

CHARTER COMMISSION
MEETING MINUTES
APRIL 23, 1992
COUNCIL COMMITTEE ROOM

Present

James Cockett
Sherrilee Dodson (Vice Chair)
Dolores Fabrao
Robert Nakasone (Chairman)
Victor Reyes
Allan Sparks
Jamie Woodburn
Deborah Wright
Lloyd Yonenaka
Susan Nakano-Ruidas (Staff)

Excused

Annette Mondoy
Anne Takabuki

Guests

Dave DeLeon
DeGray Vanderbilt

I. CALL TO ORDER

Chair Nakasone noted a quorum present and called the meeting to order at 4:04 p.m.

II. PUBLIC TESTIMONY

A. DeGray Vanderbilt, Molokai, speaking as individual.

Vanderbilt: I attended the meeting last night which I felt was a fairly productive meeting and a lot of good sharing of ideas. I just wanted to reiterate a few of them:

* I would certainly, in presenting this district situation any further, if there are maps, I would sure like to see Molokai, Lanai and Hana all in one district, and then let people try to shoot that down rather than go to those areas and it would be nice if the Commission didn't have any objection to it, and from the Hana situation, like I mentioned last night, it's and Lanai are both rural, they are both really going to be slow growth along with Molokai, so your percentages aren't going to get warped. And, the most important thing is, out of the 50,000-plus acres of homestead land, almost 99% of them would be in that district. We tried to get that in the state re-apportionment, but we were so busy fighting to get out of a canoe district with downtown Honolulu, that we ran out of energy before we could get that one passed.

* The other thing is we have no Charters on Molokai. I don't know if the mayor can do something. The problem seems to be that there's no way for anybody in the clerk's office to collect money for the Charters, because they don't have a member of the county clerk's office on Molokai. But, they have people in the administration so there's got to be some way to send a hundred or so over there and somebody collect the \$3.00 and put it in an envelope, or something. Granted they can call or write and ask the clerk to send one, but it'd just be nice if they were there in the county office on Molokai.

* The other one is the initiative. I just wanted to get it on the public record, and I think that the problem is now that it's just impossible for anybody to meet that 20% of the voter registration in thirty days. I would suggest 120 days as a minimum, and whether you want to leave the percentage at twenty, or lower it, whatever, but twenty is certainly high enough. Maybe it could be a little bit lower, but I think the percentage is not too bad it's just the timing -- thirty days, there's just no way.

* One thing we've had a problem with in the past... There's been several good community plans; I think Hana mentioned it had a good plan, Molokai

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Vanderbilt: (Continued) feels like it had a good plan since the early '80s. But, our plans seem to be subject to a lot of changes through either variances or community plan amendments that require zoning changes that go through the council, and I've got to admit I haven't studied the Charter in the last couple of months to see what it is, but I think it ought to be it's got to take at least two-thirds of the council to override any major community plan amendment, or to pass any major community plan amendment, and if it's a good community plan amendment it will obviously get that. If it's a controversial one it probably won't. But, you've got to have some kind of reliability in your community plan, and there's been a lot of changes through the variance and through the community plan amendments.

* And, next time you come to Molokai if we could have whatever you're going to propose at least a couple of weeks ahead of time, it would be sure helpful because I think you'll get a lot more constructive comments and you'll get a lot bigger turnout, that I think you'd like to have.

III. COMMUNICATIONS

The Commissioners accepted the following Communications:

- 92-31 Letter re: Land Use Conditions and Requirements/
Response to Committee B Inquiry, submitted by G. Kaya
- 92-32 Copy of 4/14/92 Hawaii Tribune Herald article sent
by Takashi Domingo of the Big Island, submitted by D. Yamamoto
- 92-33 Letter of 4/9/92 requesting Planning Commission for
Lanai, submitted by G. Hokama
NOTE: PETITION SHEETS RECEIVED FROM D. FABRAO WITH
LANAI RESIDENT SIGNATURES ATTACHED AND MADE PART OF
THIS COMMUNICATION DURING 4/23/92 MEETING.
- 92-34 Memorandum dated 4/20/92 re: 1) Appointment and
confirmation of county prosecutor and corp counsel;
2) Subdistrict durational residency requirement,
submitted by P. Mancini

IV. COMMUNICATIONS

- A. Paul Mancini, Charter Commission Attorney - re: proposed
language for Charter Amendments (see Communication 92-34)

Mancini: I did a memorandum to the Commission addressing the appointment and confirmation or rejection of corporation counsel and prosecuting attorney. I looked at the opinion that was drafted by Jeffrey Portnoy to the council, and I tried to somewhat summarize that to the Commission in the letter. And, then I tried to identify the issues that I believe remain for the Charter Commission to resolve, because the ambiguities that Jeffrey Portnoy identified and what I saw were open issues, some of which weren't identified by him but they seemed to be clear from reading his letter and reading the Charter.

Then I looked at the issue of subdistrict residency requirement that Russell Blair brought up, and I wrote that in too for the Commission to consider.

Before coming here today, I read through it again and I thought, well you probably won't have a chance to read this, so I did a couple of charts. The first chart starts with the election process. What I tried to do with that was to show you where the Charter moves right now, and why we find ourselves in the position that we're in with regards to corporation counsel and prosecuting attorney. Let me walk through that with

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Mancini: (Continued) you; most of it's covered in my memo in narrative form, but I think walking through this with you will make it easy to understand. The situation that occurred a year and a half ago results from a couple of ambiguities and a couple of areas where there are no guidelines by the Charter. The threshold point comes into play when there is a vacancy in the position of the corporation counsel/prosecuting attorney. The Charter has a provision for a holdover; a new administration's elected, or the mayor is elected, the Charter has a sixty day provision for department heads to holdover those positions.

I recall when this was introduced, and the Charter doesn't give you any background, but I think Bob was on the council when this came into play. There was one administration that felt that it wasn't necessary to submit the names of corporation counsel/prosecuting attorney after reelection because they never vacated their offices -- they continued through. So, the Charter amendment under 6-2.3. was put into place to show that once, even though it's the same mayor, the mayor is reelected, those offices discontinued at that point in time. And, there was a vacancy after sixty days; it could carry over for sixty days. It was strictly meant to deal with the holdover provision and to deal with the situation which I think happened two years previous, where one of the appointed officials said "I don't have to be reconfirmed; I don't have to go back through this process again." So that was put in the Charter to make clear that the corp counsel/prosecuting attorney, their names had to be resubmitted.

Jeff Portnoy, in his opinion, seems to take this sixty day provision and says the real intent of that was that anybody in an acting basis is only good for sixty days. That's not what it says, and that's not the background to the provision because I recall when it was recommended. And I think that's the only place where I significantly differ with Jeffrey in his opinion.

But, you've got a holdover situation and if there is a vacancy, first the holdover resigns or he's left then you've got a vacancy. And, what happens when you have a vacancy? Jeff in his opinion said that Section 7-5.1. of the Charter created implied power to the mayor to fill that vacancy. And that Section 7-5.1. says the mayor has supervisory responsibilities over all departments; and in that he says there's an implied power to supervise that department, and therefore to create somebody in an acting basis if there is no other mechanism to do that.

Section 6-3.3. of the Charter allows any department head to create a subordinate to act in his place. Well, if you've got a vacancy there's nobody to create a subordinate, unless he's done that before he's left and then you have questionable authority after he's left. So, the implied power is found under 7-5.1. and that gives the justification under the Charter to create an interim appointment.

So, you see where I take my arrow -- go from a holdover to a failure to holdover creating the vacancy, then to the mayor to fill that vacancy under that implied power in 7.5, and that gives you your interim appointment, as we've seen take place. That interim appointment is then submitted to the council; there's no time deadline in the Charter by which it has to be submitted, and there's no provision in the Charter saying what happens if it isn't submitted. But, we know departments have to run and so you assume that once that person is appointed or is nominated that there's going to be a reasonable period of time to submit that person to the council. The council can approve or reject that nominee and the Charter gives no

Mancini: (Continued) guidelines, either for time under which the council has to approve or reject. And, what happens if they don't do it at any point in time? Upon rejection, then you've got the question what has happened to the interim appointment -- can that person holdover longer? And then you have a new appointment process.

What I've done on the next page is outline the variables. I've broken it down to four major issues:

1) The authority for interim appointments. And as I said, in Jeff's letter he identifies Section 7-5.1. as the implied power. There's nothing in the Charter that says the mayor can make these interim appointments, but I think it's reasonable to say that it's implied there.

Question number one for the Charter Commission -- Do you want to change that to specific authority, so it's clear the mayor can do it; Two, do you want to leave it as it is, and that is leave the implied power there; or Three, you could create an obligation on a holdover if the holdover leaves, to appoint one, but I think that would be a questionable situation and probably less substantive than leaving it as an implied power to the mayor.

So those were the issues under the interim appointment question.

2) The next question was what happens if the nominee's rejected? And, that was our situation. Does the Charter Commission want to prohibit that person to act any further from the time of rejection? Does the Charter Commission want to authorize that person to act until a new nominee is confirmed? Does the Charter Commission want to authorize the person to act within a limited time period until a new nominee's identified? This seems to be the three options available. You may think of others, but those are the ones that came to my mind.

