

**OFFICE OF THE COUNTY CLERK**

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
www.mauicounty.gov/county/clerk

May 17, 2011

Mr. Joshua A. Stone, Chair  
Charter Commission  
County of Maui  
c/o Department of the Corporation Counsel  
200 South High Street  
Wailuku, Hawaii 96793

Dear Chair Stone and Commissioners:

SUBJECT: REMARKS TO THE CHARTER COMMISSION

Congratulations on your approval as Charter Commissioners.<sup>1</sup>

Hawaii Revised Statutes § 50-10 states in pertinent part as follows:

The county clerk shall provide for the submission of the proposed charter with any alternatives, as provided by section 50-9, to the qualified electors of the county for approval at a general election or special election to be held on the date determined by the charter commission[.]

In the event the Commission determines that Charter proposals must be submitted to the qualified voters of Maui County at a special election, I offer the following information for your consideration:

1. As of May 5, 2011, there are 80,970 registered voters in Maui County; and
2. The estimated cost of an all-mail Special Election is \$250,000.00.<sup>2</sup> (This cost is in addition to the cost of operating elections on primary and general election days. The additional cost will be paid out of County revenue.)

<sup>1</sup> The Council of the County of Maui approved your appointment as Charter Commissioners by Resolution No. 11-31, adopted on April 1, 2011.

<sup>2</sup> Haw. Rev. Stat. § 11-91.5 states in pertinent part:

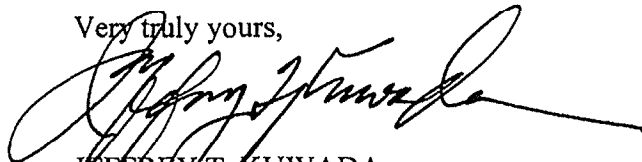
...  
(c) The county clerk shall determine whether a county election, held other than on the date of a regularly scheduled primary or general election, may be conducted by mail or at polling places. An election by mail shall be under the supervision of the county clerk.  
...

May 17, 2011  
Page 2

In the event Charter amendment proposals are submitted to the qualified voters of Maui County at the General Election on November 6, 2012, the exact wording of the ballot questions must be submitted to the Chief Election Officer, State of Hawaii, not later than 4:30 p.m., on the seventy-fifth calendar day prior to the 2012 General Election, i.e., August 23, 2012.<sup>3</sup>

Please contact me should you have questions concerning the substance of this letter.

Very truly yours,



JEFFREY T. KUWADA  
County Clerk

cc: Dennis A. Mateo, Council Chair  
Ken Fukuoka, Director, Office of Council Services

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<sup>3</sup> Act 126, Session Laws of Hawaii 2010, changed the date of the State's primary election from the second to the last Saturday of September to the second Saturday of August. The change in the date of the primary election was necessary to comply with provisions within the National Defense Authorization Act for Fiscal Year 2010, 3 P.L. 111-84, which requires that absentee ballots must be mailed to uniformed and overseas voters no later than forty-five days prior to elections for federal office.

Act 126 required the State legislature to make further changes to other election deadlines during the 2011 legislative session. These changes were enacted in H.B. 716 H.D. 1, S.D. 1, C.D. 1, hereinafter referred to as "H.B. 716". Section 4 of H.B. 716 amends subsection (b) of Hawaii Revised Statutes § 11-119.

Currently, subsection (b) of Hawaii Revised Statutes § 11-119 reads as follows:

...  
(b) Whenever the chief election officer is responsible for the printing of ballots, the exact wording to appear thereon, including, but not limited to, questions and issues shall be submitted to the chief election officer not later than 4:30 p.m. on the sixtieth calendar day prior to the applicable election. [Emphasis added.]  
...

Section 4 of H.B. 716 amends subsection (b) of Hawaii Revised Statutes § 11-119 to read as follows:

...  
(b) Whenever the chief election officer is responsible for the printing of ballots, unless provided otherwise, the exact wording to appear thereon, including questions and issues shall be submitted to the chief election officer not later than 4:30 p.m. on the seventy-fifth calendar day prior to the applicable election. [Emphasis added.]

