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Date: 6/15/2012 2:51 PM
Subject: Council actions

Heads up on Charter-related actions by the County Council:

n One of our proposals - actually the Jim Smith proposal - has effectively already passed . The Council today passed Bill 54 which orders the County Clerk to update the charter whenever an amendment is made. Question? Can we still drop our proposal? That was the Council's purpose in passing this.

n The various proposals to require the Council to approve the Managing Director, Planning Director and Finance Director failed in the Policy Committee and will not be on the ballot.

n The recalled auditor proposal also failed, so only the Charter Commission's proposal on the auditor will appear on the ballot. Mike White led the effort to drop the Council's proposal, saying that having two similar measures on the ballot will only serve to confuse the voters. Once the Commission dropped the provision for the COGComission to appoint the auditor, White said the issue was resolved in his mind.

n The recalled Council proposal that would allow for as much as 14 years in office for some Council Members, however, was approved by the Policy Committee and will appear on the ballot alongside the Commission's 12-year max proposal. White tried to kill that as well, calling the proposal "self-serving," but he only got Don Couch to follow him on that one. If the Council really wants four-year terms, they would be well advised to drop this proposal as well.

n And today the Council did approve a resolution placing on the ballot a proposed charter amendment that is meant to clear up the confusion over how to count a partial term on the Council when a replacement is appointed to fill a vacant seat caused by death or other reasons. Danny Mateo suffered through a long legal fight - which he ultimately won - because he replaced Pat Kawano mid-term and that partial term was not counted against his five term limit. Those bringing that suit argued that partial term was the same as a full 2-year term. The Court ruled that they were wrong. The charter amendment will seal that question forever.

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062512 - Item No. II.A.

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2011-2012 MAUI COUNTY CHARTER COMMISSION REVISED FINAL
REPORT TO THE COUNTY CLERK

BACKGROUND :

The eleven members of the 2011-2012 Maui County Charter Commission ("Commission") were nominated by Mayor Alan M. Arakawa on January 26, 2011, and were subsequently confirmed by the County Council by Resolution No. 11-31, on April 1, 2011. The members appointed and confirmed were:

Joshua A. Stone, Chair
Wayne N. Hedani, Vice Chair
Artemio C. Baxa
Stephanie (Stacy) S. Crivello
David P. DeLeon
Frank R. De Rego, Jr.
Clifford P. Hashimoto
Susan A. Moikeha
Linda Kay Okamoto
Yuki Lei Sugimura
Flo V. Wiger

ORGANIZATION :

The Commission's first meeting was held on May 9, 2011. Mayor Alan M. Arakawa, selected Joshua A. Stone to Chair the Commission. The Commission elected Wayne N. Hedani to serve as Vice Chair of the Commission. The Commission adopted organizational and procedural rules for the conduct of its business.

The Commission sought to hire a Commission Analyst, and a Commission Secretary. The Commission was successful in hiring Jon M. Van Dyke and Sherry P. Broder, collectively, as the Commission Analyst. The Commission was unsuccessful in hiring a Commission Secretary.

Unexpectedly, on November 29, 2011, Jon M. Van Dyke passed away. The Commission was saddened and held a moment of silence for him at its meeting of December 12, 2011. The Commission was very grateful to have had the opportunity to work with Jon M. Van Dyke, and to benefit from his wealth of experience in law as well as having served as the previous Commission Analyst for the Maui

County Charter Commission in 2001-2002. The Commission was thankful that his wife, Sherry P. Broder, was able to continue on as the Commission Analyst.

The Commission was also advised throughout by Edward S. Kushi, Jr., First Deputy Corporation Counsel, and aided by representatives of the Office of the Mayor, particularly, Executive Assistant, Michael Molina. Department of the Corporation Counsel staff, Lisa A. Kahuhu, assisted with the duties of Commission Secretary. Court Reporter Tonya S. McDade of Certified Shorthand Reporters Maui, was hired to record the minutes of all meetings.

The Commission established a website at www.mauicounty.gov and an email address at charter.commission@co.mauhi.us. All documents, agendas, minutes, and meeting schedules were posted on the website, and email notifications to subscribers were sent immediately after the postings.

The Commission followed all the rules established by the State's Sunshine Law in posting agendas in a timely fashion, and in allowing public testimony at all of its meetings.

A public binder was also created for review at the Department of the Corporation Counsel Office, as well as being available at all of the meetings.

The Commission met twice a month, and held its 2011 regular meetings at the Department of Planning's conference room located at Kalana Pakui Building, Suite 200, 250 South High Street, Wailuku. The 2011 regular meetings were scheduled as follows:

- Monday, May 9, 2011
- Monday, May 23, 2011
- Monday, June 13, 2011
- Monday, June 27, 2011
- Monday, July 11, 2011
- Monday, July 25, 2011
- Monday, August 15, 2011
- Monday, August 29, 2011
- Monday, September 12, 2011
- Monday, October 10, 2011
- Monday, October 24, 2011

Monday, November 14, 2011
Monday, November 28, 2011
Monday, December 12, 2011

The Commission held its first round of public meetings in order to develop a record of public concerns and proposals regarding the Maui County Charter. These public meetings were held on the following dates, and at the following locations:

Wednesday	June 8, 2011	Mayor Hannibal Tavares Community Center, Pukalani	6:30 p.m.
Monday	June 13, 2011	Kahului Community Center, Kahului	6:30 p.m.
Tuesday	June 21, 2011	Paia Community Center, Paia	6:30 p.m.
Tuesday	July 5, 2011	Helene Hall, Hana	6:30 p.m.
Monday	July 11, 2011	Mitchell Pau`ole Center, Molokai	6:30 p.m.
Wednesday	July 13, 2011	Lahaina Civic Center, Lahaina	6:30 p.m.
Wednesday	July 20, 2011	Lanai Community Center, Lanai	7:30 p.m.
Monday	July 25, 2011	Kihei Community Center, Kihei	6:30 p.m.

The Commission established a Matrix (master list of proposals) which was updated regularly as proposals were received. A total of 125 plus proposals were received by the Commission.

The Commission established an Active Proposal List which included proposals from the Matrix that the Commission determined they would like to review further.

From the initial 125 plus proposals, the Commission moved numerous proposals to the Active List, and subsequently voted to have 21 proposals put into draft language. These 21 proposals were then put forth to the public and a second round of public meetings was held as follows:

Monday	December 12, 2011	Lahaina Civic Center, Lahaina	6:30 p.m.
Tuesday	December 13,	Kihei Community	6:30

	2011		Center, Kihei	p.m.
Wednesday	December 14, 2011		Mitchell Pau`ole Center, Molokai	6:30 p.m.
Monday	January 9, 2012		Paia Community Center, Paia	6:30 p.m.
Wednesday	January 11, 2012		Lanai Community Center, Lanai	6:30 p.m.
Wednesday	January 18, 2012		Wailuku Community Center, Wailuku	6:30 p.m.
Thursday	January 19, 2012		Helene Hall, Hana	6:30 p.m.
Wednesday	January 25, 2012		Mayor Hannibal Tavares Community Center, Pukalani	6:30 p.m.

After the second round of public meetings, the Commission continued with its deliberations at its regular meetings held at the Department of Planning's conference room located at Kalana Pakui Building, Suite 200, 250 South High Street, Wailuku, scheduled as follows:

- Monday, February 13, 2012
- Monday, February 27, 2012
- Monday, March 5, 2012
- Monday, March 19, 2012

The Commission voted to put 11 of the 21 proposals through to the ballot. The Commission took its final votes on March 19, 2012, and approved the 2011-2012 Maui County Charter Commission Final Report, March 30, 2012 for transmission to the Mayor and County Council.

The Commission met again on April 9, 2012.

On April 27, 2012, Council Chair, Danny A. Mateo, transmitted to the Commission certified copies of Resolution Nos. 12-44 and 12-45, and Committee Report No. 12-51, which were adopted by the Council of the County of Maui, State of Hawaii, on April 26, 2012 ("Council's transmittal").

The Commission met on May 7, 2012 and May 21, 2012 to review, discuss and take action on the Council's transmittal.

The Commission fulfilled its statutory duty and submitted its initial report to the Council within one year after its appointment as required by Hawaii Revised Statutes ("HRS") Chapter 50. The Council had 30 days to review the Commission's report and return back to the Commission any proposed alternatives or recommendations. The Council met its statutory deadlines as well.

The Commission was advised by verbal opinion of the First Deputy Corporation Counsel on the procedure and timeline for response to the County Council on its alternative proposals and the recommended changes to the Commission's proposals contained in the Council's Recommendations and Proposed Alternatives Received on April 27, 2012.