So, those are two issues. Interim appointment--should you make it a specific authority in the Charter? Rejected nominee--how do you want to classify his status when he is rejected?

3) Third issue--mayor's actions after vacancy. Do you want to create a time period when after a vacancy occurs under which the mayor has to submit the name as a nominee? Do you want to leave it as it is -- no time period? If you do create a time period, do you want to address the failure to meet that time period, as to what the ramifications of that are? And here I've listed some. Councilman Hokama made a suggestion, and we'll discuss that in a minute. But here are some alternatives if you want to address the question of say you give the mayor thirty days to submit the name to the council, the mayor fails to do it, what happens?

One is Councilman Hokama's suggestion is that the mayor can make that temporary appointment until a new nominee is then nominated and the nominee is confirmed.

Wright: You mean the council can make it.

Mancini: The council can make it. That was Goro's suggestion.

Another one is to have the first deputy then serving serve after a vacancy. I think that's what the City and County (Honolulu) does in their Charter.

The third one is to let the Charter's general redress powers, which are contained in 13-10 of the Charter and the County Code Section 1.12.20. addresses what happens if you violate the Charter; and, you may just want to leave it as it is and not create any other redress, and you leave it to the

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Mancini: (Continued) political process with that other ramification.

4) The fourth scenario, what happens in the council's actions after the nominee's submitted? Right now the council has no obligation to act under any period of time, either approve or reject. Do you want to leave it as it is? Do you want to create a time period? And, if you do create a time period, if they fail to act within that time, what are some of the options? You can make it automatic confirmation; you can make it automatic rejection; you can do nothing and leave the Charter to its own redress. If they've violated the Charter, then look to the penalties for violating the Charter.

As I said, Goro had submitted a recommendation and I summarized that in the letter I wrote. He created the obligation for the mayor to submit within thirty days of vacancy. If the mayor failed to submit within the thirty days, he had a provision that council could appoint a person to act in that capacity until a nominee was submitted by the mayor and confirmed. His provision made it clear that a disapproved person could not continue to act and could not be resubmitted during that term of the council, and he also included a provision which specifically authorized the mayor to make these interim appointments. So, he covered most of the issues that I brought up, but he didn't create any time limit on the council to act nor put a default provision if they failed to act.

Maybe before we go into durational residency issues, I could address some of your questions. As I said, I tried to break it into four issues and give you options for each of those four issues. You may be able to think of more options; I did not try to program you to go one way or the other with it.

I understood corporation counsel had rendered an opinion on the issue also, but I had not seen that; it wasn't provided to me. So, all I could deal with was Jeff Portnoy's opinion and looking back and taking the issues under the Charter. Jeff does not go into time elements on the mayor or the council at all.

Wright: The only thing I noticed was when you were setting the option of the possibilities if there is a failure to submit a name, that the first deputy is concerned... Didn't we have this problem last time that there wasn't either an acting or a first deputy at that point? That was the only thing I was wondering about... I thought if we had both vacancies, like prosecutor and first deputy...

Dave DeLeon: We don't have first deputies.

Wright: They have something similar to that. They do, in those offices.

Dave DeLeon: I don't think so.

Wright: They have something similar titled; they do. I know because I know people who were originally in those positions in the prosecutor's and...

Dave DeLeon: In this administration?

Wright: Yeah. It wasn't a nominated position but it was designated.

Dave DeLeon: Administrative? Second in charge?

Wright: Yup.

Dave DeLeon: There used to be, but then it was dropped.

Mancini: I think it's probably discretionary with the corporation counsel. Because, my recollection was that when Cyrus came in, Buddy was brought in as first deputy.

Wright: Yeah, and for Richard Priest, Davelyn Tengan was designated as a first deputy or something of that nature.

Mancini: I don't think they have to do it...

Dave DeLeon: I won't argue against it, I just...

Wright: No, I'm just curious as to what happens if there either isn't a first deputy at all or there's no one in that position, so how...

Dave DeLeon: I think in the payscale that the Salary Commission produced there wasn't any first deputy. Also, downstairs on the administrative board, the one with all the pictures, you won't see anybody in there except department heads.

Mancini: I think if you go to personnel services they probably would give you your choice, whether you want to identify someone for administrative purposes, so that all the world knows that if you're not there, this is the first deputy -- that's the acting... When I was corp counsel, I did not have a first deputy. But then this one time I had this trip to South Africa, and I was going to be away for two to three months, and I appointed David Nakamura as acting while I was away. But, he wasn't first deputy, because there was no one identified in the department at that time.

But, the reason I brought that up is the City and County has a Charter provision, and I'll read it to you:

'A vacancy in the office of prosecuting attorney shall be filled by the first deputy who shall act as prosecuting attorney. Or if the position of first deputy is vacant, or if the first deputy is unable to act, the mayor with the approval of the council shall fill the vacancy by appointment of a person with the requisite qualifications within thirty days after the occurrence of the vacancy.'

Now, the vacancy means basically that the guy's not there. He either resigns or he's passed away, as opposed to a temporary absence of a person.

Chair Nakasone: But, Paul, this is talking about an elected position in the City and County.

Mancini: Yeah. The prosecuting attorney is, but it could be equally applicable to the corporation counsel.

Chair Nakasone: What are the provisions for the corp counsel which is appointed by the mayor? It goes through the same confirmation process, right?

Mancini: I don't have that, but my guess would be it may be the same.

Chair Nakasone: But they do identify a first deputy so there...

Mancini: And, the purpose is to keep government functioning so everyone knows who is the head at this certain time.

Wright: To make it clear that they are authorized, because that's where it really gets confusing, or it did last year.

Mancini: Yeah, that was the problem that all this created. So, that's the reason I put the first deputy there; I was sort of tracking the City and County.

Chair Nakasone: You know another thing funny about this City and County Charter, if they haven't amended it yet, was the managing director. I think there's a provision for appointment by the mayor, but if he doesn't appoint within so many days, the council appoints an acting managing director.

Mancini: Maybe that's where Goro got his idea; I didn't know that. That seems rather bizarre, because the managing director is in no way responsible to the council. At least the prosecuting attorney and especially corp counsel is equally the servant of the council as he is the mayor; but managing director is strictly an executive position.

Chair Nakasone: I know that was kind of strange. Any questions?

Sparks: There's one scenario that I'm not clear on how you're covering here. Where there's a vacancy for whatever reason, and the mayor, before she finds the new corp counsel let's say, has to put somebody in there temporary, is that what you're talking about here? Or are you talking about...

Mancini: One scenario, I thought, you have a holdover and therefore the Charter allows a person to holdover for sixty days, so unless the person's resigned, the Charter doesn't allow the mayor to fire corp counsel or prosecuting attorney as I recall it anyway, it has to be with the consent. So, you get the transition period. If the holdover appoints someone acting and then leaves and resigns, is that person he appointed then fill the term of the holdover?

Sparks: The sixty day holdover?

Mancini: Yeah, cause the sixty day holdover creates its own scenario, allowing the person to holdover...and often times it's not unusual for the chief executive to ask for resignations for all department heads. A person doesn't have to give his resignation, especially when you can't be fired if you have to go to the council. The person can basically fail to give his resignation, appoint somebody acting which they have the power to do under the Charter, and then say aloha.

Sparks: They can appoint someone acting like when they take a trip?

Mancini: Yeah.

Sparks: They can put somebody acting after they resign?

Mancini: And then they can resign subsequently, because once you resign you've got a vacancy, and then the mayor's implied powers have to come

Mancini: (Continued) into play; once there's a vacancy. But, you avoid the vacancy by appointing someone and then resigning. But then there's a legal question that says is that appointment still valid once you resign. Or, is that acting tied to you, and the Charter of course is not clear at all.

Sparks: That's one scenario, but I was more concerned about the case where the mayor doesn't know...is looking around and is trying to find somebody to appoint, negotiating with several possible people; but there's a vacancy -- either the sixty days has run out, the council's rejected them, the person's resigned or died in office, or whatever, while they are looking to appoint somebody. Is that the interim thing that you're talking about?

Mancini: Yeah, well that's where the mayor comes under the implied powers 7-5.1.

Sparks: The interim wouldn't necessarily be the person they end up appointing being the permanent corporate...

Mancini: Correct. So there are two different scenarios; one, you are acting, but you are not my nominee, because technically you could have someone acting, for example -- Mr. X, you are acting, but Mr. Y from Hoboken, New Jersey, you are my appointment. And, you send that name, that person could stay in New Jersey until they are approved; but you are still running government under that scenario.

Sparks: Is it clear under the Charter now that the mayor or somebody has the power to...it has to be the mayor, I think...

Mancini: Well, that was my first scenario, this issue for the Charter Commission -- the authority for interim appointment. It is not a specific authority, it's only...you'd have to imply it from 7-5.1., which I said Jeff did, and I really...

Wright: Al, still that's what caused so much stink though last time, whether she could appoint somebody as an acting head.

Mancini: Was that really the issue?

Wright: That was part of it, because when there was the rejection in the prosecutor's office, she then was getting other names, and she appointed someone within the department as the acting head of the department, and there were a lot of challenges whether or not that person had authority to act while she was still in the process of appointing someone else.

Sparks: I thought it was that the person that was rejected was still in an acting position.