H.B. 716 has been sent to the Governor. I expect the Governor to sign it into law

052311 - Item No. II.A. page 2 of 2

To: Josh Stone, Chair, Maui County Charter Commission, and Members

From: Sally Raisbeck

427 Liholiho St Wailuku HI 96793 808-244-9604,

sallyraisbeck@earthlink.net

Date: May 9, 2011

Subject: DRAFT RULES OF THE MAUI COUNTY CHARTER COMMISSION

A few minor suggestions regarding the rules:

1. Rule 1.1 "Supersede" is generally preferred to "supercede".

"Usage Discussion of SUPERCEDE

Supercede has occurred as a spelling variant of supersede since the 17th century, and it is common in current published writing. It continues, however, to be widely regarded as an error. " Merriam -Webster dictionary.

2. Rule 2.1 Place and day need to be changed.

3. Rule 2.3A, Rule 2.3B, Rule 2.4 "a vote of at least two-thirds of the members"

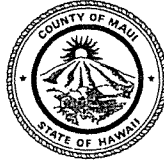
This is slightly ambiguous. Two-thirds of 11 members is 7.33, should it be 7 members or 8 members? Should the rules specify 8 to avoid ambiguity?

4. Rule 3.4 and Rule 3.6. Rule 3.4 says "the affirmative vote of six members..." is needed to take action, and Rule 3.6 says that "a failure to vote....shall be deemed an affirmative vote". Is it the intention that five affirmative votes, plus an abstention, shall be sufficient to take action?

5. Rule 11.2A. The rule might be interpreted that the Chair can close testimony at any time, even before all have testified, by giving five minutes notice of the closing of testimony. Is that the intention? (It seems a bit arbitrary.)

ALAN M. ARAKAWA  
Mayor

KEITH A. REGAN  
Managing Director



Joshua A. Stone, Chair  
Artemio C. Baxa  
Stephanie S. Crivello  
David P. DeLeon  
Frank R. DeRego, Jr.  
Clifford P. Hashimoto  
Wayne N. Hedani  
Susan A. Moikeha  
Linda Kay Okamoto

CHARTER COMMISSION  
COUNTY OF MAUI  
C/O DEPARTMENT OF THE CORPORATION COUNSEL  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
Email: Charter.commission@co.maui.hi.us

May 10, 2011

MEMORANDUM

TO: Mayor; All Directors; Police Chief; and Fire Chief; (See Distribution List attached)

Joshua A. Stone

Digitally signed by Joshua A. Stone  
DN: cn=Joshua A. Stone, o=Charter Commission, ou,  
email=charter.commission@co.maui.hi.us, c=US  
Date: 2011.05.10 11:42:52 -10'00'

FROM: Joshua A. Stone, Chair, Maui County Charter Commission and Members

SUBJECT: Request for Submittal of Proposed Charter Amendments and/or Recommendations

By Resolution No. 11-31, adopted on April 1, 2011, the members of the Charter Commission, appointed by the Mayor, were approved by Council. Pursuant to Section 14-3 of the Charter of the County of Maui (2003), the Charter Commission is tasked with the study and review of the operation of the government of the county under such amendments or new charter and to propose amendments to or draft a new charter.

This memorandum is to provide you with the opportunity to submit proposed Charter amendments and/or recommendations you or your department may have. Submissions should be addressed as follows:

Charter Commission  
c/o Department of the Corporation Counsel  
200 S. High Street, 3<sup>rd</sup> Floor  
Wailuku, Hawaii 96793

The Commission respectfully requests that all submissions be received by the Commission by June 30, 2011.

Thank you for your attention to this very important matter.