The First Deputy Corporation Counsel opined that pursuant to HRS Chapter 50, at this point in the process, the Commission was not authorized to make any substantive changes to its proposals.

The Commission had to submit its report within one year, which it did. To submit a new report after the Commission received the Council's response on April 27, 2012, would violate the one-year requirement. In particular, HRS §50-8 provides:

"Within one year of its appointment, the charter commission shall submit a report in writing on its activities, findings, and recommendations to the legislative body of the county together with a draft of the proposed charter. The legislative body of the county may in turn propose one or more sections as alternative, or alternatives to any section of the proposed charter; provided that there shall not be more than a single proposition under any alternative proposal. Within thirty days after the receipt of the proposed charter from the commission, the legislative body shall return the proposed charter with the alternatives to the commission for its study."

HRS §50-9 further elaborates:

"If the legislative body of the county proposes no alternative sections to the charter, the

charter commission shall submit a draft of the proposed charter to the county clerk within thirty days after it has received the charter from the legislative body. If alternatives are submitted by the legislative body of the county to the commission, then the commission shall accept or reject the alternatives within thirty days after the charter has been returned to it and shall report to the legislative body of the county any rejection. The legislative body of the county may within ten days after receiving such notification recall any or all of the alternative proposals rejected by the commission. Upon the expiration of the time for recall by the legislative body as provided herein or sooner with the consent of the legislative body the commission shall submit to the county clerk the proposed charter together with any alternatives proposed by the legislative body of the county which have not been accepted by the commission and incorporated in its draft."

Accordingly, the only option to make changes to the Commission's proposals available under the procedure and timeline was to delete or withdraw a Commission proposal. There was no option available to make substantive modifications to Commission proposals.

The Commission was foreclosed from incorporating any substantive changes (other than withdrawal of a proposal) whether based on the Council's alternatives proposed by resolution or the recommendations in said Council letter. The Commission had only four alternative actions permissible:

1. Accept the Council's alternative and withdraw the Commission proposal;
2. Reject the Council's alternative and keep the Commission proposal;
3. Reject the Council's alternative and withdraw the Commission proposal; or
4. Withdraw the Commission proposal where no Council alternative was made.

Once the Council was notified of rejection of any of its proposals, then it had ten days to recall or withdraw its alternative. The statutory scheme did not allow the

Commission to accept in part or reject in part one of the Council's alternatives. However, the Commission could make housekeeping changes so long as it did not affect the intent of the initial proposal submitted to the Council by the Commission. Housekeeping changes include minor grammatical changes and changes in sentence structure.

In addition, the Maui County Charter provides in §14-3, Mandatory Review, that:

"[t]he commission may propose amendments to the charter or draft a new charter which shall be submitted to the county clerk within sixteen (16) months after such commission has been appointed."

At this time in the process, should the Commission submit any proposals with substantive changes in the content, the clock would start running again and an additional 70 days would probably be required. There probably would not be enough time to meet the deadlines to put the questions for the proposals on the ballot.

On May 25, 2012, the Commission transmitted the Commission's Response to Council's Recommendations and Proposed Alternatives Received on April 27, 2012.

SUMMARY OF COUNCIL'S RECOMMENDATIONS AND COMMISSION'S RESPONSES TO COUNCIL'S RECOMMENDATIONS:

Listed below is a summary of the Council's recommendations to the Commission's 11 Charter amendment proposals, and the Commission's response to those recommendations:

Proposal One - Council Term Limits - The Council adopted Resolution 12-44, Proposing an Alternative Amendment to the Revised Charter of the County of Maui (1983), as Amended, Relating To County Council term Limits.

The Commissioners carefully considered the comments, suggestions, and proposed alternative proposal of the Council. The Commission decided to proceed with its proposal and rejected the Council's alternative. In reaching the conclusion that the Commission's proposal should be placed on the ballot, the Commission considered

the following benefits to the voters and citizens of the County of Maui.

The longer term of four years for Council Members allows an elected official more time to learn about County activities, business and requirements, and to develop and pursue a more comprehensive legislative agenda. Council Members would not have to campaign as frequently, thus reducing the need to raise campaign contributions, and to engage in countywide campaigns.

The longer term of four years combined with staggering of the terms, creates greater continuity and ensures that a complete changeover of Council Members would never occur. Currently, all nine council seats could change hands, potentially bringing in a completely new and inexperienced group of Council Members.

Limiting the term of Council Members to a maximum of twelve consecutive years is desirable for several reasons. Term limits have been enacted in many jurisdictions, including the County of Honolulu for its Council Members. The enactment of term limits increases competition, encourages new challengers, builds a "citizen" legislative body, and discourages career politicians. The Commission considered several proposals that would have made an absolute limit on terms and included terms prior to the 2014 election to be counted toward the term limits and other limitations. Accordingly, the Commission believes that its proposal to include the first two-year term as a full term is reasonable and warranted in light of the ultimate goal of term limits. Thus, the Council's proposed alternative to change the term limits to a maximum of three, full, four-year terms was rejected.

The Council expressed concern about how to count the term of an appointment to a vacancy and unexpired term. This question can be resolved by case law. The suggestion that further clarity was needed on the issue of appointment to a vacancy was deemed not to be of sufficient weight to require acceptance of the Council's alternative proposal.

Finally, the Council commented that a three-part question might be confusing to the voters. Although the Commission disagrees with that assessment, in the spirit of compromise, the Commission decided to reword the ballot question.

Proposal Two - Shoreline and Ocean Rescue and Safety -
The Council recommended that the Commission consider deleting this proposal.

The Commissioners carefully considered the Council's comments, suggestions, and recommendation that this proposal be deleted. The Commission decided to proceed with its proposal and rejected the Council's position that it should be deleted. In reaching the conclusion that the Commission's proposal should be placed on the ballot, the Commission considered the following benefits to the voters and citizens of the County of Maui.

The Commission received supportive testimony on this issue from County officials actively involved in these functions and duties, such as, the Chief of the Department of Fire and Public Safety, the Director of the Department of Parks and Recreation, and the Supervising Officer of the Ocean Safety Division of the Department of Parks and Recreation, and held many public hearings at which testimony was presented. The Commission learned that assigning shoreline and ocean safety and rescue to the Department of Fire and Public Safety is a matter that has been discussed in several County administrations and projected to happen for many years, but, in fact, has never moved to the stage of implementation. The Commission was concerned about this inaction.

The Commission debated this matter extensively among its members. The Fire Chief expressed his commitment to obtaining accreditation for the department, and his concern that there be no interference with this goal. In direct response to this concern, the Commission decided to leave the timetable for transition with the Department of Fire and Public Safety and allow the Fire Chief to finalize the submission of the necessary budget, and transfer of the allocation of funds from the Parks Department to the Fire and Public Safety Department. While the Commission supported the efforts being made to achieve accreditation, nonetheless, the Commission also wanted to make sure that the shoreline and ocean safety and rescue did move to the Fire and Public Safety Department so that these important and vital services could be consolidated in one department.

The Council expressed concerns that this proposal might conflict with a DLNR taskforce dealing with issues

relating to shoreline and ocean safety. There is a permanent DLNR Task Force on Beach and Public Safety created originally in 1990, and renewed in various sessions. The sunset date was removed in Act 152, SLH 2007. Research into the assignment and activities of this taskforce revealed that it met in 2009 and then again in 2011, that it dealt with the issues of warning signs at state and county beaches, and that it did not address the assignment of the functions of shoreline and ocean safety in any county, in any way.

In addition, the Council queried whether a change in department might affect the contracts with DLNR for these services. DLNR clarified that its concern was to be able to contract with the County of Maui for these services at Makena Beach, and that it has no input as a state agency on the allocation of duties and responsibilities within County departments.

After much deliberation, the Commission decided that it was appropriate to recommend this change and present this proposed amendment to the voters to make the final decision.

Proposal Three - Office of the County Auditor - The Council adopted Resolution 12-45, Proposing an Alternative Amendment to the Revised Charter of the County of Maui (1983), as Amended, To Establish an Office of the County Auditor.

The Commissioners carefully considered the comments, suggestions, and proposed alternative proposal of the Council. The Commission decided to proceed with its proposal and rejected the Council's alternative. In reaching the conclusion that the Commission's proposal should be placed on the ballot, the Commission considered the following benefits to the voters and citizens of the County of Maui.

It is the opinion of the Commission that it is absolutely critical to have a county auditor so that there can be financial and performance accountability for both the administrative and legislative branches of government. The Commission disagrees with the Council that the county auditor's office should be assigned to it. The county auditor should be independent above all else. All other

counties already have a county auditor, which were used as reference by the Commission in order to develop a proposal.