Wright: True, but at that point they'd said now he's not going to be the acting anymore because there was a big to-do, but then I remember there were two other people that were named as acting. One was named acting but then didn't have technically, I guess, enough years to be head of the department on Maui, licensed in this state, so there was a change, and they said well never mind. So then she said okay, well they're not the acting head, this one is the acting head, and it wasn't Butrick, I mean you know, she was submitting her other nomination of someone else because someone had to take

Wright: (Continued) charge and run it, and there had been objections to a rejected person doing it. So, we had the problem of a rejected person -- did they have authority to continue running it. Then we had when she nominated someone as an acting person, did she have authority to denote somebody as the acting. And that's part of what inspired this report, was the fact that, yes, he said under her implied powers she probably could do interim appointments, she could probably keep people in that position. That's part of where it came from, because there were some substitutes; first it was that she had the rejected people, the she nominated some other people as acting, and the question came on each one about whether there truly was authority for them to act during that time period. And that's why, I guess, maybe since this report things would calm down. Personally, I think we ought to clear it up as far as whether she has specific authority or doesn't have authority to...

Sparks: The part of the report I remember is the Charter seems kind of vague, right, so the status of the department as it was operating was kind of vague.

Wright: So you either say the mayor can appoint interim or acting heads and the mayor can have somebody held over, or where ever these variables you like, but it seems like right now that the implied authority caused a lot of trouble.

Mancini: Well, the provision that Jeff cites states that the mayor shall exercise supervision directly through the managing director over all departments enumerated in Article 8 of the Chapter, and other agencies as provided by law. So, it's her authority to supervise departments which she says gives her the ability to fill a vacancy in an interim basis.

Wright: And, he's probably right. Like you said, that makes sense. But, at the same time it caused enough trouble last time, maybe it should be cleared up.

Sparks: A few words to make it specific.

Mancini: Yeah, well, it doesn't hurt to make it specific, it helps to make it more specific, but that's why I put the three variables there. Although, I'm not terribly happy with the third variable that creates the obligation of the holdover when he leaves... You've got...you've always got a funny scenario where a holdover fails to submit his resignation; the holdover fails to submit his resignation, there's no vacancy for sixty days. But, that may have been the intent of the Charter -- I don't think it was, because I remember when this was instituted and it was maybe a result of the provision, that you've got sixty days to deal with the issue of getting a new person in place. Say the mayor wants her person on day one, that holdover can stay sixty days and get paid.

Sparks: It doesn't say until there's a new appointment?

Mancini: I don't recall...

Cockett: Whichever comes first.

Sparks: Whichever comes first, so if she makes a new appointment, that person -- that's the other issue. Does that person move right in while they

Sparks: (Continued) are waiting to be approved? No, they can't do that.

Chair Nakasone: That's the question, when does that day start -- from either the confirmation of the council or...

Fabrao: So, that means in the interim if there is nobody there, the issue would be to appoint somebody to run the office, to be the top deputy.

Mancini: It says 'or appointment of successor' in accordance with the Charter. Because we don't deal with the Charter, this question, the mayor makes the appointment, the appointment is not confirmed. Does that temporary appointment then create a termination of the person who is a holdover, or is the appointment only valid after confirmation of the council, because you don't really have a new department head until that takes place. Especially in light of the fact that there is only implied power for the interim appointment.

Sparks: Can the mayor put an acting, interim kind of person in the place of the holdover whenever they want to, so that they could take their appointed person and put them in an acting status until they are confirmed. And at the point of making that selection or that determination, the holdover is done. Is that the way it would work now, or do we have to put words in there?

Mancini: We don't know.

Wright: No, it doesn't necessarily work that way. It's not clear in there though. That's what nobody understands is what can be done in that situation -- it doesn't say.

Mancini: That's a good point because we haven't dealt with this scenario, as to whether the sixty day period is terminated when the mayor creates the nominee, or... Once the mayor makes an acting appointment, you have to assume there's a vacancy and the sixty days is already terminated by this vacancy. What we don't know, when she makes the nominee, it's not clear whether that terminates the sixty day holdover person.

Chair Nakasone: Sounds like it terminates the sixty day holdover.

Mancini: If appointment only means the identification of the nominee on an acting basis. Because, that's what it is -- you're identifying a nominee on an acting basis, but it says the appointment of a successor in accordance with the Charter. And, it doesn't give us the procedures, other than saying that that person has to be appointed and confirmed.

Wright: If it says appointed and confirmed, then maybe it means the denomination of...

Mancini: It doesn't say appointment and confirmed, it says appointment.

Wright: Oh. Yeah, but it says department heads, like the prosecuting attorney, shall be appointed by mayor and confirmed by the council, so it's separating the two; so, the council action is separate then maybe from the appointment. Appointment may only mean there's a nomination. Something like... or that may be the differentiation or the meaning of appointment comes in.

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Mancini: Let's see what their exact language is... 'and shall be appointed.' This is actually an interesting language... 'shall be appointed by the mayor with the approval of the council,' so the appointment isn't valid until you've got the approval of the council.

Wright: So that doesn't clarify anything.

Mancini: So, there's no appointment if you don't have the approval.

Yonenaka: It doesn't say anything about the confirmation, does it?

Mancini: No, it says with the approval...

Yonenaka: So is the confirmation invalid?

Wright: Well, they're separate because...

Mancini: The verb appointed is modified by the prepositional phrase with the approval. So, you have to add them both together, literally...

Wright: Yes, so it has to be clarified on what that means...

Mancini: It makes it easier though for interpretation, if you say appointment has to be with the approval. So, to interpret literally, 6-2.3. we would then say appointment of a successor with the approval of the council. So, we reasoned through that well, but I don't know if it gets us...

Wright: It means there needs to be some clarification.

Yonenaka: We should just can the whole thing and just start over.

Mancini: Well, you certainly can do that...

Fabrao: Is the prosecuting attorney and the office of corporation counsel...they don't have first deputies. My understanding was that because there was a turnover in administration that both positions resigned...

Wright: No, what Paul is saying is he's not sure there's such a designation except that it's at the discretion of the prosecuting attorney and the corporation counsel -- they may say, here's my first deputy and so it doesn't mean necessarily that it's an actual separate position. And, in which case either we'd have to say there is such a position, because you can't say it defaults to a first deputy because there might not be one or nobody knows who the heck that is, you know, under the Charter. So, either that's got to be clarified or we have to do some other interim type of appointment; it can't just default to somebody else in the department.

Chair Nakasone: Maybe Paul can make a comment whether it's necessary to identify a first deputy within the Charter.

Mancini: I don't think so. I haven't looked at the question recently in the Charter and I don't recall anything in the Charter about first deputy other than each department head has the ability to appoint someone when they

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Mancini: (Continued) are gone on an acting basis. When I was corp counsel I didn't appoint a first deputy because I thought it created political problems which I could avoid, of jealousies, and if I was gone I could basically appoint people at different times to give them some experience in running the office. So, I consciously avoided that first deputy. Now, others may look at the administrative position differently, say it's better to have one person who everyone knows is the number two guy. I recall Sonja Phelps, I think a year after I was corp counsel I brought her in, and she was really the first deputy, but the first deputy for administrative matters, because the first deputy for litigation matters was someone else.

Wright: I think the reason Dolores was asking though is because of the fact that, you know, one of your options here is you could default to the first deputy. We don't really have that position and it's not really an option unless something happens, you know.

Chair Nakasone: But Debbie, you're also asked the question where the mayor requests for their resignation, so if there's nobody there...

Wright: No, no, no. They did though... Those prosecutors or those corp counsels had someone that was somewhat designated as their first deputy. And there was a big problem with the political situation on that, because she doesn't control anybody but the department head, and she asked for some other resignations. And, as he said, he didn't designate a first deputy but other people have and so it's sort of an administrative position that's optional with the head of the department. It doesn't even truly exist so we can't say well default to the first deputy, when there's really no such person. And yet sometimes there is, sometimes there isn't, so it's just kind of a confusing situation.

Mancini: My idea was so you had as an option to do something like the City and County did in dealing with the vacancy, then creating an implied obligation to appoint the first deputy to deal with that situation. We deal with it only by giving the department head that ability in his absence.

Chair Nakasone: But isn't it saying, all these departments -- they don't recognize a deputy. All they are doing is recognizing the department head and necessary staff, according to the Charter. Only the Board of Water Supply has...

Mancini: Good point because it becomes an appropriation matter. When you set the appropriation then, do you appropriate money for a deputy or not.

Chair Nakasone: I think only the Department of Water Supply identifies a deputy.

Wright: And see, I don't care about creating a new position; I'm not speaking in favor of that, I was just trying to clarify that we really don't have that option then to say we can have the mayor authorized to appoint somebody, we can let it default to the next in command, because it really isn't a deputy, maybe, that next in command.

Fabrao: If before the corp counsel or prosecuting attorney needs to

Fabrao: (Continued) resign, couldn't he or she appoint somebody to take their place in the interim? Why is that not in this...

