.¹ The Charter does not have any express language addressing the Council’s ability to punish a witness for contempt. Therefore, the Council and the Committee lack the remedy of contempt against a witness who refuses or fails to comply with a subpoena.

Please let me know if you have any questions or require further research.

pia:misc:041memo:kmh

Attachments

¹ 4 McQuillin Mun. Corp. §13:76 (3d ed.).

LINDA LINGLE
MAYOR



J. P. SCHMIDT
CORPORATION COUNSEL

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE (808) 243-7740 • FAX (808) 243-7152

January 12, 1998

MEMO TO: Honorable Alan Arakawa, Council member
Committee of the Whole

F R O M: J. P. SCHMIDT, Corporation Counsel *JS*

SUBJECT: Remedies Against Administration

This memo is in response to your memo of October 13, 1997, asking three questions regarding remedies against the administration for misleading information.

1. What are the Council's remedies against the Administration for deliberate misinformation?

Corporation Counsel Opinion 94-5 authored by Guy Haywood addresses this particular question and we agree with the position in that opinion. Corporation Counsel Opinion 94-5 states:

"You then asked about Council's remedies for misleading or inaccurate information disseminated by Administration officials. Council has power, as stated above, to conduct investigations as to the operation of any department. If a department is regularly making misleading or inaccurate statements that reflect on the operation of the department, Council could investigate that matter. However, Council has no additional powers to control or otherwise discipline members of the administrative branch of the government. If such activities occur, there may be violations of the Code of Ethics or claims could be made in the political arena. Otherwise, I find no specific powers given to the Council to discipline members of the administration."

On a related question in Corporation Counsel Opinion 94-5, Mr. Haywood takes position that we believe must now be modified. Mr. Haywood states,

"If the Council decides to conduct an investigation and the investigation requires the attendance of either



Honorable Alan Arakawa, Councilmember
January 13, 1998
Page 2

an elected or appointed official, those officials would be required to attend pursuant to HRS § 78-9."

However, HRS § 78-9 only applies to officials who are required to take a loyalty oath in accordance with Chapter 85 of the Hawaii Revised Statutes. Chapter 85 of the Hawaii Revised Statutes relating to loyalty oaths was repealed in 1993. Therefore, there are no officials who are required by Chapter 85 to take a loyalty oath and therefore, HRS § 78-9 does not apply to anyone and in essence is a nullity.

2. What type of remedial action may the Council take if it relied on false or misleading information provided by the Administration in making a decision and approving or granting the Administration authority to act?

As stated, in the answer to question no. 1 above, and in Corporation Counsel Opinion 94-5, the Council's remedy against Administrative officials is primarily in the Code of Ethics or in the political arena.

Council may wish to enact a law which changes the prior decision. However, generally that law would be effective only from the date that it was enacted. A "legislative act" predetermines what the law will be for future cases. Life of the land v. City Council, 61 Haw. 390. Anyone who acted in reliance on the prior decision or actions of the Administration would probably be allowed to continue in accordance with that prior decision or action since there are constitutional restrictions on the ability of Council to pass laws that might be retroactive or impair the validity of contracts.

Being a right vested by ordinance, subsequent enactments will not be read as operating retrospectively to destroy or impair it unless the language employed imperatively requires a contrary construction. In Re Cosmopolitan Hotel, 37 Haw. 611. If in fact the law is intended to act retrospectively, it can only be explanatory of statutes or declaratory of the common law. Brewster v. Gage, 280 US 327.

3. Can the Council revisit an issue and rescind it's decision if it relied on false or misleading information provided by the Administration?

Generally speaking, the Council may always reconsider an action prior to the end of the meeting wherein the action was taken. Council may also rescind prior acts and votes at any subsequent time until the act or vote is complete and has been carried out. Regarding motions to reconsider, subsequent to the

Honorable Alan Arakawa, Councilmember

January 13, 1998

Page 3

meeting at which action was taken, the Hawaii Supreme Court has stated that there must be an express or inferred statutory basis for a body to initiate reconsideration of a prior final decision. Yamada v. Natural Disaster Claims Commission, 54 Haw. 621 (1973). There is no express or implied provision in the Charter or county ordinances that provide for reconsideration of a decision.

In addition, the Yamada court stated that the principles of equitable estoppel are fully applicable against the government.

"One evoking equitable estoppel must show that he or she has detrimentally relied on the representation or conduct of the person sought to be estopped and that such reliance was reasonable. Waugh v. University of Hawaii, 63 Haw. 117 (1980).

In the case of County of Kauai v. Pacific Standard Life Insurance Company, 65 Haw. 318 (1982) (commonly known as the "Nukolii" case), the Supreme Court reviewed what constitutes reasonable reliance. In the Nukolii case, the Court found that individuals could not reasonably rely on official assurances because they still had discretionary permits to obtain. If the Council decision or the administrative action sets up a process which entails further discretionary approval, Council may reconsider its action (if allowed by law) and those individuals who are still seeking further discretionary approvals may not claim equitable estoppel and may be barred from continuing. However, if Council reconsiders its action those who have reasonably relied on that action to their detriment could claim equitable estoppel.

Because your questions are of a general nature regarding Council's remedies and right to remedial action or reconsideration, my answer also refers to general legal principles. Often these matters are very dependent on the specific facts involved, particularly when considering instances of equitable estoppel. If you have a specific matter that you are concerned about, please let me know and I will be happy to advise you on the application of these general principles to the specific facts.

If you have any further questions, please do not hesitate to contact me.

JPS:ko

Enclosures

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LINDA CROCKETT LINGLE
Mayor



GUY A. HAYWOOD
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 243-7740

June 22, 1994

The Honorable Goro Hokama, Chair
Committee of the Whole
Maui County Council
200 South High Street
Wailuku, Maui, Hawaii 96793

Re: Legal Opinion Request (CC94-142)

Dear Mr. Hokama:

By way of a letter dated May 23, 1994, County Clerk Daryl Yamamoto requested that I provide a legal opinion on two questions and refer my response directly to your committee. The questions are as follows:

1. How can Administration officials be compelled to attend a Council/Committee meeting?
2. What can the Council do about misleading or inaccurate information disseminated by Administration officials?

In response to your first question, the Council has the power to conduct investigations of the operation of any department or function of the County. (See Charter Section 3-6.3) However, Charter Section 3-8.2 requires the Council, except in the above case, to deal with County employees or County officials solely through the Mayor.

If the Council decides to conduct an investigation and the investigation requires the attendance of either an elected or appointed official, those officials would be required to attend pursuant to HRS § 78-9.

Council's authority to compel attendance of witnesses was addressed in Corporation Counsel Opinion 80-20, attached hereto. That Opinion concludes the Council has no specific subpoena powers, but the provisions of HRS Section 78-9 gives the County Council,

The Honorable Goro Hokama, Chair
June 22, 1994
Page 2

when conducting any hearing or inquiry allowed by law, to require the attendance of elected or appointed officers. We support that conclusion.

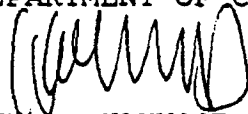
The language of Charter Section 3-6.3 speaks of "investigations" and HRS § 78-9 applies to "hearings" or "inquiries." These appear to be formal proceedings, more than simple requests to answer questions. Council should vote to conduct a formal hearing on a specific subject and then request witnesses to attend.

