

**2009-2010
HAWAI'I COUNTY
CHARTER COMMISSION**

2nd Session
Thursday, April 9, 2009

County Council Chambers
Ben Franklin Bldg. 2nd Floor
333 Kīlauea Avenue,
Hilo, Hawai'i 96720

CALL TO ORDER:

CHR. HAITSUKA: The time right now is 1:51 p.m. Today is Thursday April 9, 2009. I'd like to call this meeting of the Charter Commission to order. First I'd like to apologize to all the Commissioners, all of the members in attendance, and the staff for being late. I'd like to call the roll at this time.

ATTENDANCE:

Present:

Mr. Ed Haitzuka, Chair
Ms. Daphne Honma, Commissioner
Ms. Casey Jarman, Commissioner
Ms. Jamae Kawauchi, Commissioner
Mr. Alapaki Nahale-a, Commissioner
Mr. Todd Shumway, Commissioner
Mr. Scott Unger, Commissioner (via videoconference, Kona)

Absent:

Mr. David Fuertes, Vice Chair
Mr. Joseph Kealoha, Commissioner
Mr. Seth Murashige, Commissioner
Ms. Susie Osborne, Commissioner

Also Present:

Mr. William Takaba, Managing Director
Mr. Lincoln Ashida, Corporation Counsel
Mr. Kenneth Goodenow, County Clerk
Mr. Rodney Oshiro, Deputy County Clerk
Ms. Colleen Schrandt, Legislative Auditor
Ms. Charmaine Shigemura, Executive Assistant to Mayor
Mr. Hunter Bishop, Executive Assistant to Mayor
Ms. Maile David, Leg. Assistant (via videoconference, Kona)
Ms. Brenda Ford, Councilmember (via videoconference, Kona)
Mr. Levi Hookano, Legal Specialist
Ms. Karen Eoff, Secretary

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

CHR. HAITSUKA: Our first item of business is Statements From The Public On Agenda Items. Do we have any members of the public here today?

MS. DAVID: Chair Haitzuka, we have one person in Kona to testify, that's Brenda Ford.

CHR. HAITSUKA: Okay, we can have her proceed. Good afternoon, Mrs. Ford.

BRENDA FORD

(At this time Councilmember, Brenda Ford came forward to address members of the Commission.)

MS. FORD: Good afternoon. Thank you for allowing me to address the Commission. I would like to speak on the issue of the Charter in Section III-17, the County Reapportionment Commission. Just as a little bit of history, the last time we went through reapportionment in 2001, the community, including myself, had tremendous problems with the Reapportionment Commission. Without going into all the terrible details, the ultimate plan that came out exceeded the Federal limits of plus or minus five percent for a total of 10 percent spread on reapportionment. I don't know how many of you are familiar with reapportionment. I'm making assumptions that you understand it and that may not be fair. But, the result of the Reapportionment Commission's work was a lawsuit, two lawsuits, one which I took all the way to the U.S. Supreme Court. The U.S. Supreme Court did not hear my case, they did not rule on it in any way. So, it stayed at the ruling of the State Supreme Court which in a split decision said the spread exceeds 10 percent, which is the Federal limit, but only by a little bit; so, even though it's wrong, we're going to let it stand. And that's where it was. As a Council person, I entered an Ordinance into the County Council to redo Section III-17, and I will submit my legislation that did not pass the County Council for a Charter Amendment. I will submit that as part of my testimony to the Commission.

There are several things that need to happen in my opinion. First of all, this Section needs to be called Redistricting. There is a difference between Reapportionment and Redistricting. Reapportionment is moving representatives around, the way they do it for the U.S. Congress and the U.S. House of Representatives. There are only so many; there are 435, and they divide them up equally around the Country. Sometimes a State gains some; sometimes a State loses a Representative. Redistricting, however, changes the boundaries of a district to have equal numbers of people in the district. So we have a definitional problem.

The second issue is the very late start. I believe that we start in 2011, per the Charter, and the Census is done in 2010. We really need to start this Commission in 2010 because there is such a steep learning curve on reapportionment or redistricting, whatever you want to call it, that it takes a lot of time for people to come up to speed. One of the objections that I have talked to Mr. Ashida about is the fact that the Commission never got training on how to do reapportionment or redistricting. They got training on the Sunshine Law; they got training on a few other things, but not on how to do redistricting, and therefore they started on with no knowledge, and did it wrong and just compounded their error.

Another thing that needs to be changed in this is that we need to increase the number of criteria by which we do redistricting. We only have four criteria in our Charter at this time and two and a half of those criteria were ignored by the past Charter Commission, without making any motions or rulings in public as to what the criteria would be. They had, apparently, a silent agreement on what they were going to use as criteria, and the public was never made aware of it. Although, as the Commission went forward, it became very, very obvious what their agenda was, their unstated agenda was. So, in my legislation I reviewed a lot of legislation throughout the Country and U.S. Supreme Court decisions and wrote in several more criteria by which redistricting should take place and should be considered. That will be submitted as part of my testimony to the Commission.

Finally, there was never a written final report by the previous Commission explaining what they did or why. There was only the minutes of meetings and hearings, but no written documentation supporting any Commission decision that was made as a final report. Even though it went to the State Supreme Court, nothing was ever submitted to do this. So we have a lot of problems in this particular section of the Charter that I would like to see corrected. These two lawsuits cost the taxpayers, out of their own pockets, about \$100,000. It was all taxpayer money trying to get the County and the County Commission to do the right thing, the honest thing, the legal thing; and both of our lawsuits failed, not for lack of trying and not for lack of presenting the facts in the case. It was a political decision as far as I'm concerned, and the split decision at the State Supreme Court really explained it. Judge Moon was in the minority and said our most basic right as Americans is the right to vote in a fair election, and the basis of fair election is redistricting. So, we need to have this section cleaned up. I hope this Commission will take this into consideration and will take a look at the legislation that I proposed. It did not pass in the Council, and some of the reasons given were the Council thought it should be in the County Code instead of the Charter. But the County Code can be changed by any particular group of Council Members. When you put it in the Charter, it's there until the people change their minds. I'm asking you to make this a Charter amendment and let the people vote on whether they wish to have fair and reasonable redistricting. Thank you very much, and I'm available for questions if you have any.

CHR. HAITSIKA: Thank you, Mrs. Ford. Any questions for Mrs. Ford from any of the Commissioners? No questions. Thank you, Mrs. Ford. Do we have any other statements from any other members of the public?

APPROVAL OF MINUTES

CHR. HAITSIKA: Next on our agenda is the approval of the minutes from the last Charter Commission meeting.

Mr. Nahale-a moved to approve the minutes of the March 13, 2009 Hawai'i County Charter Commission meeting. Seconded by Ms. Jarman.

CHR. HAITSUKA: We have a motion to approve, we have a second. Any discussion?

MS. KAWAUCHI: Mr. Chairperson, just one matter. As far as attendance, the fifth name down, just a correction as to the spelling of the name.

CHR. HAITSUKA: Your name?

MS. KAWAUCHI: My name.

CHR. HAITSUKA: Other than the correction to Ms. Kawauchi's name---

MR. HOOKANO: Mr. Chair, also it's noted that Council Chair J Yoshimoto was in attendance.

MR. SHUMWAY: Also, Mr. Chair, since we're talking about names, it's minor, but Mr. Seth Murashige has two commas in his name and he only needs one.

CHR. HAITSUKA: Thank you, Mr. Shumway. Are there any other corrections to the minutes? Comments? All in favor of approving the minutes as corrected say "aye."

The motion to approve the minutes of the March 13, 2009
Hawai'i County Charter Commission meeting was seconded by
Ms. Jarman and carried by the following vote:

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

COMMUNICATIONS

CHR. HAITSUKA: Next on our agenda is Communications. Mr. Hookano, do we have any Communications?

MR. HOOKANO: Mr. Chairman, there are no Communications or Unfinished Business.

NEW BUSINESS

1. PROCEDURE FOR AGENDA ITEM SUBMISSION

CHR. HAITSUKA: So, next on the agenda is New Business. We have the memo from Mr. Hookano, the memorandum on the process on which we will place items on the agenda.

MR. HOOKANO: Correct. There should be a motion to approve it at this time and then we'll open it up for discussion.

CHR. HAITSUKA: Do I have a motion to approve Mr. Hookano's memorandum dated March 30, 2009 regarding a proposed amendment to the 2009-2010 Rules of Procedure which provides a process for Commission members to request items to be placed on an agenda?

MS. JARMAN: Excuse me, Mr. Chair. Are we approving the memo or are we making a motion to amend the Rules?

MR. HOOKANO: To amend the Rules with that memo.

CHR. HAITSUKA: Thank you for that clarification. This is as motion to amend the Rules based upon the memorandum submitted by Mr. Hookano.

Ms. Jarman moved to amend the Rules of Procedure with the contents of a memo, dated March 30, 2009, transmitted by Mr. Levi Hookano. Seconded by Mr. Nahale-a/

CHR. HAITSUKA: Any discussion?

MR. HOOKANO: Mr. Chair, if you would like me to clarify what that memo does, it amends the Rules so that at any time a Charter Commissioner can submit a request through the Chair to place a specific item on an agenda for discussion. At this time the Rules do not provide for that mechanism, but this will provide a way for the Commissioners, if they have something they really want to discuss, to request it be placed on an agenda. It also requires that the Chair has to place it on to an agenda within two meetings. There are also some things that need to be corrected on that memo. The first is that in Article III Section (b) (ii) there's a word "to" in the second sentence that should be a "shall." The Chair "shall" place the item on an agenda within two meetings.

Ms. Jarman moved to further amend the Rules of Procedure by changing the second sentence in Article III, Section (b) (ii) to read, the Chair "shall" place the item on the agenda..."
Seconded by Mr. Shumway and carried by the following vote:

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

MR. HOOKANO: So, now we're on the main motion. That was a secondary amendment, so now you are on the main motion to approve the memo as amended.

CHR. HAITSUKA: Any further discussion on the proposed amendment to the rule?

MR. NAHALE-A: I have a question. Is there a preferred format?

MR. HOOKANO: At that point, you are just sending a memo to the Chair saying you are requesting an item be placed on the agenda for discussion on whichever meeting you think appropriate. The Chair has discretion in the sense that if it's something that's dealing with a very particular matter that might be better suited for a meeting where that's already scheduled, then he'll place it on that agenda instead. The Chair would work with you on that.

CHR. HAITSUKA: Mr. Hookano, would an email suffice in that case?

MR. HOOKANO: Yes.

MS. JARMAN: May I ask a question? Why is it going to be placed under the agenda heading Communications? Is it possible that it might fall under something else?

MR. HOOKANO: Yes, in that situation the Rules provide that if it's more appropriate to go under an existing agenda item or New Business, then the Chair can place it under that.

MS. JARMAN: Thank you.

CHR. HAITSUKA: Any further discussion? All in favor of approving the motion say "aye."

The motion to amend the Rules of Procedure with the contents of a memorandum transmitted by Mr. Hookano, dated March 30, 2009, as amended, was carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi, Nahale-a, Shumway, Unger and Chair Huitsuka.

Noes: None.

Absent: Commissioners Fuertes, Kealoha, Murashige, and Osborne.

2. CREATION OF TWO AD-HOC COMMITTEES

CHR. HAITSUKA: Next on our agenda we have another memorandum from Mr. Hookano, dated March 30, 2009 which proposes an amendment to our 2009-2010 Rules of Procedure Article V pursuant to Hawai'i Revised Statutes §92-2.5 to create two ad-hoc committees. Mr. Hookano, did you want us to defer this particular item?

MR. HOOKANO: Yes, before you take up this item, I would have to say that I spoke with the Office of Information Practices (OIP) about this item. Their recommendation was that regarding the second ad-hoc committee, the Submission and Information, that would be

better suited as a Standing Committee because they have an ongoing duty. It's not just a one time research scope. For the Form and Style Committee, they said that would work if they did it all at one time; but according to the process that is being proposed, items would be submitted to them more than once, so they kind of have an ongoing life, which is more of a Standing Committee. So my recommendation, instead, is that this matter be postponed indefinitely.

CHR. HAITSUKA: Any motion to defer consideration of this proposal?

MS. JARMAN: May I ask Mr. Hookano a question?

CHR. HAITSUKA: Sure.

MS. JARMAN: Generally, postponing indefinitely means it is dead. Is that what you mean?

MR. HOOKANO: Correct. Postponing indefinitely would effectively kill the measure, but it also leaves the option to bring it back to life at the call of the Commission.

MS. JARMAN: Are you going to make recommendations then for us to have standing committees for the next meeting on these?

MR. HOOKANO: I will make recommendations on the next item on the agenda that would deal with the concerns that O.I.P. has had.

CHR. HAITSUKA: Any further discussion or questions for Mr. Hookano?

Ms. Jarman moved to postpone indefinitely the creation of two ad-hoc committees. Seconded by Ms. Honma and carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi,
Nahale-a, Shumway, Unger and Chair Huitsuka.

Noes: None.

Absent: Commissioners Fuertes, Kealoha, Murashige, and
Osborne

3. PROCEDURE FOR PROPOSING CHARTER AMENDMENTS

CHR. HAITSUKA: Next on the agenda we have Mr. Hookano's memorandum dated March 30, 2009, regarding a proposed amendment to the 2009-2010 Rules of Procedure which provides the procedure by which Charter Amendments may be proposed, approved, and adopted by the Charter Commission. Do I have a motion to amend the 2009-2010 Rules of Procedure as proposed by Mr. Hookano's memorandum?

Mr. Shumway moved to amend the 2009-2010 Rules of Procedure with the contents of a memorandum transmitted by Mr. Levi Hookano dated March 30, 2009. Seconded by Ms. Jarman.

CHR. HAITSUKA: Any discussion?

MS. JARMAN: I would like to ask some questions. Because we postponed indefinitely the Ad-Hoc Committees and these Rules refer to the Ad-Hoc Committee, is this something that we should postpone and work on cleaning up that language?

MR. HOOKANO: Yes, that recommendation is very sound.

MR. SHUMWAY: In that case, are you going to present revisions on both of those proposals?

MR. HOOKANO: I will present a revision on Item 3, the Procedure of Proposing Charter Amendments. Unless the Commission feels it is time sensitive, there is a way we can amend it right now which would not drastically change the meaning.

CHR. HAITSUKA: What would that be, Mr. Hookano?

MR. HOOKANO: That would just be amending the proposed amendments to remove references to the Ad-Hoc Committees. Where it references Ad-Hoc Committee on Form and Style, I would recommend that you just forward it to me to draft the amendments for your approval at another meeting. Also, I have commitments from the Legislative Research Branch here in the County Clerk's Office that they will help me with the drafting style. They are excellent at that; that's what they specialize in. With the reference to the Ad-Hoc Committee on Information and Submission, that committee could still be formed at a later time for one particular purpose without a continual life span. We would have to reword their duties, but that can be done at a later time. That committee could still exist later on. There is nothing to prevent this Commission from creating that ad-hoc committee at a later time.

CHR. HAITSUKA: Any questions?

MS. KAWAUCHI: Mr. Chair, my preference is just to wait on approval of the amendments. I don't think we have anything that is time sensitive, that requires it, and I would prefer being able to read everything in its entirety to make sure that it is all coherent and it flows. If we are going to adopt the procedures today, I just want to also make sure that the Timeline, the Charter Amendment Flow Chart, and Commission Process also includes reference to item 7 which is the Committee shall be responsible for proposing and implementing a public education program. I don't see that in our Flow Chart so I'm not sure if I missed it or if it needs to be there. I don't see it here so I don't know where that occurs.

MR. HOOKANO: Ms. Kawauchi makes a point. On the Charter Amendment Flowchart, Commission Process--that's the one you're referring to, Ms. Kawauchi?

MS. KAWAUCHI: Correct.

MR. HOOKANO: Within that Flow Chart, the second to the last diamond, where it says 2nd Reading of Charter Amendments, from there, once it's approved the arrow points to the Ad-Hoc Committee on Info and Submission, and that would have been the Ad-Hoc Committee that proposes the educational programs. From there it would go to the Commission for it's final approval, if I'm understanding your comment correctly. Basically that Ad-Hoc Committee would come up with the recommended methods for getting the word out on what these Charter amendments are and what they are going to do. They will come back to the Commission with their proposal. This is our educational proposal, getting the word out, radio ads, newspaper, and community meetings. They will go to the Commission for approval and say, okay, let's carry out these recommendations of the Ad-Hoc Committee.

MS. KAWAUCHI: Okay, I see. So clarified is my read of item 7 is implementing a public education program was maybe not as clear of an understanding. I wasn't sure if we were supposed to actually scheduling a program, and if we were, where that would fall in the Flow Chart. I just needed that clarification.

CHR. HAITSUKA: Mr. Hookano, I have a question. If we don't adopt the Rule, as amended and suggested by you, can we proceed with some other type of procedure in the meantime so we don't slow down the process as far as considering amendments to the Charter?

MR. HOOKANO: No, there will be nothing that would slow you down. Now that the Commissioners are allowed to place something on the agenda, they could come forward with something and put it on the agenda for discussion. They could say, "I'm looking at this section, I propose that there be an amendment to this section in this form." They could request that now as it stands with the amended Rules.