Mancini: I was thinking of a more Machiavellian situation where someone tries to get clever and says well I'll resign, but I'm going to fix everybody before I resign -- I'm going to appoint somebody and give them a higher salary for two months; then I'll resign, you're stuck with that person. And, theoretically the mechanism for that to happen maybe exists under the holdover scenario. For example, the mayor comes to department heads and says I'd like your resignation because I basically want to bring my team in. Now, I won't give you my resignation -- I don't have to and you can't fire me, because you can only fire the corp counsel and prosecuting attorney with approval of the council. If you want to fire me with the approval of the council, be my guest. You're already creating a political situation for the mayor which is the last thing the mayor wants to do in the first sixty days of their term, is to deal with firing anybody, so you're stuck. But, you could somewhat clarify that by saying that sixty day holdover is only good till somebody is nominated. I think in the public interest, the mayor ought to have his or her own team; I don't think anybody will disagree with that.

Wright: And that might be the problem, Dolores, with having the person who's on the way out appoint the next person on a temporary basis. It kind of depends on the situation.

Fabrao: It kind of seems like just because of the political stuff that the work is going to be held up because of that situation.

Wright: Well that's what it did last year, boy!

Fabrao: But it seems to me it shouldn't be that way. Maybe we are making it more difficult than what it really is.

Cockett: My curiosity is the latest flack regarding the moving people within departments, and of course, according to what I read, it's her prerogative. Would anything like that happen within the corporation counsel's office, because they're not civil service?

Chair Nakasone: They're all exempt. Well, the attorneys are exempt... I think the staff is not exempt.

Cockett: I mean as far as designating someone...

Mancini: The attorneys serve at the pleasure of the department head. Technically the department head appoints all its attorneys. The staff... I'm not sure...

Chair Nakasone: Civil service, huh?

Dave DeLeon: I don't believe so. I think they're appointed.

Chair Nakasone/Fabrao/Wright: The staff? [Simultaneously]

Mancini: They used to be; I thought it changed though.

Dave DeLeon: My impression was there was no civil service on the ninth floor.

Mancini: That's my recollection also, but there was going to be a change in that at one time because the staff felt insecure at their jobs being open every four years. But, maybe it never took place. I know it was an issue that was brought up.

Chair Nakasone: How about 8-2.3.a.? It's kind of specific that corp counsel shall be exempt from civil service.

Yonenaka: It doesn't say anything about staff.

Dave DeLeon: All these director's secretaries are appointed.

Chair Nakasone: Exempt.

Dave DeLeon: Are all exempt, yeah.

Chair Nakasone: The director's secretary, right?

Dave DeLeon: Of all the departments.

Mancini: I always thought the chief secretary for the prosecuting attorney and corp counsel were exempt. It used to be the others were exempt but I thought there was a movement to change that.

Dave DeLeon: Like for instance, I know the finance director's secretary is an appointed position. I believe all the department heads' secretaries are appointed positions -- they come and go with the directors.

Chair Nakasone: Paul, do you think there is a need for a provision to identify the acting position, to make it a little more specific in the Charter?

Mancini: I think the acting for other than the authority of the mayor to appoint an acting position; I think that should be, rather than having that as an implied power, I think we ought to make it clear so it never comes up again. But on all other departments, 6-6.3 allows for the department head to appoint an acting. Section 6-6.3. Power, Duties and Functions of any administrative head of a department may be assigned to any staff member of that department by the administrative head.

So, if I'm corp counsel and I want to take a sabbatical, I can say Sherri, you're corp counsel till I come back from my sabbatical. The mayor doesn't have that authority; I have the authority to do that appointment. But, if I resign, I say 'mayor, I resign,' then there's a vacancy. Then we only look to the implied power of the mayor to fill that vacant seat, as opposed to the specific power. That's why what I tried to do was do these in sort of yes/no... Do we want to give the mayor specific authority to appoint, yes or no? If it is yes, you don't have to go to any of the others.

Sparks: The Committee A discussed this at some considerable length and maybe someday you'll get into these minutes and see that we did discuss it at considerable length. We came to a pretty easy conclusion that the mayor should have the acting power to take care of those vacancy periods; and that both the mayor and the council should have a time limit -- after

Sparks: (Continued) some discussion of thirty or forty-five days, we settled on sixty for both of them to do their job in terms of appointing somebody and being approved. And, if they don't...if council doesn't approve it in sixty days our thought was that the person is approved as a result of inaction on the part of the council. But, if they disapprove, then another sixty day cycle for the mayor to go through; and the one that's disapproved is out as acting or interim or anything else, but the mayor has the authority to appoint an acting and it doesn't have to be the person who becomes her next appointee. That was our thought as to how to fix it, so our committee atleast has recommendations on all these options.

Mancini: So you would say, on page one, give the mayor some specific authority -- yes. Rejected nominee prohibited to act -- yes. Mayor's authority time to submit the nominee, you'd say sixty days. Under the failure to submit, what happens if he fails to submit within the sixty days?

Chair Nakasone: Deemed approved.

Mancini: Well, there's not approval -- there's nothing to...there's no action.

Sparks: If the mayor fails to submit within sixty days, that may be one of the details we didn't quite get covered...

Chair Nakasone: Then you go to the violation of the Charter provision.

Sparks: That's right, whatever those are... Bob was telling me the other day there are no penalties for violating the Charter, so I'm glad to hear there are some somewhere.

Mancini: Well, there's a code provision, unless it's been exempted...

Chair Nakasone: \$1,000 fine...

Mancini: Is it \$1,000 a day with impeachment?

Chair Nakasone: No, it's \$1,000 fine...

Mancini: I think it's 13-10 only allows an ordinance to do that. And then the code 1.12.02. sets the punishment -- potential punishment...

Sparks: Anne was going to try to look at trying to come up with some language to cover these things we talked about in committee, too. I don't know, has she ever talked to you, Paul?

Chair Nakasone: In 13-10 there's what the county can pass for ordinance, huh?

Mancini: 13-10 authorized an ordinance and I thought that ordinance had to be drafted... The council shall provide the punishment for a violation...but no penalty shall exceed a fine of \$1,000 or 1 year in prison.

Sparks: So, let's see, you are concerned about the mayor not getting around to appointing but just leaves somebody in an acting status...

Chair Nakasone: Well, I think that's why you folks suggested the acting would be given a length of time...

Sparks: There's a sixty day length of time in which she has to reappoint somebody to go before the council, but...

Woodburn: Well, what if they are reappointed and they are serving sixty days but the council doesn't get it together to confirm?

Sparks: Then there's an appointment and an automatic approval. He's suggesting he doesn't even get around to making an appointment, just an acting kind of a...somebody gets the authority to be acting to keep the department running, and nothing happens within sixty days... Why would a mayor want to do that?

Chair Nakasone: You know, my real concern is... I'm not taking positions as far as the council rejecting the appointments, but I say if there is a limitation in terms of the acting, why would they be so strong about having a rejected nominee from being acting until such time as the mayor can appoint and have an approval by the council?

Mancini: Why would they object to the rejected?

Chair Nakasone: As far as being on an acting...

Sparks: They, being the council? In other words, they reject an appointee but you're suggesting...

Chair Nakasone: But they're saying that a rejected cannot serve as acting.

Wright: They feel that if they say they are not qualified for the job on a permanent basis, then they shouldn't be on the job on a temporary basis because they've already determined the person not to be qualified for some reason. That's what I understood. I'm not sure I agree, Bob; I don't necessarily agree. They say we don't like this person and we've already said we don't want this person as permanent, so we've already basically said he's not in some manner appropriate for that job, therefore he shouldn't remain in an acting...

Reyes: I think another reason is that it puts cloud on the authority of that temporary or acting person who's been rejected by the council. I think that's one of the arguments...

Chair Nakasone: By the same token, if you have an acting position, the council really doesn't have any authority to say who's going to be acting. The mayor's going to decide who is going to be acting.

Cockett: We're talking about corp counsel...

Chair Nakasone: Both corp counsel and prosecuting attorney.

Cockett: ...who serves both council and administration, so it wouldn't look right for him to take a secondary role if he's refused the top position just to stay in office...

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Chair Nakasone: But it has a time limit, you know. I can see if we don't establish a time limit -- that person could be acting throughout the whole term -- but if it's a time limit where it has to be... you have to find a corp counsel or prosecuting attorney within those given days...

Cockett: My only thought is would the council have confidence in that person to be the counsel...

Sparks: After they rejected them. That's a common sense way of looking at it -- it just wouldn't really work very well for anybody.

Wright: I really think that's silly; I'll tell you why -- because all the people who were rejected are still working in those departments and still serving the mayor and the county. The one who was nominated for corp counsel is working in corporation counsel, and the one who was nominated for prosecutor is still a prosecutor, and they are both doing their jobs and they are both still supposed to be serving the county. So, I can understand the reasoning, and I can understand the emotional appeal of he shouldn't be doing it because we've already found him not to be qualified, but for that head position; but as far as the general duties from a legal viewpoint, they are doing their jobs.

Cockett: I wasn't aware; I mean...

Wright: Yeah, they didn't leave...they're not gone...

Chair Nakasone: They're still there.

Wright: They're not department heads, but they are still performing corporation counsel...deputy corporation counsel duties and deputy prosecuting duties.

Cockett: I'm just thinking coming from the outside, but I presume they were already on the inside that they were being looked at. Well, that's a different ball of wax.

