

**James R. Smith**

August 29, 2011  
Members of the Maui County Charter Commission  
200 S. High Street  
Wailuku, Hawaii 96793

Subject: Political reality as it affects your study of  
the Maui County Charter

Members,

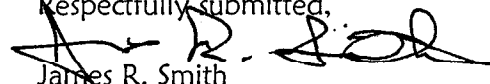
In 2010 a member of this Commission, prior to its appointment, challenged our Council to propose to amend our charter to establish district voting. His argument centered on the fact that "we are organized" this is your last chance. (Minutes of that meeting are presented here in communication from the council chair. See pages at 08/29/11- Item II. B. 96 and 97)

In a viewpoint article a member of this commission argued that in the 2010 general election an average of 20 percent of voters did not vote in council elections. This member failed to qualify this number by informing readers that three races were uncontested, that in these over 30 percent of voters did not vote.

I am concerned that your judgment will be perceived as based upon prejudice and not principle. I submit to you this request:

1. that you establish a procedure where each proposed amendment is valued, based upon three principles: principle of Solvency(e.g. cost justified by benefit); the principle of Necessity (e.g. If it hasn't been done before what makes it necessary now.) and the principle of moral consistency with Article 1, Chapter 1. Incorporation. e.g. Identify the degree to which the proposed amendment can be seen as relevant to equal dignity.
2. That under each principle a proposed amendment be rated from 1 to 5, including decimals;
3. That a threshold be established to prioritize deliberation:
4. That the taking up of a proposed amendment be according to numerical significance based upon numerical evaluation, and not chronological sequence.

Respectfully submitted,

  
James R. Smith

082911 - Written Public Testimony from Jim Smith

## CHARTER COMMISSION HEARING

Testimony of Lloyd Fischel

August 29, 2011

Good afternoon.

A few weeks ago, I appeared here to discuss the Mayor's proposal to revise our Charter of government regarding Article 8, Chapter 12, the Department of Police. The mayor would like to insert the words that allow the police chief, and by extension the executive branch, to create, "a force of reserve police officers". He originally proposed this as number 4, and in his revised August 26 submittal, it is now number 3.

My last time here, I cited the words of great leaders, Gorbachev and Ikeda, on the importance of government existing for the people, not the other way around. And, the ancient maxim, "If you seek peace, do not prepare for war." Applying their guidance to the Mayor's request is the purpose of my testimony today.

Maui County's charter provides for a Civil Defense Agency, Chapter 16, Section 8. The Mission Statement of Civil Defense Agency is "to protect life and property of all people in Maui County during emergency and disaster situations." And, the Proposed Budget for Fiscal year 2012 includes funds for this Agency, Page 3-1.

Take a look at the Mayor's proposal #4 on his latest form. Notice it says, "Chapter 16 Cost of Government Commission". But, according to our Charter, Chapter 16 is the Civil Defense Agency. Chapter 15 is actually the Cost of Government Commission. If you adopt the mayor's proposal you will have caused confusion, and in effect you will have undermined the Civil Defense Agency in times of crises.

This is not a typo in the form. This is a deliberate attempt to change our way of governing and center these powers in the hands of the executive branch. According to Section 8-16.1, the Civil Defense Agency is overseen by the Fire and Public Safety Commission. But, by adopting the mayor's proposed change, the people responding to emergencies will be overseen by the police. The danger is that this gives our citizens no way to redress grievances; a core part of what makes democracy a democracy.

Furthermore, by creating confusion in the Charter, the effect will eliminate the effectiveness of the Civil Defense Agency. Some read his change as working to castrate the Agency.

The mayor's proposal also reads, "Across the country police departments are utilizing volunteer police officers." What these governments are not doing is squashing important existing agencies, creating confusion in government, and adding additional layers and cost to government. By and large, the smart jurisdictions are being very careful when they institute volunteer, highly trained persons to support any departments of government. What the mayor is doing here is clearly not in that league.