You then asked about Council's remedies for misleading or inaccurate information disseminated by Administration officials. Council has power, as stated above, to conduct investigations as to the operation of any department. If a department is regularly making misleading or inaccurate statements that reflect on the operation of the department, Council could investigate that matter. However, Council has no additional powers to control or otherwise discipline members of the administrative branch of government. If such activities occur, there may be violations of the Code of Ethics or claims could be made in the political arena. Otherwise, I find no specific powers given to the Council to discipline members of the Administration.

If you have any questions or comments, please feel free to contact me.

Sincerely yours,

DEPARTMENT OF CORPORATION COUNSEL



GUY A. HAYWOOD
Corporation Counsel

GAH:lc
Attachment
c:\council\admoft

DARYL T. YAMAMOTO
County Clerk



ROY T. HIRAGA
Deputy County Clerk

OFFICE OF THE COUNTY CLERK
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, HAWAII 96793

May 23, 1994

MEMO TO: Guy Haywood, Corporation Counsel

F R O M: Daryl T. Yamamoto, County Clerk

A handwritten signature in dark ink, appearing to be "D.T.Y.", is written over the name "Daryl T. Yamamoto" in the "F R O M:" line.

SUBJECT: LEGAL OPINION REQUEST (CC 94-142)

During its discussion of County Communication No. 94-142 at its meeting of May 20, 1994, the Council requested a legal opinion on the following:

1. How can the Administration officials be compelled to attend a Council/Committee meeting?
2. What can the Council do about misleading or inaccurate information disseminated by Administration officials?

Since County Communication No. 94-142 was referred to the Committee of the Whole, please transmit your response directly to the Committee.

Please feel free to contact me if you have any questions on this matter.

CC94/142:DTY/f

xc: Council Chair
Chair, Committee of the Whole
Director of Council Services

HANNIBAL TANARES
Mayor



PAUL E. MANCINI
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
WAILUKU, MAUI, HAWAII 96793
TELEPHONE 244-7740

May 1, 1980

Ms. Doreen Isagawa
Research Analyst
Council Services Office
County of Maui
Wailuku, Maui 96793

Dear Ms. Isagawa:

This is in response to your request of April 1, 1980, on behalf of the Charter Review Committee relative to the Council's authority to subpoena witnesses or documents or both in carrying out investigative powers.

Charter Section 3.7.4 states that the Council "shall have the power...to conduct investigations of (a) the operation of any department or function of the county and (b) any subject upon which the council may legislate."

On March 7, 1980, I had occasion to research this question for you and to report the results of that research.

The rule is that the power to subpoena, except by a court, is purely statutory. A provision such as Charter Section 3.7.4 which confers the power to investigate does not confer an implied power to issue subpoenas. Com ex rel. Margiotti, Applt. v. Orsini, 368 Pa. 259, 81 A.2d 891 (1951). Under the authority of the Orsini case, the power would have to be conferred by statute or Charter provision; an ordinance would not suffice.

There are two statutory provisions, Section 92-16 and Section 78-9, HRS, which are relevant to your inquiry.

Subsection 92-16(a)(1), HRS, provides that any board or commission "which is by law authorized or required to hold hearings for the purpose of receiving evidence, shall have the" power, in connection with the hearings, to subpoena witnesses.

May 1, 1980

We do not believe that the county council is one of the boards or commissions contemplated under this section. Rather, we believe the section was intended to apply to appointive administrative agencies.

The section was enacted as Act 329 in 1949. The Senate and House committee reports on said act reveal that the purpose of the provision was to induce citizens "to accept appointment" to boards required or authorized to hold hearings. The Senate Journal states, "The time required to be expended by members of boards and commissions in connection with hearings, has, in many instances particularly in recent years, been so great as to deter many able and conscientious persons from consenting to be appointed to serve upon such boards and commissions." 1949 Senate Journal pp. 1013, 1014; See also, 1949 House Journal 2213.

Section 78-9, HRS, does not provide a subpoena power, but it would permit the Council to terminate the employment of public officers and employees who, after receiving proper notice to testify before it about matters concerning the affairs, property or government of the County, refuse to appear or testify.

Section 78-9, HRS, states:

"§78-9 Failure to appear or testify, termination of employment. If any person subject to sections 78-8 to 78-11, after lawful notice or process, wilfully refuses or fails to appear before any court or judge, any legislative committee, or any officer, board, commission, or other body authorized to conduct any hearing or inquiry, or having appeared refuses to testify or to answer any question regarding (1) the government, property or affairs of the State or of any political subdivision thereof, or (2) the person's qualifications for public office or employment (including matters pertaining to loyalty or disloyalty), or (3) the qualifications of any officer or employee of the State or any political subdivision thereof, on the ground that his answer would tend to incriminate him, or refuses to testify or to answer any such question without right, his term or tenure of office or employment shall terminate and the office or employment shall be vacant, and he shall not be eligible to election or appointment to any office or employment under the State or any political subdivision thereof. To the extent that the State is without authority to require, under

May 1, 1980

the constitution or laws of the United States, compliance by any public officer or public employee herewith, sections 78-8 to 78-11 shall not apply to the officer or employee, but the sections shall apply to the extent that they or any part thereof can lawfully be made applicable."

The section applies to all paid officers, appointees, and employees of the County except for officers or employees located or stationed at facilities for the care and treatment of leprosy patients, inmates or patient employees, aliens, referees, receivers, masters, and jurors and casual and temporary employees. Sections 85-32 and 85-34, HRS.

In summary, we are of the opinion that statutory or charter authority must exist to confer the subpoena power upon the Council. We find no statute or Charter provision which provides such power. However, Sec. 78-9, HRS, does provide a mechanism under which county officers and employees may be compelled under threat of loss of employment, to appear and testify before the council.

Very truly yours,

DEPARTMENT OF THE
CORPORATION COUNSEL



SONIA FAUST
Deputy Corporation Counsel

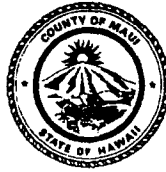
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APPROVED:



PAUL R. MANCINI
Corporation Counsel

JAMES "KIMO" APANA
Mayor



JAMES B. TAKAYESU
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
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TELEPHONE: (808) 270-7740 FAX (808) 270-7152

March 18, 2002

Honorable Michael J. Molina, Chair
Subcommittee on Communications Infrastructure
County Council
County of Maui
200 S. High Street
Wailuku, Hawaii 96793

Re: Request for Guidance on the Subcommittee's Subpoena Power
and the Authority to Limit the Number of New
Communication Service Providers

Dear Chair Molina:

This letter is sent in response to your request of February 26, 2002, on behalf of the Communications Infrastructure Subcommittee relating to the Council's authority to subpoena witnesses to attend the meetings of the subcommittee and to limit the number of new communications service providers.

County's Subpoena Power.

The power to subpoena witnesses, except when exercised by a court, is conferred upon a body by statute. In Hawaii, the general powers and limitations of the counties are enumerated in H.R.S. §46-1.5(1) - (25). These enumerated powers do not include a general subpoena power. Similarly, under the Maui County Charter (adopted under H.R.S. §46-1.5(1)), the County Council has no general subpoena power.