Wright: I understand, and that's still the emotional appeal of what council is saying, and it does make sense that you'd say, hey, somebody that we've rejected we don't want in that head position. But, from a realistic viewpoint, I'm not really sure it makes all that much difference. But, I think that's really such an emotional thing that in general, I think the voters would tend to agree, that if someone's been rejected they can still hold that particular job. I don't think it necessarily makes that much sense when you get down to the real situation, but from a practical viewpoint I think sometimes they're the ones who do the job the best until somebody else comes in.

Sparks: Think of the politics, too. Council says no, we reject that appointee and then the mayor says, okay, I'll put them in acting, and you'll be stuck with them anyway. I just don't think it makes sense. We can clarify it though; we can say they can't serve as acting but the mayor can appoint anybody else as acting while they are looking for another appointee...

Cockett: Another scenario, if I may... Suppose the prosecutor now decided to leave and takes a position outside in the community, a private firm or whatever, and now this person comes up to be considered for the top job. He's been turned down now a year and a half, if the mayor would submit his name again, do you think he'd have a difficult time getting confirmed? I doubt it; I think he'd get it because...

Wright: I don't think so, they'd get so mad that she named the same person that they'd rejected before...they'd be mad...give me a break...

Cockett: I don't know, it's a year and a half now...

Wright: But some of these people you're talking about were before they were nominated, they were already in that department, they had been in that department. They were nominated and rejected. But all I'm saying is I think they'd say that's an insult, we've already rejected this person.

Mancini: They might say we made a mistake before...

Sparks: Thanks for giving us a chance to correct our mistakes...
yeah, sure.

Cockett: I think they'd have to have a damn good reason after a year and a half...

Fabrao: I would think so, and after having done the job, they would have to find something really big...

Cockett: Okay, well that was just a scenario...

Chair Nakasone: Al, what was your committee's recommendation on that?
As of now?

Sparks: Any time there's a vacancy, whether it's in the beginning, during the holdover period, or even other times, the mayor should have the power clearly specified to designate an acting counsel or prosecutor. And then as far as appointments of a permanent prosecutor or attorney, they have the power to do that and they do it within sixty days. And then the council should act on it within sixty days, and if the council rejects, it starts over again. There's another sixty days to find another one, council has sixty days to approve.

Chair Nakasone: With the proviso that the rejected nominee cannot serve as acting.

Sparks: With the proviso that the rejected cannot serve as acting. The new appointee doesn't necessarily have to be the acting one. The scenario could be that you've got a sudden vacancy or a sudden rejection, and you've got to keep the department going, so you find somebody in the department, put them in acting position and then you go searching again for a permanent one.

Chair Nakasone: But you're not tying it in with other sections of the Charter, that provision of holdovers, huh? Is that tied in with that holdover provision?

Sparks: Well if...

Yonenaka: If they appoint an acting, does the holdover still get to stay?

Chair Nakasone: No, acting takes over...

Sparks: I think the intent of our...

Chair Nakasone: Holdover is of the existing department head, right?

Mancini: Until the holdover's term is up, you don't have a vacancy, but I still think you've got the obligation...the power of the mayor to submit a nominee. That nominee doesn't have to be acting during that time. That's independent. I think there's independent scenarios; one, submit a nominee for approval, two, appoint somebody acting. They don't have to be the same.

Sparks: That's right. And, we could give the mayor the power to put in or to replace a holdover with an acting...

Chair Nakasone: Well, it seems this question of holdover if you have an existing person, because of the transition of the election you have a new mayor so the existing corp counsel can act in those sixty days as head of the department.

Sparks: Yeah, that's the holdover until the mayor appoints somebody new.

Yonenaka: No, it doesn't. That's not what it says, it says appoint a successor in accordance with the Charter.

Mancini: And appointment is defined as with approval.

Yonenaka: With approval, so an acting... So if she appoints an acting...

Sparks: I see what you're saying...

Yonenaka: But no holdover.

Chair Nakasone: No holdover. If an appointment is made as far as acting then this whole question is...

Yonenaka: So you have to define appointing an acting, then it should be okay.

Sparks: We could say at the end of a sixty day period or upon the appointment of an acting, or the approval of a new appointment. Either way, right? Get them both in there...

Chair Nakasone: That section could set provisos for the appointment time limit, yeah?

Mancini: You could terminate him by just the acting...

Sparks: You could terminate him by appointing an acting or a new permanent one that's approved. I don't know exactly what the language would be like because that's the lawyer's job.

Mancini: That would be a simple amendment.

Sparks: Yeah, and then we want the sixty day cycles and the acting authority during any of those interruptions, I mean maybe somebody's rejected or somebody dies in office or leaves, or whatever.

Chair Nakasone: So, are we going to consider amending the section under the Chapter 2 and Chapter 3 then? Well, I guess it's not Committee A's... in terms of the confirmation and approval of the corp counsel and prosecutor.

Sparks: Oh, I was looking under the executive branch authorities there for all departments basically.

Chair Nakasone: But is it necessary to put the provision under this 6-2, also under Chapter 10...

Mancini: I think the thing to do under this 6-2, it says appointment and removal of officers, probably the authority for acting appointments should go under 6-2, and to clarify the acting appointment would terminate the sixty day holdover clauses under 6-2, because that's the appointment of an acting person it seems appropriate under 6-2. What you do with your sixty day games would probably go somewhere else.

Sparks: Isn't... Maybe I've got it wrong here, but isn't the sixty days we're talking about generally applicable to all department heads? So, including what happens if you reject one and how much time you should have to appoint one, and how much time the council should have to act on one if they have... They only have an action right now on the counsel's...

Mancini: Yeah, this is only specific to corp counsel...

Sparks: Right now it is, but... You know, then there's the whole thing about commissions that the council has to approve on too, right? They reject an appointment to a commission like they did to this one. Things can get delayed while that gets worked out. Maybe we need to be more specific about that.

Mancini: There's no time element for commissions? Actions on commissions?

Dave DeLeon: Yeah, there is. Sixty days.

Chair Nakasone: But there should be some provision for that because on the basis of this particular commission, you know, there's a specific time when the commission was supposed to be formed. And, according to this we were three months late already when we finally got enough members. But, they should have some specific time element for approval or disapproval in terms of appointment of commission members.

Dave DeLeon: The Charter says sixty days.

Chair Nakasone: Is it sixty days? What section?

Mancini: Section 13, page 38. A vacancy on a commission or board due

Mancini: (Continued) to the expiration of a members term shall be filled as follows: not more than seventy days, not less than sixty days before the vacancy is to occur the mayor shall submit to the council, within sixty days thereafter the council shall act to approve or disapprove. If the council disapproves it shall immediately notify the mayor and then the whole thing starts again.

Dave DeLeon: The other thing is you guys have one of these rare birds, I mean your commission starts and stops at a given point; it isn't an ongoing business. Most of the commissions on go and they lose a member here or there and they can keep on going from that point. We're talking about what should happen at that point. Your commission, this is an unusual situation you've got on this commission. Maybe, the salary commission is a similar situation, but most others don't get...

Sparks: Well, I guess what I was thinking, can we under 6-3, can we cover all the other department head appointees? They seem to be covered there now; that seems to be what they are trying to do.

Chair Nakasone: That covers all department heads, doesn't it?

Mancini: Under 6-2?

Sparks: Yeah, so what we're talking about is making it more specific. We've been talking about it in terms of when the council has to approve, but portions of what we've been talking about would apply to all these other department heads where there isn't any council approval, right? The mayor has the acting authority...

Chair Nakasone: Well, there's item four, section two...

Wright: I can't find it.

Chair Nakasone: Jim, have you folks discussed this question whether to... you know on section two and three, on corp counsel and prosecutor's office about the appointment process?

Cockett: We're just referring to the 92-03 that Goro Hokama had submitted, but we didn't get into depth. That submission was done in February regarding the council confirms or denies, the mayor continues the process. If the mayor cannot within thirty days, according to this little stipulation here, that they want the privilege of making the appointment. It's not refined but that's one of the items.

Chair Nakasone: But, Paul, we can just look to 6-2 to address that question of acting...

Mancini: You can do 6-2 on acting, you could also deal with if, if you wanted to deal with the appointment... There's another section in here dealing with corporation counsel and prosecuting attorney where you could put that provision under their respective chapters, Chapter 3 or Chapter 2.

Sparks: How about making a provision under 6-2, like he says another point four, that deals not with corp counsel and prosecuting attorney

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Sparks: (Continued) specifically, but with all department heads that have to be appointed, or that have to be approved. Right now that includes the attorneys only but in the future, it may not. Then you'd have a generic thing about all those department heads that have to be appointed and approved have to go through the same sixty days and acting provisions and so forth.

Chair Nakasone: Or make it separate where it requires the appointment approval process.

Sparks: Right. Then you have to talk about the sixty days, and sixty days if not approved, not being acted upon by the council if deemed approved...

Mancini: You could under 7-5.1. Supervision add another sentence there indicating that the mayor specifically has the authority to appoint an acting department heads in the offices of corporation counsel and prosecuting attorney in the interim prior to confirmation or approval by the council. You could stick it in there under a supervisory proviso. That's where Jeff found the implied authority. She has the right under every other department to appoint the person, so you usually don't need an acting appointment. If you've got the right to appoint, the only one that becomes clouded is that two offices.

Wright: Although she might need someone to be acting in some other department while or before she gets the head of the department. You know, you might have...