CHR. HAITSUKA: Do I have a motion to either postpone the consideration of this proposal or to adopt it as amended, as suggested by Mr. Hookano?

MS. JARMAN: I would move to postpone because it's not clear to me exactly how it would read. The Ad-Hoc Committee is all through it, so unless he had time to give us a second copy before our meeting ends today, I would prefer to postpone. So I move to postpone.

Ms. Jarman moved to postpone the memorandum submitted by Mr. Hookano, dated March 30, 2009, regarding the Procedure for Proposing Charter Amendments. Seconded by Ms. Kawauchi and carried by the following vote:

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

MR. HOOKANO: I'll get something to you guys for the next Commission meeting.

CHR. HAITSUKA: Thank you.

MR. UNGER: Chairman Ed, can you hear me?

CHR. HAITSUKA: Yes.

MR. UNGER: This is Scott. One more question before Levi takes off regarding the committees. I'm just trying to get clarification on the two different types of committees we can form and when it's appropriate to form them. What I'm understanding is the ad-hoc committee is established for a very particular purpose and it's formed for that purpose and we come up with recommendations and then you dissolve the committee. The standing committee is something that can take up more than one issue. When are we allowed to introduce a suggestion to form a committee? At what point can we, as a Commission, come up and begin to form different committees?

MR. HOOKANO: There is no deadline to form any type of committees. They can be formed at any time as long as it is on the agenda that a committee is going to be formed and whether it is a standing committee or an ad-hoc committee.

MR. UNGER: Okay.

CHR. HAITSUKA: Any other questions?

4. DISCUSSION ON GOALS AND OBJECTIVES/TIMELINES/ADOPTION OF A PROPOSED SCHEDULE FOR DISCUSSION OF THE CHARTER'S ARTICLES

CHR. HAITSUKA: Next on our agenda is a discussion on our Goals and Objectives, Timelines and Adoption of a Proposed Schedule for Discussion of the Charter's Articles. Everyone should have gotten information as to the proposed timeline as to the review of the Articles by the Commission. This was done in response to Ms. Jarman's request that we come up with some kind of schedule to look at the various articles of the Charter and to discuss those at the various meetings. The information that you have is that Articles I-IV would be discussed during this particular meeting. Articles V-VI would be discussed at the next meeting which is to occur in May of 2009. Articles VII-VIII would be discussed at the June 2009 meeting. Articles IX-XI would be discussed at the July 2009 meeting. Articles XII-XIII would be discussed at the August 2009 meeting and the final Articles XIV-XVI would be discussed at the September 2009 meeting. I came up with this schedule just based upon looking at the Articles and seeing what particular issues might arise and how long we would spend on them. There is nothing set in stone. This is just a suggestion as far as what we think we can probably handle at each meeting, but I'm open to any suggestions on how we should address this. Any discussion?

MR. UNGER: Chairman Ed, I have a question.

CHR. HAITSUKA: Yes, Mr. Unger.

MR. UNGER: For today's meeting you have proposed talking about Articles I-IV. If someone were to approach us later on regarding these Articles, just because we're discussing them today, they're not prohibited from coming to us later and discussing these sections?

CHR. HAITSUKA: Mr. Hookano, would it be precluded from later allowing a member of the public to come and give testimony regarding a particular section that we have already covered?

MR. HOOKANO: No, they could still give testimony. If it's not listed on the agenda specifically, it's at the call of the Chair whether he wants to allow it or not. The Sunshine Law says that you can testify on things that are listed on the agenda. There is nothing that prohibits you from revisiting sections at a later time, so it would be at the call of the Chair if it's not on the agenda whether to allow someone to testify on something.

CHR. HAITSUKA: Thank you. Does that answer your question Mr. Unger?

MR. UNGER: Yes.

CHR. HAITSUKA: Any other discussion on the proposed schedule for reviewing the Articles?

MR. NAHALE-A: Yes, I have a question, Mr. Chair. As an agenda item, it is just letting the public know that we will be having some focused conversations. We really can't take any actions at all, even make a committee, since that's not listed on the agenda, is that correct?

MR. HOOKANO: It all depends on what is listed on the agenda. For example, Agenda Item 5 on today's agenda says discussion of Articles I-IV of the Hawai'i County Charter. At this time you cannot propose a Charter Amendment because you are only discussing those sections. There is nothing that says you are going to be making changes today.

MR. NAHALE-A: But, could we make an ad-hoc committee?

MR. HOOKANO: The formation of an ad-hoc committee depends on what the focus is. There is nothing on the agenda to create a committee at this time.

MR. NAHALE-A: So really, the way the agenda item is listed, we can just talk openly about those Articles.

MR. HOOKANO: If you wanted to propose an ad-hoc committee, you would have to agendaize it and mention the scope of that committee. The basics for the agenda is that a person from the public that reads the agenda has to reasonably know what is going to be discussed and decided on at the meeting.

MR. NAHALE-A: Then also, in terms of getting feedback from the various department heads, is this the time we are supposed to be hearing from them?

MR. HOOKANO: At any time we discuss it the department heads can show up. As you can see, we have our distinguished members from the Administration here, as well as from the Legislative Branch. They are here for questions because we are discussing Articles III and IV today. That really concerns their area so they are here to offer questions and comments when that comes up on the agenda. When other Articles are brought up according to the proposed schedule, then we would contact the department heads and let them know the Commission is going to be discussing your portion of the Charter--you might want to be there.

MR. NAHALE-A: My assumption or preference would be that the appropriate department people are proposing changes to us. I'm still not sure if that's during this agenda item or later on during the process. When can I expect to hear from them about how they think the Charter can be improved? That's what I'm still a little ambiguous about.

MR. HOOKANO: There's nothing to prevent department heads from contacting any of you directly at this time. They could come to you as an individual and voice their concerns. The proposed procedure that we just postponed would have mandated that all Charter Amendments come through a Commission member. That really is, no matter which way you look at it, the way it's going to have to be as it relates to this Commission. Because that's what this Commission's job is. So, if a member of the Administration comes to you and says, "I'm looking at this proposal," then it's your decision as a Commission member to decide if you want to put it on an agenda or not through the procedure of requesting items be placed on the agenda. So at this time, there is nothing to prevent Administration from talking to you individually and you requesting something be placed on the agenda for that purpose.

CHR. HAITSUKA: I have a comment. The way that I envisioned this is that we are going to be discussing these various Articles and the provisions in the Articles at a particular meeting and after that discussion we are either going to put something on the agenda to make a proposal to amend a particular Charter Section for the following meeting and/or we are going to create some kind of ad-hoc committee to investigate or take some kind of action with respect to a proposed amendment. That's how I thought we were going to do it. That was consistent with reading your proposed memo regarding the amendment to our Rules as to the method in which proposed amendments would be submitted. Would my understanding comply with how we should be doing it?

MR. HOOKANO: I would say, yes. I know that in the past, the former Commission, in their minutes, it reflected that when they discussed the sections generally, they would go through it and say, "This language in Article I looks fine." So they just moved on and never revisited that section again because they felt that language already was fine. The same thing with Article II, they just moved on. Article III, they went through it section by section and decided whether they wanted to look at it closer or not. If they did want to look at it closer, then that's when they would request information from the attorney about the background and

history of that section, why was it written that way, and that's all done at the request of the Commission. So the Commission goes through it and decides what they want to take a closer look at and then requests more information on that particular section, and that would show up on a later agenda.

MS. KAWAUCHI: Mr. Chairperson, I'm still trying to figure out if Mr. Nahale-a is fully satisfied. I'm wondering if the proposed schedule should reflect the Articles discussed and then for the following meeting or the following month reflect something on the timetable to show that it's an appropriate time to create the ad-hoc committee or to table the discussion for further discussion of the Articles that were discussed before. I just want to make sure that Mr. Nahale-a's concerns were addressed, and that if he wants communication from a department head there's room for that. If we're going to discuss, for example, Articles I-IV and we request communication from a department head about Articles I-IV, that there's room on the next agenda to create an ad-hoc committee, or decide we want communication from department heads. I don't know if I'm further confusing it, but I just want to make sure that the concerns are addressed and the community and the public are properly noticed as to how we are going to be taking up all of these agenda items. I think it might be a little bit vague or not as comprehensive. Mr. Chair, I leave it up to you to invite any other comments.

CHR. HAITSUKA: I think that if we do discuss something and Mr. Nahale-a has a suggestion as to whether or not we need further follow up with Administration or someone else, I think we can have a motion at that time. We can either have Mr. Hookano follow up or if we want to create an ad-hoc committee, we have to put that on the next agenda and have a motion to put that on the next agenda. I think Mr. Nahale-a, through our procedures that we adopted today, could make a request to put that on the next agenda. So, I think it can be handled that way. Mr. Hookano, is that correct?

MR. HOOKANO: Yes. I'm just wondering, Mr. Nahale-a, does that satisfy your question?

MR. NAHALE-A: Mr. Chair, what would help me is if we are going to have these agendaized discussions, I just want to have confidence that appropriate department heads or other staff know that if they want something proposed, they should contact one of us individually. I kind of had it in my head that during this item people would be coming up and making suggestions. That's what I thought was going to happen. So, if that's not the communication to the appropriate staff, and they want the Commissioners to propose something, then I need to get some direct communication in order to do that.

MS. JARMAN: Mr. Chair, can we ask Mr. Ashida to come to the microphone?

CHR. HAITSUKA: Sure. Good afternoon, Mr. Ashida.

MR. ASHIDA: Good afternoon.

MS. JARMAN: You may not know the answer to his question, but is the Administration planning on having a representative here at each meeting and is the Administration looking

over the Charter and discussing proposed amendments so that that's what will be happening at future meetings?

MR. ASHIDA: I'll answer your questions in reverse order. Yes, at two cabinet meetings ago, Mayor Kenoi charged all department heads with reviewing the Charter--well first of all the Mayor informed the Cabinet that the Charter Commission had been established, and he charged each department head and Deputy with reviewing the Charter. Not only those portions relevant to their particular department, but if there are any changes, he encouraged those to be brought forward. He wasn't specific in terms of the mechanism in bringing it forward, whether we were to come before the Commission personally, or the suggestions come out of the Mayor's Office. We haven't discussed that subsequent. But to answer your question, he did, in no uncertain terms, advise the departments that we should be looking over the Charter and thinking of possible suggestions. Now, I forgot your first question.

MS. JARMAN: Will the department heads or at least a representative from the Mayor's Office be here when we're dealing with a particular department within the Administration, in case we have questions or in case they want to make suggestions?

MR. ASHIDA: I think we can arrange that. For example, for today, Mr. Hookano contacted us and as you know we have an excellent working relationship with the Clerk's Office. I think, Mr. Hookano, you just called us yesterday. Was it just yesterday?

MR. HOOKANO: I think it was yesterday or the day before. It might have been Monday or so.

MR. ASHIDA: You have the Managing Director here, myself, Mr. Bishop and Ms. Shigimura. So, we're available, and if you want us to communicate that to Mayor Kenoi, we can arrange for that, as long as you give us advance notice.

CHR. HAITSUKA: I think maybe that's part of the concern; that we need to notify Administration as to which Sections or Articles we're reviewing, so the Administration can have an opportunity to be here. That is something we can discuss as far as the mechanism to get that information out. In thinking about it, I don't know if it's appropriate where we would have to push the schedule back maybe one month just to ensure that we give--not that we can't discuss Articles I-IV. I think we can because it's on the agenda, but we can also push everything back a month to give Administration the ability to respond, have someone present. That's just a suggestion.

MR. HOOKANO: Mr. Chair, if I may. If you approve this timeline that you have here on the agenda, Articles I-IV April 2009, Articles V-VI May, and so on, we could send that schedule to all department heads and that would give them their preliminary notice that this month at this meeting, your department is scheduled to be discussed at the Charter Commission. I think that would give them some notice. Of course, the Departments scheduled in May would have one month notice whereas anything that is discussed in Articles XIV-XVI would have several months notice at this time. As the date gets closer we could send out another notice as their month gets closer.

CHR. HAITSUKA: Not to say that we can't entertain a later discussion by Administration if they came up with something that we've already covered.

MR. HOOKANO: Not at all.

MR. ASHIDA: Mr. Chairman, may I speak?

CHR. HAITSUKA: Yes, Mr. Ashida.

MR. ASHIDA: I'm just thinking out loud, and whatever you decide is fine, but I think in addressing what Mr. Nahale-a was getting at, perhaps--this is just a suggestion off the top of my head--maybe you could ask the departments when they come, "give us three suggestions of things you would like to see changed in the Charter. Give us three suggestions of things you would not want to have changed." I think what Mr. Nahale-a was getting at is he doesn't want to have to start inventing the wheel all by himself. We've been working with the Charter for years, and we probably all know, on the Administration side, what works and what we would kind of wish would change. And I think, Alapaki, that was what I was hearing you say, something like that. I know the departments want to be very respectful to the Commission, but I don't think there's any problem with you indicating, you know, "Tell us how you feel." An open ended question like that might be effective. But, I just throw that out.

CHR. HAITSUKA: Alright, thank you.

MR. SHUMWAY: Mr. Chairperson, I'd also like to comment on what Mr. Ashida said. I also agree with Mr. Nahale-a. I would also like to have that kind of input from the Directors when they come. I don't know if we can include that on our agenda, or what. Some sort of instruction that not only to invite them, but to ask them for their direction and their input based on their experience and what they suggest.

MR. ASHIDA: Mr. Chair, I have back there in my notes already, 50 things I would like to see changed about the Council that I've been saving for years now. I'm ready with that.

CHR. HAITSUKA: I think we only have a year to do all of this.

MS. KAWAUCHI: Perhaps your suggestion about pushing the agenda back a month was well taken. Perhaps it might accommodate what Mr. Shumway and Mr. Nahale-a are asking for, which is comment from department heads.

CHR. HAITSUKA: I'm trying to think, do we have a discussion so we know what to ask the department heads and then ask the department heads those questions, or do we invite them here? As far as timing, I'm not sure as to what should go first? Should we have that open discussion on a particular section, questions are raised, and then send those off to the department heads? I'm still struggling with what goes first. Ms. Honma.

MS. HONMA: I just think that what he suggested with the three things, to change or keep, that would help us understand a little bit better about what we're trying to accomplish. I think if we can hear from them, then we can know what kind of questions we really want to ask.

CHR. HAITSUKA: Mr. Unger.

MR. UNGER: Mr. Chair, I would like to make a comment as well. Seeing as how we have already adjourned this meeting and you are trying to work through this timeline here, it's probably not a bad idea today, for us to go through Articles I-IV. I too am concerned as to how we are going to get comment on this. A good example, if indeed we stuck to this timeline, Article III is all about our Legislative Branch and County Council and other than Brenda Ford--it's pretty important stuff--and no one is here to talk to us about it. I'm just wondering, were they notified? If not, then absolutely, I think they need to be notified and we need to have another discussion with them present, probably next month. It might be a good practice, a good exercise for us to go through Articles I-IV just to start the process.

MR. HOOKANO: Mr. Chair, if I may.

CHR. HAITSUKA: Yes, Mr. Hookano.

MR. HOOKANO: Rather fortuitously, I do work for the Legislative Branch so I did contact our County Clerk and he is here today to make comments on Article III, as well as our Legislative Auditor, who is also present today to make comments on Article III. Additionally, for the Council Members, you can't exactly have more than two of them present at one time, because it could be viewed as a Sunshine Law violation when they're discussing their authority. So, that kind of poses a problem in some ways.

CHR. HAITSUKA: Alright, thank you. So, are there any suggestions so far as how we should handle notification to the various Administration members or Council Members and how we should conduct our meetings with respect to the review of particular sections.

MS. KAWAUCHI: Just one question, Mr. Chairperson. Regarding comment from legislative officials and the last comment from Mr. Hookano concerning Sunshine Law, is it possible for those legislators to submit comment through the Legislative Auditor or the County Clerk to us? Would that be a violation of Sunshine Law?

CHR. HAITSUKA: I believe that we could take written comments. Is that correct, Mr. Hookano?

MR. HOOKANO: Yes, as long as they don't communicate with each other, it's okay if it goes through the Clerk to you. It should be fine as long as they don't communicate with each other about what they are doing.

CHR. HAITSUKA: So whether it's written or oral to us individually, that would be okay?

MR. HOOKANO: Yes.

CHR. HAITSUKA: Did that answer your question?

MS. KAWAUCHI: That did, thank you.

CHR. HAITSUKA: Ms. Jarman.

MS. JARMAN: Mr. Chair, I like Mr. Ashida's idea of the three questions, three and three. What would you like to see changed, what do you want to keep the same? Perhaps we could delegate to you, to our Secretary and our Legal Specialist, to actually develop those questions. Basically write a memo to them in advance of the meeting; give them time to do that. Perhaps we could invite them to submit those questions to us, like a week before the meeting so we all could look at them and be thinking about them, and then we would be able to ask them questions.

CHR. HAITSUKA: Just for clarification, your suggestion is that we would have a memo or a letter prepared to the department heads that would advise them that we are considering their Article or Section and then have those particular questions.

MS. JARMAN: Yes, and have them submit them in time for the Secretary to get them to us, maybe a week in advance, to read.

CHR. HAITSUKA: Mr. Hookano, if we did that, would we have to put something on the agenda to address that?