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If any future administration feels the need for more police officers, the need is submitted to the Council in budget requests. And, the Council, our elected representatives, then reviews the claims to determine if the requested funds are or are not appropriate.

The executive branch, specifically the mayor who is supposed to work for the people, has the duty to support the Council's determinations, and effectuate the provisions of the Charter. He should be making proposals that strengthen our Charter not confuse it beyond what is comprehensible. In other words, by instituting this proposed change the Civil Defense Agency's function in times of emergency becomes incomprehensibly unclear.

The Charter Commission's job is to keep our way of governing in tact by protecting the Charter, and in the process keep the separations of powers--that the founders of the U.S. Constitution taught the world--is the number one standard upon which the agencies of government best operate in a democracy. The separation of powers gives the people standing to question government and insure it is working for the people.

Like many of you, I love art. One of my favorite artists is Joan Miro. As the economy in his country was in difficulty and fear was growing, this prophetic comment is as appropriate today as when he voiced it: "If the powers of backwardness continue to spread, if they push us further into the dead end of incomprehension, that will be the end of all human dignity." The outbreak of civil war in Spain confirmed his worst fears.

Let's keep our Charter in tact and not give-in to proactive and entrepreneurial governmental tactics that will actually bring unintended consequences, that stand to bring us closer to divide, when unity based on respect for life and ohana, must be the number one priority. This the only way to keep Maui no ka oi.

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**Civil Defense Program*****Program Description***

The Maui County Civil Defense Agency (MCDA) assumes responsibility for the administration and operation of the various local, state and federal civil defense programs for the Mayor. MCDA is tasked with implementing planning, preparation and coordination of operations with all service-providing entities in the County to address major natural and human-caused disasters, and nuclear wartime conditions for the preservation of life and property, and the recovery of the community from the effects of such disasters. MCDA develops plans to meet different contingencies; directs and coordinates the development and administration of the County's disaster preparedness and response program; coordinates civil defense preparedness training sessions, tests and exercises; initiates and coordinates disaster public education and community action programs; reviews disaster response plans as needed; coordinates County's public safety communications and civil defense alert and warning systems; coordinates operations during an emergency or disaster situation; and coordinates post-disaster recovery operations which require State and/or Federal disaster assistance.

***Goals***

A primary goal of the MCDA is to utilize emergency management principles of preparedness, mitigation, response and recovery to protect the lives and property of residents and visitors within Maui County. The MCDA will continue to work with public safety organizations to nurture and secure cooperation, collaboration and support from the public and private sectors so as to educate, train, exercise and prepare Maui County's state of readiness.

The long term goal of the MCDA is to ensure the County of Maui is sufficiently prepared for all phases of a catastrophic event. Achieving this will depend on the following:

- Availability of personnel, operational funds and resources to perform its mission and to execute emergency management activities.
- The will, motivation and support of decision makers to allocate resources and to initiate policies and directives that support strategic plans and activities.
- Participation from public and private sectors to take responsibility to develop emergency contingency plans, increase their knowledge, train and exercise.
- Commitment of emergency management and service response staff to execute action plans.

***Objectives for Fiscal Year 2012***

The MCDA's objectives for Fiscal Year 2012 and beyond supports its mission and goals. Bench marks are established to assess, plan, develop and initiate programs to support core emergency management functions; mitigation, preparedness, response and recovery within Maui County.

**MITIGATION:** Sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects.

**PREPAREDNESS:** Building the community to effectively prepare for, mitigate against, respond to, and recover from any hazard by planning, training, and exercising

**RESPONSE:** Conducting emergency operations to save lives and property by positioning emergency equipment and supplies; evacuating potential victims; providing food, water, shelter, and medical care to those in need; and restoring critical public services