Sparks: Right, while looking for someone else. And, it covers that holdover, if there's somebody holding over in those departments she could terminate that by an acting, even though she hasn't found somebody she really wants permanent.

Mancini: If you've got a holdover, that holdover terminates upon the appointment of a successor. Once she appoints a successor, he's out of there.

Fabrao: The date of appointment or the date they take office?

Mancini: Well, they would have to take office because the appointment would only be effective...

Sparks: It does seem like you need another paragraph to deal with those cases where there does have to be approval by the council, right?

Mancini: You've got two scenarios. One is the authority to appoint someone to an acting prior to approval of the council, and then you've got the other scenario dealing with the whole procedure by which the council entertains the nomination and it accepts or rejects with consequences of that. Where did Goro put it in on his? He made a recommendation on it.

Cockett: This is what he had submitted.

Mancini: 8-2... He had put it under the respective chapters, 8-2 and 8-3.

Chair Nakasone: That would be under the departments, huh?

Mancini: So he's just putting it under the respective departments. He's just added it to each department.

Cockett: I think it's kind of ambiguous under the Chapter 8, really. I think under Article 6 that you're working with would be the one to correct that.

Chair Nakasone: So, your committee is not making any recommendations?

Cockett: I don't think so because what's here under Article 8, Chapter 2 is just the duties. It doesn't get into the area that we've had all this discussion on today.

Reyes: I have an insertion in my Charter book here to add a number 4 under section 6-2, deal with new appointment being approved to clarify this confusion about the Charter. So, we might at some point have talked or touched on it, because I did make a note here to insert number 4 to deal with clarifying that solution about new appointments.

Chair Nakasone: As Al suggested, if we set another provision like 6-2.4. to deal with the department heads that go through the appointment/approval process to identify the acting...

Reyes: So, I think we did touch on it, but we didn't have any specific recommendation as to how we're going to reword it. But, we did take note of that. And, if I may add, shouldn't the commission or the subcommittee agree first on what was really the intent? See, we're trying to clarify; I think we should agree to what is the intent of the Charter and then let's fix it according to what we can agree is the intent of that Charter, so that then it will be more defined in trying to word or whatever we want to do to solve this dilemma. I think we should have, as a body, agree upon what is the intent and then propose a solution.

Wright: But, we haven't found any intent with regard to any interim or acting. I think you're right to some extent, that's why Paul told us what happened on the holdover and what that was designed to fix originally. That's why he felt Portnoy was probably misinterpreting what that particular provision was, because he recalls when they inserted it and what the intent was at that particular time...

Reyes: We all have common sense, what would be a common sense intent if we want to really clarify this?

Sparks: What is our intent, in other words.

Reyes: Yeah, what would be a common sense type of interpretation; a practical interpretation without going through all the technicalities. Because we can have different interpretations and we'll not arrive at anything. So, let's say we can simplify...

Chair Nakasone: Let me give you an example; for example why that section came about on 6-2.3. Prior to that amendment, one administration could appoint a prosecuting attorney and corp counsel. Those particular people could have gone

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Nakasone: (Continued) into the new administration without the mayor having the choice of appointment, because, if the mayor couldn't fire those people without council approval. So, as long as the council did not agree with firing those two department heads, the mayor can't get them out. They could be left in that department indefinitely, because they need the approval of the council to hire and fire.

Sparks: This was before?

Chair Nakasone: Yeah, before this amendment. And, that could have happened too, if the people in this department were very strong with the council, without this provision they can be corp counsel and prosecutor forever. Because, the mayor cannot fire them.

Reyes: So when they modified or amended it, they automatically leave after the sixty days or upon the appointment of a successor. So, what is the common sense meaning of appointment? Do you have to go again with the technicality, appointment with approval or appointment with confirmation, was that the intent when they had to have a confirmation after an appointment?

Chair Nakasone: Victor, I think the intent right now is, as far as the commission is concerned, I think it's because of the questions that the county council brought up with an outside attorney to interpret the Charter. I think the intent of this commission is to get rid of the gray areas or something that's questionable that is not agreeable by both administration and the council. That's why this particular subject, because of the gray areas, is not specific enough, and maybe we should make it specific.

Reyes: I totally agree with that, but what I am saying is while we are deliberating, I think the way we make it specific or by making it specific we have to kind of agree as to... Knowing the background now, I kind of appreciate why this amendment came about and I think upon appointment of a successor, to me means that if an appointment requires the approval of the council, that's what an appointment means. If an appointment doesn't need an approval of the council, that's an appointment... Personally, like I said, I have no problem with the background; I understand.

Chair Nakasone: Well, this commission can take it further. We can go and debate whether the prosecutor should be an elected position; we can debate the issue whether there should be confirmation, or approval by the council. But, if anybody brings up the question of why do we need approval by the council, why is it in the Charter in the first place? Is it a question of checks and balances or because the prosecutor serves at the pleasure of both council and administration. Or, can we separate a legal advisor for administration and council?

Cockett: Question. Wasn't there some kind of situation with Mr. Betts a few years ago? That I can't comprehend. Was he not corporate counsel at one time and then he wasn't? Was it by appointment or was it by rejection of the council?

Chair Nakasone: I think that's the reason why you have this amendment!

Cockett: I don't understand the problem.

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Dave DeLeon: Hannibal had basically three terms; he had a short term of three years on the special election, and then he had two other terms. The first term he came in, he was...brought in an attorney, and then the council when he got reelected did not get a shot at saying yes or no, whether they did like or didn't like, because there was no provision to reconsider this attorney, he just continued in office. And, the appointment continued after the first confirmation, so the council moved to change the Charter and the citizen's agreed, and that caused that sixty day holdover so that the council had sixty days to consider whether they wanted to continue after... So, when Hannibal's third term came around, the council considered Mr. Betts and they rejected him, because they inserted that provision in order to be able to have control over an attorney. Otherwise an attorney, like in Mr. Betts case, he would have served for ten years with one confirmation. But, there might be history there that says to the council...

Cockett: That's an education that I'm getting; thank you.

Dave DeLeon: The council also had the option of initiating firing procedures -- didn't the council also have the ability to initiate a firing procedure?

Chair Nakasone: It had to be initiated by the mayor.

Dave DeLeon: They weren't happy with Mr. Betts and that's why they created that provision. I don't mean to be personal, I'm just saying that's a part of the history.

Sparks: Could I, as a committee chair, maybe make a motion that covers the substance of what we might agree on but not the precise wording, which we would need from the lawyer later? Is that a way to proceed?

Chair Nakasone: Any objections to have... You're talking about 6-2?

Sparks: Yeah, basically what I said before was the committee recommendation. I'd like to move that the commission adopt the committee's recommendation that wording be found to make it clear that the mayor has the power to appoint an acting whenever there's a vacancy, and to terminate holdovers with acting.

Chair Nakasone: So, you want to add another section to 6-2?

Sparks: I don't care whether it's another section...

Chair Nakasone: You did emphasize the fact that you want to keep it separate from other appointments.

Sparks: And then when we are dealing with all appointments, I guess, we've just covered that -- the acting can terminate the holdover, so that's covered. But when there's appointments that have to be approved by the council, same thing; the mayor has the power to appoint acting, and sixty days to appoint a permanent position; the council has sixty days to act on it; not acting means that they are confirmed. And, if they are rejected, they can't serve as an acting department head -- they are done in that department...

Wright: In that position, not that department.

Sparks: In that position, right.

Chair Nakasone: You got it, Paul?

Sparks: And, the mayor then has another sixty days for a new appointment, and the council after that appointment has another sixty days to act, and so forth in the cycle which can continue as long as necessary.

Reyes: Are you done? I second the motion.

Sparks: I think that covers all the areas, I'm not sure.

Chair Nakasone: If no objections, so approved in terms of Al's recommendation.

Mancini: And if the mayor doesn't approve within sixty days?

Sparks: Then we're back to the provisions in the Charter and in the code for penalties. I don't see any other way out of that.

Chair Nakasone: Okay, there was a second by Victor, so we're open for discussion now.

Sparks: That's the substance of our decision. The wording will come from our capable lawyer, right?

Chair Nakasone: Yeah, we're approving the substance, right.

Cockett: Question. This is on all department heads appointed and confirmed by the council, is that correct?

Sparks: Yeah, not making it specific to corp counsel or prosecuting attorney, but dealing with it generically, as department heads that have to be approved by the council. And, if we cover that under Article 6, then we should have covered it.

Fabrao: I think it's more appropriate to leave it in the executive branch under 6-2, as an additional section.

Sparks: I think you're right.

Chair Nakasone: Okay? All in favor say aye. Motion carried. We shall draft, as stated by Al.

Sparks: This was one we had to fix because of the fuss about it.

Chair Nakasone: Okay, Paul you want to go to the next section?