MR. HOOKANO: If it's the Commission's will that they want to all take a look at what the memo says prior to it being sent out, then it would have to be placed on the agenda. If the Commission relies on the Chair and myself and the staff to draft it and trusts our judgment, then it won't have to be put on the agenda, we'll just draft it and send it out. But if the Commission wants to see that memo as a whole---actually, I think we could send it all to everyone and they provide their comments only to the staff. If they all provided it to the Chair, then that might be problematic.

CHR. HAITSUKA: So, we could all communicate with you as far as our comments.

MR. HOOKANO: Yes.

MS. JARMAN: I'm happy to delegate it.

MR. NAHALE-A: I think it's a good idea, Mr. Chair.

CHR. HAITSUKA: Do we have a motion to approve Ms. Jarman's suggestion that we would have our staff draft a memorandum or letter to the department heads with particular questions which would get from them the changes they would like to see in the Charter?

MR. HOOKANO: No, I don't that requires a motion. That's more of a directive to the staff.

MS. JARMAN: I think you can ask if anybody objects, and if nobody objects then it will happen.

CHR. HAITSUKA: Does anybody object to that procedure? Alright, Mr. Hookano, can you prepare that memo?

MR. HOOKANO: Sure will. The decision still has to be made on the motion to approve the schedule that is on the agenda.

CHR. HAITSUKA: Right.

MR. NAHALE-A: Mr. Chair, a quick comment. I think if the memo can express---if I heard my colleagues correctly, we would like to get that feedback during that section when it's up for discussion; so that we have a lot of time to figure out how to incorporate those changes, how to craft language. First, is crafting something and then six months from now, we get the meat of the feedback from the departments.

MR. SHUMWAY: Mr. Chair, following up on that, I'd ask the staff, if we maintain this schedule, does that allow the department heads time, especially for the next meeting, to prepare those kinds of questions or that kind of advise?

MR. HOOKANO: I would direct that to the department head that we have here, the Managing Director or Corporation Counsel. Would one month notice be enough for a department head to craft---let that reflect that Mr. Ashida said that 48 hours is plenty of time. So, if that's okay then, this schedule as proposed will be alright. If I send this memo out immediately, those offices covered by V and VI would have one month notice.

CHR. HAITSUKA: Right.

MS. HONMA: Real quick question. So, the people that should be here for Articles I-IV are already here?

MR. HOOKANO: Yes, they are here in this room right now.

MS. HONMA: Okay.

CHR. HAITSUKA: What we also can do, because now we are going to be sending this memo out, we can always bring Articles I-IV, which has a lot the hot topics in there, back again at the end or sometime.

MR. HOOKANO: Yes, there is no reason why you couldn't include it on another agenda. I think with the schedule that is proposed here, it just says, at this meeting, these Articles are definitely going to be discussed. We may revisit ones that we have previously discussed.

CHR. HAITSUKA: We could always put that back on the agenda.

MR. HOOKANO: Yes.

CHR. HAITSUKA: Even if we don't finish our discussion on a particular Article, we could always put that on the agenda at a following meeting.

MR. HOOKANO: Yes, it could be placed under Unfinished Business.

CHR. HAITSUKA: Any further discussion, questions?

Ms. Jarman moved to adopt the Proposed Schedule for discussion of the Charter's Articles. Seconded by Mr. Nahale-a and carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi, Nahale-a, Shumway, Unger and Chair Huitsuka.

Noes: None.

Absent: Commissioners Fuertes, Kealoha, Murashige, and Osborne

5. DISCUSSION OF ARTICLES I-IV, HAWAI'I COUNTY CHARTER

CHR. HAITSUKA: Now we move on to Discussion of Articles I-IV. I'm sure everybody had an opportunity to review the entire Charter.

MS. JARMAN: Mr. Chair.

CHR. HAITSUKA: Yes, Ms. Jarman.

MS. JARMAN: Can I have Mr. Ashida up to the table?

CHR. HAITSUKA: Mr. Ashida.

MS. JARMAN: Under Section 1-2 (Geographical Limits)--"The island of Hawai'i and all other islands within the shores thereof and the waters adjacent thereto shall be the county of Hawaii." What does waters adjacent to mean? What are the waters adjacent to? Is that out to three miles, 500 yards off shore? Where does our County end in terms of the water side?

MR. ASHIDA: I don't know. I don't know about Maritime jurisdiction. Is that what you're talking about?

MS. JARMAN: Well, it's the boundaries of---these are the geographical boundaries of our County, right?

MR. ASHIDA: Right.

MS. JARMAN: It says the waters adjacent. So how far out are we going? You know the State has jurisdiction three miles around each island.

MR. ASHIDA: That's correct.

MS. JARMAN: But, the way a Constitutional Amendment passed several years ago, we actually have it even further if we can convince the Federal government to let us. It's not clear where our County boundary ends for purposes of County regulation when it just says waters adjacent thereto. Like the City and County of Honolulu actually goes all the way to Kure Atoll, which is interesting. It includes Kure Atoll, which is just 1,000 miles away.

MR. ASHIDA: Well, let's start with something easy, I know we get Coconut Island.

MS. JARMAN: It seems to me we should have some clarity as to what we mean by that and maybe have some conversation with the Attorney General or look at other County Charters to see. But, that would be an issue particularly for the police.

MR. ASHIDA: No, the police are okay because they are empowered to enforce not only County but Federal and State law. So for example, if there's an incident that occurs two miles out on a fishing boat, the police would have jurisdiction. That's not going to be a problem.

MS. JARMAN: But what if the County Council wanted to have jurisdiction somewhere in the water, how far out do they have?

MR. ASHIDA: Is this a law school question?

MS. JARMAN: Well, I teach Ocean and Coastal Law, and I teach Land Use, and I think about these things. It just seems to me that we should be a little more clear; unless we want it to be vague, in which case then we'll take jurisdiction as whatever we think adjacent is.

MR. NAHALE-A: Mr. Chair, this is something that also concerns me; just trying to get some clarity on what that means, and I think there are several issues that it affects. I don't want to talk about it right now, but I think it would be good for us to investigate how other Counties are doing it and see where State and County jurisdiction overlaps, divides.

CHR. HAITSUKA: Is this something we should ask our Counsel to investigate and research maybe?

MR. HOOKANO: I was just about to say, is that something that the Commission would like me to research?

CHR. HAITSUKA: As far as the legal jurisdictional limits of our County, Mr. Nahale-a, is that what you would like?

MR. NAHALE-A: Yes, I would appreciate getting some more information on this issue.

CHR. HAITSIKA: When we come back with that information, we can make a determination as to whether or not we need to clarify this further. I don't know if the geographical limits change over time. I don't know if it's based on the growth of our island, or loss of land, or what.

MR. NAHALE-A: I'll give you one hypothetical example. I'm living on my boat, anchored off Reed's island. Can we charge property tax?

MR. HOOKANO: I don't think a boat constitutes real property.

MR. NAHALE-A: But the water does.

MS. JARMAN: The question certainly would be are you a citizen of our County or are you a citizen of somewhere else?

MR. NAHALE-A: If you need fire or police protection, we would probably go out there and give it to you.

MR. HOOKANO: Well, with regard to real property tax, you can't own the water personally, that's within the public trust. You can't pay real property tax on something that's within the public trust.

MR. NAHALE-A: Maybe this is a law school test.

MS. KAWAUCHI: Mr. Chair, I think it is deserving of clarification. We have good County laws; we should know how far they extend. We should know limits of liability for the County. We should know whether or not the County is responsible for areas; how far out they should be, or if the liability should be imputed to another entity. It's really an important question and I think it does deserve clarification. It comes up from time to time in land use, in environmental law and again, I guess I go back to my first point which is we have very good laws in our County, and we have good legislators. We have good law makers, a good Mayor and good people here. So we should be charged with making decisions about our shorelines. I would suggest that we do pursue that question.

CHR. HAITSIKA: So, Mr. Hookano, is that something you can research?

MR. HOOKANO: Certainly, but not by the end of this meeting.

MS. JARMAN: I'll be happy to work with you on that issue, Mr. Hookano.

MR. HOOKANO: We have a Law School professor on this Commission, so that's great. And we have six legal minds in this room right now, so I'm sure we could come up with something.

CHR. HAITSUKA: Do you need any further clarification from the Commissioners as to what they want?

MR. HOOKANO: Just to clarify, I'm going to research Section 1-2 of the Charter, to determine exactly what that means, the extent of the offshore waters.

CHR. HAITSUKA: I guess on the broader issue, I think they were trying to determine what the geographical limits of our County are as it extends out towards the water, how far out.

MS. KAWAUCHI: Mr. Chair, just one additional point for discussion which is that I don't know if our Commission has the power to change Section 1-2, in the event that an amendment were proposed, or that the County itself has the power to do it. It might be a question, as well, for our Council to address that question. I don't know if the Commission has the power to make changes to (Section) 1-2 if that were going to be proposed.

CHR. HAITSUKA: When you say "change" you mean we can't change the boundary of our County, or we can't change the language in Section 1-2?

MS. KAWAUCHI: Maybe there are two questions there, and maybe the second question, which kind of implicates the chicken or the egg. If we do change the language, does that change the boundaries of our County?

MS. JARMAN: May I respond, Mr. Chair?

CHR. HAITSUKA: Yes, Ms. Jarman.

MS. JARMAN: It won't necessarily change the boundaries, it will just help define what waters adjacent to the County of Hawai'i means. And then, we'll at least all be clear on where the boundaries are. Right now the boundaries are the waters adjacent to the island. And this is the geographical limit that is set by the Charter and not by the Council. So it is a Charter question.

CHR. HAITSUKA: I don't even think the Council can change the boundaries.

MS. JARMAN: They can't change the boundaries, except by a Charter amendment.

MR. HOOKANO: If I may, I believe there might be some things in State law that would speak to this issue. The County only gets whatever authority is delegated by the State, and I don't think it would be within the County's authority to expand their jurisdiction more than they are allowed by the State. That is something I will search for while I am doing this assignment. I'm sure the State would have something that would dictate how far off shore, if anything.

CHR. HAITSUKA: Alright, any other discussion or questions on Section 1-2? We skipped over (Section) 1-1. Does anybody have any discussion or questions on 1-1? Ms. Jarman.

MS. JARMAN: I have just a general question. The Charter doesn't use diacritical marks. Would we make, at some point in time, a motion to insert the proper diacritical marks throughout the Charter, as opposed to doing it section by section?

CHR. HAITSUKA: I have a question for you. What's a diacritical mark?

MS. JARMAN: Like the island of Hawai'i doesn't have the okina. Can we just, say, make a motion that wherever a diacritical mark is necessary in the Charter, that it be inserted?

MR. HOOKANO: Mr. Chair, if I may. I believe that anything proposed by this Commission that would change the Charter has to go to the voters. So that could be listed as a Charter amendment. Should all Hawaiian words in the Charter be amended to include the proper diacritical marks? And that would be one of those sweeping changes that would give the reviser the authority to go in there and make sure that this is the correct Hawaiian word with the correct meaning. Mostly in the mention of the word Hawai'i, they don't include the okina, so that is one of those really blatantly obvious changes I think that Ms. Jarman is referring to.

MS. JARMAN: Or is that just something the reviser can do without having to put it to the voters because in a sense it is a grammatical change. It doesn't cause any substantive change.

MR. GOODENOW: The Clerk is the reviser of ordinances, and we're given specific authority in the ordinances to change things, however, no such authority is given to us regarding the Charter. So, we have resisted that. We won't even correct anything. But, I think that's a good idea, maybe to establish a reviser of the Charter. That's something to consider. But, at this point, no, unless the public votes on it, we have no authority to change anything at this time is my opinion.

MS. JARMAN: Mr. Ashida, do you have a sense of that?

MR. ASHIDA: If there's a way to not put that question to the voters, I would strongly recommend it not be given to the voters. I personally think it's something that we could do. Maybe this is somewhere that Kenny and I disagree, but I think it's not a substantive change; it's not changing the meaning of anything, it's just proper grammar. It's grammar.

MR. GOODENOW: This is maybe getting off the agenda, but I did want to apologize, we expected to have the revised Charter ready. It seemed very simple. But we started to really look back from the beginning and to build the historical evidence for why the Charter reads the way it does. We came across issues, not just limited to diacritical marks. I'd like maybe for the next meeting if we could agendize---it relates to the subject of a reviser, and I think maybe during that discussion, this discussion of diacritical and revisions could be better discussed in the context of that discussion. So, maybe if we could put this off until we have an opportunity to present that.

CHR. HAITSUKA: Mr. Goodenow, I have a question for you. Presently, you have the ability to make non substantive changes to the County Ordinances based on some type of County Code?

MR. GOODENOW: The Code itself has a provision called Reviser of Ordinances and gives us the authority, for example, to put in diacritical marks that are missing. That's in the Code.

MR. SHUMWAY: Mr. Chairman, if I may. If we do agendize that, I think it would be really helpful to have the County Clerk give us a real definite scope of what a reviser is.

MR. GOODENOW: We would like to give a presentation showing what we've found and where things were different; if that's possible, we would like to do that.

CHR. HAITSUKA: Yes, I think that would be helpful.

MR. SHUMWAY: I was just going to say, I think if it goes as a Charter amendment, I think it is going to be very important that it has a very strict and limited definition.

CHR. HAITSUKA: Any questions for Mr. Goodenow? So, Section 1-1, any discussion of that particular Section? No. Section 2-1, any comments or discussion, anyone here to discuss that? Section 2-2? Section 3-1? Mr. Ashida.

MR. ASHIDA: I've been waiting for this day. Section 3-1 says that "The Legislative powers of the county shall be vested in the county council. Its primary function shall be legislation and public policy formulation, as distinct and separate from the executive administration of county government." There has been, at least in my experience with the County, significant debate as to exactly what is public policy formation. What is it that they are authorized to do, entitled to do, what can they do. The ending part of that sentence gives the comparative language, it says "as distinct and separate from the executive administration of county government." I can't tell you how often I've heard Council Members argue, saying, "We are the policy makers of the County; the Charter says so." Therefore the argument goes, "Because we set policy,"--I'm paraphrasing here--we can essentially tell the administration what to do. I have to admit, on the one hand, the way it's written right here is ambiguous because there isn't proper definition of what "public policy formation" is. It's not necessarily all the time a bad thing, because in our County we have what municipalities call the strong Mayor, strong Council system. In some municipalities on the mainland, you have basically a Council that runs the whole show. The Mayor is really just a figurehead, is a Mr. Popularity thing. But in Hawai'i State Government, the counties have what's called the strong Mayor, strong Council system where there is this intentionally created tension, and when I say tension I say it in a positive way, the checks and balances, the separation of powers; and that's a good thing.

It ensures that the one branch of government doesn't become so dominant so as to override the other. So, sometimes that ambiguity is good, because it always asks us to revisit this. On a case by case we look, and hopefully through that adversarial process of pushing back and

forth, wherever it settles in middle it is the equilibrium, the just result. That's philosophically how it's supposed to work.

A lot of Council Members---and I'm glad Kenny is here so he can defend the Council Members. I wonder if we need to define what public policy formation is, because, I'll tell you, the best definition that I heard of what public policy formation means was spoken by our Managing Director, Bill Takaba. One day when we were talking, he said--and Bill I hope you won't mind me saying this, because you out rank me--the Council expresses the formation of policy by the passage of ordinances, and I thought that makes sense; that's so correct. That's what they're entitled to do, pass laws that establish the policy, the public policy of the County. If you look in the County Code, all the ordinances, that reflects the overall public policy of the County. In terms of its implementation, that is left solely to the Administration, to the Mayor's side to implement that policy. A lot of Council Members are confused; when they get elected, newer Council Members read this, they're told by their colleagues, "Hey, we're the policy makers." It creates a false sense of authority on their part. That's all I have. Thank you.

CHR. HAITSIKA: Thank you, Mr. Ashida. Is there any discussion on that?

MR. GOODENOW: If I could respond just a little. I think there are a lot of things, in fact all of Article III, which really affects my office. I think if we didn't change anything, everything would run fine; it's been running fine. But, there are certain things that we interpret here, because they are not clear, and I think in this particular instance, though, it is good to be somewhat vague. I will be the first to admit, as Mr. Ashida says, our Council members have a warped understanding of what this can mean. That being said, there's a lot of Case Law. You not only look at our law, but you can look at the Separation of Powers Doctrine at the State level, the National level. I think it's almost better to have Corp. Counsel part of that process giving a legal definition as to, do we have to do this just because the Council is saying this is policy? I think it may be best just to leave it as it is. We do things through Ordinances but there are also resolutions, and you may have a resolution saying---that is not a law, but still sets policy. I agree that Council members really go too far with this, but I would be leery changing it since there is a lot of case law to provide guidance.

MR. NAHALE-A: I have a question, Mr. Chair. Could you give me more specifics? It's one thing for folks to say, I have that authority, and it's another---

MR. GOODENOW: Here's an easy one: marijuana, cannabis initiative. Council Members can say, "We're making marijuana the lowest law enforcement priority; that's the policy of our County; you've got to follow our policy, Chief." But in reality, you have the separation of powers issue; you have the second part of this sentence where it says, "As opposed to the Executive Branch carrying out the policy." Really, enforcement is more an Executive Branch function. You get into areas like that, is that our policy or is that our---

MR. NAHALE-A: In that case, people did the work to get it codified, that intention. There's that check and balance. But are there other examples where they can wreak havoc without

actually going through the creation of an ordinance? Or, is the irritation just statements? If it's just people saying, "I have the authority," well, we have to put up with that.