052311 - Item No. II.C. page 1 of 2



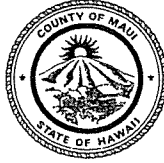
**DISTRIBUTION LIST:**

**LIST:**

The Honorable Alan M. Arakawa, Mayor  
Keith A. Regan, Managing Director  
Patrick K. Wong, Corporation Counsel  
William Spence, Director, Department of Planning  
Danilo Aagsalog, Director, Department of Finance  
John Kim, Prosecuting Attorney  
Jo-Ann Ridao, Director, Department of Housing and Human  
Concerns  
Dave Taylor, Director, Department of Water Supply  
David Goode, Director, Department of Public Works  
Kyle Ginoza, Director, Department of Environmental Management  
Glenn Correa, Director, Department of Parks & Recreation  
Gary Yabuta, Chief of Police, Maui Police Department  
Jeffrey A. Murray, Chief of Fire, Department of Fire and Public  
Safety  
Franklyn Silva, Director, Department of Liquor  
Jo Anne Johnson, Director, Department of Transportation  
Lance Hiromoto, Director, Department of Personnel Services

ALAN M. ARAKAWA  
Mayor

KEITH A. REGAN  
Managing Director



Joshua A. Stone, Chair  
Artemio C. Baxa  
Stephanie S. Crivello  
David P. DeLeon  
Frank R. DeRego, Jr.  
Clifford P. Hashimoto  
Wayne N. Hedani  
Susan A. Moikeha  
Linda Kay Okamoto

CHARTER COMMISSION  
COUNTY OF MAUI  
C/O DEPARTMENT OF THE CORPORATION COUNSEL  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
Email: Charter.commission@co.maui.hi.us

May 10, 2011

**MEMORANDUM**

TO: The Honorable Danny A. Mateo, Council Chair and Council Members; Jeffrey Kuwada, County Clerk; and Ken Fukuoka, Director of Council Services  
Joshua A. Stone

FROM: Joshua A. Stone, Chair, Maui County Charter Commission and Members

SUBJECT: Request for Submittal of Proposed Charter Amendments and/or Recommendations

Digitally signed by Joshua A. Stone  
DN: cn=Joshua A. Stone, ou=Charter Commission, ou=Maui County, c=US  
email=charter.commission@co.maui.hi.us, c=US  
Date: 2011.05.10 11:38:15 -1000

By Resolution No. 11-31, adopted on April 1, 2011, the members of the Charter Commission, appointed by the Mayor, were approved by Council. Pursuant to Section 14-3 of the Charter of the County of Maui (2003), the Charter Commission is tasked with the study and review of the operation of the government of the county under such amendments or new charter and to propose amendments to or draft a new charter.

This memorandum is to provide you with the opportunity to submit proposed Charter amendments and/or recommendations you may have. Submissions should be addressed as follows:

Charter Commission  
c/o Department of the Corporation Counsel  
200 S. High Street, 3<sup>rd</sup> Floor  
Wailuku, Hawaii 96793

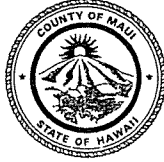
The Commission respectfully requests that all submissions be received by the Commission by June 30, 2011.

Thank you for your attention to this very important matter.

052311- Item No. II.D. page 1 of 1

ALAN M. ARAKAWA  
Mayor

KEITH A. REGAN  
Managing Director



Joshua A. Stone, Chair  
Artemio C. Baxa  
Stephanie S. Crivello  
David P. DeLeon  
Frank R. DeRego, Jr.  
Clifford P. Hashimoto  
Wayne N. Hedani  
Susan A. Moikeha  
Linda Kay Okamoto

CHARTER COMMISSION  
COUNTY OF MAUI  
C/O DEPARTMENT OF THE CORPORATION COUNSEL  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
Email: Charter.commission@co.maui.hi.us

May 10, 2011

MEMORANDUM

TO: ALL BOARDS AND COMMISSIONS **Joshua A. Stone**  
FROM: Joshua A. Stone, Chair, Maui County Charter Commission and Members  
SUBJECT: Request for Submittal of Proposed Charter Amendments and/or Recommendations

Digitally signed by Joshua A. Stone  
DN: cn=Joshua A. Stone, o=Charter Commission, ou,  
email=charter.commission@co.maui.hi.us, c=US  
Date: 2011.05.10 11:26:31 -10'00'

By Resolution No. 11-31, adopted on April 1, 2011, the members of the Charter Commission, appointed by the Mayor, were approved by Council. Pursuant to Section 14-3 of the Charter of the County of Maui (2003), the Charter Commission is tasked with the study and review of the operation of the government of the county under such amendments or new charter and to propose amendments to or draft a new charter.