Mancini: Yes, and maybe it's a little less time consuming... If you recall Russell Blair asked you to address the question of the subdistrict residency requirement. Go to 3-3 of the Charter, and his objection was that on a subdistrict there really was no need to have a ninety day residency requirement prior to filing a nomination paper. He gave us three reasons. We read that provision and we weren't sure there was a ninety day residency requirement in the Charter. There are four categories for qualifications

Mancini: (Continued) and one was that the candidate had to be a citizen, two-a voter in the county, three-a resident of the county for ninety days, prior to filing nomination papers, and relative to district representation, the candidate must be a resident of the district. But, looking at the Charter literally, it didn't say when that person had to be a resident of that district. You might interpret it that he had to be a resident for ninety days prior to filing, but it certainly wasn't stated clearly. You might interpret it that he had to be a resident when he was elected, and you might interpret it that he had to be a resident before he took office. But, none of it was stated in there, so what I did on the next sheet of paper, I created the options. Resident of a subdistrict, I had the question when -- when he files his nomination papers; ninety days prior to filing; when he's elected; or when he takes office. That seemed to be the four alternatives.

Sparks: We had quite a discussion on this and I'm not sure we came to any unanimous conclusion. I think what we ended up was wishing we had the lawyer with us while we were talking about it. And, now we have a lawyer, so you're telling us it's not really clear what the existing wording means in terms of the residency requirement for somebody running for office, and when do they have to be a resident of an area.

Mancini: If you read it literally, where a residency in a district is a requirement, a resident in the district from which the person seeks to be elected. And, when it clearly states with regard to the county residency ninety days prior to filing, it doesn't specifically state that. You might interpret that that way, but it doesn't state it.

Sparks: I see a couple of issues. One is what is the real meaning of the sentence they've got there? And, another one is the legalese issue, if I remember correctly, that Blair raised and maybe you did too, about if it goes to court, can you provide a substantial reason as to, a rational good government type of reason, for requiring somebody to reside a certain length of time before they file or serve for a district. Whereas, you might make a good argument that they should reside somewhere in the county for a certain period of time, can you make a really good argument before the court that they have to reside in a particular district or residency area before they can file? And, my memory of that conversation was that that might be a harder one to argue, that any kind of a duration of residency requirement for a district might be a hard one to argue if it was ever challenged.

Wright: You do have to have some kind of reasonable basis to pick ninety days; then why ninety days? What's the reason? Or, what's magic about that number?

Sparks: So, if that's a point that basically might become a legal point, my recommendation would be to drop...make it clear that we don't require ninety days residency in an area or a district, but just make it at the time of filing. And, if we want, we could leave the ninety days in the county because I think that one's defensible, right?

Reyes: Can I add something to that? What is a residency? Is a P.O. Box a residency?

Sparks: No, I think that's defined in previous cases; you have to have a domicile, you have to be taking your shower some place... So, would that fix it if we just made the language a little clearer?

Wright: At the time of filing the nomination papers, you would have to... Is that what you are saying?

Sparks: Yeah, you would have to reside in the district residency area.

Cockett: How would this dovetail with another thing that's an issue down the road regarding district elections? How would this fit in with the ninety days -- would it fit in?

Sparks: Perfectly; whether you're talking about residency areas or true districts, it doesn't matter. I don't think so.

Mancini: So, you're opting for choice number one?

Sparks: Well, we're not dealing with the ninety days residency in the county.

Mancini: All you would state in that sentence would be quite easy. A resident of the county for a period of ninety days next preceding the filing of nomination papers, and where district is a requirement, at the time of filing a resident of that district.

Sparks: I so move.

Woodburn: Second.

Chair Nakasone: It has been moved and seconded. There is a motion to specify the question of residency requirement is at the time of filing the nomination papers.

Mancini: He would be a resident at the time he files, just clarifying that last part of that sentence.

Chair Nakasone: So, again we're voting on substance. Any questions?

Sparks: But the precise wording he's suggested...

Reyes: I have one comment, Mr. Chairman. I have a concern and my concern is could this be used for political expediency by some smart candidate?

Mancini: Sure.

Fabrao: Of course.

Reyes: I mean, is that good or bad?

Sparks: Moving to a district where they think they have a better chance can be done ninety days ahead, or it can be done just before filing or it can be done a year ahead. Whatever. This guarantees that they are going to have to be living there for about six months before they ever get elected and start serving, I guess.

Wright: If you put a specific time period, it depends on how you define that time period. If you say they have to do it ninety days before they file, then why ninety days?

Reyes: Maybe it's so you have to have substantial experience in the area that you're going to represent.

Wright: I understand that, and that's why it's been used in the past in various forms a lot of times, but the question is if it's going to take ninety days to learn about that district. I mean that's what happens when you get into the court -- they argue and say I can learn everything about this in thirty days, so what's the problem here? I'm just saying what the court challenges will be...

Reyes: Well, as I said, it's just a concern.

Wright: Yeah, I know. People do that too; they will move in the day before filing.

Sparks: That gets to be a real fun time, right around the day before filing.

Chair Nakasone: Any more comments?

Reyes: No, I just brought it up because it was a concern I had before and I won't take it up again.

Chair Nakasone: Personally, I don't think it's going to discourage anybody from maneuver in terms of residency.

Yonenaka: No, but make it a little more legal.

Chair Nakasone: Paul, can I ask you a question on this? How do we go about defining a resident?

Sparks: I'm just assuming that there are fairly standard definitions in all the court cases that get involved in this sort of thing...

Chair Nakasone: Well, I think this question came... I think one of the council members...

Mancini: It was Alice Lee.

Chair Nakasone: Right. Now the question is she is physically living up there or not? They had to investigate or have witnesses to identify whether...

Dave DeLeon: Our corporation counsel could answer that because he was party to that case. There was actually a legal opinion in that case.

Chair Nakasone: But didn't the state have something to say about it?

Dave DeLeon: Voter registration; the voter registration.

Chair Nakasone: They don't really identify a resident though. I thought they wanted to make it much more clearer...

Dave DeLeon: But what I'm telling you though is that Daryl would be able to give you chapter and verse on it.

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Sparks: I'm assuming that the term resident means something legally. I don't know exactly how the legal beagles define it, but I'm pretty sure there must be some kind of...

Mancini: It's the same as a domicile, in that you reside there and you have an intent to make it your permanent place of residency; it's not in transition.

Wright: You see where you get into the question is where they say the intent portion, because perhaps you haven't lived there, or you've just... but if you can show that you have the intent to make it your residence...

Cockett: Like George Bush.

Wright: Absolutely, you're right. I laugh everytime they call him a Texan. Not when I lived there, I mean...

Chair Nakasone: Any further discussion on the motion?

Reyes: I think my concern earlier was as I recall it, that particular residency question came about because it happened just before the registration or something, and people questioned it.

Chair Nakasone: Okay, if there are no objections, the Chair will recommend that we are now voting on the substance of the motion and we'll have further investigation on the question of residency, as suggested. So, all in favor of the motion say aye. Opposed? Motion carried.

Okay, the motion carried is on the basis of substance again. Okay, that's all we have for you, Paul. Thank you.

V. COMMUNICATION 92-30 - RULES OF THE CHARTER COMMISSION

Chair Nakasone: We have the Rules of the Charter Commission. The Chair wanted these rules adopted prior to our final decision making of this commission. I believe we should have certain standards in terms of making recommendations for the Charter amendments are concerned.

Sparks: These are the rules we were just using, right?

Chair Nakasone: Any discussion on the Rules of the Charter Commission?

Reyes: Mr. Chairman, is this a typo?

Chair Nakasone: Yeah, there's some typo errors, I typed this that's why. Maybe I should explain some of the rules. As far as the final adoption of any of the proposed Charter amendments, the Chair felt that we needed at least two-thirds of this membership to pass Charter provision proposals. Otherwise, if we have a bare majority, it really doesn't represent, I would say, the consensus of this Charter Commission. But, there is a section, I think, 92-15 of the statutes that identifies boards and commissions requirement that says just a bare majority; and, according to corp counsel that would not be in violation of that 92-15 of the statutes. So, this is a lot more specific than the minimum majority requirements.

Sparks: We're eleven total, right?

Chair Nakasone: Yeah, we'd need eight.

Sparks: So, six wouldn't be a majority, right, and that would be legal.

Chair Nakasone: Right.

Sparks: So, if we wanted to we could adopt the rule that said six instead of eight.

Fabrao: It's saying here that six members is the bare majority, forms a quorum. But it's also saying here to act on any amendment you have to have a vote of eight. So, how can you vote on anything without having eight?

Sparks: You can't if you pass this rule.

Fabrao: Because, it's kind of contradictory right there.

Woodburn: Well, it's not so much contradictory as it is just a stiffer requirement to take action versus what constitutes a quorum.

Fabrao: Oh, you can conduct business on quorum but you can't act on any of... Okay.

Chair Nakasone: Yeah, the final amendments to the Charter -- proposals -- would... The Chair would recommend eight members to adopt those or pass those.

Wright: Which we just had, just eight...on the thing that we just passed.

Chair Nakasone: Yeah.

Sparks: With the logic being that anything we put or decide to recommend to the public, it would have more force and effect if it was more than just a bare majority of the commission. Are you recommending it, is that the idea?

Chair Nakasone: Yeah, well that's what the Chair believes in as far as if we are passing proposed amendments to the Charter, I think that a two-thirds majority would hold very strong with the public, rather than a bare majority.

Yonenaka: So, I assume then the intent is when we put something on the ballot, we are endorsing it, and saying this is a good move. Is that the intent?

Chair Nakasone: Yeah, that's the intent.

Sparks: I'm not sure. I haven't really thought about it too much, but I'm not sure. It could frustrate us to the point where nothing very controversial gets recommended.