The Commission did consider many different ways in which to have the county auditor appointed and managed. The Commission gave priority to independence, and to a system of checks and balances.

The Commission concluded that it would be of the utmost importance for the powers and duties of the auditor to be spelled out in the Charter so that they would be very clear, and not subject to change by the Council through ordinance. Moreover, since the auditor would have the power and duty to audit the Council, the Commission did not want to leave these issues unresolved in any way to protect the auditor from politics, and possibly retaliation in the event of a negative audit.

Finally, the Commission debated whether or not to continue the functions of the Cost of Government Commission, and concluded that it was necessary in order to give the highest priority to independence. The Commission disagrees with the Council and has decided that continuing the Cost of Government Commission would enhance and provide further protection in a system of checks and balances.

Proposal Four - Interactive Communication Access - The Council recommended that the Commission consider deleting this proposal.

The Commissioners carefully considered the Council's comments, suggestions, and recommendation that this proposal be deleted. The Commission decided to proceed with its proposal and rejected the Council's position that it should be deleted. In reaching the conclusion that the Commission's proposal should be placed on the ballot, the Commission considered the following benefits to the voters and citizens of the County of Maui.

The Commission received extensive public testimony, and testimony from County officials involved in interactive options for public hearings and found it to be very helpful and informative. The Commission concluded that it was critical that all citizens be able to participate as often as possible, and that reasonable efforts be made to achieve this goal. The Commission thought that it was important to include this goal in the Charter to underscore its high

value in this unique County of four islands and many rural areas that are far from the seat of County government.

The Commission found that the issue had been discussed, but that the necessary actions to properly implement interactive communication had not been undertaken. The testimony of the experts on interactive communication, as well as general knowledge in the community makes it clear that the technology exists to implement this proposal. The additional benefits would outweigh the costs. Furthermore, the Commission is proposing language that affords the Council leeway and discretion in the implementation. The proposal states that "as the council shall deem appropriate and reasonable to all county council meetings and county council committee meetings." Thus, it is within the decision making power of the Council to determine which meetings shall be conducted with interactive communication. However, that Council decision making power is limited by the standard of what is appropriate and reasonable, which also provides the public with protection against arbitrary and capricious actions.

The Council stated that it weighed the goal of accomplishing interactive communication against the possible difficulties in implementing it, and found that the difficulties were too great. The Commission disagrees with the Council, and found that the weight of testimony favors a much stronger policy on this issue.

Finally, the Commission disagrees with the Council that this proposal is vague. To the contrary, the proposal is very clear, and at the same time continues to afford the Council discretion, but limited by reasonableness and appropriateness.

Proposal Five - Publication of Charter Amendments -
The Council recommended that the Commission consider deleting this proposal.

The Commissioners carefully considered the Council's comments, suggestions, and recommendation that this proposal be deleted. The Commission decided to proceed with its proposal and rejected the Council's position that it should be deleted. In reaching the conclusion that the Commission's proposal should be placed on the ballot, the Commission considered the following benefits to the voters and citizens of the County of Maui.

The Commission found that the current piecemeal publication of the Charter was difficult to use, created confusion, and caused time to be wasted in determining what the final version of the Charter was. Since the Charter is the governing document for the County, it has a high value, and should be reconstituted and republished when it is amended.

The Commission decided that republishing the Charter after changes were adopted by the voters was very simple to accomplish given the resources and technology available in today's society. Currently, the Charter is available in electronic form; incorporating amendments in the electronic version and reloading it to the Maui County website should be a simple matter. In addition, republishing print versions should not be very difficult. Certainly Maui County has adequate copy machines and other methods of duplication available to make sufficient copies for those members of the public who seek a printed version. Moreover, the Charter should be immediately available to all County employees so that they can properly discharge their duties and functions.

Proposal Six - Defense and Indemnification of Board Members - The Council recommended that the Commission consider deleting this proposal.

The Commission agreed with the recommendation of the Council to delete Proposal Six, to require the County of Maui to fund the defense of members of all County of Maui boards and commissions and to indemnify all members, on the grounds that it was unnecessary.

Proposal Seven - County Council Residency Requirements - The Council recommended that the Commission consider placing this proposal on the next general-election ballot.

The Council recommended placing this proposed amendment on the ballot but had some questions regarding its clarity. The Commission believes that the proposal is precise - the person seeking election must be a resident in the area of the County from which the person seeks to be elected for a period of one year before the filing of nomination papers. Logically, should that person be a resident of the area, that person will also have to be a resident of the County for the same period as well "to be

eligible for election." The Commission found that it was very important for elected officials to be knowledgeable about, familiar with, experienced in, and cognizant of the community and people that they represent and their problems, resources, environment, economic situation, safety and general status. The one-year residency requirement will assist in developing these bases.

Proposal Eight - Residency Requirements for the Mayor
- The Council recommended that the Commission consider deleting this proposal.

The Council did not recommend placing this proposed amendment on the ballot although it pointed out that it was similar to the proposal requiring a one-year residency in an area at the time of filing nomination papers. The Council merely concluded that it was not necessary, but did not provide any reasons why the office of Mayor would differ from the office of Council Member with regard to residency. The Commission believes that these two proposals are meritorious for the same reasons. In fact, the Mayor has even broader duties and more responsibilities for County business and activities, and there is a stronger argument for the one-year residency.

The Commission notes that in other jurisdictions, there can be a longer residency requirement for the office of the Mayor or Governor, not a shorter one. The Kauai County Charter provides that a candidate for Council must have been a duly qualified elector of the county for at least two years immediately preceding his election or appointment. A candidate for Mayor must have been a duly qualified resident elector of the county for at least three years immediately prior to his election to be eligible for election to the office of the Mayor. The Hawai`i State Constitution has residency requirements for candidates for state offices. Article 3, Section 6, of the Hawai`i State Constitution requires that a candidate for the State House of Representatives and State Senate be a resident of the state for not less than three years. The Hawai`i State Constitution, Article V, The Executive, Section 1, provides that the Governor shall be a resident of the State of Hawai`i for five years immediately preceding the election. Section 2 requires that the Lieutenant Governor meet the same qualifications.

To reiterate, the Commission found that it was very important for elected officials to be knowledgeable about, familiar with, experienced in, and cognizant of the community and people that they represent and their problems, resources, environment, economic situation, safety and general status. The one-year residency requirement will assist in developing these bases.

Proposal Nine - Sustainability - The Council recommended that the Commission consider deleting this proposal.

The Commissioners carefully considered the Council's comments, suggestions, and recommendation that this proposal be deleted. The Commission decided to proceed with its proposal and rejected the Council's position that it should be deleted. In reaching the conclusion that the Commission's proposal should be placed on the ballot, the Commission considered the following benefits to the voters, citizens, and residents of the County of Maui.

The Commission received testimony on this issue from many County officials actively involved in these functions and duties, and held many public hearings at which testimony was presented. In addition, the Mayor came to Commission meetings to support the addition of the concept of sustainability to the Charter and to urge the Commission to submit a proposal to the voters on this issue. The Mayor recommended that this concept of sustainability be added to the Department of Environmental Management. The Commission concluded that the Mayor, as the chief executive officer of the County, was well situated to make a recommendation on the appropriate department for assignment.

However, the Commission wanted to clarify that the concept of sustainability was not to be considered in isolation, but along with the following: environmental, natural resource protection, sustainability, conservation, and restoration, and that sustainability is not the number one or exclusive concern.

Although there was testimony indicating that the Mayor could make this assignment without a Charter amendment, there are several reasons why it should be added to the Charter. There is a need for certainty about the policy and legal requirement for the implementation of these

functions. A Charter amendment will provide direction to the Council and increase the chances of appropriations for a staff position or positions. Including these concepts in the Charter elevates its status as an issue to be considered.

Nonetheless, the Commission was concerned about the potential cost of having sustainability included as a consideration. Thus, the Commission specified that the only requirement is to "guide efforts" and that this language is intended to mean that it is not mandatory. Rather, it is for the County officials to determine the reasonable and appropriate grouping of many factors, and allow the Mayor, Council, and the Department of Environmental Management the maximum amount of discretion in determining how to implement these factors.

Proposal Ten - Consistency in Commission References -
The Council recommended that the Commission consider deleting this proposal.

The Commissioners carefully considered the Council's comments, suggestions, and recommendation that this proposal be deleted. The Commission decided to proceed with its proposal and rejected the Council's position that it should be deleted. In reaching the conclusion that the Commission's proposal should be placed on the ballot, the Commission considered the following benefits to the voters, citizens, and residents of the County of Maui.