MR. GOODENOW: We've had resolutions say--I'm trying to think of a specific example that we've had recently--have a bus route to the Airport. Now, do we have to have one just because---and would that even be appropriate to pass an ordinance saying that there must be a bus route. I think it's a very grey area, and I think there is the case law. I think you have to leave some things to Corp. Counsel to sort out, and I'd say this might be one of those.

MR. SHUMWAY: Mr. Chairman, I also have a question. As we get later in Section 3, 3-9, it talks about resolutions, and I actually have questions about that Section, but, I'm wondering if this can be addressed by clarifying what a resolution is and leaving this part alone?

MR. GOODENOW: I think that's possible, but pretty much a resolution--there are really only two things a Council does, ordinances and laws and everything else is by resolution. So right now, it is kind of a catch-all for us.

CHR. HAITSUKA: When I read this Section the first time, I thought I had it down, but after having this discussion, apparently, I misread it, or didn't understand it as I thought I did. I can see now where that insertion of the word and between legislation and public policy formulation may cause a problem where it's saying they have a power aside from the legislative abilities. So, I don't know how to rectify that but I can understand the concern.

MR. ASHIDA: Mr. Chairman, as a practical matter, it hasn't been a grave problem where it's wreaked all sorts of havoc. Primarily, because I think that the lawyers involved, both at Corp. Counsel and the current Clerk, the former Clerk, everybody understands how it should be. We've worked very amicably well together. I think the issue becomes for--and I'll say it--I see it with a lot of new Council Members who---it's more for them, they don't appreciate the limits of their authority. It doesn't really create problems for me, and we advise all our departments. I don't know what kind of problems it creates for them.

CHR. HAITSUKA: Is the problem with the resolutions as opposed to the ordinances? I notice the proposed language that you mentioned, Mr. Takaba's definition as to what public policy formulation means, refers to the ordinances.

MR. GOODENOW: Even with an ordinance, you can have the same issue, like the marijuana. It's an ordinance, and you could say that's public policy from the Council, but then if it violates the Separation of Powers, it's an invalid ordinance. Now, there's a severability clause in there, so that part may well be struck down in a court case. In fact, I would assume it would be, in my personal opinion.

MR. ASHIDA: Just so that we can move this along, if you look at the second sentence, it says, "Its primary function shall be legislation and public policy formulation." I would just suggest it read, "Its primary function shall be public policy formulation through legislation..." and then the rest. Then, it's clear that that's how you are shaping public policy

through legislation, whatever that legislation is, whether you call it an ordinance or resolution, we'll fight that battle down the road. But, I would just make that suggestion.

MR. GOODENOW: I personally have no objection to that.

MS. JARMAN: Mr. Chair, can I ask a question?

CHR. HAITSUKA: Yes, Ms. Jarman.

MS. JARMAN: If that's their primary function, what else do they do?

MR. GOODENOW: We have a side that we---we have honorary functions, we lobby the Legislature as well on issues concerning the County. We do have a ceremonial function; you go to opening of playgrounds, you lobby the Legislature on County issues.

MR. ASHIDA: Also, there are certain State Statutes that require the Council to act to receive Federal or State funds via resolution on behalf of the Administration. I guess that could be considered a legislative function, but it's not limited to the creation of ordinances.

MS. JARMAN: Although I like that definition, and I think that's the primary definition, but there are other times when the Council is directed in other areas to actually law make by resolution and not by legislation. I remember we actually had Mr. Hookano write us a whole memo on what is policy and how does that work. It isn't without its problems, but I think it's fine the way it is and I agree that it's not a huge problem, and it's something that can be worked out as it come up. Corp. Counsel represents both the Council and the Executive Branch, because he represents the whole County. If I could think of an easy fix, it would be great, but I can't think of an easy fix for it, or even a satisfactory fix. So, I think I'm in kind of the same place as the County Clerk is at the moment.

MR. NAHALE-A: Mr. Chair, I think for me one of the key roles of the Council Members is to act as representatives, and when they do the work of having a collective voice via resolution or ordinance, then that carries weight with it backed up by the Charter. I still think that if they voiced their opinions and they're in the minority, or even just sending a memo to Executive Branch, that they still are the voice of their constituent group. That authority has to have some kind of a power. This is exactly the kind of input we were asking for earlier, because I would have never thought about this issue, and I do think it is the job of this Commission to chew this stuff up and see if we can improve our County via language changes. So, I appreciate the chance for us to debate it and see if it needs addressing or not.

MR. ASHIDA: I think, bottom line for me, I have no heartburn one way or another. I could live with it, okay, that's the bottom line. But, a big part of why I can live with it is because our office has been blessed with having wonderful Clerks who are reasonable, see it the way it should be. The one thing--I'm getting ahead of myself--we cannot do is have separate attorneys for the Council and the Administration. That's going to create a mess because then it's going to be adversarial, this is going to be argued and pushed to the edge. As long as this

Commission is not going to tinker with giving separate legal counsel to the Council or the Administration, then I think this is okay, we can work through stuff like this. Kenny, would you agree with that?

MS. KAWAUCHI: Mr. Chairperson, just to clarify. The County Council has a---perhaps this is a question for Mr. Ashida or Mr. Goodenow, the County Council has an attorney on its own? Mr. Hookano is not the Council's attorney?

MR. ASHIDA: No, Mr. Hookano's title is Legal Specialist. He can advise the Council, but when it comes to representation, by Charter, that is the responsibility of my office, actual making an appearance on behalf of the client. But that doesn't prevent Mr. Hookano from advising them. We welcome that, because we want the Council to be as fully informed as they can be. But, no, representation is done solely through my office.

MS. KAWAUCHI: In other jurisdictions, for example the County of Maui, do they have their own, or is it all Corporation Counsel?

MR. ASHIDA: I think what you might be thinking of is they have---what is that called?

MR. HOOKANO: The Office of Council Services.

MR. ASHIDA: Yes, their Office of Council Services. They have a bunch of attorneys in there. That's fine, but when it comes down to actual legal representation, in all of the four Counties in our State, it's all done by the Corporation Counsel, or what's called the County Attorney in Maui---in Kaua'i, and that's a good thing.

MR. HOOKANO: If I may comment on that, Mr. Ashida is absolutely correct. The other Counties, County of Maui and City and County of Honolulu do have a separate Legal Service Branch within the Legislative Branch, but their only role is to advise on proper legislation, drafting, and helping with the budget. Whereas, all representation, all appearances on behalf of the County in a legal capacity, is done by Corporation Counsel.

MR. GOODENOW: I believe, don't they have a provision, except in cases where---

MR. HOOKANO: If the adversarial situation is between the Council and the Administration.

MR. GOODENOW: City and County is different. They have something in there---I'm sorry I don't have the specific language.

CHR. HAITSUKA: Any further discussion on Section 3-1? On 3-2, any comments, discussion?

MR. NAHALE-A: This is one of my big issues, and I'm really a proponent of four-year terms for Council. I think two-year terms are really a disservice to the public. It's something I'll be lobbying for aggressively at the Commission level. I'm fine with term limits, like

three four-year terms, or two four-year terms, although I like good Council Members to get a chance to stay in office.

MS. JARMAN: Mr. Chair, I agree wholeheartedly. After serving two years as the County Clerk, it became abundantly clear to me that two years is way too short of a time. A new Council Member comes in and it takes a while for them to get up to speed and to learn basically how to be an effective Council Member. About the time they learned, they are setting up for re-election plus all the other Council Members then are starting up for re-election and so there's this sort of window of time when a lot of things don't get done. As well as, you have this other period of time when there's this huge flurry, and they're in a rush to get everything done, because they might only have two years. Because of that sort of sense that the time is short, things don't always get the deliberation they might have if there were longer terms, and there wasn't this sense of having to get it all done now. I think I would much prefer a four-year term.

MR. SHUMWAY: Mr. Chairman, I don't have a strong feeling either way, but I would be curious what the arguments are for the two-year terms. Obviously, there is a historical reason probably, and I'm not sure what it is.

CHR. HAITSUKA: Does anyone wish to speak in support of a two-year term, maintaining a two-year term? I don't know what the arguments are, but I would think the two-year term was done to allow more of a turnover in the Council, so we wouldn't have Council Members staying in for a long period of time and not doing anything. That's what I would think. Mr. Goodenow.

MR. GOODENOW: I would just note there have been such propositions, Charter Amendments to go to four, and they have been rejected. I think the last one was in 1998, longer council terms was rejected. There may have been another one rejected by the voters. But, I certainly concur on a personal level with former Clerk Jarman.

MS. KAWAUCHI: I don't have a comment in favor or against; I just have some thoughts. Would having longer term limits increase the amount of legislation? Is that a good thing for the County? Is it a bad thing for the County? Would it increase the work load for the Administration? Is that a good thing for the County? Is it bad? If we go to four-year term limits as a proposed amendment, will that increase the amount of discussion? Or would it prolong certain types of actions from happening? Do we need the orderly administration of government to include faster delivery of services? Would a four-year term limit ensure faster delivery of services? Would it make it less likely? Does a two-year term limit make it more efficient, or not more efficient? I'm kind of thinking along the lines of what creates a more efficient and orderly process of government. I know it's probably very difficult for Legislators to have to run for election every two years not knowing whether or not they're going to be in place. Does the normal and orderly process of government, is it hindered by the fact that we have two-year term limits as opposed to having four? I just offer those thoughts. I don't know the answers to them, I'm just offering them as thoughts.

CHR. HAITSUKA: Any further discussion?

MR. NAHALE-A: Like Commissioner Jarman mentioned, when I worked for the Council, I think it does inhibit orderliness. Like she described, Council Members---basically you get elected and you have to campaign from day one. Frankly, a lot of the things that take some courage and initiative to implement, you're not going to get the results of those in two years. In my experience it has made it less likely for Council Members to take the controversial position that they believe is right because they're not going to have time to see the benefits. Also, it's tough to campaign, so I think we are losing some of our quality candidates, because they don't want to campaign. I think the best Council Members really don't like that process. They want to do the work, and so they're going to avoid running because running every two years is kind of tough.

The other thing I think people don't realize is campaigns are a drain on the public. Every time there is a campaign I get requests to buy tickets; can you do this? And we've got better things to do, frankly. I've got better things to put my money towards than ads in the paper and signs. Obviously, I'm passionate about this issue, but I haven't seen us get better government because of two-year terms. I've seen us get worse government.

CHR. HAITSUKA: Ms. Jarman.

MS. JARMAN: I think those are very good questions to ask, and if you also look at it from the point of view, the elections. You now have to have elections every two years, which is hugely expensive and takes up an incredible amount of time. Trying to get people to work at elections---elections only work if you have hundreds and hundreds of volunteers. Trying to recruit that every two years is really, really difficult.

Another thing to look at is the staff. It's very difficult, because the Clerk's term is co-terminus with the Council's term, although I'm going to suggest we change that in the Charter. But assuming it stays that way, the Clerk is appointed by the Council, which basically means appointed by the Council Chair. The people who work here have a new boss every two years very often, and the new boss knows nothing generally, unless they have happened to already work for the County Council. We're lucky to have Mr. Goodenow, because he was the Deputy Clerk for two years plus he had served as the Legal Specialist. But that's the exception, that's not the rule. It's really inefficient for the operation of the Clerk's office to have every two years this change over happening, because it is tied in totally with the Clerk. There are new people appointed, so the appointed people---like we have our Legislative Research Branch which helps review the legislation for the Council Members; those people are appointed by the Clerk. At the end of two years, if the Clerk wants to, they can fire all of them and all of a sudden you would have absolutely nobody in the office who knows anything about assisting the Council Members with actually drafting legislation. That has happened in the past, where somebody fired everybody, and it was a disaster. I think it would also help efficiency in terms of the Office of the County Clerk if the terms were longer, and the Office of Elections.

CHR. HAITSUKA: Are there any other comments? I don't have a position one way or the other, although I find it interesting that the public has rejected it, at least in 1998. I don't

know what the public sentiment is, or maybe there wasn't enough education when this amendment was sent out as to how it would impact the County. So, if we're considering sending this back out again, trying to change the terms, I think maybe we have to consider that there is some opposition out there, or maybe some lack of information out there. When we take on the task, if we do, to change this section we need to educate the public.
Ms. Jarman.

MS. JARMAN: Another thing that always seemed strange to me is they all end and start at the same time. Is there any value to having them staggered? I know in a lot of jurisdictions, five would start in odd years and the other four in even years. In a sense, that also provides some more continuity. Again, it has raised some interesting issues like when does somebody end and when does somebody start? Who signs what paperwork when, because there is this window of time when there is no Chair of the Council because every body--their terms have ended. Between the time of midnight, the day before they get sworn in until such time later that afternoon, when there is a Chair---actually there is no Council, and then there is no Chair. So, having some continuity through staggered terms might help that.

CHR. HAITSUKA: Thank you. Do we have any proposal as far as action we should take with regard to Section 3-2?

MR. ASHIDA: Mr. Chairman, I think this one is going to be a big one for this Commission, no doubt. I think every body knows that. I don't think we have to slay the dragon today. Maybe three things I just wanted to throw out to the Commission just for you to keep in mind because obviously you are going to revisit this. Number one is what Ms. Jarman said about the staggered terms. No jurisdiction in the State of Hawai'i Council has staggered terms. You probably have to check. Maybe Mr. Hookano needs to check on the mainland to see the process in which that's followed. I cannot comment intelligently one way or another whether I think that's an efficient way or not. The other two things to keep in mind is if you do propose movement back to four-year terms, that the section should expressly and explicitly in no uncertain terms state how we will handle Council Members who are currently serving for a transitional provision. We had that problem with---our office was involved in a law suit involving Mr. Arakaki on that very issue. When does it apply? Does it apply to the members who are currently serving? If so, when does it start to apply to them? At the next election? Or, assuming the same election when the voters do change this in 2010. The third thing is--and I'm not an advocate of this, I'm just saying it may come up and may be something you may want to consider---is the County of Kaua'i is, or maybe it's Maui, don't they have all at-large Council Members?

MR. HOOKANO: I think it would be Kaua'i because Maui does have districts.

MR. ASHIDA: I'm not an advocate one way or another, but I just love giving Levi work; so maybe Mr. Hookano can contact the Clerk of that County and see what the benefits are of that. Just something for you to think about. I don't have strong feelings one way or another but having maybe nine at-large---you know we're talking about cutting the cost of government, maybe then, we just go seven at-large. I don't know, I just like to make trouble.

MS. JARMAN: I'd like to respond to that. There has been a lot of literature written on that, at-large versus districts, and how that impacts the diversity of Council Members and the diversity. Particularly with an island of our size, you could presumably, if it's all at-large, you could have six out of seven council members elected from Kona or from Hilo. It could potentially and seriously damage the rural areas in particular. I would be--although I would be open to listening to that discussion--very reluctant at this point on our island to go to an at-large voting system. But I am certainly not opposed to Mr. Hookano looking at some of the advantages and disadvantages, but my initial would be resistant.

CHR. HAITSIKA: Mr. Goodenow.

MR. GOODENOW: I was just going to concur with Mr. Ashida in that this is really one of the bigger issues you are probably going to have to come back repeatedly and look at. I don't know what your mechanism is to putting it later on your agenda. There are all kinds of possibilities. You could have two member districts, right? You could have three at-large and four from different districts. It's almost totally up to you guys. Personally, I do concur with what Ms. Jarman stated. We used to be on this island; we had at-large seats on this island at one time.

CHR. HAITSIKA: I think it was a mix.

MR. GOODENOW: It was a mix, right.

CHR. HAITSIKA: I did have the same questions as Mr. Ashida. As I was driving in today and thinking about this section, how do we do the staggered terms? I thought about that myself as far as the currently seated Council Members and whether or not that would violate any laws if we did something to alter what they are currently serving. I don't have the answers to that. I can see the practical problems.

MR. GOODENOW: I think--well, I shouldn't speak for Corp Counsel--but whatever you want to do, there's an answer. Their going to find a way to make it work, to make that part clear--the transition. I think you can rest assured in that.

CHR. HAITSIKA: And if it doesn't work, they'll be defending the County in the suit following that. Any further discussion? Mr. Unger.

MR. UNGER: If we were to move forward with some language with regards to terms, at what point would we start to do that?

CHR. HAITSIKA: That's what I was trying to determine at this point. Do we try to put something together and try to put it on the agenda for the next meeting? Is it still in the preliminary stage where we need to talk to more people? I don't know at this point. I'm open for suggestions.

MR. UNGER: I don't know that I can come up with specific language right now; but maybe we can all, as part of our homework, come up with some very basic language and we all

discuss our language at the next meeting. This is not a big section here. I think it could be handled fairly easily, but I don't know. I don't know the right way to do it, but I personally would like some more time to think about it and come up with some language and introduce it, maybe next time.

MR. NAHALE-A: Mr. Chair, isn't that the process that we discussed earlier? That we fill out one of those forms, we're looking at doing it like that?