This memorandum is to provide you with the opportunity to submit proposed Charter amendments and/or recommendations you as a board or commission may have. Submissions should be addressed as follows:

Charter Commission  
c/o Department of the Corporation Counsel  
200 S. High Street, 3<sup>rd</sup> Floor  
Wailuku, Hawaii 96793

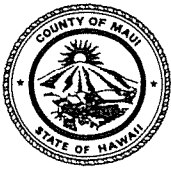
The Commission respectfully requests that all submissions be received by the Commission by June 30, 2011.

Thank you for your attention to this very important matter.

**DISTRIBUTION LIST:**

**LIST:**

Affirmative Action Advisory Council  
Aging, Council on  
Animal Control Board  
Arborist Committee, Maui County  
Children and Youth, Commission on  
Civil Service Commission  
Code Appeals, Board of  
Cost of Government Commission  
Cultural Resources Commission  
Culture and The Arts, Commission on  
Ethics, Board of  
Fire and Public Safety Commission  
Grants Review Committee  
Hana Advisory Committee to Planning Commission  
Kula Ag Park Committee  
Lanai Planning Commission  
Liquor Control Adjudication Board  
Liquor Control Commission  
Maui Planning Commission  
Maui Redevelopment Agency  
Molokai Planning Commission  
Naming Streets, Parks & Facilities, Commission on  
Persons With Disabilities, Commission on  
Police Commission  
Real Property Tax Review Board  
Salary Commission  
Status of Women, Committee on the  
Outdoor Lighting Committee  
Subdivision Engineering Standards Committee  
Traffic Safety Council  
Urban Design Review Board  
Variances and Appeals, Board of  
Water Supply, Board of



ALAN M. ARAKAWA

MAYOR

OUR REFERENCE

YOUR REFERENCE

# POLICE DEPARTMENT

## COUNTY OF MAUI

55 MAHALANI STREET  
WAILUKU, HAWAII 96793  
(808) 244-6400  
FAX (808) 244-6411



GARY A. YABUTA  
CHIEF OF POLICE

CLAYTON N.Y.W. TOM  
DEPUTY CHIEF OF POLICE

May 11, 2011

Mr. Joshua A. Stone, Chair  
Charter Commission  
c/o Department of the Corporation Counsel  
200 S. High Street, 3<sup>rd</sup> Floor  
Wailuku, HI 96793

Re: Request for Submittal of Proposed Charter Amendments and  
Recommendations

2011 MAY 12 AM 10:36  
CORPORATION COUNSEL

Dear Chair Stone:

Thank you for the opportunity to comment on the study and review of the County's current Charter, and amendments thereof. We hereby request that no changes or amendments be made to Chapter 12 of the County Charter, relating to the Department of Police and Police Commission.

We have absolute confidence in the Police Commission's ability to receive, review, and investigate public charges involving police misconduct, and authority in appointing and removing the Chief of Police.