Yonenaka: Yeah, I agree. And, I'll probably get shot for this one, but maybe it's just my interpretation that it is not our decision to say what is

Yonenaka: (Continued) good and bad, but rather what should be decided by the public.

Fabrao: No.

Wright: No, I don't think that's correct. We are supposed to make a recommendation, because that is part of our job.

Yonenaka: Then, I stand corrected.

Sparks: Well, I think you can look at it that way though, but I do tend to agree that what we... I think the public is relying on us to do a lot of the homework to come up with good recommendations that we can get behind. That's true.

Wright: And, I think that anybody who disagrees with some of the recommendations, when we have public hearings both sides can be presented. We can say this is what they recommended and if people have questions, anybody disagrees, is free to say no, I didn't agree with that provision and here's why.

Fabrao: We're working toward getting our preliminary document out. We've got to go out to the public again. It's at that time, if they don't agree with what we have proposed, that's when we'll know that that's not okay with them so we come up with something else. Which we still have to work at it to come up with a consensus.

Sparks: What we are talking about here is for the final decision, do we want to require eight people of our eleven to agree with it, or do we go with what the law would allow us -- less than that -- down to six?

Wright: I can tell you one thing though, Al, I really don't care if the law says simple majority is fine, but if we're that closely split on it, I think there's going to be problems in the public anyway. If it's going to be six-five on something, then it's probably not going to be real compelling to be presented. Because, I figure most of us, as the rules say, if we don't agree with the report or we do not agree with certain line items on it, then I intend to, if I don't agree, sign it saying I do not concur and my name. And, I think everybody who didn't agree would do that. It goes to the public and they look at it and there's five people who consistently don't agree with everything on there, out of the eleven, I think that's going to cause a lot of concern. I hope that there'll be more like eight or nine that agree.

Sparks: I would too.

Wright: And, I don't mean that should be the requirement for passage, but I really will have a lot of concern if we can't get that close together on some of this stuff. I really do, because I don't think it's going to look for a very good presentation.

Chair Nakasone: Yeah, that's the Chair's position. I think we need this kind of support.

Wright: Yeah, I really do think that if we don't have that...if we're not that strong on most of the issues, not all, but on most of the issues, then we're going to probably have problems getting passage, or having anybody feel real comfortable with our decisions.

Sparks: How about seven?

Wright: There's a compromise here.

Sparks: Yeah, how about compromising here?

Chair Nakasone: You want to amend it to seven? That's fine with me.

Fabrao: I have no problem with eight.

Yonenaka: We can take a vote; you only need six! To determine if you want seven or eight...

Sparks: We don't have eight here so we can't pass on the rules anyway.

Fabrao: We do. We have eight.

Sparks: Oh, we do.

Chair Nakasone: So, anyway, the Chair is looking at my experience with dealing with a very strong positive position while on the council of two-thirds vote is powerful enough to override a mayor's veto, and moreso, this would reflect my feelings about actions taken by this commission. I think two-thirds is a very strong position, positive position.

Sparks: What is seven-eleven?

Cockett: It's a little fast food store I ran, expensively.

Fabrao: Gambling. Isn't that the roll of the dice?

Sparks: Isn't it two-thirds? Or, not?

Chair Nakasone: It's not two-thirds.

Sparks: It's not quite two-thirds.

Reyes: It's seven point something so it's over seven.

Sparks: I am really of the opinion that what we recommend should... I'd like to see it unanimous, so we're all behind it and out there explaining it and pushing it.

Wright: 66.6%...

Fabrao: 67%

Sparks: That being the feeling of the community at large, that may just shoot down anything somewhat controversial coming out of this commission.

Chair Nakasone: But, you have a provision there on the rules, you can identify any section of the Charter that we're proposing to amend, you can put I do not concur by it, but in terms of total package, I think we should...

Sparks: In other words, you're saying that all the recommendations should have eight people.

Chair Nakasone: Any discussion on this?

Fabrao: I'm for the eight; more, eleven.

Wright: No, there's no way.

Woodburn: That's going to be a pretty short package.

Yonenaka: We might as well go home.

Sparks: I think I want to take the stand of seven is about...

Chair Nakasone: Why, because we don't have eight members over here?

Wright: We've got eight.

Fabrao: We have eight, including you.

Chair Nakasone: Yeah, but eight votes.

Fabrao: Oh, he doesn't vote?

Sparks: That's to act on any proposed amendment. You didn't say what our rules are for the Rules.

Chair Nakasone: A simple majority, right?

Wright: We haven't passed it yet, it hasn't...

Chair Nakasone: Is there a motion to approve?

Woodburn: I so move.

Fabrao: Second.

Chair Nakasone: Discussion? All in favor of the motion say aye. Raise your hand...

Yonenaka: What is this? To approve...

Chair Nakasone: To approve the rules.

Yonenaka: Okay, you've got mine; I stand corrected.

Chair Nakasone: That's five for. We need one more. Opposed? Two.

Wright: I haven't voted. I'll vote for.

Chair Nakasone: Motion carried. Thank you, Debbie.

Wright: I couldn't make up my mind. I was sitting here going eight or seven...seven or eight on this...

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VI. COMMUNICATIONS - COMMITTEE REPORTS [Item VII. on the Agenda]

Chair Nakasone: Al, do you have any written report?

Sparks: Not a summarized report, no.

Chair Nakasone: Okay, can we have that next week? How about you, Jim?

Cockett: I had a rough draft that I had given to her [staff] just to look at and I think there are some changes from today's meeting that I will be making...

Chair Nakasone: So, if there's no objection, the Chair would like to recommend that these reports be submitted for the next...summary reports be submitted for the next meeting.

Fabrao: Mr. Chair, I don't know if this would be appropriate or not, you don't have a section for this... Regarding Committee B, for getting a Planning Commission for Lanai...

Chair Nakasone: We received communication on that.

Fabrao: Yeah, but I wanted to add this list of names...

Chair Nakasone: A petition?

Fabrao: Yeah, a petition, and that's just the beginning, sir. There are nine pages there.

Chair Nakasone: Okay, so we'll have copies of this petition attached to that Communication 92-33. No objections?

Fabrao: This is all together, so I don't think there's any objection, even though we did not know at that time that he had submitted his letter.

Chair Nakasone: No objections, Dolores, to making this part of that Communication?

Fabrao: No.

Chair Nakasone: Since Anne is not here for Committee C, so...

Sparks: We need to approve the minutes of my Committee meetings, is that what this agenda is telling me?

Woodburn: Well, I think that was just deferred to the next meeting, wasn't it?

Chair Nakasone: If we can get the summary report, we'll defer the approval of these minutes to make the minutes part of the summary report, okay? Same with your Committee.

Cockett: Okay, I wasn't...What was that?

Chair Nakasone: On the agenda, we have Committee B, as far as approval of the minutes, what we'll do is have your summary report be part of the...

Chair Nakasone: (Continued) Your minutes will be part of the summary report...

Cockett: Okay.

Chair Nakasone: And then we'll adopt those at the next meeting on April 30th. Okay, any questions on that? If there's no further discussion... Al?

Sparks: Yeah, well let me bring up our time line. The other night the reporter caught me and said he wanted some specifics as to when we were going to be out with tentative recommendations, when we were going to be finalizing our recommendations, and so forth. And, I could really only give him some generalities...but we said about August 15th. Is that our final, final date to get the report in? To the Clerk?

Chair Nakasone: I asked the Clerk to reconfirm our exact last date to submit to the Clerk's office for any proposed amendments to be put on the ballot. So, he's backtracking; he's going to be checking with corp counsel, too, and we'll reconfirm those dates.

Sparks: So, with these reports in to the Commission, we'll start making at least our tentative decisions, based on these reports at the next meeting on April 30th; then in May we'll be going out to the public again?

Chair Nakasone: Yeah, well we were talking about that what do you call that at MCC?

Sparks: Yeah, and that's the other thing. I double checked with them and the third or fourth week in May would... If we pick a date now, it would be a good idea, and then they can start planning on it there, and we can start planning on it. After Monday, the 18th... After that time, we can pick a date and then spend an evening in the sky bridge studio of \$100/hour and get Hana, Molokai and Lanai all at once. But, I think it would be an excellent idea to pick a date now and then try to get the word out to those communities. The technicians need a little time to make sure they can get someone as a technician at each studio.

Chair Nakasone: We're talking about what week in May, Al?

Sparks: After the 18th.

Cockett: How about after the 27th?

Fabrao: Yeah, because that week I'm gone.

Sparks: You can't be gone.

Fabrao: I am gone the 18th through the 22nd.

Chair Nakasone: What about the 28th?

Cockett: Thursday, the 28th, May 28th. I'll be back.

Sparks: Thursday night the 28th you want to do it? I think that'll work. I'll tell our guy.

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Chair Nakasone: Okay, tentatively May 28th. We'll try to shoot for that.

VII. NEXT MEETING DATE

The next meeting will be held Thursday, April 30, 1992 at 4:00 p.m.

VIII. ADJOURNMENT

There being no further business, the meeting was adjourned at 6:02 p.m.

[NOTE: Minutes of the March 12, 1992 and April 9, 1992 meetings were not approved at this meeting.]

ACCEPTED:

Robert Nakasone, Chairman

Date