MR. HOOKANO: At this time it appears it is still in the preliminary stages. You guys know you want to look at it. There's no proposal on the table at this time for a specific amendment so everything is still in its preliminary stages I would say.

MR. NAHALE-A: My question is--maybe I misunderstood--that proposal that we deferred, didn't it lay out the process by which we would propose an amendment to the Charter?

MR. HOOKANO: Yes.

MR. NAHALE-A: My understanding of that conversation is that the intent is fine but we just had to postpone it because of the ad-hoc committee problems. I'm still under the impression we are going to adopt something like that, and that's going to dictate how we submit language.

MR. HOOKANO: Right, but any process that you adopt cannot apply to anything that was decided on before. What I would recommend at this point is---what Mr. Unger is suggesting is that at the next meeting everyone comes back with more specific ideas relating to this section for discussion. I'm not sure if at that time you want to adopt anything just yet---any specific language just yet.

MR. NAHALE-A: My preference is that we finish the process that you proposed, clean up the committee language, adopt that first. Then we have a real consistent methodology to proposing language and debating it. That's my preference.

CHR. HAITSUKA: In other words, we wait before taking any action on this particular issue or any others until we get the process in first.

MR. NAHALE-A: Yes, if I understand that earlier proposal correctly, I'd rather finish that first and then start processing language.

MR. SHUMWAY: I'd like to second that. It would be nice to have the consistent rules in place and be really clear. I'm a little concerned about writing by committee too. I think that could be time consuming.

MS. JARMAN: Mr. Chair, I'm wondering if this might be an issue that would be worthwhile having an ad-hoc committee. It's really a huge, huge issue and it would give a committee an opportunity to hear from not just current Council Members, but recent Council Members, and shop this out to the public in a different way to try to get input back on it.

That would, in a sense, also be a way for us learning about why the public didn't vote to change it in the past. It just seems to me this is a huge, huge issue. That whole thing about at-large versus districts etcetera, and then if we change that from a district then does that change the reapportionment? Does that mean that has to be repealed? It seems like there's just really a lot of this, and maybe this is one of those things we should consider an ad-hoc committee.

CHR. HAITSUKA: I agree that a committee might be appropriate. But I don't know if ad-hoc would be the one, because it seems like if you wanted to take public testimony, you might have to do a standing committee.

MR. HOOKANO: No. With ad-hoc committees, they can talk to any one. They can talk to each other, as long as their scope is defined very narrowly and they don't have members that would constitute a quorum of the whole Commission. You could have up to five members on an ad-hoc committee. The Sunshine Law says you cannot have a number that constitutes a quorum. A quorum of this Commission is six, so you could have up to five members to form an ad-hoc committee.

CHR. HAITSUKA: So do you think that an ad-hoc committee would be appropriate in this situation?

MR. HOOKANO: Yes, but you could not form that ad-hoc committee at this moment. You could form it at the next meeting.

CHR. HAITSUKA: Right, but as far as a mechanism to look into this particular section, we could use the ad-hoc committee?

MR. HOOKANO: Yes.

MR. NAHALE-A: So can we request right now that it be placed on the next agenda?

MR. HOOKANO: Yes, we can definitely include it on the next Commission meeting agenda.

CHR. HAITSUKA: Alright, any further discussion on Section 3-2? Section 3-3, any discussion?

MR. NAHALE-A: Real quick question, does anyone know if one year is the typical term proceeding in residency for a year?

MR. ASHIDA: There's actually a State law provision in HRS which requires all officers in the State and County to be residents of the State one year prior to their election. I know--and maybe Mr. Hookano can correct me if I'm wrong, I believe that the Attorney General has opined that that is Constitutional and it's legal. I don't know if there have been any court case challenges to that, but this is true everywhere in the State.

MR. HOOKANO: I believe Mr. Ashida is correct on that.

MR. NAHALE-A: Could it be ten years?

MR. GOODENOW: There are some Federal Supreme Court Cases that deal with this issue. Not exactly in this situation, but I think that it could be an issue.

MR. NAHALE-A: Time is an issue; we just don't really know what---

MR. GOODENOW: I think we can say this is okay since it mirrors the HRS, but if you wanted to make it longer, we would have to definitely do a legal check on that.

MS. JARMAN: Mr. Chair

CHR. HAITSUKA: Yes, Ms. Jarman.

MS. JARMAN: Can I ask Mr. Ashida a question, or Mr. Hookano, or any of the wonderful attorneys we have here, or any body else who might know the answer? What is a duly qualified elector? Does that mean you have to be registered to vote? Because, then the next sentence, "You have to be a resident registered voter for the district for at least 90 days." So I'm not sure why two different terms were used.

MR. ASHIDA: We need to research this a little closer. My recollection is this issue came up at least, not in this last election, but in the election before. My recollection--and don't hold me to this--was we determined a qualified elector was someone who meets the qualifications for voting, but did not necessarily have to be registered to vote. Does that sound familiar, Ms. Jarman?

MS. JARMAN: It sounds reasonable, but I don't recall looking at that issue.

MR. ASHIDA: Yeah, because that came up with Pat Nakamoto at Elections, and I think that's what we settled on. I agree that there is some ambiguity here because of the language. Another perfect assignment for Mr. Hookano, I believe.

MR. HOOKANO: If that's the will of the Commission.

CHR. HAITSUKA: Is that something that someone wants Mr. Hookano to research?

MS. JARMAN: I think it would be helpful to know if that is what a duly qualified elector is, and maybe he can do some research to find out at what point in time, what year---like if one year is fine, but at five years are we running up against a Constitutional problem, or ten years in terms of the residency requirement? It is essentially a residency requirement, so I'm assuming that's a Constitutional issue.

MR. ASHIDA: That's correct, and the reason--now it's getting a little clearer in my mind--we came up with that is because what Elections did when they looked at the term "qualified

elector,” they looked at the Statute in terms of the criteria for determining whether person was able to register in that district. There are certain specific requirements with respect to establishing a residence versus just what constitutes a residence and so forth. So, that’s what this is saying. It’s saying, we don’t want you just being on paper, living in the district one year prior. You have got to have at least lived in the district. Maybe you weren’t registered to vote there, but you actually lived in that district or in the County, rather, for one year prior. I think that’s what it was getting at. So a qualified elector, as I recall, we looked to the HRS language regarding what the qualifications were for voting, even if you were not registered to vote. They were more principally concerned about not having like a sham residency in the County and you were actually living in the mainland or elsewhere.

MR. NAHALE-A: Mr. Chair, and on that note, because it would probably be the same area of research, I’m wondering if HRS defines what resident means? There are folks that have two households, can they claim both? It would be nice to know what that meant.

CHR. HAITSUKA: I believe HRS has definitions.

MR. HOOKANO: I think HRS could provide some guidance, I don’t know if it definitively defines “qualified elector.” I know that the Elections Statute does specify what would constitute someone to be able to register to vote, which is one of the factors that go towards residency. In some legal cases, they define a resident as someone who intends to make that location their permanent domicile. As opposed to a transient person, which is like a college student, who is just here for school and digging out right afterwards, as well as military; someone who is stationed here might not intend to make Hawai‘i their primary residence, but they are residents for the purpose that they are living here. So, there are several factors that would go into that, I’m sure. Just so that I’m clear, the Commission does want me to look into this issue on whether 10 years would be a problem, the definition of a qualified elector, and the difference between that and a registered voter?

MR. NAHALE-A: I’m not really asking for 10 years, I’m being facetious. But, I am curious if we’re bound by the one-year term.

MR. HOOKANO: I’m using your words there.

CHR. HAITSUKA: Alright, so you’ll research that for us?

MR. HOOKANO: Certainly.

MR. GOODENOW: If you don’t want your Counsel to do it, the Clerks’ Office would, but of course I would assign it to Levi.

MS. JARMAN: He’s going to have a student pretty soon, so he can assign it to his student.

CHR. HAITSUKA: Any further discussion on Section 3-3? Section 3-4, any discussion?

MR. SHUMWAY: Yes, I have a question about this. In the middle of this section, it says that if there is a vacancy, that formal action shall be taken to fill the vacancy at a regularly specified meeting. What is formal action? It seems really vague to me. I have no idea what that means. I'm wondering if you can you clarify that? Does it need to be clarified?

CHR. HAITSIKA: Does anyone have experience with the situation? Mr. Ashida?

MR. ASHIDA: Yes, this occurred when Bobby Jean Leithead-Todd had decided to resign from the Council. At the time Jimmy Arakaki was the Council Chair and I think the formal action that was taken, if I recall, was he introduced a communication to the Council setting forth the necessary steps that the Council would need to take in order to fill the vacancy, and the consequences of them failing to do so would be, the Council Chair gets to appoint the person outright. There was a process where they accepted--I think they set up an application process. By application I mean, like a deadline to submit---to throw your name in the ring. Mike Tulang was selected by the majority of the Council to replace her. I think, you are correct, there isn't any---I think the formal action that they are referring to here is that it has to come to an actual vote of the Council. That's what they are talking about.

MR. NAHALE-A: Couldn't we just say a majority of the vote of the Council?

MR. ASHIDA: Well, let me see, I think formal action means more than just a majority vote. It means following the protocols and rules established by the Council. I guess I had the benefit of seeing this happen. Mr. Arakaki's staff sent out the notices as required, they met, they deliberated on the process that they were to follow and---

MR. SHUMWAY: So if I understand it correctly, if this happens, they basically can make up any procedure they want? They can define formal action?

MR. ASHIDA: No, I think formal action throughout this Charter generally means five votes or six votes when specifically required because certain actions of the Council require six votes. Mr. Goodenow, is that your understanding?

MR. GOODENOW: I concur. I kind of agree with you in a sense. It already says that should the Council fail to fill a vacancy, right---I mean the only way the Council can do anything under another section is by majority of the entire membership. Maybe it's redundant, but I see no problem with the way that it is now.

CHR. HAITSIKA: Any further discussion on Section 3-4?

MR. NAHALE-A: I thought we had a provision that within a certain timeline it had to go---hold a Special Election.

MR. ASHIDA: I don't think that applies to Council Members. That might be for Mayor only and I think the Prosecutor is also exempt from that. I think it's only for Mayor, but I might be wrong. I can check.

MR. NAHALE-A: Especially if we were successful at getting four-year terms. I would be especially worried that if we lost somebody in the first month and then we could appoint somebody to a four-year term, I would want to consider adding language to hold a Special Election, depending on the time frame left in the term.

MR. ASHIDA: Just for your information, you are talking, Mr. Nahale-a, about section 5-1.4 regarding Vacancies in Office and Special Elections for the Mayor. I do not believe there is any provision for the Prosecutor or Council Members for Special Election.

MS. JARMAN: We can also check and see if there is anything in State Law. Or we could ask Pat. Pat is the Elections coordinator for the County.

MR. GOODENOW: My understanding is that, no, for Council Members there is nothing. But you could easily write, if there were four-year terms, just kind of copy what the Mayor has, that kind of thing.

MR. NAHALE-A: In terms of the actual Charter Amendment, we can actually tie two sections together, right, so we would change that only if the four-year terms were approved.

MS. HONMA: Mr. Chairman, I have a question. Wasn't Barbara Marshall a Council Member, and didn't they have a Special Election to replace her?

MR. ASHIDA: Yes, I think the Honolulu Charter may have different requirements. I think they are going to have a Special Election. I think the deadline was last week.

MR. GOODENOW: April 23, 2009 is the Vote by Mail. They have four-year staggered terms too, I believe. She was, I believe, at the beginning part of her four-year term.

MR. ASHIDA: Yes, and that's where they have the Special Election. Like for the Mayor, it's kind of confusing, but if he's further along in his term, then the Managing Director just fills out the end of the term. But if it's earlier along, then the Special Election is called. Right, Kenny? That's how it works?

MR. GOODENOW: Correct.

MS. HONMA: So, if we do--like going into this four-year term thing--then we would have to put in provisions for that.

MR. ASHIDA: Yes, that's what Mr. Nahale-a was talking about. That's where it gets complicated because if this, then this---

CHR. HAITSUKA: So we would have to go through and make sure all the Sections are consistent.

MR. ASHIDA: Right, because what if one passes and the other doesn't, then we might be stuck with something that no make sense.

MR. GOODENOW: I think, though I may be wrong, you could do a Charter Amendment that incorporates two changes to the Charter in one question.

MR. ASHIDA: Mr. Goodenow, Ms. Ford is giving you “stink-eye” over there in Kona. Or is the microphone off?

MR. HOOKANO: No, they can hear what you’re saying, Mr. Ashida.

MR. ASHIDA: Ms. Ford?

MS. FORD: Do you want to talk to me?
(At this time, Council Member Brenda Ford came forward to address Commission members.)

MR. ASHIDA: Good afternoon.

MS. FORD: Good afternoon.

MR. ASHIDA: No, we were just asking whether you could hear us or not.

MS. FORD: Yes, we can hear you over here.

MR. ASHIDA: Okay.

MR. HOOKANO: I would just like to comment on that question about pairing two different portions of the Charter. That is possible as long as they are related to each other and they affect each other in some way. You couldn’t have two completely different questions mixed into one Charter Amendment.

MS. JARMAN: Mr. Chair, if we do form an ad-hoc committee on Section 3-2, maybe we should add Section 3-4 into that, because it is interrelated. We could look at the City and County of Honolulu and see how they do it, since they do apparently have four-year staggered terms and do have Special Elections. We could collapse them.

CHR. HAITSUKA: I think that’s a good idea. I don’t know if there are any other Sections that might be affected. I can’t recall any offhand.

MR. HOOKANO: If I may make a suggestion, Mr. Chair. When the ad-hoc committee is formed that will be looking at four-year terms, part of its duties could be to see how that change would interact with the Charter as a whole. Through that, they’ll surely come across things like, how do you fill the vacancy and how that provision of changing to four-year terms interacts with the Charter as a whole.

CHR. HAITSUKA: So, we don’t necessarily have to specify which sections that they need to look at?

MR. HOOKANO: Yes.

CHR. HAITSUKA: Thank you. Is there any further discussion on Section 3-4? Section 3-5, any discussion? Section 3-6, any discussion?

MR. HOOKANO: Mr. Chair if I may just bring something to the Commission's attention. This Section was amended at the recent election. I believe our Secretary, Ms. Eoff, has provided all of you with the text of that amendment, which separated out the Legislative Auditor's Office. It removed the appointing authority from the County Clerk to the County Council. I believe that's included in your folders as provided by Ms. Eoff. Also, we have the Legislative Auditor, Ms. Colleen Schrandt, available if any discussion occurs relating to the Legislative Auditor's Office.

CHR. HAITSUKA: Do we have any questions for the Legislative Auditor relating to this Section?

MR. NAHALE-A: Here's another Section where I would prefer to get some input on how it's working.

MR. GOODENOW: Just from my standpoint, as far as being the Clerk, I think (a) tends to work fine. The Mayor comes in, we start the process. I don't see any problem with that. Subsection (b), I think everything is fine. Sometimes if it's vague you leave it to us to interpret. If you look at (b) subsection (6), it says the Clerk shall "appoint necessary staff for which appropriations have been made by the council subject to civil service laws and classifications..." You know, there's a debate over does that mean do all employees of the Council have to be civil servants? So, our current Human Resource Director has taken the position that if the Clerk appoints, they have to be Civil Service. So for instance, all of the transcriptionists, those people are all civil servants. If the Council appoints, then they're appointed. However, there is some gray area. For example, Mr. Hookano, well I can say I'm appointing him on behalf of the Council and I was the hiring authority. Our Legislative Research Branch, they are appointed as well. But, maybe they should be civil servants. It's really up to the Director of Human Resources as to how they decide that. It's somewhat vague. We may not have to change it and we just let the Human Resource guy do what he's been doing and we muddle along. But that is an issue. I don't know the answer, I just know that what we do, it doesn't totally relate to what's written.

MR. NAHALE-A: Are you saying that if you appoint them they are Civil Service, but they are still at-will hires?

MR. GOODENOW: No, civil service they get the full collective bargaining.

MR. NAHALE-A: So you inherited the previous appointees?

MR. GOODENOW: Well, fortunately I agreed with all of the appointees made by Ms. Jarman, so we kept everyone.

MR. NAHALE-A: But you could.

MR. GOODENOW: Oh yeah. Just to give you an idea, the Clerk's Office consists of the Elections Division, those are all civil servants except for the temporary hires, of course. Then we have the Machine Room, they do the copying for the County; they are all civil servants. We have Council and Committee Services, they do the transcriptions; they put out the agendas and help with the logistics of the meetings. I think we have about 11 of those employees, they are all Civil Service. Then we have the Legislative Research Branch who help to draft Bills; they're appointed; Mr. Hookano is appointed. Each Council Member gets two staff, an Aide and a Legislative Assistant; they're appointed. But again, I don't know if number (6) really provides guidance on how we do that. I know Ms. Jarman could probably give a lot of good points on that. Like the Legislative Research Branch, we could totally gut them and replace them if I'm the new guy, right--political appointees. But, there's a lot of institutional knowledge that we want to build up as far as drafting, so maybe they should be civil servants.

CHR. HAITSIKA: Any discussion? Ms. Jarman.