The power of the Council is to "conduct investigations of . . . any subject upon which the council may legislate." Maui Charter, Section 3-6, Powers of Council, Subsection 3 [nonapplicable portion omitted.] A provision such as this confers the power to investigate, but does not confer an implied power to issue subpoenas. See, for example, Com ex rel. Margiotti, Aplnt. V. Orsini, 368 Pa. 259, 81 A.2d 891 (1951), which states succinctly:

The law is well settled that the power of subpoena which formerly was exclusively a judicial power, may now be granted to nonjudicial bodies, commissions, agencies, or officials by statute, but the power and the extent of the

Honorable Michael J. Molina, Chair
Subcommittee on Communications Infrastructure
March 18, 2002
Page 2

power is to be determined in each case by the express statutory grant. C.F. Annenberg v. Roberts, 333 Pa. 203, 2 S.2d 612; Federal Power Commission v. Metropolitan Edison Co., 304 U.S. 375, 58 S.Ct. 963, 82 L.Ed. 1408; Jones v. Securities and Exchange Commission, 298 U.S. 1, 56 S.Ct. 654, 80 L.Ed. 1015; Harriman v. Interstate Commerce Commission, 211 U.S. 407, 29 S.Ct. 115, 53 L.Ed. 253; Interstate Commerce Commission v. Branson, 154 U.S. 447, 14 S.Ct. 1125, 38 L.Ed. 1047; In re Pacific Railway Commission, C.C., 32 F. 241; 39 Harvard Law Review, p. 694. Orsini at 263 (emphasis in original.)

In Hawaii, the Supreme Court has recognized that the power of an executive agency to subpoena witnesses is derived from a statutory grant of authority. See Marsland v. First Hawaiian Bank, 70 Haw. 126, 764 P.2d. 1228 (1988), where the court considered the investigating subpoena power of the County prosecutor and held that to the extent the county charter "authorized subpoena powers broader than or inconsistent with the subpoena powers authorized in H.R.S", the charter is invalid.

Based on the foregoing cases, any grant of authority to the Council to issue subpoenas must be found in an explicit State statutory grant. Arguably, H.R.S. §92-16(a) is a grant of authority to the Council, as a political subdivision of the State, to subpoena witnesses. H.R.S. §92-16(a) states in relevant part:

Any board (which term as used in this section means any board or commission of the State or of any political subdivision of the State) which is by law authorized or required to hold hearings for the purpose of receiving evidence, shall have the following powers, in addition to those provided for by any other law, in connection with the hearings:

1. To subpoena witnesses . . . served in the same manner . . . as in the case of a witness subpoenaed to testify before a circuit court. [emphasis added, portions omitted.]

However, the key language here is "for the purpose of receiving evidence." This language implies a judicial or quasi-judicial hearing and not an investigatory meeting (such as a council subcommittee's meeting) conducted pursuant to Charter Section 3-6, subsection 3. Therefore, neither the Council nor its subcommittees have the power to subpoena witnesses for the purpose of investigation.

As a side note, we could find no amendments to H.R.S. §92-16(a) that would broaden the authority of the Council to issue

Honorable Michael J. Molina, Chair
Subcommittee on Communications Infrastructure
March 18, 2002
Page 3

subpoenas. We checked both the main volume and the 2000 supplement to H.R.S. as well as the 2000 Session Laws, the 2001 Regular and Special Session documents online, and the 2002 Regular Session Bills and Committee reports online. No amendments relating to the Council's subpoena power were found.

Authority of the County to Limit the Number of New Communication Service Providers (Wireless, Cable, Telephone, etc.)

Your second question asks for guidance on the County's authority to limit the number of new communication service providers including wireless service providers, cable companies, and telephone service providers. In Hawaii, much of the ability of the County to regulate communication service providers is preempted by state statute. The two major state statutes regulating communication service providers are H.R.S. Chapter 269, Public Utilities Commission, and H.R.S. Chapter 440G, Cable Television Systems. We consider each of these sections separately below.

Under H.R.S. §269-6, the public utilities commission supervises generally all public utilities as defined in H.R.S. §269-1, which includes the responsibility for regulating all franchised and certificated public service companies including telephone and telecommunication service providers. The commission has the authority to regulate all local exchange and interisland toll services as well as telecommunications companies that provide interstate telephone services, mobile telephone services, paging and interisland transmission service. The application procedure for service providers wishing to commence business in the state is set forth in H.R.S. §269-7.5. Certificates are issued by the commission to any qualified applicant and authorized operations provided that the applicant is able to provide the service and the proposed service is required for the convenience or necessity of the public. H.R.S. §269-7.5(b).

Under H.R.S. Chapter 440G, the department of commerce and consumer affairs is the agency responsible for supervising and regulating every cable operator within the state. Applications or proposals for cable franchises are governed by the procedures set forth in H.R.S. §440G-7 and the director of the DCCA is empowered to issue cable franchises based upon the criteria of H.R.S. §440G-8.

Both chapters 269 and 440G include provisions regulating on a statewide basis the procedures under which new communication service providers may be permitted to conduct business within the state. County authority to limit the number of new communication service providers is preempted by a limitation on the power of the county under H.R.S. §46-1.5(13). Under this section, a municipal ordinance may be preempted if (1) it covers the same subject matter

Honorable Michael J. Molina, Chair
Subcommittee on Communications Infrastructure
March 18, 2002
Page 4

embraced within a comprehensive state statutory scheme disclosing an express or implied intent to be exclusive and uniform throughout the state, or (2) it conflicts with state law. Here, the proposed limit on the number of new providers is covered by the state uniform regulations and would be in conflict with state law. Therefore, the County lacks the authority to limit the number of new communication providers based upon state preemption.

The lead case in Hawaii addressing the issue of state law preemption of county ordinances relating to public utilities is Citizens Utilities Company, Kauai Electric Division v. County of Kauai, 72 Haw. 285, 814 P.2d 398 (1991), holding that the county's regulation of the height of utility poles is preempted by the PUC's regulatory powers. The doctrine of preemption and the Citizens case were discussed at length and affirmed in Richardson v. City and County of Honolulu, 76 Haw. 46, 868 P.2d 1193 (1994).

Further, the federal Telecommunications Act of 1996 includes specific provisions that prohibit local government (both state and county) from discriminating against competing communication service providers. Section 253(a), Removal of Barriers to Entry - In General, states:

(a) IN GENERAL - No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Section 253(d) provides for preemption of the local statute if Section 253(a) is violated:

(d) PREEMPTION - If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

Very truly yours,



Gregory J. Garneau
Deputy Corporation Counsel

GJG:ko

S:\ALL\GJG\Comm Sub\ltr to chair molina march 7 2002.wpd

APPROVED FOR TRANSMITTAL:


Corporation Counsel
County of Maui
Date: 3/18/02

Council Chair
Patrick S. Kawano

Council Vice-Chair
Dain P. Kane

Presiding Officer Pro Tempore
Charmaine Tavares

Council Members
Alan M. Arakawa
Robert Carroll
G. Riki Hokama
Jo Anne Johnson
Michael J. Molina
Wayne K. Nishiki



Director of Council Services
Ken R. Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

February 26, 2002

MEMO TO: Mr. James B. Takayesu
Corporation Counsel

F R O M: Michael J. Molina, Chair 
Subcommittee on Communications Infrastructure

SUBJECT: **COMMUNICATIONS INFRASTRUCTURE (S-COMINF 1)**

At its meeting of February 25, 2002, the Subcommittee on Communications Infrastructure met to discuss the aforementioned subject matter.

During its discussions, the Subcommittee asked that your office provide guidance on the following:

1. Does the County have the authority to limit the number of new communication service providers (wireless, cable, phone, etc.)?
2. According to Section 92-16 of the Hawaii Revised Statutes, boards authorized or required to hold hearings for the purpose of receiving evidence, have power to subpoena witnesses for the purpose of gathering evidence. Would these same powers also apply to a Subcommittee? If so, how would the Subcommittee exercise its authority pursuant to this provision?

Please provide a written response no later than March 5, 2002.