The purpose of this proposal is to conform and make consistent the treatment of heads of departments that are hired, reviewed, and fired by County commissions. The Council expressed concern that the word "report" is somehow not clear. However, since the word "report" is already included in the duties of the fire and public safety commission, which has been evaluating the department head and issuing "reports", this comment seems to lack any merit. The requirement of an annual review is basic and certainly constitutes good, sound government, and should be incorporated for all commissions that have the power to evaluate. In addition, the procedure to follow prior to firing a head should be set forth and should be consistent. Mandating that the director may be removed by a commission only after being informed in writing of the charges which are resulting in the dismissal, and after being given a

hearing before the commission, would be the setting for the basic requirements of due process.

Proposal Eleven - Preamble - The Council recommended that the Commission consider placing this proposal on the next general-election ballot.

The Council agrees that this amendment should be submitted on the ballot to the voters. The Commission was strongly in favor of the policy addition to the preamble because this language provides honor and shows respect and appreciation for the Native Hawaiians of Maui and their culture and values, includes in the Charter the State motto which is an important principle shared with everyone and taught to all by Native Hawaiians, and sets forth the special and unique nature of the beautiful and special County of Maui.

CHARTER COMMISSION REVISED FINAL REPORT TO THE COUNTY CLERK:

The report that follows presents the final ten (10) proposed amendments to the Revised Charter of the County of Maui (1983) ("Charter"), as amended in 2003, 2006, and 2010, resulting from the deliberations of the 2011-2012 Maui County Charter Commission.

**RECOMMENDATIONS FOR SUBSTANTIVE CHANGES
TO THE MAUI COUNTY CHARTER**

**PROPOSAL ONE - ARTICLE 3, COUNTY COUNCIL TERM LIMITS,
SECTION 3-2**

The Commission recommends that:

1. Section 3-2, Subsection 5 of the Charter be amended to read as follows:

"Section 3-2.5. The term of office of council members shall be for [two (2) years,] four (4) years, beginning at twelve o'clock meridian on the second day of January following their election. Effective January 2, 2015, no [No] member of the county council, from any residency area,

shall serve more than [five consecutive full terms] three (3) consecutive terms, whether such terms are two-year or four-year terms of office."

2. Section 15 of the Charter be amended to add a new section to be appropriately designated and to read as follows:

"Section 15-4. Transition Provisions Relating To Staggering Of Council Members' Terms. The terms of council members shall be staggered commencing on January 2, 2015, and shall be implemented in accordance with this section as follows: in the 2014 election, the five (5) council members who receive the highest number of votes shall be elected to serve four (4) year terms; the remaining four (4) council members shall be elected to serve a two (2) year term commencing on January 2, 2015, provided that in the 2016 election, these council positions serving such two (2) year terms shall be elected to serve four (4) year terms commencing on January 2, 2017."

The ballot question would be as follows:

Should Sections 3-2.5 and 15-4 of the Charter be amended to lengthen the terms of Council Members from two (2) to four (4) years, with term limits of three (3) consecutive terms, whether such terms are two (2) or (4) years, beginning on January 2, 2015, with terms to be staggered?

**PROPOSAL TWO - ARTICLE 8, CHAPTER 7, SECTION 8-7.4
ASSIGNING OCEAN SAFETY AND RESCUE FROM THE DEPARTMENT OF
PARKS AND RECREATION TO THE DEPARTMENT OF FIRE AND PUBLIC
SAFETY**

The Commission recommends that:

3. Section 8-7.4 of the Charter be amended to read as follows:

"Section 8-7.4. Powers, Duties and Functions. The fire chief shall: 1. Be the administrative head of the department.

2. Provide and perform fire fighting, rescue, shoreline and ocean rescue and safety, and first-responder emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same.

3. Provide public education programs related to fire prevention, shoreline and ocean rescue and safety, and public safety.

4. Train, equip, maintain, and supervise the force of fire fighting, shoreline and ocean rescue and safety, and emergency rescue personnel.

5. Investigate the cause, origin and circumstances of fires.

6. Adopt rules relating to the protection of persons and property against fires.

7. Monitor the standards for construction and occupancy of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law.

8. Exercise such other powers and duties as may be assigned by the commission or as may be provided by law."

4. Article 15 of the Charter be amended to add a new section to be appropriately designated and to read as follows:

"Section 15-5. Upon adoption of the proposed 2012 amendment to Section 8-7.4, the Maui County Department of Fire and Public Safety shall provide the timetable for the transition to include the functions of shoreline and ocean rescue and safety."

The ballot question would be as follows:

Should Section 8-7.4 of the Charter be amended to assign shoreline and ocean rescue and safety to the Department of Fire and Public Safety?

PROPOSAL THREE - ARTICLE 3, COUNTY COUNCIL, NEW SECTION 3-8, OFFICE OF THE COUNTY AUDITOR

The Commission recommends that:

5. Article 3 of the Charter be amended by adding new sections to be appropriately designated and to read as follows:

Section 3-8.1. Declaration of Policy. It is declared to be the policy of the county to promote economy, efficiency and improved service in the transaction of the public business in the legislative and executive branches of county by: 1. Limiting expenditures to the lowest amount consistent with the efficient performance of essential services, activities, and functions.

2. Eliminating duplication and overlapping of services, activities, and functions.

3. Consolidating services, activities, and functions of a similar nature.

4. Abolishing services, activities, and functions not necessary to the efficient conduct of government.

Section 3-8.2. Office of County Auditor and County Auditor. 1. There is established an office of the county auditor, to be headed by a county auditor who shall be appointed by the county council, by a majority vote of its membership, and shall serve for a term of six years. The county auditor may be re-appointed, or a successor appointed, by the council for subsequent terms of six years. The county auditor may hold over until a successor is appointed. The salary of the county auditor shall be determined by the salary commission. The council, by a two-thirds vote of its membership, may remove the county auditor from office at any time for cause. The county auditor shall be exempt from the civil service.

2. The county auditor shall possess adequate professional proficiency for the office, demonstrated by relevant certification as a certified internal auditor or certified public accountant, and have at least five years of experience in the field of auditing, evaluation, or analysis. The county auditor shall have a bachelor's degree in accounting, business administration, or public administration or related field.

3. Except for exercising the right to vote, neither the county auditor nor any staff member of the office of the county auditor shall support, advocate, or aid in the

election or defeat of any candidate for county public office.

4. The county auditor shall appoint the necessary staff as shall be authorized by law. Persons appointed to such positions shall be exempt from the civil service and shall serve at the pleasure of the county auditor.

Section 3-8.3. Powers, Duties and Functions. 1. The county auditor shall have the duty and power to conduct or cause to be conducted:

a. The independent annual financial audit of the county, as authorized by Section 9-13 of this charter;

b. Other program, financial, or performance audits or evaluations regarding county organizations, operations, and regulations; and

c. Performance or financial audits of the funds, programs, or activities of any agency or function of the county, as the county auditor deems warranted; provided that, before each fiscal year, the auditor shall transmit a plan of the audits proposed to be conducted during the fiscal year to the mayor and the council, for review and comment, but not approval.

2. Audit findings and recommendations shall be set forth in written reports of the county auditor, a copy of which shall be transmitted to the mayor and to the council, which shall be public records, except as provided by law.

3. For the purposes of carrying out any audit, the county auditor shall have full, free, and unrestricted access to any county officer or employee and shall be authorized to examine and inspect any record of any agency or operation of the county, to administer oaths and subpoena witnesses, and compel the production of records pertinent thereto. If any person subpoenaed as a witness or compelled to produce records shall fail or refuse to respond thereto, the proper court, upon request of the county auditor, shall have the power to compel obedience to any process of the county auditor and to punish, as a contempt of the court, any refusal to comply therewith without good cause. Notwithstanding Section 3-6(6), the county auditor may, without council approval, retain special counsel to represent the county auditor in implementing these powers.

4. The county auditor shall submit its budget to the county council and its budget shall include the cost of government's budget subject to Article 9, Section 9-2(1).

Section 3-8.4. Cost of Government Commission. For the purpose of carrying out the policy set forth herein, in accordance with section 13-2 of this charter, the mayor with the approval of the council shall appoint a cost of government commission consisting of nine members. The commission shall be advisory to the county auditor.

The commission shall have the power and duty to:

1. Study and investigate the organizations and methods of operations of all departments, commissions, boards, offices, and other instrumentality of all branches of the county government and determine what changes, if any, may be desirable to accomplish the policy set forth herein.