MS. JARMAN: When I first came on as Clerk and I read that I thought, how in the world do I get to appoint any body? I thought it had to be civil service. It's just this weird interpretation that Human Resources has come up with that gives more flexibility to the Clerk and the Council. But I do think that might be something we can talk to Human Resources and ask them to come in and give us some suggestions. I don't know why it said they had to be civil servants, but I kind of agree that LRB, Legislative Research Branch, should be civil servants, because you really do need that continuity and these people are experts in what they do.

As you know, I was the Clerk, and Kenny is a Clerk, and one of the things that struck me is that the County Clerk--there are absolutely no qualifications for the County Clerk. You don't have to be able to read and write, there's none. All you have to do is be appointed and voted on by at least five members of the Council. After having served as County Clerk for two years, that is not an easy job. It requires a lot, and a lot of skills. You are managing about 60 people. You have nine Council Members you have no control over. They each have two staff members that you have almost no control over. Then you have the civil servants who you have a fair amount of control over, but you are bound by the Union. Then you have a certain amount of people you can hire and fire at will. All of these people have to work together in order to make the Clerk's Office and the Council function. It's not an easy job plus you have all of these other hats that you wear. You can see you are also---you conduct all elections. You are the Chief Elections Officer of which you know nothing about elections unless somehow, you have worked them before, and you are the custodian of the County Seal which basically means it sits in your office, and people have to ask permission to use it.

It just seems like there should be some qualifications for the County Clerk, other than a totally political position. So, it's just something to think about. The other thing, City and County of Honolulu has gone with a six year contract for the County Clerk. It's also very disruptive when a County Clerk ends after two years. It's very, very disruptive. Somebody

new comes on and the staff is constantly having to spend time educating somebody new about their job. Just like it takes Council members awhile to get up to speed, it takes the Clerk time to get up to speed. I had suggested maybe the Council themselves could pass a rule where they would have a contract. Right now, because it is two-year terms, you would have it be at least three years. So when new people come on, there is some consistency. You don't have it be a totally political move every time a new Chair comes on and the Council reorganizes. Then the new people who come on have time to work with this Clerk and decide whether or not they think the person is competent, and then you could go ahead and let them go. It's not efficient, as you were saying before, Ms. Kawauchi, and it's just so political; but the job needs to be much more apolitical, I think, in order to help the Council function.

CHR. HAITSUKA: With regards to the qualifications for the Clerk, would the Charter be the place where we should have something in there about the qualifications?

MS. JARMAN: I don't see why not, or you could direct the Council to establish qualifications.

MR. HOOKANO: I would just like to say that other department heads' qualifications are included in the Charter, so it would be an appropriate place to include those.

CHR. HAITSUKA: It's something we should consider then. Any further discussion?

MR. NAHALE-A: I'm curious how the new Legislator Auditor's office is going? I know it's new so maybe there hasn't been enough time to see how the changes have worked. Do we anticipate a meeting to address that at all?

MS. SCHRANDT: It is very new, so we are still trying to work out some little bugs and---

MR. GOODENOW: I just told her she's independent.

MR. HOOKANO: Excuse me, if I may interrupt for a second, Ms. Schrandt, can you please identify yourself for the Commission?

MS. SCHRANDT: I'm Colleen Schrandt, Legislative Auditor. The language the way it was proposed was actually taken from model language from the Association of Local Government Auditors. The language that was put in has pretty much been tried in many governmental entities and been revised as they've learned and gone along. I think the language is good. It does not go to complete independence, which leaves some inherent kinds of issues, but it's a major step in establishing independence so I think the language is good as it stands.

MR. NAHALE-A: By that do you mean you can be removed by a two thirds vote? Is that what you are referencing in terms of independence?

MS. SCHRANDT: There has to be a mechanism to have a check and balance on every position, even the Auditor's position. I agree there has got to be some mechanism for removal. The fact that we are still housed actually, technically, under the Legislative Branch does potentially still create some issues for lack of independence. That's an issue not just in this county, that's an issue in many governmental units. Most of them are established in the same way. The only other thing that--I'm not sure if I should bring this up. If you look at the model language and you look at the way the Auditor is set up in a lot of jurisdictions, a lot of times they will establish, also by Charter, an Audit Committee. I know there was a lot of debate. I do think eventually that's something that should happen. The impression I got from the people who were looking to do this was that they wanted to take it one step at a time. They thought just establishing the office and the independence was the first step, and at some point down the road they could look at establishing an Audit Committee as well. If you are interested, I can also provide you with model language for doing that.

CHR. HAITSUKA: Any further questions? Thank you.

MR. HOOKANO: Mr. Chair, at this time, if there are not going to be any other questions for Ms. Schrandt, I know she's a busy woman; if she could get back to her duties, or would you like her to stick around?

CHR. HAITSUKA: Any further questions for Ms Schrandt?

MS. SCHRANDT: The only thing I will offer, there are Governmental Audit Associations that we'd be happy to, if you would like us to look up model language for anything, we'd be happy to do that for you.

CHR. HAITSUKA: Thank you, we appreciate it. Any further discussion on Section 3-6? Section 3-7, any discussion?

MR. GOODENOW: If I could make a comment, Mr. Chair. I'm sure Ms. Jarman remembers this. You'll see there it says, "The affirmative vote of a majority of the entire membership shall be necessary for council action." Just to let you know, we have no problem with the way it's working now, but this does rely on our interpretation of the Charter. The way we interpret this to mean is that if you want to pass a bill or a resolution, you have got to have five votes. It can't be four to three, you have to have at least five. Another way to look at this, as was pointed out in the last term, you could say, what about if you had a motion to kill a bill, the reverse? If you had, say, a situation of like a four-four tie, you're not really passing it, but should it be dead? You can't really kill it. Do you have to have a majority to kill something? Now, Corporation Counsel resolved this issue by interpreting it to mean--kind of on a historic basis--that if you get a four-four vote the Bill is dead. That's how we treat this. But, again, that's how we have interpreted it. I have no problem leaving it the way it is, but you have to realize, there are some State laws with State boards where they interpret it differently. I wanted to bring that to your attention.

MS. KAWAUCHI: Mr. Chair, is it possible to obtain---if the Corporation Counsel's analysis was reduced to written form, is it possible to obtain a copy of that so that we can take a look at what they put together?

MR. GOODENOW: I'm not sure if it was, it came up at a meeting. I'm sure our Legal Specialist, Mr. Hookano, could work on something.

MS. JARMAN: Mr. Chair.

CHR. HAITSUKA: Yes, Ms. Jarman.

MS. JARMAN: All this came about because I interpreted it differently than anybody had ever interpreted it in the past. I felt like Council action includes inaction. If you get a four-four, is that the same as defeating something? Action means inaction. What you've done is you've taken an action, you've defeated something or you've tied. Action includes something that you actively do, but it also includes you not taking action. There is some case law for the Board of Land and Natural Resources that supports that interpretation. Everybody but me hated it. Corp Counsel hated it, the Council Members hated it, everybody hated it. So, I just kind of gave in and said fine, no big deal, we'll do it the way they've always done it. Because of that Supreme Court opinion, I think that it is potentially subject to challenge in court. If we could clean up the language so we know exactly what that means, a four-four tie means what ever happened failed, then I think that would be helpful. I'm a lawyer, I think about these things, but it might not even be that big of an issue. Until I made it an issue, nobody had ever considered it an issue, and I finally gave up on it.

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

MR. HOOKANO: Mr. Chair, I recall this conversation and this coming up in a meeting. I don't want to speak for Corporation Counsel, in case I'm misquoting them. But if I recall correctly, part of the rationale was when they said that not garnishing five votes considers a measure defeated, part of the rationale was it should be more difficult to pass something then to maintain the status quo. I recall that was part of the rationale being in that situation. Changing something should be more difficult than maintaining the status quo.

MS. KAWAUCHI: Mr. Chair, I'll just share with the Committee that this specific sentence in this Section has come up to me before by a member of the public, so I think there might be some room for ambiguity there. If there is, then I don't know if we should---it might be a good idea for us to think about some language just to make it clear so that there's no further ambiguity and the County is not subject to any kind of action. If there is a Supreme Court case, I would love to read it.

MR. HOOKANO: I could certainly research that issue for the Commission and find that case for all of you and provide a brief for what that case says.

MS. JARMAN: I can give you the case.

MR. HOOKANO: I think I actually have it on my computer, now that I think about it.

MS. JARMAN: Yes, because I think we talked about it before.

CHR. HAITSUKA: Perhaps maybe a short memo on that then we can see whether or not we need to clarify this so there's no ambiguity.

MR. GOODENOW: It's kind of difficult though, because if you make the motion, I move to pass Bill 305---well what if you make the motion, I move to defeat Bill 305? I'm sure Mr. Hookano can work something out.

MS. JARMAN: Therein lies the problem. Because if it's a four-four, then both of those motions would have been defeated.

MR. HOOKANO: I believe according to Robert's Rules, all motions have to be stated in the affirmative so that a majority vote would approve something. A majority vote in the affirmative would approve something and not use a majority vote to defeat something in that sense. I don't think that sounds clear, but the ayes should always be for approval.

MR. GOODENOW: But again, do we put that in our Charter, or do we rely on Robert's Rules and other things? It's up for you guys to decide.

CHR. HAITSUKA: Are there any further comments on Section 3-7?

MR. NAHALE-A: We don't have to get too far into it, but are the rules about meetings, how often we meet and where, is that working?

MR. GOODENOW: I'm glad you mentioned that. We now, by Council Rule, have half our meetings in Kona and half in Hilo. But, some people have argued, well, is that fair? What about Nā'ālehu? What about Hawi? There are cost factors with that. The other thing is, and I may be wrong, but I believe that Hilo is the County seat. It's not established in our Charter, I believe it's a State Law that established that, but I don't know. Would this seem restrictive? Do you want to give leeway? What if we didn't have the four meetings there? It's a policy call for you, but it's highly, highly politically charged. We tried to go from 10 and 10 to 8 and 11, and we got email; people were upset, Council Members saying that it's a plot by Hilo--no, I won't say that--and so we changed it back. But, it costs us approximately about \$6,000 to \$7,000 more to hold the meetings in Kona. That's including the overtime, the mileage, the extra money for the video people to go out there, the hotel rooms, the per diem. But, it's really your call. I'm neutral, but it does cost resources to go to Kona.

MR. NAHALE-A: So on that issue, the dollar amount really helps me personally, but I'd like to know how many folks testify from Kona versus Hilo.

MR. GOODENOW: Well, you know it's really interesting. This is not scientific, but when we first started going to Kona, I think more people showed up. The last few meetings in Kona there really weren't that many testifiers. It depends, if it's a really hot Kona issue, I

know in the past it was 50-50. They would try and schedule that issue to be in Kona. To be honest, now, because we are in our temporary room and the seating capacity is 40, I always try to ask the Chair to put controversial things in Kona because we have a huge ballroom where everyone can fit. To be honest, I have not seen the turnout--correct me if I'm wrong, Mr. Hookano--it's dropped down. Sometimes there is more staff than public in the room.

CHR. HAITSIKA: Ms. Jarman.

MS. JARMAN: On that issue, one of the advantages of having it over there is, as you can see, the Kona office only seats about twelve people. It's very small, so when we have meetings in Kona we have it in a hotel with a whole ballroom. So, you would want to at least have enough meetings over there and have them scheduled so that you have what you anticipate to be the hot button items. Sometimes we all get totally fooled. We think it's going to be a nice quiet meeting, and then we come and there are 50 people signing up to testify. But, that is one of the problems right now; the Kona office doesn't hold a lot of people, which sort of helps to justify paying that extra money to have the meetings over there. That's just part of the equation.

MR. GOODENOW: Eventually, we'll have the West Hawai'i Civic Center. I think if you ask me my feeling on this--because it is such a political issue--I mean, maybe that's something to consider. Does it belong in the Charter or should you let each Council decide what's best? That is just my observation.

CHR. HAITSIKA: It seems like the Council is meeting more than is required by the Charter.

MR. GOODENOW: That's correct, because we passed our rules to make it 50-50.

CHR. HAITSIKA: So, I don't know if we necessarily have to amend that since you already are having more meetings than are required. You can always go down to the minimum, I guess, which would be quarterly.

MS. JARMAN: There has always been something that I haven't understood what it means. Kenny, do you know what it means? It's the next to the last sentence. It says a majority of the entire membership of the Council shall constitute a quorum. I get that, but what does it mean that a smaller number may adjourn from time to time and may compel the attendance of absent members? What exactly does that mean?

MR. GOODENOW: I believe Mr. Hookano did a research project on this. I think it was just historical language that is often used, but basically it means if you have less than a quorum show up at a meeting--I know it says adjourn, and you think of that as ending a meeting--but what that just means is we can talk about, where is Bob, let's get him over here, or where is Joe, let's---That's how we interpret it, but you're right, why do they use adjourn? But, historically, it's been that way from the first Charter.

MR. HOOKANO: If I might say, I think Mr. Goodenow is correct in that. My understanding of that section is that if you have less than a quorum, the only thing you can do is wait for other members to show up, call them up and say, where are you? If you cannot get the quorum, then basically the meeting is just cancelled. It is adjourned through cancellation. That meeting is done. A new agenda has to be filed if you are going to meet again on those issues. That's my understanding of that section. That's my reading of that section. You cannot transact business because you do not have a quorum.

MS. JARMAN: Thank you.

CHR. HAITSUKA: Any further discussion on Section 3-7? Section 3-8, any discussion? Section 3-9, Resolutions, any discussion?

MR. SHUMWAY: I was just going to ask, if you look at Section 3-10, ordinances are described in detail. Resolutions are not really defined at all. It's actually just my opinion, but I sometimes hear about resolutions, and I just wonder if they're really within the jurisdiction of the Council? It seems to me that people use resolutions for a lot of political purposes, or can, anyways. Personally, I would like to see that limited. I think that sometimes it's a waste of time and even embarrassing. I don't know if it's that important, but perhaps having resolutions defined better would help. Perhaps using words like jurisdiction, and limiting resolutions to what falls under the jurisdiction of the County. I'm not going to offer any specific examples of what I don't like, but I think people kind of know.

MR. HOOKANO: If I may, Mr. Chair. Mr. Shumway makes some excellent points there. With regards to resolutions, inherent within the definition of a resolution is that it doesn't have the force and effect of law. So, it's really just a statement of the Council. Also, along with resolutions, there are some things that the Council does specifically do by resolution. One of which is authorize the purchase of land through eminent domain. That comes through the Council through a resolution. That's the channel that it uses. It's not done through ordinance. I believe there are other things that are done specifically with resolutions. Mr. Clerk if you could---

MR. GOODENOW: Yes, if you look at that 3-8, it says, "Non legislative acts of the council may be by resolution and, except as otherwise provided by law, no resolution shall have the force and effect of law." What that means is our HRS, our Statutes, require resolutions, as Ms. Jarman explained earlier. Setting the fuel tax, and there are other examples, eminent domain. I love what you are saying. You must have had a former life as a Clerk. These resolutions---you're going, what the heck, this is embarrassing. They have no authority; they send the Legislature all of these things about numerous bills. But, on the other hand, it's almost like---that's all, we have two things. We have ordinance, and everything else is resolution. So, you do want to have some breadth there. If you define it too tightly---sometimes it's good to send a resolution to the Legislature. There are times when that is appropriate. I don't know, maybe that's something Mr. Hookano could look at. I would be a little leery of---it's meant to be something that's loose, because it doesn't have the force of law. It can even be congratulatory to somebody, winning baseball games or something. It's very open. It's similar, I might say, to the State House and the State Senate. They can do

resolutions on anything. It's kind of a traditionally broad tool. But if you're willing to look at narrowing it, I would be happy to work with Mr. Hookano to see what we could do.

MR. NAHALE-A: That's the way I have always understood it. It's the only way the Council can voice their opinion. They have no other mechanism to do that.

MR. GOODENOW: That's really a good description right there.

MR. NAHALE-A: So, we're really commenting on the worth of the opinion.

MR. GOODENOW: That's probably very true.

MR. SHUMWAY: You're right. One of my questions is you don't elect Council Members necessarily to give their opinions on things other than what falls within the jurisdiction of their job as a County Council Member. And that's where my concern lies. Sometimes they are giving their opinions through resolutions about stuff that doesn't really have any bearing on what they should be doing.

MS. JARMAN: The flip side of that, even though I remember sitting through hours and hours of testimony on something the Council had no jurisdiction over and thinking, we're going to be here until 10:00 p.m. or 11:00 p.m. tonight. It does provide a local forum for local people to talk about issues that are happening either in the Federal government or the State government. The people on our island don't have the ability to have the same impact, so they can use the Council to show how deeply they feel about something in a way that you can't do, because you can't all fly over to Honolulu. It also serves the purposes for the Council of hearing what issues are really important and it gives them ideas so that when they are trying to decide what legislative packages to recommend to the State. So, there is that inherent value, but I agree with you there were times when I saw the resolution coming through and I was wishing I could find a way to talk the Council Member out of putting that on the agenda. I'm kind of like you; I have mixed feelings about it. I see both sides and certainly from the Clerk's position it would be really nice to have fewer of those and from an efficiency point of view, definitely.

MR. SHUMWAY: This may be a necessary evil, not even an evil, but the vagueness of it may be a necessary evil. I'm willing to accept that if you guys think that's true. So we don't need to give Mr. Hookano any additional work.