Thank you for your consideration of this request. Please feel free to contact me or my Subcommittee staff, Shannon Alueta (ext. 7687) or Camille Sakamoto (ext. 8007) should you need clarification or additional information.

Report Title:

Public Service; Deletion of Limitation on Legislative Bodies Subpoena Power

Description:

Deletes language that has been interpreted as limiting legislative bodies' subpoena power; deletes obsolete reference.

THE SENATE

TWENTY-FIRST LEGISLATURE,
2001

STATE OF HAWAII

S.B. NO. ⁷⁹⁷

A BILL FOR AN ACT

RELATING TO PUBLIC SERVICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to delete outdated references to language in chapter 85, Hawaii Revised Statutes, repealed in 1993, from sections 78-8 and 78-9, Hawaii Revised Statutes, and to delete language from section 78-9, Hawaii Revised Statutes, that has been interpreted as limiting legislative bodies' subpoena power.

SECTION 2. Section 78-8, Hawaii Revised Statutes, is amended to read as follows:

"§78-8 Persons subject to sections 78-8 to 78-11. The persons subject to sections 78-8 to 78-11 are those elected to or appointed or employed in the government of the State or any county, or in any political subdivision thereof, or appointed to or employed in any office or employment any part of the compensation of which is paid out

of public funds[, and who are required to take and subscribe a loyalty oath or affirmation pursuant to chapter 85. All persons exempted from the requirements of chapter 85 are and shall be exempted from sections 78-8 to 78-11]."

SECTION 3. Section 78-9, Hawaii Revised Statutes, is amended to read as follows:

"§78-9 Failure to appear or testify, termination of employment. If any person subject to sections 78-8 to 78-11, after lawful notice or process, wilfully refuses or fails to appear before any court or judge, any legislative committee, or any officer, board, or commission, [~~or other body authorized to conduct any hearing or inquiry,~~] or having appeared refuses to testify or to answer any question regarding (1) the government, property or affairs of the State or of any political subdivision thereof, or (2) the person's qualifications for public office or employment [~~(including matters pertaining to loyalty or disloyalty)~~], or (3) the qualifications of any officer or employee of the State or any political subdivision thereof, on the ground that the person's answer would tend to incriminate the person, or refuses to testify or to answer any such question without right, the person's term or tenure of office or employment shall terminate and the office or employment shall be vacant, and the person shall not be eligible to election or appointment to any office or employment under the State or any political subdivision thereof. To the extent that the State is without authority to require, under the constitution or laws of the United States, compliance by any public officer or public employee herewith, sections 78-8 to 78-11 shall not apply to the officer or employee, but the sections shall apply to the extent that they or any part thereof can lawfully be made applicable."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____

STAND. COM. REP.
NO. 1520

Honolulu, Hawaii

, 2001

RE:
S.B.
No.
797

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-First State Legislature
Regular Session of 2001
State of Hawaii

Sir:

Your Committee on Judiciary and Hawaiian Affairs, to which was referred S.B. No. 797 entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC SERVICE,"

begs leave to report as follows:

The purpose of this bill is to clarify the scope of subpoena powers of state and county legislative bodies by removing obsolete loyalty oath references, which were found in repealed Chapter 85, Hawaii Revised Statutes (HRS).

Seven members of the Maui County Council testified in support of this measure.

Your Committee finds that the law has been interpreted to require the loyalty oath for subpoena powers. Since the requirement for a loyalty oath no longer exists, certain county councils have not been able to compel county officials to appear before the council or its committees. This bill will remove any confusion about the interpretation of this section.

As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 797 and recommends that it pass Third Reading.

Respectfully
submitted on behalf
of the members of the
Committee on
Judiciary and
Hawaiian Affairs,

ERIC G. HAMAKAWA, Chair

Resolution

No. 94-103

Introduced By

Goro Hokama
GORO HOKAMA

Councilmember

AUTHORIZING THE FINANCE COMMITTEE TO CONDUCT A FORMAL
INVESTIGATION OF THE DEPARTMENT OF FINANCE
AND THE DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT

WHEREAS, Section 3-6.3 of the Charter of the County of Maui authorizes the Council of the County of Maui to investigate (1) the operation of any department or function of the County; and (2) any subject upon which the Council may legislate; and

WHEREAS, Section 78-9 of the Hawaii Revised Statutes empowers the Council, when it conducts a hearing or inquiry, to compel the attendance of persons elected, appointed, or employed in the County, or in any political subdivision thereof; and

WHEREAS, Section 78-9 of the Hawaii Revised Statutes also empowers the Council, when it conducts a hearing or inquiry, to compel these persons to testify or to answer any question regarding (1) the government, property, or affairs of the State or of any political subdivision thereof; or (2) the person's qualifications for public office or employment (including matters pertaining to loyalty or disloyalty); or (3) the qualifications of any officer or employee of the State or any political subdivision thereof; and

WHEREAS, the Council is informed of certain matters which require a formal investigation in order for it to be fully informed; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby authorizes the Finance Committee to conduct a formal investigation of the Department of Finance and the Department of Public Works and Waste Management, which may commence within a reasonable time from the adoption of this resolution; and
2. That when necessary, the Finance Committee may hold an executive session; and
3. That during the formal investigation of these departments, the following persons may be summoned to appear or testify before the Finance Committee:
 - a. Department of Finance:
 - (1) Director;
 - (2) Purchasing Agent;
 - (3) Manager of Motor Vehicles and Driver Licensing;

Resolution No. 94-103

- b. Department of Public Works and Waste Management:
 - (1) Director;
 - (2) Solid Waste Division Engineering Program Manager;
 - (3) Recycling Coordinator; and
- 4. That upon lawful notice or process, the Finance Committee may summon any other person elected, appointed, or employed in the County, or in any political subdivision thereof, who is necessary to complete the formal investigation; and
- 5. That a formal investigation of the Department of Finance may be conducted on the following matters:
 - a. Appropriation to the Office of the Mayor for Fiscal Year 1993-1994:
 - (1) Wages and fringe benefit payments paid to the Public Information Officer;
 - (2) Means by which payments were made;
 - (3) Sources of any additional funds used to compensate for the reduction in salary;
 - (4) Any procedure or policy authorizing the payments;
 - (5) Wages and fringe benefit payments for each position within the Office of the Mayor;
 - b. County bidding procedures and requirements:
 - (1) Bid specifications for a computer-aided testing system for driver's licensing:
 - (a) References of "three municipalities of a size comparable or larger to Maui County using a system similar to the proposed hardware and software for a period of at least one year";
 - (2) County vehicle purchases:
 - (a) Initial bid specifications for vehicles and any changes in specifications;
 - (b) Reasons for changes in specifications;
 - (c) Instances where new bids were solicited as a result of changes in specifications;
 - (d) Reasons for the award of contracts;
 - (e) Compliance of purchases with specifications;
 - (f) Trade-in of vehicles;

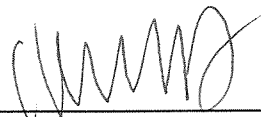
Resolution No. 94-103

- c. Notice of May 5, 1994, relating to the \$250 bonus for the members of the Hawaii Government Employees Association (HGEA) Bargaining Unit 3:
 - (1) Contents of the notice;
 - (2) Reasons for the notice;
 - (3) Any procedure or policy authorizing the notice; and
- 6. That a formal investigation of the Department of Public Works and Waste Management may be conducted on the following matters:
 - a. County Recycling Program:
 - (1) Contracts for consultants for waste management;
 - (2) Contracts for recycling:
 - (a) Procedures for awarding a contract;
 - (b) Implementation of contract provisions relating to services to be performed;
 - (c) Performance of services according to all laws, rules, and regulations;
 - (3) Appropriation of funds to Campaign Recycle Maui; and
- 7. That the Finance Committee shall prepare and submit its findings and recommendations to the Council on a regular basis, including a report no later than December 31, 1994; and

Resolution No. 94-103

8. That certified copies of this resolution be transmitted to the Mayor; the Director of Finance; the Purchasing Agent, Department of Finance; the Manager of Motor Vehicles and Driver Licensing, Department of Finance; the Director of Public Works and Waste Management; the Solid Waste Division Engineering Program Manager, Department of Public Works and Waste Management; the Recycling Coordinator, Department of Public Works and Waste Management; the Corporation Counsel; and the Chair of the Finance Committee.