2. Be authorized to secure directly from any department, commission, board, office, or any other instrumentalities of all branches of the county government or from any individual officer or employee of the county, information, suggestions, estimates, and statistics necessary to carry out its duties.

3. Submit an annual report of its findings and recommendations to the mayor, council, and county auditor.

Section 3-8.5. Definitions. For the purpose of this section, the following definitions shall apply:

"Agency or operation of the county" includes any executive agency, semi-autonomous agency, council office, and other establishment of county government supported, in whole or in part, by county or public funds.

"Council office" includes the council itself, the office of a council member and the council member's immediate staff, the office of the county clerk, and the office of council services. This definition shall not be construed as excluding the office of the county auditor from the legislative branch.

"Record" includes any account, book, paper, and document, and any financial affair, notwithstanding whether any of the preceding is stored on paper or electronically."

6. Article 9, Section 9-13 of the Charter, relating to Audit of Accounts, be amended to read as follows:

Section 9-13. Audit of Accounts. Within six (6) months after the beginning of each fiscal year, [the county council shall provide for] the county auditor shall conduct or cause to be conducted an independent financial audit of the funds, accounts, and other evidences of financial transactions of the county and of all operations for which

the county is responsible[.] for the audited fiscal year. The audit shall be [made] conducted by a certified public accountant or firm of certified public accountants[, designated by the council,] who have no personal interest, direct or indirect, in the fiscal affairs of the county or any of its operations. The audit shall include both financial accountability and adequacy of the financial and accounting system. If the State makes such an audit, the [council] county auditor may accept it as satisfying the requirements of this section. The scope of the audit shall be in accordance with the terms of a written contract [to be] recommended by the county auditor and signed by the council chair[,] as the contracting officer for the legislative branch, which contract shall encourage recommendations for better financial controls and procedures and shall provide for the completion of the audit within a reasonable time after the close of the previous fiscal year. A copy of the audit reports shall be filed with the county clerk and shall be a public record[.], unless otherwise provided by law.

In case of the death, resignation, or removal of the director of finance, the council shall cause an independent audit to be made of the finance director's accounts."

7. Article 15 of the Charter, relating to Transitional Provisions, be amended to add a new section to be appropriately designated and to read as follows:

"Section 15-5. Transfer of Audit Functions to the Office of the County Auditor. 1. All lawful obligations and liabilities owed by or to the office of council services relating to financial and performance audits on June 30, 2013 shall remain in effect on July 1, 2013. The obligations and liabilities shall be assumed by the office of the county auditor.

All contracts held by the office of council services relating to financial and performance audits which are to remain effective after June 30, 2013 shall be assumed by the office of the county auditor. The contracts shall continue in effect until fulfilled or lawfully terminated. All financial and performance audit activities administered by the office of council services on June 30, 2013 shall be assumed by the office of the county auditor on July 1, 2013.

2. On July 1, 2013, all records, data, and information held by the office of council services relating

to financial and performance audits which have not been completed as of June 30, 2013 shall be transferred to the office of the county auditor."

8. Article 8, Chapter 16, should be deleted in its entirety as follows:

"[Section 8-16.1. Declaration of Policy. It is declared to be the policy of the county to promote economy, efficiency and improved service in the transaction of the public business in the legislative and executive branches of county by:

1. Limiting expenditures to the lowest amount consistent with the efficient performance of essential services, activities, and functions.

2. Eliminating duplication and overlapping of services, activities, and functions.

3. Consolidating services, activities, and functions of a similar nature.

4. Abolishing services, activities, and functions not necessary to the efficient conduct of government.

Section 8-16.2. Cost of Government Commission. For the purpose of carrying out the policy set forth herein the mayor with the approval of the council shall biennially appoint a cost of government commission consisting of nine members. Each such commission shall:

1. Prepare and submit to the mayor a request for an appropriation for the operation of the commission.

2. Study and investigate the organizations and methods of operations of all departments, commissions, boards, offices and other instrumentality of all branches of the county government and determine what changes, if any, may be desirable to accomplish the policy set forth herein.

3. Be authorized to secure directly from any department, commission, board, office, or any other instrumentalities of all branches of the county government or from any individual officer or employee of the county, information, suggestions, estimates, and statistics necessary to carry out its duties.

4. Submit a report of its findings and recommendations to the mayor and council not later than eleven months after its appointment.

Section 8-16.3. Term of Commission. Members of the Cost of Government Commission shall serve for staggered terms of two years, with an initial appointment of four members to serve two year terms and five members to serve one year terms. A member may be reappointed, but shall not serve on the commission for more than a total of four years.]”

The ballot question would be as follows:

Should the Charter be amended to establish an independent Office of the County Auditor, to provide for the appointment and removal of an independent County Auditor by the County Council, to define the County Auditor’s duties and powers in order to increase accountability and efficiency of County operations, to attach the Cost of Government Commission as an advisory board to the County Auditor, and to make other clarifying, conforming, transitional, and related amendments?

PROPOSAL FOUR - ARTICLE 3, COUNTY COUNCIL, SECTION 3-5, PROCEDURE; MEETINGS; RULES AND JOURNAL; VOTING; REQUIRE INTERACTIVE COMMUNICATIONS ACCESS FOR PUBLIC TESTIMONY AT ALL COUNTY COUNCIL AND COUNTY COUNCIL COMMITTEE MEETINGS

The Commission recommends that:

9. Section 3-5 of the Charter be amended to add a new subsection to be appropriately designated and to read as follows:

"Section 3-5(5). To the extent capable, the council shall provide interactive communications access for the residents of Hana, Lana`i, Moloka`i and other geographic areas as the council shall deem appropriate and reasonable to all county council meetings and county council committee meetings. Said access shall include, but not be limited to, the ability of the public to testify, of council members to ask questions, and of the public to respond to questions."

The ballot question would be as follows:

Should Article 3, County Council, of the Charter be amended to require interactive communications access for public testimony at all County Council and County Council committee meetings for the residents of Hana, Lana`i, Moloka`i and other geographic areas as the Council deems appropriate and reasonable?

PROPOSAL FIVE - AMEND ARTICLE 14, CHARTER AMENDMENT, TO ADD A NEW SECTION TO REQUIRE THAT THE CHARTER BE REVISED AND PUBLISHED TO INCLUDE ALL NEW SIGNIFICANT AMENDMENTS ADOPTED

The Commission recommends that:

10. Article 14 of the Charter be amended to add a new section to be appropriately designated and to read as follows:

"Section 14-4. Publication of Maui County Charter.
The Maui county charter shall be revised and published in its entirety following any special or general election on any proposed charter, or revision or amendment thereto to include all new significant amendments adopted."

The ballot question would be as follows:

Should Article 14 of the Charter be amended to add a new section to require that the Maui County Charter be revised and published to include all new significant amendments adopted?

PROPOSAL SIX - ARTICLE 3, COUNTY COUNCIL RESIDENCY REQUIREMENTS

The Commission recommends that:

12. Section 3.3 of the Charter, should be amended to read as follows:

Section 3.3. Qualifications. To be eligible for election or appointment to the council, a person must be a citizen of the United States, a voter in the county, [a resident of the county for a period of ninety (90) days next preceding the filing of nomination papers and at the time of filing of nomination papers a resident in the area from which the person seeks to be elected.] and be a resident in the area of the county from which the person seeks to be elected for a period of one year before the filing of nomination papers. If a council member ceases to be a resident of the county, or ceases to be a resident of the council member's residency area during the council member's term of office, or if a council member is adjudicated guilty of a felony, the council member shall immediately forfeit office and the seat shall thereupon become vacant."

The ballot question would be as follows:

Should Section 3.3 of the Charter be amended to increase the time period for residency requirements in the County of Maui, and from the area which the person seeks to be elected from 90 days to 1 year before a candidate for council files nomination papers?

PROPOSAL SEVEN - ARTICLE 7, MAYOR RESIDENCY REQUIREMENTS

The Commission recommends that:

13. Section 7.3 of the Charter be amended to read as follows:

"Section 7-3. Qualifications. Any citizen of the United States who is a voter of the county and a resident of the county for a period of at least [ninety (90) days] one (1) year next preceding the filing of nomination papers shall be eligible to be mayor. Upon removal of the mayor's residence from the county, the mayor shall by that fact be deemed to have vacated the office of mayor. If the mayor ceases to be a voter of the county, or is adjudicated guilty of a felony, the mayor shall immediately forfeit the office of mayor."

The ballot question would be as follows:

Should Section 7.3 of the Charter be amended to increase the time period for residency requirement in the County of Maui from 90 days to 1 year before a candidate for Mayor files nomination papers?