MR. HOOKANO: Mr. Chair, if I may make some comments on the subject of resolutions. Ms. Jarman and Mr. Goodenow both indicated earlier that I did some research on resolutions. In Honolulu they have a specific section in their revised ordinances of Honolulu listed as policy resolutions. I contacted one of the attorneys in their Council Services office at that time; a good friend of mine, Jim Williston, and he offered some excellent language about what Honolulu saw as their Policy Resolutions. His definition of it was that pure policy is made through resolutions such that is meant to guide the function of government without being so strictly enforced or regulatory such that an Ordinance would be more appropriate. So they use their resolutions as a form of guiding what they felt would be an appropriate

action without making it an ordinance. So, if the Administration said, well, this wouldn't work for us in this certain situation, there's no penalty for them not following it. Also, along those lines, it's a resolution that has continuing effect. It's not meant to apply to a single situation.

There was a situation in Honolulu where the City Council wanted, I believe it was the Department of Parks of something, to lease a specific structure for a specific purpose and they did that through resolution. They said that the Administration had to do it. The Supreme Court of Hawai'i said no, because it's so specific; that it's not exactly a policy statement on behalf of the Council through a resolution. For example, also directing a department head to take specific action through a resolution would not set policy. So it's really what is appropriate for a resolution. It's all other statements of the Council, really, but is it something under jurisdiction. That's a policy decision. Both Clerks here have commented that they have seen things that were appropriate, some things that were not. But, like has been stated, it is the other voice of the Council. How appropriate those resolutions that come through are, the Clerks certainly try their best to guide the Council Members in making sure that it's appropriate. I just thought that those things would provide some insight for this Commission about what Honolulu has viewed as the use of their resolutions. I'll leave it at that.

MR. NAHALE-A: Mr. Chair, Mr. Hookano brings up a lot things that Mr. Ashida alluded to earlier. To Mr. Shumway's comments, I think this is one of the issues we should take up as a Commission to really lay some boundaries. From the public's point of view, I think that a lot of times we sell them a false bill of goods. You ask for help and they say I'm going to introduce a resolution. They come down to testify, they weigh in and they think they got something, and they didn't. I'd be interested in pursuing it further; it might need to be left alone, but I think it's worth the conversation.

MS. KAWAUCHI: Mr. Chair.

CHR. HAITSUKA: Yes.

MS. KAWAUCHI: The one thing I would just caution us on is that one of the words I heard Mr. Hookano use is "ordinance," so I just want to be careful that if we are reviewing this issue that we be clear as to whether or not a change should be an amendment to the Charter or is it more appropriate as an ordinance. So should the Charter stay a little more open with regard to definition of resolution and more specificity be established through the passing of an ordinance? Or, should the Charter itself be amended to change language and to further clarify what a resolution is? I just want to offer that as a word of caution, as to whether or not it should be a proposed Charter amendment or if it should be something that should be passed through an ordinance.

MR. GOODENOW: I think that Honolulu's Charter is very similar to this here, and you're right, what they do is they have all resolutions, but they just make this distinguishing type by ordinance.

MR. HOOKANO: I would actually like to clarify that. I asked my friend, Jim Williston, about that as well. They've compiled that list of policy resolutions on their own. It's not mandated that they compile these resolutions. The criteria they use is that it's not a specific instance, it's meant to have continuing effect. There's nothing really official about them compiling those resolutions, as I understand it. They do it on their own.

CHR. HAITSIKA: Mr. Takaba.

MR. TAKABA: The experience that we've had, especially at the Department of Finance when I was there, is that usually a resolution---

MR. HOOKANO: Mr. Takaba, if I may interrupt for a second, please introduce yourself.

MR. TAKABA: My name is Bill Takaba, Managing Director. I always looked at a Policy Resolution as one that carries out the purpose of an Ordinance. For example, if we're about to transfer funds---if a department needs to transfer funds to another department or agency, then the ordinance would say they need a resolution to do that by the County Council. Another one would be like if you were entering into a multi-year lease for property you would want to lease for, say, five years, in order to do that the Council would have to approve it for five years. My personal belief is that a resolution becomes part of the policy of the ordinance; it carries out the ordinance; because now you have concurrence by the Council to allow you to do something that the ordinance requires. That's just my personal belief.

CHR. HAITSIKA: You're saying that it's a mechanism on how you carry out an ordinance.

MR. TAKABA: Yes, it's a mechanism to carry out an ordinance. Then the resolution carries the force of policy, because you can't carry it out unless the Council would authorize you to do it, as an Administration.

CHR. HAITSIKA: You found that helpful in your prior position?

MR. TAKABA: Yes, I did.

CHR. HAITSIKA: Any further questions for Mr. Takaba? Thank you, Mr. Takaba. Is this something that the Commission should take up at some point? I think that was what somebody suggested.

MR. SHUMWAY: I'm a little torn. I think, certainly, resolutions serve an important function. My only concern with this section here is just the complete lack of definition. Maybe it's not necessary. I defer to you guys who actually have to work with this. If you guys don't think it needs to be any further defined, I'm okay with that.

MR. GOODENOW: I think because we only have two options, ordinances or resolutions, it's kind of good that it's not defined. But I do sympathize, sometimes they do use them, and you think, gee---

CHR. HAITSUKA: Anything further?

MR. GOODENOW: You know, I was going to bring this up in Section 3-10, but I see my staff, they keep coming to the window. They need approval of the agenda, so I'll comment on this and then if you'll excuse me, and I can come back if you have questions.

MS. JARMAN: Excuse me, Mr. Chair; I wouldn't mind a 10 minute break, or 5 minute break.

CHR. HAITSUKA: Let's take a 10 minute break.

MR. GOODENOW: Thank you.

MR. NAHALE-A: Could we check if any one else is leaving? Since, if we lose one person, we lose our quorum.

CHR. HAITSUKA: Is somebody leaving?

MR. HOOKANO: At this time, if you lose one person, you would still maintain your quorum. However, I would have to say that because we noticed this meeting as a videoconference meeting with Commission Members present in Kona, this connection between Hilo and Kona has to be maintained for the duration of the entire meeting. Even if Mr. Unger were to leave, we have to maintain that connection and that site has to remain available if anyone were to show up.

CHR. HAITSUKA: Does somebody have to leave?

MR. SHUMWAY: Actually, I do have to leave in about 10 minutes.

CHR. HAITSUKA: Anybody else?

MS. JARMAN: What time do you have to leave?

MR. SHUMWAY: At about 4:50 p.m., at the latest.

MS. JARMAN: Maybe we should keep going until you have to leave, then--so you can have your full benefit of your time.

CHR. HAITSUKA: Okay.

MR. GOODENOW: Okay, just briefly, on the reading. Again, I have no problems with the way that things are now, because it's working. But, this relies on our office's interpretation of what the word reading means, because there is no definition provided. Traditionally, a reading has meant, you read it out loud or by title and there's an affirmative vote. So to pass first reading you've got to have the vote. When Ms. Jarman was Clerk, and I agreed with her, you could also---it says reading of bill can be by title only. So, what if you have a

meeting, you read it, and then they postpone it? Then you have another meeting, they read it again. Does that qualify as two readings? Is reading, just reading it? Or, does it include an affirmative vote? We interpret it to mean you read it and a vote. But, there is no real clear definition of reading in there. I don't know if you need to change anything, but I just thought I'd bring that to your attention.

MS. JARMAN: It's important, because everything has to have either two or three readings. So you have to know what that means. What the confusion was, because it said reading may be by title only, that implies it's reading it into the record. But if things are supposed to have two readings, that implies you need to have some discussion and vote so it happens at two different meetings; and people get to listen and it's debated. So, it was just using that word, we interpreted it the way Kenny was saying. I think that makes more sense. But it did raise a little bit of question when we were trying to figure out what a reading is, because it came up as an issue, what is a reading?

MR. GOODENOW: Those are really only my comments. I think the system does work well. If you would excuse me, unless you have something specific you want to ask. I'll be here at most all your meetings.

MS. JARMAN: Are you coming back?

MR. GOODENOW: Yes, I can come back in about 15 minutes or so.

CHR. HAITSIKA: Thank you. Are we done with 3-9? We're on Section 3-10. Are there any comments on Section 3-10?

MS. JARMAN: There is a provision in Section 3-10 (a) which again says full readings, which I guess is different from a reading, I guess that means other than by title only, where you have to read the whole bill in, and public hearings may be required by a one third vote of the entire membership. I was interested in hearing Kenny's and maybe Levi's, and other people's thoughts on requiring only three people to vote to have a public hearing. When I was Clerk, it seemed like way too few votes.

CHR. HAITSIKA: Do you have any comment on that, Mr. Hookano?

MR. HOOKANO: Actually, I don't have any comment on that. I just kind of took that on face value as one third vote of the entire membership, three people out of nine, could be used to call a public hearing. I can see some strategic value in that for a minority group within the Council, but as far as legal reasons for it being in there, I can't comment on that at this time. I don't have a response for that.

MR. NAHALE-A: I have something to add, Mr. Chair. I would be curious what other jurisdictions do, if that's typical or not. I also have concerns that it's a small group of people to incur substantial costs to the County, and time.

CHR. HAITSIKA: Is that something we should ask of the Council? Would they have some kind of comment on it, the Council Members?

MR. HOOKANO: I'm not sure, because that's kind of a procedural issue, calling for a public hearing. I could certainly look into what other jurisdictions use for their public hearing requirements. By other jurisdictions, I'm going to limit it to those within the State of Hawai'i. So, I'll look at the other counties.

MS. JARMAN: To me, it's kind of a policy question. How many votes do we want it to take to have a public hearing? I think Levi made a good point. You might not want it to be the majority, five, because then it would prevent the minority being able to have something; but maybe four instead of three. It just seemed like a lot of times it was so easy to have a public hearing with three, and it costs so much energy and time and staff time to have a public hearing. Then you go out and nobody would show up. Sometimes the Council Members would use that as a way to postpone deciding on something, right. Rather than going and doing their homework and finding out, or trying to get people, they would sort of use that. I don't have strong feelings; it just always kind of bothered me that it was only three votes. It's just something to consider, I think.

MR. NAHALE-A: If I could comment, Mr. Chair. I think for this Charter review, the economy is a big factor to me. I think where we can try to minimize costs needlessly, we should take a look at it.

MS. JARMAN: Yeah, because the public hearings are rarely in Hilo. Or, they'll say, let's have a public hearing in Hilo, then the Kona people say if you have it in Hilo then we want it in Kona. Then the people from Waimea say well, if we're going to have it in Hilo and Kona, we want it in Waimea, and then the people in Ka'u say, well, we'd like it down in Ka'u. So, before long, you have four hearings instead of one hearing; and you can understand that, but something that starts out as one hearing usually becomes four hearings, and it really costs a lot of money.

MR. NAHALE-A: I'm sure we don't have quantitative data on hand, but even just anecdotal. Like, if the public hearings in the past have led to changes in votes, changes in legislation, then I think they're worth it. But if they haven't, and they're just a drain on the tax payer's dollars, we should take a look at it.

MS. JARMAN: I think rarely---I mean in the two years that I was Clerk I think the one time that the public hearing testimony really affected the outcome was on the GMO taro and coffee; and Council Members said that they had come in planning to vote one way, and because of the testimony, voted another way. I think that's--I'm trying to think--Bill, do you remember any other times where we had public hearings where it made a substantial difference? I guess the Punalu'u, we certainly had a lot of people at the Punalu'u public hearings, and having it in Ka'u made a measure of sense, because it was hard for people down there to come up here to meetings. We had, I don't know, about 500 people at the meeting, or a huge number.

MR. TAKABA: There was the Waste to Energy public hearings that went island wide, like you said, there were about five, I think, about four or five hearings. But one of the things that happened is that the same people traveled through each district and so you got similar views at each district and it was just the same people. I don't know about whether they changed their votes or not, I'm not real sure because I wasn't--we didn't poll anybody prior to as well as after, but it could have swayed people. It gets very persuasive, but you don't know if that's still representative of the whole island, because it's just the same people.

MR. NAHALE-A: And the other question to the point you're making is we could still go to public hearing, it just would take more votes. So, we're thinking about increasing the number of votes it would take. We're not saying we wouldn't be going to public hearing, right?

MS. JARMAN: Correct. It would be just having more votes.

MR. NAHALE-A: And the examples we just gave, my hunch is the Council would have voted to go to public hearing. Who knows, but that's my hunch.

MS. KAWAUCHI: Mr. Chair, I think one thing to consider with this is---and I think the word I picked up on was the word minority votes. But the minority vote, sometimes when considering, for an example, some of our districts which are low in population, large in geography. Some of the minority votes are areas where people should have a voice but they don't necessarily have the larger public vote. So, I think Mr. Nahale-a brought up a good point which was that if they swayed public opinion, maybe it matters. Should we---it's hard for me to say to increase the number if there's a chance that something may not be good for a minority district and their minority representatives are able to collate a small minority to have a hearing held out in the place that it concerns. It kind of makes me feel like we should keep the smaller number of votes for a public hearing. I understand the efficiency, time, cost is very important to me. But I just feel like if there's an issue of importance to a particular group of people and it impacts them, but there are a small number, they can't get people to hear them necessarily, maybe we should just keep that number in there. I don't know how often we have the situation where there's only a small number of legislators who are asking for a public hearing. I think Mr. Nahale-a asked for that, too. We're not quite sure, we don't have the statistics, but I don't know, I kind of feel like it should stay how it is.

CHR. HAITSUKA: I don't know enough about this subject, but one of the questions I have is whether it is being abused or being used in a wrong manner, maybe by a minority. Or, like Ms. Jarman said, by maybe Council members who are not prepared to discuss the issues and they want to defer. I don't know, I haven't heard testimony from anyone. That's where I thought maybe we could get someone to tell us whether they thought that it's not being used properly or unnecessary public hearings are being conducted. Any further comments?
Mr. Unger.

MR. UNGER: I just have a comment. As far as addressing the minority, I was just talking to Brenda here, and all of the County Council meetings are open to the public, and the bills that are on the agenda are posted six days before. So, if there is an issue that affects the minority,

it doesn't stop them from coming to a County Council meeting and testifying on that bill, isn't that correct?

MR. HOOKANO: That is correct; all meetings of the Council are open to the public. It's always noticed six days in advance, according to the Sunshine Law. Public testimony is required at the beginning of all meetings just like how it is with this Commission.

MR. UNGER: So how would a public hearing, as far as publicizing a public hearing, versus a regular County Council meeting and publicizing the bills through the regularly held County Council meeting? I'm just trying to see the difference between a public hearing and someone coming to the County Council and testifying.

MR. HOOKANO: Mr. Chair, if I may.

CHR. HAITSUKA: Yes, Mr. Hookano.

MR. HOOKANO: Public hearings are used in limited scope in that it usually focuses on just one specific issue. I've rarely seen them used for multiple issues. This Commission is required to have six public hearings. How this Commission decides to tackle those six public hearings is up to the Commission as a whole. Whether they want to do it now to get general input from the six geographical areas or whether the Commission wants to do it--go around to the six geographical areas with specific proposals in hand already. Either way, public hearings have a very limited scope. The Council will define what it wants to take up at the public hearing. At public hearings, no decisions are made by the body. It's just strictly to hear what the public has to say. For example, I've looked at the previous Charter Commission's meetings and there was a public hearing, I believe they had in Kealahou where no one was in attendance, so they cancelled the---the public hearing just adjourned. Those situations could occur with any public hearing. But, it's used strictly to get public input, not for decision making by the body.

CHR. HAITSUKA: Any further discussion? Mr. Shumway, do you need to leave? This would be a good time to take our break. Let's take a five minute break.

RECESS: At 4:55 p.m., the Chair called for a five minute recess.

RECONVENE: The meeting was reconvened at 5:01 p.m.

CHR. HAITSUKA: We left off on Section 3-10.

MR. HOOKANO: Mr. Chair, I think this would be an appropriate time to inform the Commission of your intentions regarding this meeting.

CHR. HAITSUKA: I don't think we can address the full schedule that I had anticipated. I think we're going to get a few more sections down. We probably won't get to Article IV. I think we can take that up at the next meeting. Any objections to that?

MR. HOOKANO: So what time are you looking to conclude business today, just to give a rough estimate?

CHR. HAITSUKA: I think no later than 5:30 p.m., or if we find a comfortable break in our discussions prior to 5:30 p.m. then we can adjourn. Any further discussion on Section 3-10? Ms. Jarman.

MS. JARMAN: You guys are going to wish I wasn't on this body. I think Kenny might have addressed this too, we had this issue. So 3-10 (d) says, "A bill shall not be amended to change its original purpose," and also bills are all supposed to have their titles. So this issue came up, and Ms. Ford might remember it, about how do you determine what the original purpose of the bill was? Some people said you have to determine it by the title and other people say, well no, you just look broadly at what the purpose of the bill is. Then what started happening was that the Administration started writing its titles so specifically that it made it hard to ever amend the bill, because they didn't want things to be amended to change their original purpose. Again, I don't know if that's just really esoteric, but it really did hamper or create some problems sometimes, particularly when bills were controversial about to what extent they could be amended. I'm not sure what we would do about it, I was hoping that Mr. Goodenow would be back to talk about it.