APPROVED AS TO FORM
AND LEGALITY:


Guy A. Haywood
Corporation Counsel
County of Maui
a:\94Areso2.doc(lc)

COUNCIL OF THE COUNTY OF MAUI
WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the foregoing resolution was adopted by the Council of the County of Maui, State of Hawaii, on the 7th day of October, 19 94 by the following vote:

MEMBERS	Goro HOKAMA Chair	Dennis Y. NAKAMURA Vice-Chair	James H. APANA, Jr.	B. Lynn BRITTON	Patrick S. KAWANO	Alice L. LEE	Ricardo MEDINA	Manuel MONIZ, Jr.	Thomas P. MORROW
ROLL CALL	Aye	Aye	Aye	Aye	Aye	No	Aye	Aye	Aye


COUNTY CLERK

Resolution

No. 13-83

AUTHORIZING THE POLICY AND
INTERGOVERNMENTAL AFFAIRS COMMITTEE TO
CONDUCT A FORMAL INVESTIGATION OF THE
DEPARTMENT OF MANAGEMENT; DEPARTMENT
OF FINANCE; BUDGET OFFICE, OFFICE OF THE
MAYOR; DEPARTMENT OF PUBLIC WORKS; AND
DEPARTMENT OF THE CORPORATION COUNSEL

WHEREAS, Section 3-6(3) of the Revised Charter of the County of Maui (1983), as amended ("Charter"), authorizes the Council to investigate the operation of any department or function of the County, and any subject upon which the Council may legislate; and

WHEREAS, as part of its investigation, the Council or Council committee is authorized by Section 78-9, Hawaii Revised Statutes, to compel persons elected to or appointed or employed in County government to testify regarding the government, property or affairs of the County; and

WHEREAS, the Council is concerned that the County may have violated the Fiscal Year 2012 Budget or other laws by entering into contracts to demolish the Old Wailuku Post Office and to begin the Kalana O Maui Campus Expansion master plan using an appropriation for rehabilitation of the Old Wailuku Post Office building; and

WHEREAS, the Council is also concerned about whether expenditures for work performed on the Old Wailuku Post Office site subsequent to demolition of the building, including paving of the site for parking purposes, were authorized; and

WHEREAS, the Council finds that, as the legislative body of the County, it is the Council's duty to ensure that payments authorized or made and obligations incurred against the County by the executive branch are in accordance with appropriations duly made and under such procedures and policies as established by ordinance; and

WHEREAS, the Council finds that in order to ensure the Council is fully informed of the relevant facts and circumstances, a formal investigation is required; now, therefore,

Resolution No. 13-83

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby authorizes the Policy and Intergovernmental Affairs Committee (“Committee”) to conduct a formal investigation of the Department of Management; Department of Finance; Budget Office, Office of the Mayor; Department of Public Works; and Department of the Corporation Counsel (the “Departments”); and
2. That during the formal investigation of the Departments, the Committee may summon the following employees to appear or testify before the Committee:
 - a. Department of Management:
 - (1) Managing Director;
 - (2) Countywide Capital Improvement Program (“CIP”) Coordinator;
 - (3) CIP Coordinator (Project Manager); and
 - (4) CIP Project Coordinator;
 - b. Department of Finance:
 - (1) Director of Finance; and
 - (2) Central Purchasing Agent;
 - c. Budget Office, Office of the Mayor:
 - (1) Budget Director;
 - d. Department of Public Works:
 - (1) Director of Public Works; and
 - (2) Highways Division Chief;
 - e. Department of the Corporation Counsel:
 - (1) Corporation Counsel; and
 - (2) Appropriate Deputy Corporation Counsel; and
3. That upon lawful notice or process, the Committee may summon any other person elected, appointed, or employed in the County who is necessary to complete the formal investigation; and
4. That a formal investigation may be conducted on the following matters:
 - a. Use of the Fiscal Year 2012 appropriation for the Old Wailuku Post Office Rehabilitation project, including:

Resolution No. 13-83

- (1) Contract C5155 for the Kalana O Maui Campus Expansion and Contract C5228 for the demolition of the Old Wailuku Post Office building;
 - (2) Any Request for Proposals;
 - (3) Policies and procedures for authorizing or approving the contracts; and
 - (4) Policies and procedures for Department of the Corporation Counsel's review and approval as to form and legality of the contracts;
- b. Work performed on the Old Wailuku Post Office site subsequent to demolition of the building, including paving for parking purposes:
 - (1) Any funds used to pay for the work;
 - (2) Any Requests for Proposals; and
 - (3) Any contracts for work; and
5. That the Committee, as part of its investigation, is authorized to initiate an independent financial or performance audit of the Departments; and
6. That the Committee shall prepare and submit its findings and recommendations to the Council on a periodic basis; and
7. That certified copies of this resolution be transmitted to the Mayor; the Managing Director; the Countywide CIP Coordinator, Department of Management; the CIP Coordinator (Project Manager), Department of Management; the CIP Project Coordinator, Department of Management; the Director of Finance; the Central Purchasing Agent, Department of Finance; the Budget Director, Office of the Mayor; the Director of Public Works; the Highways Division Chief, Department of Public Works; the Corporation Counsel; the Chair of the Policy and Intergovernmental Affairs Committee; and David Louie, Attorney General, State of Hawaii.

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 13-83 was adopted by the Council of the County of Maui, State of Hawaii, on the 5th day of July, 2013, by the following vote:

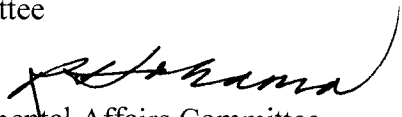
MEMBERS	Gladys C. BAISA Chair	Robert CARROLL Vice-Chair	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	Donald S. GUZMAN	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	No	No	Aye	No	Aye	Excused	Aye	Aye	Aye



COUNTY CLERK

September 30, 2013

MEMO TO: Members of the Committee

F R O M: G. Riki Hokama, Chair 
Policy and Intergovernmental Affairs Committee

SUBJECT: **COUNCIL INVESTIGATION OF OLD WAILUKU POST OFFICE** (PIA-41)

Pursuant to the “Old Wailuku Post Office Investigation Scope, Investigative Process, and General Rules”, adopted by the Committee at its August 14, 2013, meeting, I hereby submit the following status report on the Committee’s progress with its investigation of the Old Wailuku Post Office.

BACKGROUND

Pursuant to Section 3-6(3) of the Revised Charter of the County of Maui (1983), as amended (“Charter”), the Council has the power to conduct investigations of the operation of any department or function of the County and any subject upon which the Council may legislate. Based on this power, the Council authorized the Policy and Intergovernmental Affairs Committee to conduct an investigation into the Old Wailuku Post Office through Resolution 13-83, adopted on July 5, 2013, and as amended by Resolution 13-104, adopted on September 6, 2013.