PROPOSAL EIGHT - ARTICLE 8, CHAPTER 15, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, TO ADD ENVIRONMENTAL PROTECTION AND SUSTAINABILITY TO THE POWERS, DUTIES, AND FUNCTIONS OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

The Commission recommends that:

14. Section 8-15.3 of the Charter be amended to read as follows:

"Section 8-15.3. Powers, Duties and Functions. The director of environmental management shall: 1. Supervise waste management and control of pollution, including recycling, litter control, and protection of the unique beauty of Maui [County.] county.

2. Plan, design, build, operate, and maintain solid waste collection, processing and disposal systems, including recycling programs.

3. Plan, design, build, operate, and maintain the county's sewer treatment plants, pump stations, sewer lines, reclaimed water distribution systems, and related programs.

4. Guide efforts to optimize opportunities for environmental, natural resource protection, sustainability, conservation, and restoration.

[4.]5. Perform such other duties and functions as shall be assigned by the mayor."

The ballot question would be as follows:

Should Section 8-15.3 of the Charter be amended to add the following to the Powers, Duties and Functions of the Director of the Department of Environmental Management:

Guide efforts to optimize opportunities for environmental, natural resource protection, sustainability, conservation, and restoration?

PROPOSAL NINE - ARTICLE 8, CHAPTER 7, DEPARTMENT OF FIRE AND PUBLIC SAFETY, SECTION 8-7.2; ARTICLE 8, CHAPTER 9, DEPARTMENT OF PERSONNEL SERVICES, SECTION 8-9.4; ARTICLE 8, CHAPTER 12, DEPARTMENT OF POLICE, SECTION 8-12.2; ARTICLE 8, CHAPTER 13, DEPARTMENT OF LIQUOR CONTROL, SECTION 8-13.2, TO PROVIDE CONSISTENCY IN THE PROCESS IN WHICH THE VARIOUS COMMISSIONS OF THE LISTED DEPARTMENTS THAT APPOINT ITS DIRECTORS OR CHIEFS HANDLE THE EVALUATION AND REMOVAL OF ITS DIRECTORS OR CHIEFS

The Commission recommends that:

15. Article 8, Chapter 7, Section 8-7.2 of the Charter be amended to read as follows:

"Section 8-7.2. Fire and Public Safety Commission.

The fire and public safety commission shall consist of nine members appointed by the mayor with the approval of the council. The fire and public safety commission shall:

1. Adopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law.

2. Review and submit to the mayor the department's request for an annual appropriation for the operation of the department.

3. Review the operations of the department of fire and public safety and the civil defense agency and make recommendations for changes that may be desirable to improve the performance of emergency functions and the provision of public safety services.

4. Receive, review, and investigate any charges brought forth by the public against the conduct of the department of fire and public safety or any of its members and submit a written report of its findings and recommendations to the fire chief for disposition.

5. **[Evaluate at least annually]** Annually review and evaluate the performance of the fire chief and submit a report to the mayor and the council.

6. Submit an annual report to the mayor and the council on its activities.

7. Have such other powers and duties as may be provided by law.

Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department."

16. Article 8, Chapter 9, Section 8-9.4 of the Charter, should be amended to read as follows:

"Section 8-9.4. Civil Service Commission. The civil service commission shall consist of five members appointed by the mayor with the approval of the council.

The civil service commission shall:

1. Adopt rules having the force and effect of law to carry out the provisions of the civil service laws of the State.

2. Request an annual appropriation for the operation of the department.

3. Hear appeals, in accordance with law, by any officer or employee aggrieved by any action by the director of personnel services or by an appointing authority.

4. Advise the mayor and director of personnel services on problems concerning personnel administration.

5. Annually review and evaluate the performance of the director of personnel services and submit a report to the mayor and the council.

[5.]6. Have such other powers and duties as may be provided by law."

17. Article 8, Chapter 12, Section 8-12.2 of the Charter be amended to read as follows:

"Section 8-12.2. Police Commission. The police commission shall consist of nine members appointed by the mayor with the approval of the council.

The police commission shall:

1. Adopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law.

2. Review and submit to the mayor the department's request for an annual appropriation for the operation of the department.

3. Receive, review and investigate any charges brought forth by the public against the conduct of the department or any of its members and submit a written report of its findings and recommendations to the chief of police for the chief's disposition.

4. Annually review and evaluate the performance of the chief of police and submit a report to the mayor and the council.

[4.]5. Have such other powers and duties as may be provided by law."

18. Article 8, Chapter 13, Section 8-13.2 of the Charter be amended to read as follows:

"Section 8-13.2. Liquor Control Commission. The liquor control commission shall consist of nine members appointed by the mayor with the approval of the council.

The liquor control commission shall:

1. Prepare and submit a request for an annual appropriation for the operation of the department.

2. Adopt rules having the force and effect of law for the administration of liquor control in the county and to carry out provisions of the liquor control laws of the State, including, but not limited to, the fixing of liquor license fees.

3. Grant, renew, or refuse applications for licenses for the manufacture, importation and sale of liquor in the county under applicable laws and regulations.

4. Annually review and evaluate the performance of the director of liquor control and submit a report to the mayor and the council.

[4.]5. Have such other powers and duties as may be provided by law not in conflict with the provisions of this section."

19. Article 8, Chapter 13, Section 8-13.4 of the Charter be amended to read as follows:

"Section 8-13.4. Director of the Department of Liquor Control. The director of the department of liquor control shall be appointed and may be removed by the liquor control commission. The director may be removed by the liquor control commission only after being informed in writing of the charges which are resulting in the director's dismissal, and after being given a hearing before the commission. The director of the department of liquor control shall have had a minimum of five years experience in law enforcement, at least three of which shall have been in an administrative capacity."

The **ballot question** would be as follows:

Should Chapters 7 (Department of Fire and Public Safety), 9 (Department of Personnel Services), 12 (Department of Police), and 13 (Department of Liquor Control) of Article 8 of the Charter be amended to provide consistency in the process in which the various commissions of the listed departments that appoint its directors or chiefs handle the evaluation and removal of its directors or chiefs?

PROPOSAL TEN - PREAMBLE

The Commission recommends that:

20. The Preamble of the Charter be amended to read as follows:

WE, THE PEOPLE OF THE COUNTY OF MAUI, mindful of our Hawaiian history, heritage and culture and our uniqueness as a four island county, dedicate our efforts to fulfill the philosophy decreed by the Hawaii State motto, "Ua mau ke ea o ka aina i ka pono," ["The life of the land is perpetuated in righteousness."]

[WE, THE PEOPLE OF THE COUNTY OF MAUI,] In order to secure the benefits of the best possible form of county government and to exercise the powers and assume the responsibilities of county government to the fullest extent possible, we do hereby adopt this charter of the County of Maui, State of Hawai`i."

The **ballot question** would be as follows:

Should the Preamble of the Charter be amended to add that the people of the County of Maui being mindful of their Hawaiian history, heritage and culture and uniqueness as a four island County shall dedicate their efforts to fulfill the philosophy decreed by the Hawaii State motto, "Ua mau ke ea o ka aina i ka pono," ["The life of the land is perpetuated in righteousness."]?

* * *

On June 1, 2012, Danny A. Mateo, Council Chair, transmitted to the Commission certified copies of Resolution Nos. 12-54 and 12-55, which were adopted by the Council on June 1, 2012, and which respectively recalled the Council's proposed alternative relating to Council Term Limits, and the Council's proposed alternative to Establish an Office of the County Auditor.

The Commission met again on June 4, 2012 and June 25, 2012, to review discuss and take action on this 2011 - 2012 Maui County Charter Commission Final Revised Report to the County Clerk, June 25, 2012.

COMMISSION POLICY RECOMMENDATIONS TO THE MAYOR, THE COUNCIL, AND OTHER GOVERNMENTAL BODIES OF MAUI COUNTY

In addition to the proposed Charter revisions explained above, the Commission members, based on their year-long study of Maui's governance, makes the following policy recommendations to the Mayor, the Council, and the other governmental bodies of Maui County:

The Commission recommends that a task force be established to thoroughly review the structure of the County of Maui government, research other models of county governments and prepare a report.