MR. HOOKANO: There is Mr. Goodenow, now. If I may make a comment on this. I had a conversation with Jon Henricks from our Legislative Research Branch on this before. He commented to me that in the Legislative Drafting Manual it does state that titles to bills are not to be amended. But that's within the State's Drafting Manual. Our County Drafting Manual says to refer to the State Drafting Manual. How that's applicable as law, it's more of a guideline, I'm sure. But, I'm sure now that the Clerk is here, he can comment on this issue.

MR. GOODENOW: It kind of goes to how we look at the word "reading." Because the way that we've interpreted it is, it says it must be passed after two readings. Readings of bills may be by title only. So we've been saying, okay you have a bill, it has its reading, you read it out loud, then they amend it. The title is different; it's really a different bill. So we say you've got to have two more readings. But basically, our informal rule to make it easy is we really discourage Council Members from changing titles. I think it's fair to the public, they know what to expect, especially if a reading is by title. I don't know if you need to change that, but I would support that as a change. I guess you could stick it under 3-10 (d), "A bill shall not be amended to change its original particular purpose." I'd say, "A title shall not be changed." It's just easier.

MS. JARMAN: Mr. Chair, may I ask him a question?

CHR. HAITSUKA: Yes.

MS. JARMAN: Also, we were talking about that it can't be amended to change its original purpose. Remember the debate we were having over what is the purpose? Is it the broad purpose of the bill? Or, is it the narrow purpose as defined in the title? Then the Administration starting making titles that were so narrow it made it hard sometimes to amend them. And Ms. Ford is here, so maybe she might have some comments on this issue too.

MR. GOODENOW: I like the way the Legislature does it. It says you can't change its original purpose as stated in the title, is really how it works. But, you know, that's a judgment call of Corporation Counsel and the Clerk, really. You change it how much---you know, not everything is going to be black and white. Ms. Ford, I don't know if she wants to comment.

MS. FORD: I'm willing to comment, and please understand, this is my opinion. I believe that the titles of the bills should express the purpose and that is what we're trying not to change is the purpose of the bill. You don't want it to go from subject A to subject B. At the same time, you don't want so strict an interpretation that if you've actually made an error in the title, misstated a code or misspelled something, that we can't get that corrected. But I would agree that the purpose of the title is what should not be changed, and the intent that is expressed through the rest of the bill. Does that help?

MR. GOODENOW: This is Ken Goodenow speaking again. I agree with Ms. Ford. But you know you make a mistake in the title, well; maybe you should have thought it out better when you wrote the bill. I agree, though, I think that should be kind of the defining---the purpose should be expressed in the title, and the title shall not be amended. Something like that.

CHR. HAITSIKA: Any further discussion on Section 3-10?

MR. GOODENOW: I just wanted to note for the record, just to give you an idea. It has this Publishing of Bills; you have it here for First Reading in 3-10 (c) and then you have (h) after enactment. We put aside in our budget approximately \$40,000 for publishing, primarily for those two. We also publish the meeting dates, but that's much smaller, about \$135 per meeting. It's just for your information.

MR. NAHALE-A: Mr. Chair, you see when you bring it up then it begs the question. In today's day and age it just seems to me that's probably the most ineffective way to communicate with the public, and it's costly. If we just posted it on a web site or something like that, it would be cheaper, faster, a better record of it; you can go in and search for it.

MR. GOODENOW: Well, in my humble opinion, which is just me again, especially the ones after first reading. I mean it's nice because it says imposition of a duty, but I really wonder how many people read them. I've never had an instance where someone called me up and said, "Hey, I read this passed first reading, what's going on?" That's never happened.

MR. HOOKANO: Mr. Chair, if I may make a comment.

CHR. HAITSUKA: Yes, Mr. Hookano.

MR. HOOKANO: It was brought up about notices being published. Just to let you know that notice publication is done by State Law through the Sunshine Law. So that's mandated by the State. Regarding bills and resolutions, the results ayes and noes, that is for the Charter. But, you cannot say that notices for meetings should be published only on line because that's not within this Commission's jurisdiction.

MR. GOODENOW: Yes, I agree. But for these two, (c) and (h), I mean, as Clerk, I'd kind of feel happy without having to worry about that.

MR. NAHALE-A: My understanding now, is that internet has a deeper penetration rate than paper. So it's not even a matter of people saying well, you're preventing folks who don't have the internet from getting the communication. More folks have access to the internet than to the paper.

MR. GOODENOW: I would agree with that.

MS. JARMAN: Mr. Chair, we could also say, and be posted at the Office of the County Clerk, and then anybody could go and look at it there who doesn't have access.

CHR. HAITSUKA: Instead of the newspapers we would say---

MS. JARMAN: On the County Clerk's website and at their office, or something.

MR. GOODENOW: We have a County bulletin board, so the official County bulletin board and for public inspection at the Office of the County Clerk. Or something like that.

MS. JARMAN: I agree. It seemed like an awful lot of work for basically nothing.

MS. HONMA: Just one comment, and it's because I live in a rural area. A lot of the older people do not know how to use a computer, for one. I know there's a lot families where I live that don't even own a computer. At this day and age it's expected, and even in our school, we try to do a lot of stuff through internet and stuff like that. But a lot of it has to be done in school because some of these families just can't afford to have one. The other thing is internet access is not available in all areas, and so we have people that are off the grid and they choose to live that way, and that's by choice, but just awareness.

MR. NAHALE-A: Question, Mr. Chairman. In those areas, do you think the newspaper is their means of communication? Because maybe we should be publishing in the community bulleting board or at the corner store. The purpose of this is to give the public access to the information.

MS. HONMA: I can tell you, in my area there are a lot of people that buy the newspaper. But, you know, I don't think it needs to be put out that many times. Maybe once is good enough. There are people that read the paper daily. Some of them buy Tribune Herald, West

Hawai'i, Advertiser. Some of them get three newspapers, so they use the newspaper. I think it's just because in our area for them that's like---

CHR. HAITSUKA: Not the bulletin board at Earl's Lunch Shop.

MS. JARMAN: Sometimes I wondered if people would understand it when they read it because it's usually a one or two sentence summary of what it is, and if you weren't sitting there in the meeting, you'd probably read it and wouldn't even know what they were talking about anyways. I remember reading that thinking if I hadn't sat through those meetings, I wouldn't know what it was.

MR. GOODENOW: You know, the newspapers are usually publishing the stories anyways. If it's a big story, they probably report it. Although that's not always true. In fact I was told once that if you want more coverage, you should buy more ads. So, I don't know how this would fit into that, but---

CHR. HAITSUKA: I think this is something we can consider because anyways, before it can get adopted it has to go out to the public, and the public will speak as to whether or not that would be an appropriate method. So I guess this is something we can consider. Any further discussion on Section 3-10. Section 3-11, any discussion? I was wondering if Section 3-11 is even used, or how frequently?

MR. GOODENOW: We used it when we had the earthquake in the 2004-2006 term. Then in our 2006-2008 term there was another time that it was used.

MS. JARMAN: That was in relation to Public Works doing something.

MR. GOODENOW: Right, also for another earthquake, I believe.

MS. JARMAN: It was. It was related to that earthquake.

MR. GOODENOW: So both times were for earthquakes. Under a previous Clerk, not under Clerk Jarman, there was an issue where they had an emergency meeting--oh, I'm sorry this is Emergency Ordinance, not Meeting. That's a different subject, so forget that comment.

MR. HOOKANO: For your information, Emergency Meeting falls under the Sunshine Law as well.

CHR. HAITSUKA: Section 3-12, any discussion? Mr. Goodenow.

MR. GOODENOW: Well, I think the system works fine. There is one slight thing though, it says after the Mayor receives the bill he has time to do his veto or what not, and sometimes there was a concern; would the Clerk just sit on bills? We decided that we should hold bills for six days, because someone could have a motion to reconsider, under our rules. It would kind of make that whole process moot if we didn't hang onto it for six days. But just to let

you know we do that. The Corporation Counsel says as long as it's reasonable, we're okay. So I don't see any reason to change it, but we do hold the bills for a few days.

The other thing, just policy wise, I have no comment on. You know, this does have line item veto in it, right? A portion thereof, by striking out or reducing the same, and I have no comment on that, but that's traditionally been a debated issue.

CHR. HAITSUKA: And the issue is whether the Mayor should have that authority?

MR. GOODENOW: Yeah, it kind of gives him more power, right. He doesn't have to veto the whole budget; he can just go through a pick a few things.

CHR. HAITSUKA: Any further discussion of 3-12? Section 3-13?

MR. NAHALE-A: Mr. Chair, I'm wondering if we should---I think you said 5:30. I'm wondering if we should do Section 3-17 in honor of Council Member Ford, since that was her issue.

CHR. HAITSUKA: So, you want to skip 3-13, 3-14, 3-15 and 3-16 for now?

MR. NAHALE-A: For now, since she's been waiting for that issue I think.

CHR. HAITSUKA: Does anybody have a problem with moving on to Section 3-17? Any comments on Section 3-17?

MR. UNGER: Mr. Chair.

CHR. HAITSUKA: Yes, Mr. Unger.

MR. UNGER: You know, one thing, I don't know who mentioned it earlier; I think Levi did. We were talking about forming an ad-hoc committee for Section 3-2. He said we can also define this ad-hoc committee to incorporate other aspects of the Charter and I think he specifically mentioned 3-17. What Brenda has provided---she has provided a bunch of back up materials to what she discussed briefly. I think it would be more appropriate to attack this issue and her back up documents with an ad-hoc committee.

MR. HOOKANO: Mr. Chair, if I may clarify. When I mentioned the ad-hoc committee for 3-2, that was for the four-year terms, and that was related not to 3-17, but to the Vacancy in Office Section of 3-4. The Reapportionment could perhaps be attached to this ad-hoc committee, but in this case, I would suggest it be its own because it's such a large scope for investigation purposes.

MR. UNGER: Except that when we were talking about the terms and what not, we started talking about districts and having at-large seats as opposed to specific seats and districts. So, once you start talking about at-large, that definitely brings in the Reapportionment issue, doesn't it?

MR. HOOKANO: Mr. Unger is completely correct. That's where the scope of the ad-hoc committee that is looking at four-year terms, that's where their defined scope really comes into play. Because if they're just looking at term limits, then that would preclude investigating anything to do with reapportionment; because Reapportionment has nothing to do with term limits. Whereas, if they say term limits and nine-member districts, how that applies, then that would bring the reapportionment scheme into their scope. So it really depends on how the scope of that ad-hoc committee is defined at the next meeting.

MR. NAHALE-A: Mr. Chair, I would just like to ask, because the notion of going to at-large districts was just something that Mr. Ashida brought up, I didn't hear any Commission members support that. As a person who is supportive of changing the term limits, that's all I want that ad-hoc committee to be focused on is four-year terms, more focused. I actually think the Reapportionment Committee has a bunch of other work to do, so I like the notion of two separate ones unless there's some energy in the Commission to go to at-large districts. The other thing for me with the ad-hoc committee is it's limited to five members, so if we combine those then you are leaving some people out of the mix. Maybe somebody wants to talk about one issue, but not the other, and this way we can spread out a little bit.

MR. HOOKANO: Mr. Chair, would you like me to comment on ad-hoc committee?

CHR. HAITSUKA: Sure, Mr. Hookano.

MR. HOOKANO: Ad-hoc committees are for investigative purposes. They do not seek input from other members of the board because that would be a serial communication. They do their work on their own, communicate with each other all they want regarding that issue, take input from people who are not members of the board as much as they want. Then they come up with their recommendations and present to the Board. That's when other Commission members will give their input on what they think about the report. From that point on the Commission, at the next meeting, the Commission as a whole will vote to approve the recommendations of the ad-hoc committee, reject the recommendations of the ad-hoc committee; that's their option at that point. They could amend the report of the ad-hoc committee, the recommendations. That's when the other Commissioners have their input onto the work of the ad-hoc committee. It's when they come back with their report.

CHR. HAITSUKA: Ms. Jarman.

MS. JARMAN: I agree with Mr. Nahale-a. I would like to see them discussed separately. I think this Reapportionment/Redistricting is a very big issue and deserves to have its own committee. And I didn't hear anybody say they were in favor of at-large districts either, changing that. If that ended up coming up in the committee for Section 3-2, I think they would just refer it back over here to this other committee. We don't have to have five members, we can anywhere from two to five, right?

MR. HOOKANO: Ms. Jarman is correct.

CHR. HAITSUKA: I would support two separate committees myself. I think with the amount of work the committees would have to do for those issues, I would prefer to see two separate committees.

MR. UNGER: Yeah, and actually I would too. I just didn't know that we were talking about an ad-hoc committee for---well I guess we hadn't gotten to that point yet. I'm in agreement there as well.

MR. HOOKANO: I would just like to also say that if ad-hoc committees are formed, I will attend every ad-hoc committee.

CHR. HAITSUKA: So, can we put that on the next agenda to form an ad-hoc committee to look at Section 3-17? I don't know if it has to be worded that narrowly, but maybe looking at the issue of Reapportionment.

MR. HOOKANO: We will be sure to place that on the next agenda.

MS. JARMAN: Can I move that we have the meetings happen at the same time so we can see how he attends both at the same time?

CHR. HAITSUKA: One in Hilo and one in Kona.

MR. HOOKANO: I'm up for the challenge, I'll find a way.

MR. NAHALE-A: Just to be certain, we'll be able to get that support material, Levi, do you know if that will be received and copied?

MR. HOOKANO: Yes, I'm sure Ms. Ford has all the materials necessary. She can transmit it to our Secretary, Ms. Eoff, and she will distribute it to all of you.

CHR. HAITSUKA: Thank you. Any further discussion on Section 3-17?

MR. NAHALE-A: A quick question on that. Levi, could you comment on the point about Reapportionment versus Redistricting?

MR. HOOKANO: Actually, the question was to comment on definition of Reapportionment and Redistricting. Last term, Ms Ford actually had me look into this, and she is correct in her definitions. Reapportionment is the movement of seats, whereas Redistricting is the movement of lines. So, she is absolutely correct on that.

CHR. HAITSUKA: Any further comments on Section 3-17?

MR. HOOKANO: Just one thing. Ms. Ford, if you could give your materials to Ms. Eoff as soon as possible so we can distribute that to Commission members right away, rather than waiting until the next meeting; so we can get it to them immediately.

MS. FORD: Okay, Karen is not here, but they'll be on her desk by the time you finish your meeting tonight, and Monday she can do her thing. Is that satisfactory?

MR. HOOKANO: Thank you.

CHR. HAITSUKA: Thank you. Alright, if we don't have any further comments on Section 3-17, and it's just about 5:30 p.m., I would suggest that we adjourn for today. We take up at the next meeting the Sections in Article III that we did not address, we can address Article IV and then commence with Articles V through VI. Any comments, is that alright?

MR. HOOKANO: Mr. Chair, just to let you know those Sections that were not finished today, we'll be placing them under Unfinished Business on the next agenda then.

CHR. HAITSUKA: Alright, thank you. As far as today's agenda, we don't have any Reports, no Referrals for Executive Session, no Announcements. Mr. Hookano.

MR. HOOKANO: Actually, I think Ms. Jarman would agree with me on this, if we could have a motion to postpone discussion of the remaining Sections that were not discussed today until the next meeting.

CHR. HAITSUKA: Okay, so do we have a motion to postpone the Sections in Article III and Article IV that were not discussed today?

Ms. Jarman moved to postpone discussion of the remaining Sections of Article III and Article IV that were not discussed until the next meeting. Seconded by Ms. Honma and carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi,
Nahale-a, Unger and Chair Huitsuka.

Noes: None.

Absent: Commissioners Fuertes, Kealoha, Murashige,
Osborne and Shumway.

CHR. HAITSUKA: So, it looks like we are at the end of our agenda. We need to discuss the next meeting.

MR. HOOKANO: The next regularly scheduled meeting would be May 8, 2009, the second Friday of May.

CHR. HAITSUKA: So, May 8, 2009.

MS. KAWAUCHI: Mr. Chairman, that would be starting at 1:30 p.m. again on that day?

MR. HOOKANO: Yes, according to our rules, the regularly scheduled meetings would be at 1:30 p.m. on the second Friday of each month. This meeting was an exception because of the holiday tomorrow.

CHR. HAITSUKA: Alright, next meeting is May 8, 2009 at 1:30 p.m.

MR. NAHALE-A: Mr. Chair, I do want to say I know that Ms. Osborne was really disappointed that she couldn't be here. You guys probably saw her e-mail; her dad is not doing well, so she's with him. I just wanted to wish her well.

ADJOURNMENT

CHR. HAITSUKA: Thank you. Alright, if nothing further, the meeting can be adjourned.

MR. HOOKANO: Is there a motion to adjourn? Unless you guys want to stick around longer.

There being no further business, at 5:30 p.m., Ms. Jarman moved to adjourn the meeting. Seconded by Ms. Kawauchi and carried by the following vote:

Ayes: Commissioners Honma, Jarman, Kawauchi,
Nahale-a, Unger and Chair Huitsuka.

Noes: None.

Absent: Commissioners Fuertes, Kealoha, Murashige,
Osborne and Shumway.

Respectfully Submitted,

Karen Eoff, Secretary

Approved:

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