SUMMARY OF COMMITTEE WORK

The Committee met on this item on August 12, 2013, August 14, 2013 (reconvene), and September 25, 2013. At its reconvened meeting on August 14, 2013, the Committee received from the Committee Chair the document entitled “Policy and Intergovernmental Affairs Committee, Old Wailuku Post Office Investigation Scope, Investigative Process, and General Rules”. The Committee also discussed the extent of the Council’s subpoena powers when conducting an investigation pursuant to the Charter.

By correspondence dated August 26, 2013, the Chair, on behalf of the Committee, requested the County Auditor to conduct a performance or financial audit into the Fiscal Year 2012 appropriation for the Old Wailuku Post Office Rehabilitation Project.

By correspondence dated September 6, 2013, the County Auditor informed the Committee he is unable to commit to performing the requested audit until he has properly staffed the Office of the County Auditor and established auditing standards. The County Auditor did state that the requested audit will be given serious consideration for inclusion in the Office’s plan of audits to be initiated in Fiscal Year 2014.

RECEIVED AT PIA MEETING ON 09/30/13

At its meeting of September 25, 2013, the Committee met with the County Auditor. The County Auditor informed the Committee that he intends to present the Council with a plan of audits for Fiscal Year 2014 by January 2014, at the latest.

The Committee has received, under Committee item PIA-1(26), 12 requests for special counsel for employees of the Executive Branch relating to the Council's investigation. The proposed resolutions authorizing the hiring of special counsel for the employees have not been scheduled for a meeting and remain on the Committee's master agenda.

COMMITTEE CHAIR'S RECOMMENDATION

One of the core functions of the Council is to exercise legislative oversight of the operations of the Executive Branch of County government. Another core function of the Council is to legislate appropriations for County purposes. In the Fiscal Year 2012 Budget, the Mayor proposed and the Council appropriated funds for rehabilitation of the Old Wailuku Post Office. The appropriation was based on expert inspections of the building who found the building suitable for rehabilitation.

When the decision was made to demolish the Old Wailuku Post Office and begin plans to expand the County campus, the Mayor was required to come to the Council and request the appropriate budget amendments. The Mayor has publicly admitted that his administration made a mistake and did not follow Charter-mandated procedures. The Council now has a duty to investigate how the Charter deviation occurred, and establish procedures to avoid similar deviations in the future.

When the Council members became aware of the demolition, they were prohibited by Section 3-8(2) of the Charter from ordering a stop to the demolition. Had a Council member tried to intervene in such a manner, the member would have been subject to removal from office by impeachment. The Council's only authority is to investigate the matter.

It is the Administration's mistake that is causing the delay and added costs to the people of this County. Like the fruit of the poisonous tree, if the process is flawed at its inception, everything that flows from it is likewise flawed and cannot be cured later in the process.

It is fortuitous that the Office of the County Auditor has been established concurrently with the Council's decision to conduct an investigation. Unfortunately, the Office of the County Auditor will take time to organize, hire staff, establish auditing standards, and be in a position to conduct an audit of the nature requested by the Committee. However, the Office of the County

Auditor was established specifically to undertake these types of audits, if deemed warranted by the County Auditor.

The Charter gives the County Auditor greater flexibility than it gives the Council to conduct a full and fair inquiry into the potential misuse of County funds, including the ability to subpoena witnesses and to compel document production. The County Auditor also possesses a greater ability to enforce non-compliance with subpoenas and requests for documents.

Additionally, the County Auditor will have more flexibility than a third-party contracted by the Council to conduct an audit. Hiring a third-party to conduct the audit will also result in additional costs to taxpayers.

The process of the investigation must be fair, and provide for adequate procedural safeguards. Any findings and recommendations must be based on a complete and thorough investigation, free of bias and political influences. Any findings and recommendations must be able to withstand the highest degree of scrutiny that they will be given by the Administration, the Council, and the public. Lastly, the investigation should be conducted efficiently and at minimal cost to the taxpayers.

Therefore, it is my recommendation that the Committee give the County Auditor the time needed to consider the requested audit for his plan of audits for Fiscal Year 2014. If the requested audit is not included in the County Auditor's plan of audits, the Committee may reevaluate its options at that time.

Resolution

No. 23-203

AUTHORIZING A COUNCIL COMMITTEE TO CONDUCT A FORMAL INVESTIGATION OF COUNTY AGENCIES ON THE COUNTY'S RESPONSE TO THE AUGUST 2023 WILDFIRES ON MAUI ISLAND

WHEREAS, Section 3-6(3) of the Revised Charter of the County of Maui (1983), as amended, authorizes the Council to “conduct investigations of . . . the operation of any department or function of the county” and “any subject upon which the council may legislate”; and

WHEREAS, as a part of a formal investigation, the Council is authorized by Section 78-9, Hawai'i Revised Statutes, to compel persons elected, appointed, or employed by the County “to testify or answer any question regarding . . . the government, property, or affairs” of the County; and

WHEREAS, there is widespread concern about the County's response to the August 2023 wildfires on Maui Island; and

WHEREAS, in a August 17, 2023 press release, Attorney General Anne Lopez announced that “she will be engaging a third-party private organization with experience in emergency management and processes to assess the performance of State and County agencies in preparing and responding to the Maui wildfires”; and

WHEREAS, on August 28, 2023, the Congressional House Oversight and Accountability Committee announced that it will conduct an investigation into the federal government's response to the wildfires on Maui Island; and

WHEREAS, the severe impact of the August 2023 wildfires warrants additional scrutiny to comprehend the series of events that lead to the catastrophic destruction and loss of lives; and

WHEREAS, questions have been raised by the public about how the County functions in preparation for and in response to an emergency event; and

Resolution No. 23-203

WHEREAS, the Council is concerned about County resiliency and intends to assess the performance of agencies with oversight to this critical incident in order to bolster County-wide preparedness; and

WHEREAS, a thorough formal investigation will provide essential information needed to prevent a similar disaster in the future; and

WHEREAS, the Council finds that to be fully informed of the relevant facts and circumstances pertaining to this matter, a formal investigation including public testimony or statements under oath or affirmation is required; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it authorizes the Disaster, Resilience, International Affairs, and Planning Committee to conduct a formal investigation of the Department of Fire and Public Safety, Police Department, Maui Emergency Management Agency, and Department of Public Works related to the County's response to the August 2023 wildfires on Maui Island;
2. That a formal investigation of the Department of Fire and Public Safety, Police Department, Maui Emergency Management Agency, and Department of Public Works is required to determine whether County fulfilled their duties and whether any corrective legislation or other remedies are warranted;
3. That during the formal investigation of the departments, the Disaster, Resilience, International Affairs, and Planning Committee may summon the following County officers and employees to appear or testify before the Committee:
 - a. Department of Fire and Public Safety
 - (1) Fire Chief.
 - (2) Deputy Fire Chief;
 - b. Police Department
 - (1) Chief of Police.
 - (2) Deputy Chief of Police;

Resolution No. 23-203

- c. Maui Emergency Management Agency
 - (1) Emergency Management Administrator;
 - d. Department of Public Works
 - (1) Director of Public Works.
 - (2) Deputy Director of Public Works;
- 4. That on lawful notice of process, the Disaster, Resilience, International Affairs, and Planning Committee may summon any person who is necessary to complete the formal investigation, whether they are elected, appointed, or employed in the County;
- 5. That the Disaster, Resilience, International Affairs, and Planning Committee may request in writing other persons, including former County employees, to voluntarily appear and give testimony or statements under oath or affirmation during the formal investigation;
- 6. The formal investigation may be conducted on the County's response to the August 2023 wildfires on Maui Island;
- 7. That the Disaster, Resilience, International Affairs, and Planning Committee must prepare and submit its findings and recommendations to the Council by March 15, 2024; and
- 8. That certified copies of this Resolution be transmitted to the Fire Chief, Chief of Police, Maui Emergency Management Administrator, Director of Public Works, Fire and Public Safety Commission, Police Commission, and the Mayor.