COMMISSION POLICY RECOMMENDATIONS TO FUTURE CHARTER COMMISSIONS

The Commission recommends that the 2021 - 2022 Charter Commission's first meeting be on or about April 1, 2021, or as soon thereafter as possible. Further that a user manual be prepared for the first meeting of the Charter Commission that sets forth the timetable and the actual process of developing the ballot questions; the schedule of meetings and communications with the Council and submission to the Clerk; the limitations of Charter Commission powers at the end of the process; that Christmas time be avoided for public hearings; the rules that were adopted by the 2012 Charter Commission (which were based on the 2002 Charter Commission); a copy of the 2002 and 2012 brochures on the charter questions that were posed in prior elections and the information from the County Clerk on the votes cast and results; and that the RFP process for hiring a legislative

analyst and commission secretary be commenced before the first meeting.

James R. Smith
P.O. Box 790403
Paia, Maui, Hawaii 96779

Attention: Lisa Kahuhu Maui Charter Commission

FAX: This is the CORRECTED VERSION

Fax number: 270-7152

Date: 6/24/12

To: Chairperson Joshua Stone and Members of the Maui Charter Commission

Subject: written testimony re: Item No. II.A. and attached testimony Maui County Council dated 6/06/12

From: Jim Smith

Message: I may not be able to attend and submit this written testimony for your consideration.

Number of pages: **3**

0625-12 - Written Public Testimony

**James R. Smith
P.O. Box 790403
Paia, Hawaii 96779**

June 25, 2012
Chairperson Joshua Stone,
Members of the Maui County Charter Commission
200 S. High Street
Wailuku, Hawaii 96793

**Subject: Communication Item No. II.A , transmitted via
E-mail to Charter Commission members on June 15, 2012**

Dear Chairperson Stone and Members,

In the above mentioned communication a member poses the question: "Can we still drop our proposal?" This appears to be an ex parte communication that violates our Sunshine Law, as it relates to members meeting and take up in private, matters required to be noticed and considered in public. The agenda for this meeting does not list for consideration an item to take up a proposal to consider repeal of any proposed amendment to our Charter.

This is injurious to dignity. It takes away my right to see and/or participate in a meaningful way, in Commission decision-making. This right is guaranteed by general law of the State of Hawaii - HRS 92.

Equally as important to public trust, the member failed to provide you with a copy of the legislation referenced; the Policy Committee Report concerning the ordinance; nor did he inform the committee of written testimony provided the Council, for or against. I submitted written testimony to our Council when it considered the first reading of the bill related to publication of the charter, dated June 6, 2012. (see attachment)

It appears DeLeon relies upon his status as a member, to affirm the truth of his allegation. The Council did not adopted this Commission's proposal. It merely restated an existing law, that the Clerk failed to administer. (I assume the legality of its use of power, for the sake of argument)

If this Commission would like to take up reconsideration of the proposal referenced by Member DeLeon, or any other, I request that the Commission give adequate notice. The public needs the time and opportunity, as provided by law.

Thank you for your time and patience

Sincerely submitted,


James R. Smith

James R. Smith
P.O. Box 790403
Paia, Maui, Hawaii 96790

June 6, 2012

Chairperson Danny Mateo
And Members of the Maui County Council
200 S. High Street
Wailuku, Hawaii 96793

Subject: Bill for an Ordinance Amending Chapter 1.14,
Maui County Code relating to Publication of the Maui County
Charter

Dear Chairperson Mateo and Members,

Our Charter Commission's proposal to bring to the community an amendment to Article 14 of our Charter is meaningful, appropriate and necessary. This is not an amendment to the duty, function and responsibility of the Office of the Clerk, at Article 5.

Article 14 establishes the importance of our Charter, in the lives of citizens. It assures and protects governance of and by the people. The proposed amendment finalizes that importance, and in light of experience, it is necessary. It advances public awareness of citizen power, and the limits of political power. By this awareness, consent is possible. And I believe this proposal to be a significant improvement to our existing Charter.

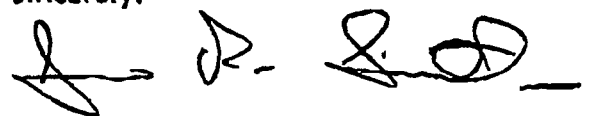
The timing of the Council hearing this proposed bill is unfortunate.

In effect the proposal is not an expression of public policy, rather simply an administrative directive, in the nature of the Rules of Council. Council rules are adopted by resolution not ordinance. If the council position that the proposed amendment does not merit inclusion in a constitutional document has merit, then it appears on its face this proposed bill does not merit inclusion in the Maui County Code.

We must possess a clear understanding of these differences. Because this difference defines the nature of our political structure, governance by law. The opportunity to take up these matters in your Policy Committee's review of our Charter Commission's response, dated May 25, 2012, should not be lost. I request that this bill be referred back to the Committee prior to final approval.

In addition, I believe the proposed bill to be defective, particularly as it repeals the inclusion of the Rules of Council as appended to the Maui County Code.

Sincerely,



ORDINANCE NO. 3958

BILL NO. 54 (2012)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 1.14, MAUI COUNTY CODE,
RELATING TO PUBLICATION OF THE MAUI COUNTY CHARTER

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 1.14.020, Maui County Code, is amended to read as follows:

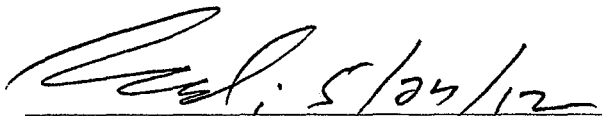
“1.14.020 Duties. In performing the function of revising and publishing county laws, the duties of the revisor of county laws, in order of priority, shall be:

- A. To publish and distribute supplements to the Maui County Code;
- B. To publish and distribute replacement volumes of the Maui County Code;
- C. [To compile, publish, and distribute the following as appendices to the Maui County Code:
 - 1. County charter;
 - 2. Rules of the council; and
 - 3. Rules and regulations promulgated by county agencies.] To compile, publish, and distribute the Maui County Charter in its entirety following any special or general election on any proposed charter, or amendment thereto, to include all amendments adopted.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



Edward S. Kushi, Jr.
Department of the Corporation Counsel
County of Maui
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062512 - Additional material

WE HEREBY CERTIFY that the foregoing BILL NO. 54 (2012)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 15th day of June, 2012, by the following vote:


Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
Excused	Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 15th day of June, 2012.


DATED AT WAILUKU, MAUI, HAWAII, this 15th day of June, 2012.

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OFFICE OF THE MAYOR

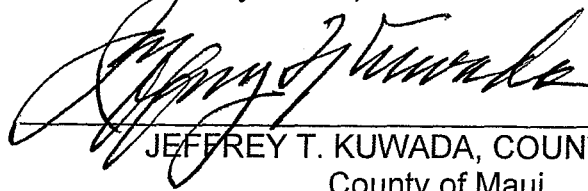

JOSEPH PONTANILLA, VICE-CHAIR
Council of the County of Maui


JEFFREY T. KUWADA, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 18 DAY OF June, 2012.


ALAN M. ARAKAWA, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3958 of the County of Maui, State of Hawaii.


JEFFREY T. KUWADA, COUNTY CLERK
County of Maui

Passed First Reading on June 6, 2012.
Effective date of Ordinance June 18, 2012

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OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3958, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

MESSAGE TO MAUI COUNTY VOTERS

FROM

THE MAUI COUNTY CHARTER COMMISSION (2011-12)

During the upcoming General Election, Maui County Voters are going to be asked to review and vote on (10?) amendments to the Maui County Charter. The County Charter is like the County's constitution. It is the fountain on which our local government is based. It sets the rules for how we select our leaders; spend our tax dollars to run the county government; and how that government is organized. Because the Charter is so important, all changes to it require the approval of the voters.

Every 10 years a panel of 11 citizens is selected by the Mayor and approved by the County Council to review the charter, seek comments on it from our elected leadership and the general public; and then after careful review, make recommendations for amending the Charter. This Charter Commission is chaired by Joshua A. Stone and Wayne N. Hedani serves as the Vice Chair. The other members are: Artemio C. Baxa, Stephanie S. Crivello, David P. DeLeon, Frank R. DeRego, Clifford P. Hashimoto, Susan A. Moikeha, Linda Kay Okamoto, Yuki Lei Sugimura, and Flo V. Wiger. The Commission held 23 regular meetings ((including three we have not held yet: remember this is to be read in September)) and held public hearings throughout the County twice. After consulting with the Maui County Council as required by law, the Commission chose to place the following 10 proposed Charter Amendments on the November General Election ballot for the voters' consideration and approval:

PROPOSAL ONE -- SHALL THE TERM OF OFFICE FOR COUNTY COUNCIL MEMBERS BE CHANGED FROM TWO (2) TO FOUR (4) YEARS; THE NUMBER OF TERMS LIMITED TO THREE (3) OR NOT MORE THAN 12 YEARS OF CONTINUOUS SERVICE; AND THAT THE TERMS BE STAGGERED?