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Civil Defense Program

***Accomplishments for Calendar Year 2010***

- **Chile Tsunami:** At 8:50 p.m. HST, on Friday, February 26, 2010, MCDA received Tsunami Bulletin #01 providing the first information about an 8.5 magnitude earthquake off the coast of Chile. An earthquake of this magnitude is enough to cause alarm even with Chile being so far away. The MCDA staff, Mayor and Managing Director staffs were notified and the EOC was partially activated to monitor the situation. State Civil Defense held a video conference call at 12:30 a.m. Saturday and shortly after the Emergency Operating Center (EOC) was fully activated. In the ensuing hours Maui County responded to the need to: completely evacuate the beach area, pre-position equipment, coordinate with the American Red Cross, Department of Education and Parks & Recreation Department to open shelters, direct the Civil Air Patrol to fly missions in areas not covered by the siren warning system, and discuss the possibility of using the Hawaii National Guard. This was the first time in quite awhile that many of these activities had to be accomplished. It was the first time that the beach area was ever completely evacuated. With the help of others, MCDA was able to coordinate the various activities that are required to protect life and property.
- **Dam Mapping:** MCDA coordinated a project to develop maps indicating the evacuation zones for fifty-four dams in Maui County. The Department of Land & Natural Resources contracted the Pacific Disaster Center to develop inundations zones for these dams that would provide information on how the water would flow if the dams were compromised. Many of these are makai of heavily populated areas. MCDA worked with the Planning Department, Police Department, Fire Department and the Management Department's Geographic Information System Division to determine what areas mauka should be evacuated in the event of a dam break. This information will be included in the Maui County Hazard Mitigation Plan and will be a resource for the Emergency Operations Plan. This information will also be used for the Police Department's evacuation plans and can be used by the Planning Department's General Plan. This project helps MCDA to achieve emergency management principles of mitigation and preparedness.
- **CERT:** MCDA has the administrative and fiscal oversight of the CERT. The CERT Program educates people about disaster preparedness for hazards that may impact their area and trains them in basic disaster response skills, such as fire safety, light search and rescue, team organization, and disaster medical operations. The Maui Fire Department does the training. MCDA is charged with scheduling the classes, organizing graduates into teams and engaging the individuals/teams when required. This past year twenty-seven people graduated bringing the total to over three hundred. This program helps the County in the areas of preparedness, response and recovery.

## TESTIMONY IN SUPPORT OF TWO YEAR COUNCIL TERMS

There is a proposal by the current administration, and I am certain it will be close to unanimously supported by the current Maui County Council, to change Article 3, Section 3-2, to four year council terms from the existing two year County Council terms. This is another of those proposals, such as the opposition by most council members and a few members in the community, to centralize political power amongst a small group of elite individuals. This must be disposed of immediately.

The major arguments put forth by the administration and others is that it takes too long for a newly elected member to the County Council to learn the job. Perhaps, if we elected more educated and knowledgeable individuals, instead of a certain cross section of people tied to the entrenched power structure, the learning curve would be much less. Candidates should already be experienced and qualified for the office they are seeking. In this community, we do not value education, no matter what lip service is promoted. Most of our local elected officials have had limited or no college education. In much of the country, this would not be the case. Thus, it would take them additional time to grasped the intricate demands of the job.

However, a person who runs and is elected to the United States Congress, is also elected every two years, and for almost two hundred and fifty years, this does not seem to be a problem with them learning the ropes and what is necessary to be an effective legislator. Each member of the House represents tens of thousands of constituents, in areas larger than the entire State of Hawai'i. Nevertheless, there is little or no movement to expand the terms of our members of the United States House of Representatives.

This is also true of our State House of Representatives in our Hawai'i legislature. They also run for office every two years. Of course, they run in a district, which allows them to reach their entire constituency. In addition, they are accountable to those who elected them and every two years, if they are doing a good job, they are almost always reelected. If we made distinct County Council districts, the need to raise the vast amounts of money would not be necessary. With a single-member, district council system, the learning curve and expense of running is much less, plus the need to raise large amounts of campaign funds will be extremely diminished.