INTRODUCED BY:

Tamara M. Paltin

TAMARA PALTIN

June 30, 2014

MEMO TO: Don S. Guzman, Councilmember

F R O M: Sharon Brooks, Legislative Attorney *SB*
Scott Jensen, Legislative Analyst *ST*
Pauline Martins, Committee Secretary *PM*

SUBJECT: **WORKING GROUP COMPARISON** (PAF 14-164)

You have asked us for an overview of various forms of entities – which we can cumulatively refer to as “working groups” – that have been historically employed by Council members to gather information and consensus on matters of public concern. Temporary investigative groups (“TIGs”), also known as permitted interaction groups; subcommittees; special committees; independent working groups; and boards, commissions, and advisory committees are among the distinct group forms that we review below in narrative form and in the attached chart. As you will see, the working groups have differing legal requirements, membership, and capabilities.

Temporary investigative groups

A TIG may be created by a standing committee pursuant to the permitted interactions section of the State Sunshine Law (Section 92-2.5(b), Hawaii Revised Statutes (“HRS”)). Typically, this group is tasked with studying a defined issue and making recommendations to the standing committee. More rarely, a TIG may be created to present, discuss, or negotiate a position of the standing committee at a meeting.

The TIG membership may consist of two or more members of a standing committee, but less than a quorum. Members of the public may also work with the TIG. Should a vacancy occur on a TIG, no replacement member can be chosen as the TIG’s membership is set at creation. If the standing committee wants to change the TIG’s membership, it must dissolve the TIG and create a new one.

TIGs are not *required* to hold meetings, be open to the public, take testimony, transcribe minutes, or post agendas. This exemption from the Sunshine Law expedites the TIG’s work and promotes a more efficient process. Nonetheless, TIGs may take any of those actions, if they wish. TIGs may solicit input from the public as part of an investigation without needing to post a meeting agenda. TIG members may operate by email or phone and, as an exception to Sunshine Law requirements for other boards, may discuss Council business outside of a meeting. Members of the committee who are not part of the TIG may not attend TIG meetings. Before the TIG reports to the committee, TIG members should not discuss the status of their investigation with committee members who are not part of the TIG.

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A TIG has limited duration and is usually dissolved following its report to the standing committee. The primary benefit of a TIG is that it is more flexible than a standing committee or subcommittee because it need not adhere to Sunshine Law requirements. A disadvantage of a TIG is that the group's report must be given on a separate date that is prior to the date of any consideration or action by the standing committee. Additionally, TIGs can be labor intensive and demanding on Council resources.

We found two examples of TIGs formed by Council standing committees: the 2011 TIG of the Budget and Finance Committee to make findings and recommendations on policies relating to the apparent disparity of real property assessments for agricultural use versus non-agricultural use, and the 2013 TIG of the Budget and Finance Committee to recruit, evaluate, and recommend a County Auditor. At your direction, we can research the Council's experience with those TIGs, including interviewing Council members and staff who participated.

Executive-branch deliberative bodies, including the Maui General Plan Advisory Committee, appear to have made more frequent use of TIGs.

Subcommittees

Subcommittees may be created within any standing committee pursuant to Rule 7(D), Rules of the Council. Subcommittees are created to provide recommendations to the standing committees, particularly on matters that require in-depth research or technical expertise. The standing committee appoints the chair, vice-chair, and members of the subcommittee; specifies the objectives of the subcommittee; and sets a date on which the subcommittee is to be dissolved. Subcommittees must comply with all Sunshine Law requirements for a standing committee. That is, they must hold noticed, public meetings; post agendas; produce minutes; and take testimony (see Part I, Chapter 92, HRS).

An advantage of a subcommittee is that the standing committee to which it reports may take action on the subcommittee's recommendations at the same meeting at which the report is presented. However, a disadvantage of a subcommittee is the standing committee will typically have numerous meetings of its own to consider the subcommittee's findings and recommendations before taking action on the subcommittee's report. The standing committee's review and deliberations on a subcommittee's report adds another layer to the Council's review process, placing additional burdens on budget, staff, and other resources.

While the use of subcommittees reached its peak in the 1990s (six established in the 1993-94 term, six in the 1995-96 term, and eight in the 1997-98 term), their numbers tapered off in the ensuing decades. The final two subcommittees were established in 2002, including the Subcommittee on Outdoor Lighting Standards, which was formed to assist the Public Works and Transportation Committee with an item regarding amendments to an outdoor lighting bill. While the group met a number of times, no legislation resulted from the subcommittee's efforts. Ultimately, a private group took over the task of trying to provide well-considered recommendations to the appropriate Council committee on the legislation.

Special committees

Special committees can be regarded as obsolete because the applicable authorizing law, former Rule 6, Rules of the Council, was removed in 2011. In the preceding decade, special committees had been rarely, if ever, used. Under the prior rule, a special committee was established by the full Council, which specified its purposes and operating period, and approved the chair, vice-chair and membership.

Independent working groups

Council members are free to establish, or join, an independent working group (i.e., a body not formed by the Council or a Council committee), provided they remain cognizant of Sunshine Law constraints relating to communication among Council members. Typically, these groups are formed by, or with, community interest groups to focus on specific issues. They can be useful in determining policy goals because they can cover a broad range of issues, incorporate a diverse membership, and change their goals over time. Historically, however, bill drafting by independent groups has been problematic, as the task has not been performed by those with professional training and experience. In addition, some public members have appeared to be committed to specific language of a draft bill because they worked on it, whether or not the language meets legal requirements.

OCS resources are rarely provided to an independent working group because of budgetary constraints and the possible perception of preferential treatment. Therefore, from time to time, Council members have chosen to provide staff and other resources from their individual offices to assist various independent working groups. Provided there is a public purpose for the allocation of resources, this appears appropriate.

Don S. Guzman
June 30, 2014
Page 4

Boards, commissions, and advisory committees

Boards, commissions, and advisory committees, established by Charter or ordinance, are often available to respond to Council members' inquiries. For example, the Commission on Children and Youth is tasked with making recommendations to the Council on all matters relating to children, youth, and youth programs proposed for adoption by the Council (Chapter 2.39, Maui County Code). While a Council member with a question or a proposal in those areas is free to obtain the group's assistance with minimal impact on Council resources, the option of seeking guidance from this commission and other County entities appears underutilized. OCS encourages a greater use of this resource.

We hope this is helpful. Please let us know if you have any questions or require further assistance.