Currently, our nine-member County Council is elected every two years. This proposal would increase the term length to four years. The purpose for this increase is to give the Council Members more time to do the work they were elected to do by not requiring them to run for re-election every 2 years.

This amendment would create a limit of three four-year terms, or a maximum of 12 years, after which members would have to vacate their office. Currently, Council Members are limited to a maximum of five 2-year terms or 10 years.

This proposal would also stagger the Council elections so that the five members with the highest vote counts in the 2014 election would be given an initial four-year term and the four with the lowest vote counts would be given an initial two-year term for that election only and thereafter would be given four-year terms. The purpose for staggering the terms is so that the whole Council would not be running for re-election at the same time. The Council Members with the initial two-year terms of office would be limited to a maximum of 10 years in office.

While this proposal has three parts, the voter will be asked to vote on all three as a unit, in a single yes or no vote.

062512 - Additional material submitted by Dave DeLeon

BALLOT QUESTION

Shall Section 3.2, of the Charter of the County of Maui be amended to:

- (a) Change the term of office for Council Members from two (2) to four (4) years; and
- (b) Limit the term to no more than three (3) consecutive terms;
- (c) Have the terms be staged?

PROPOSAL TWO -- SHOULD THE RESPONSIBILITY FOR OCEAN AND SHORELINE RESCUE AND SAFETY BE PLACED IN THE DEPARTMENT OF FIRE AND PUBLIC SAFETY

Currently, County Beach Lifeguards or Ocean Safety Officers are based in the County Parks and Recreation Department primarily because they work at Beach Parks. However, there has been a long-term effort to move this responsibility to the Fire and Public Safety Department because it is primarily a public safety function that would be enhanced by being part of a department with a public safety mission. This shift, however, has not been accomplished and remains an open question. If approved by the voters, the County's Ocean Safety function would be moved to the Department of Fire and Public Safety.

BALLOT QUESTION

Shall Section 8-7.4 of the Charter of the County of Maui be amended to assign shoreline and ocean rescue and safety to the Department of Fire and Public Safety?

PROPOSAL THREE -- SHOULD MAUI COUNTY ESTABLISH AN INDEPENDENT OFFICE OF COUNTY AUDITOR

Maui County does not currently have an auditor function with a broad range of authority to study the operations of the government in order to enhance both governmental accountability and efficiency. This proposed Charter amendment would create a new office of County Auditor that would be responsible for both fiscal and management audits of county accounts and operations. While the County Auditor, who would head up this new office, would be appointed by the County Council and may be removed by the Council, the goal for this office is to be independent of the county's administrative and legislative leadership so that the auditor would be able to issue complete, accurate, unbiased and reliable reports to the Mayor, the Council and the Public about how Maui County is operating and how efficiencies can be achieved. The auditor will appoint the auditor's staff, which will not be subject to civil service laws. Under this proposal the County Cost of Government Commission will serve in an advisory capacity to the County Auditor. The Commission will be appointed by the Mayor and confirmed by the County Council.

BALLOT QUESTION

Shall the Charter be amended to establish an independent Office of the County Auditor, to provide for the appointment and removal of an independent County Auditor by the County Council, to define the County Auditor's duties and powers in order to increase accountability and efficiency of County operations, to attach the Cost of Government Commission as an advisory board to the County Auditor, and to make other clarifying, conforming, transitional, and related amendments?

PROPOSAL FOUR -- SHALL THE COUNTY COUNCIL BE REQUIRED TO ESTABLISH A SYSTEM TO ALLOW FOR RESIDENTS OF MOLOKAI, LANAI AND HANA TO TESTIFY LIVE AT COUNCIL MEETINGS VIA AN INTERACTIVE COMMUNICATIONS SYSTEM

Currently for residents to testify live at County Council meetings they have to appear in person in Wailuku. For residents from Hana that means two hours driving one way. For Lanai and Molokai residents it means committing a full day and considerable expense. While the idea of establishing a communications system that would allow residents of remote districts to give testimony without traveling long distances, has been frequently discussed over the years, to date no such system has been created. This proposal requires that one be created.

BALLOT QUESTION

Shall Article 3, County Council, of the Charter of the County of Maui be amended to require interactive communications access for public testimony at all County Council and County Council committee meetings for the residents of Hana, Lanai, Molokai and other geographic areas as the Council deems appropriate and reasonable?

PROPOSAL FIVE -- SHALL THE COUNTY CLERK BE REQUIRED TO RE-PUBLISH THE COUNTY CHARTER EVERY TIME IT IS AMENDED

Currently the County Charter is re-published every so often and if amendments to the charter are approved by the voters before the charter is re-published, those amendments are attached as addendums to the last published version of the Charter. This creates a confusing presentation of the Charter. Because the Charter is a public document, meant to be clearly understood by one and all, it is proposed that the County Clerk be required to republish the Charter whenever it is amended.

BALLOT QUESTION

Shall Article 14, Charter Amendments, be amend to add a new section to require that the Maui County Charter be reviewed and published to include all new significant amendments adopted?

PROPOSAL SIX -- INCREASING THE DISTRICT RESIDENCY REQUIREMENT FOR COUNCIL CANDIDATES TO ONE YEAR

While County Council Members are elected at-large in Maui County, they also must run from the residency district that includes their home address. They are currently required to have lived in the residency district they run from for 90 days. This proposal would increase that requirement to a full year. The purpose for this increase is better assure that the candidates for County Council have a strong relationship to their residency district.

BALLOT QUESTION

Shall Section 3.3 of the Charter of the County of Maui be amended to increase the time period for residency requirements in the County of Maui, and from the area which the person seeks to be elected from 90 days to one year before a candidate for council files nomination papers?

PROPOSAL SEVEN -- INCREASING THE RESIDENCY REQUIREMENT FOR MAYORAL CANDIDATES TO ONE YEAR

Candidates for Mayor are now required to have lived in Maui County for 90 days. This proposal would increase that required residency in the County to a full year. The purpose is to better assure that the candidates for Mayor have a stronger knowledge of our three-island County.

BALLOT QUESTION

Shall Section 7.3 of the Charter of the County of Maui be amended to increase the time period for residency requirement in the County of Maui from 90 days to one year before a candidate for Mayor files nominations papers?

PROPOSAL EIGHT --INCREASING THE RESPONSIBILITIES OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT TO INCLUDE ENVIRONMENTAL PROTECTION AND SUSTAINABILITY

Currently the Department of Environmental Management has two functions: wastewater and solid waste processing and management. The County does not have an agency responsible for environmental protection and sustainability. This proposal would assign that responsibility to the Department of Environmental Management. The purpose of this proposal is to assign an agency with the responsibility to work to protect the natural environment and increase our community's ability to sustain itself.

BALLOT QUESTION

Shall Section 8-15.3 of the Charter of the County of Maui be amended to add the following to the Powers, Duties and Functions of the Director of the Department of Environmental Management:

Guide efforts to optimize opportunities for environmental, natural resource protection, sustainability, conservation, and restoration?

PROPOSAL NINE -- CREATE CONSISTENCY IN THE CHARTER'S REFERENCES TO DEPARTMENTS OVERSEEN BY COMMISSIONS

Currently there are four County Departments that are overseen by Commissions: Police, Fire and Public Safety, Personnel Services, and Liquor. While the responsibilities and powers among these commissions are identical, their powers and duties, as described in the charter vary. The purpose of this provision is to bring consistency in how the directors for these departments are hired, evaluated, and if necessary removed from office.

BALLOT QUESTION

Shall Chapters 7 (Department of Fire and Public Safety), 9 (Department of Personnel Services), 12 (Department of Police), and 13 (Department of Liquor Control) of Article 8 of the Charter be amended to provide consistency in the process in which the various commissions of the listed department that appoint its directors or chiefs handle the evaluation and removal of its directors or chiefs?

PROPOSAL 10 -- AMENDING THE PREAMBLE OF THE CHARTER TO RECOGNIZE MAUI COUNTY'S HAWAIIAN HERITAGE AND CONSISTING OF FOUR ISLANDS

Currently the Preamble of the Charter does not make reference to our community's unique heritage and the fact that the County includes four main islands. This proposal would correct that oversight.

BALLOT QUESTION

Shall the Preamble of the Maui County Charter be amended to add that the people of the County of Maui being mindful of their Hawaiian history, heritage, and culture and uniqueness as a four island county shall dedicate their efforts to fulfill the philosophy decreed by the Hawaii State motto, "Uamaukeea o kaainaikapono," ["The life of the land is perpetuated in righteousness."]