A two year term gives the voters' an opportunity to express their satisfaction or frustration with the performance of the Council member. Do not take this away from the citizens of Maui County. This proposal, made here by the administration and, I would imagine, supported by many on the current County Council, is solely a power grabbing mechanism to solidify political power. There is no other legitimate reason to be making this change to our County Charter. If one does research on this subject, you will find that a majority of those supporting this change are elected officials, developers and those in the community connected to and supportive of business as usual in local government. Many others see this kind of proposal for exactly what it is. I will not repeat here the chorus of nonsensical arguments by those who want this change as to why it may improve an elected body.

Nevertheless, I am not against it being put up for a vote to the public. If they are swayed by the arguments to support such a dangerous and unnecessary proposal, then so be it. This is why I also strongly urge that you do the same with asking the public if they want a distinct, single-member district system to elect our Maui County Council, and if it is supported by a majority of the public, then establish a task force with the sole job of designing the best and most effective election system.

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## COUNTY CHARTER SUGGESTED CHANGES

### ARTICLE 3 – COUNTY COUNCIL

#### S3-1 Composition:

**NB:** A Single member District electoral system, comprising ELEVEN (11) separate and distinct Districts, is preferable and NEEDS to replace this entire Section. Nevertheless, the changes incorporated below are also suggested for alteration of current Districts!

Put on the ballot a question which asks the community IF they was distinct, single-member Council districts. If it passes, then establish a committee with the sole task of coming up with the best system and given a six month mandate to reach they decision. Thus this one issue will finally be researched, analyzed and pondered by people who must design a workable and functional system.

East Maui – Change boundaries to place Huelo Precinct in Ha'iku-Pa'ia-Makawao.

#### S3-2 Election and Terms:

1. Institute Instant Runoff Voting (IRV) and/or Preferential Voting – Thus eliminates need for special and general elections. Held only during general election in November.

Keep the two year terms and five term limit

S3-3 Qualifications: Must be a resident of the district for 90 days prior to filing of nomination papers.

### ARTICLE 8 – COUNTY DEPARTMENTS

#### CHAPTER 8. DEPARTMENT OF PLANNING

S8-8.4 DELETE: “4. Act as the authority... Coastal Zone Management law.”

#### CHAPTER 11. DEPARTMENT OF WATER SUPPLY

S8-11.2.1 ADD: “and acquire, through purchase, eminent domain, condemnation and/or any other legal mechanism, ALL ground and surface sources of water used for residential and commercial consumption in the County of Maui.

### ARTICLE 10 – CODE OF ETHICS

S10-4.2.a CHANGE: “No former.... within a period of **TWO (2) YEARS** after...”

S10-4.2.b CHANGE: “No former.... within a period of **TWO (2) YEARS** after...”

### ARTICLE 11 – INITIATIVE

S11-3.2 CHANGE: “Such petitions must be signed..... **FIVE percent (5%)** of the .... election.”

### ARTICLE 14 – CHARTER AMENDMENT

S14-1.2 CHANGE: By petition presented..... **FIVE PERCENT (5%)** of the ... counsel.”

S14-1.3 CHANGE: By petition presented.....**FIVE PERCENT (5%)** of the ...counsel.”

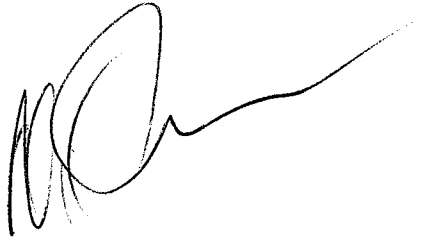
S14-2.2 ADD: “The county clerk.... forty-five (45) days ,**AND AT LEAST TWO OTHER TIMES** prior to.... election.”

S14-3 ADD: “Mandatory Review..... The commission shall publish.... days... election, “**AND AT LEAST TWO OTHER TIMES** in the newspaper.... (Amended 1992)”

S14-3 ADD a Final Paragraph – During the time of the establishment of the Charter Commission, all amendments to this Charter must come through the commission and not come through the Maui County Council nor by any petition arising from the general public.

Submitted by:

NIKHILANANDA  
HUELO

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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