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Attachment

COMPARISON OF WORKING GROUPS FOR COUNTY ISSUES

	Temporary Investigative Group	Legislative Subcommittee	Special Committee	Public	Executive Board/Commission/Advisory Committee
Definition	A small group composed of committee members to investigate a specific issue and report findings within a defined time period.	Created by a standing committee to focus on specified subject matter and report findings to the standing committee.	A group created by the Council for specified purposes operating within a defined period of time.	A group formed by members of the public, focused on issues of concern, without specific rules or requirements of law.	A group formed pursuant to Charter or ordinance, typically appointed by the Mayor with Council approval.
Authority	HRS § 92-2.5(b)(1)	Rule 7(D), Rules of the Council	There is no current authority for a special committee. Prior to 2011, authority to create a special committee was in Rule 6, Rules of the Council.	No authority needed. Not defined under law.	Specific Maui County Code or Charter provision.
Creation	A temporary investigative group ("TIG"), also known as a permitted investigative group, may be created by a standing committee.	A subcommittee may be created within any standing committee by motion and vote.	Rule 6, as it existed prior to 2011, provided that the Council may create any special committee as deemed appropriate. There is no legal support for creating a special committee at this time.	An independent working group is typically formed by individual members of the public.	Created by Charter or ordinance.
Purpose	To investigate a matter relating to the official business of a standing committee.	To provide well-considered recommendations to the standing committee, particularly on matters that require in-depth research or technical expertise.	Rule 6, as it existed prior to 2011, provided that the objectives of a special committee were specified by the the Council at the time of establishment.	The group defines its own purpose, which often evolves over time.	Defined by Charter or ordinance.
Scope	The scope of the investigation and each member's authority are defined by the standing committee.	The standing committee shall specify the objectives of the subcommittee and set a date on which the subcommittee shall be deemed dissolved.	Rule 6, as it existed prior to 2011, provided that the Council shall specify the objectives of the special committee, and shall set a date on which the special committee shall be deemed dissolved.	Defined by the group.	Defined by Charter or ordinance.
Membership	Two or more Council members, but less than a quorum of the standing committee, as specified at creation.	The standing committee shall appoint the chair, vice-chair, and members of the subcommittee. Council members who are not voting members of a subcommittee serve as non-voting members of the subcommittee and may participate in the proceedings.	Prior rule provided that the Council shall appoint the chair, vice-chair, and members of the special committee. Council members who are not voting members of a special committee serve as non-voting members and may participate in the proceedings.	Council members, as restricted by the Sunshine Law, and members of the public, without limitation.	As defined at creation.

Resources; staffing	TIGs are entitled to the same resources as a standing committee.	A subcommittee is analogous to a new standing committee, requiring full OCS support.	When formed in the past, a special committee was analogous to a subcommittee, having full OCS support.	Typically, little or no OCS staffing is provided. Council members may assign their Executive Assistants.	Minimal OCS resources; staffed by Administration.
Legal requirements	TIGs are provided for by the Sunshine Law under HRS § 92-2.5. While they are not required to transcribe minutes or post agendas, they must present findings and recommendations to the standing committee, whereafter all deliberation on the investigated matter must occur only at a duly noticed meeting of the standing committee subsequent to the date of the meeting where the TIG report was made.	Subcommittees shall comply with the procedural requirements applicable to standing committees, to the extent practicable.	When formed in the past, special committees had to comply with the procedural requirements applicable to standing committees, to the extent D16 practicable.	No specific requirements under law.	None.
Sunshine Law requirements (Part I Chapter 92, HRS)	TIGs must comply with special provisions under HRS § 92-2.5.	Must comply with Sunshine Law.	Must comply with Sunshine Law.	Council members must be cognizant of Sunshine Law restrictions on communication amongst themselves outside of duly noticed public meetings.	Must comply with Sunshine Law.
History	Example: In 2013, the Budget and Finance Committee voted to establish a TIG for recruiting and evaluating applicants for the position of County Auditor. The TIG was composed of three Council members, whose respective authorities were set forth when the TIG was created.	No subcommittees have been created since 2002. The Subcommittee on Outdoor Lighting Standards was created in that year, but no legislation resulted.	Special committees were rarely utilized by the Council to investigate specific issues prior to 2011, when the rule providing for them was deleted. Example: Special Committee on Land Acquisition formed in 1998 to concentrate on long-term financing and criteria for land acquisition, as recommended by the Budget and Finance Committee.	The group defines its own purpose, which often evolves over time.	
Comments	In the past, TIGs have involved intense work, heavily using OCS staff, often after hours.	While a subcommittee may be created under current rule, this group form is disfavored because it imposes heavy burdens on OCS resources, which may not have been anticipated in the budget, and it requires additional availability of Council members, who must comply with Sunshine Law requirements.		Because members of independent working groups are rarely trained in legislative drafting, they are best used to formulate broad policy agendas and create consensus. When OCS has been involved, questions have arisen concerning the extent to which staff can advise the group, draft legislation, or be present at meetings.	Boards, commissions, and advisory committees were designed to be used by the Council but have been underutilized (e.g., the Commission on Children and Youth, established by Chapter 2.39, Maui County Code, which makes recommendations to the Council on all matters relating to children, youth, and youth programs). Assistance may be initiated by correspondence from a Council member.

References:

IIRS § 92-2.5(b)

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decision-making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

Rules of the Council, Rule 7(D)

Subcommittees. A subcommittee within any standing committee may be created for the purpose of providing well-considered recommendations to the standing committee particularly on matters that require in-depth research or technical expertise. The standing committee shall appoint the chair, vice-chair, and members of the subcommittee shall specify the objectives of the subcommittee and shall set a date on which the subcommittee shall be deemed dissolved. Subcommittees shall comply with the procedural requirements applicable to standing committees to the extent practicable. All Council members who are not voting members of a subcommittee shall serve as non-voting members of the subcommittee and may participate in the proceedings but shall not be counted toward quorum for the subcommittee.

December 8, 2022

2022 DEC -8 PM 5:04
OFFICE OF THE
COUNTY COUNCIL

RECEIVED

MEMO TO: PSLU-2(4) File

F R O M: Traci N. T. Fujita *tntf*
Director of Council Services

SUBJECT: **PRESENTATION AND DISCUSSION ON REAL PROPERTY
LOCATED AT 5385 LOWER HONOAPI'ILANI ROAD, NĀPILI,
MAUI, HAWAI'I** (PSLU-2(4))

The attached informational document pertains to Item 2(4) on the Committee's agenda.

Attachment

ocs:proj:napili house investigation:pslu-2(4) file

Timeline of events for the procurement of an investigator for the Napili House matter:

August 22, 2022	Meeting with Chair Lee and Councilmember Paltin to discuss Napili House Investigation. Decision was made to hire an outside investigator.
August 31, 2022	RFP was released and posted on State HANDS (procurement) website.
September 1, 2022	RFP link was sent to 22 consultants (Hawaii planning consultants and vendors who have submitted proposals to Council procurements in the past).
September 6, 2022	Request received from interested vendor for the last two years of financials.
September 15, 2022	Addendum 1 to RFP issued responding to request for the last two years of financials. Response was that the legislative branch does not have access to executive branch documents at this time and that documents may be requested from the executive branch as part of the investigation process, if needed.
September 29, 2022	No proposals received by due date.
September 30, 2022	OCS Director informs Chair Lee and Councilmember Paltin no proposals were received by the deadline. Alternative procurement process proposed to Chair Lee to contact 3 vendors to request a proposal and verbal approval obtained.
October 3, 2022	Chair Lee approves written alternative procurement process.
September 30 - October 10, 2022	Three vendors contacted to request proposals. How vendors were chosen: Two vendors expressed interest in the RFP but didn't submit a proposal by the deadline; One vendor has done work for the County in the past.
October 11, 2022	One vendor declined to submit a proposal.
October 19, 2022	One vendor submitted a proposal in the amount of \$92,200, plus GET. Third vendor never responded.
October 20, 2022	Councilmember Paltin decided not to proceed with procurement of investigator.