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

Sincerely,

GARY A. YABUTA  
Chief of Police

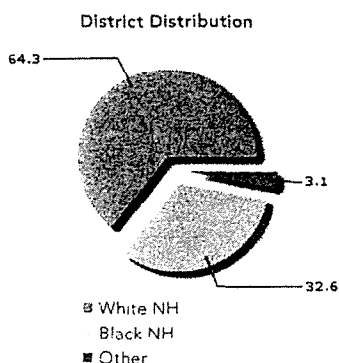
- c: Deputy Chief Clayton Tom  
Assistant Chief Wayne Ribao  
Assistant Chief, Danny Matsuura  
Assistance Chief Lawrence Hudson  
Mr. Leil Koch, Chair, Police Commission  
Mayor Alan M. Arakawa

052311 - Item No. II. F. page 1 of 1

# OPENING UP THE PROCESS WEB-BASED APPLICATION ENCOURAGES CITIZEN INVOLVEMENT

← • →

A new online platform developed by Esri lets citizens become more engaged in the redistricting process.



By combining geographic data and tools in an online application, Esri Redistricting gives state and local governments, the public, and advocacy groups unprecedented access to the redistricting process. In the United States, political representation is based on population and location. Ideally, political boundaries are drawn to equally allocate population among the districts in a state so that all citizens obtain fair representation.

Because people are born, retire, die, relocate, or for other reasons move, the population shifts. To account for these changes, the US Constitution mandates a decennial census. Based on the data collected, district boundaries are redrawn to account for these changes. Over time, states gain or lose congressional seats, and individual districts in those states change shape. How these districts are redrawn has a very real impact on representation for the intervening five congressional cycles. In late March 2011, the Census Bureau supplied data from the 2010 Census to states so they could begin the process of evaluating and modifying districts. The 435 seats in the US House of Representatives are assigned based on a formula that first assigns one seat to each state then uses each state's resident population (plus any overseas military personnel and civilian federal workers and their dependents) to allocate the remaining 385 seats.

Mapping has always been central to the process of redistricting. GIS is the perfect technology for creating redistricting maps and understanding the effects of boundary changes on associated populations. It's not surprising that GIS was applied to both census and redistricting activities as soon as it became commercially available in the 1980s.

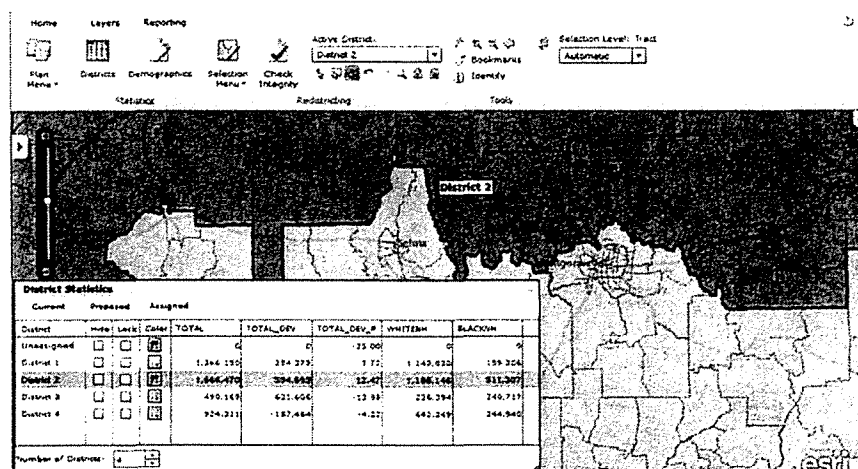
Over the past three decades, Esri business partners built solutions that lowered the cost and increased the efficiency of the redistricting process. In the 1990s, GIS-based redistricting solutions could model as many as 100 scenarios when considering a redistricting plan. The number of potential scenarios that could practically be considered grew to 1,000 for GIS redistricting applications used with the 2000 Census data.

Legislators, commissioners, and others involved in creating redistricting plans need to share those plans, solicit feedback, consider alternative plans, and incorporate edits before submitting final plans. However, despite improvements in the tools used by government officials, involvement by citizens and advocacy groups in the process was limited.



Esri recognized this need by developing a web-centric solution that invites larger participation in a process that was previously much more exclusive. Esri Redistricting provides a common view of current and proposed districts for state and local government officials, advocacy groups, and citizens. While few public users may pursue their own redistricting plans, this application enables citizen engagement on a more basic level by letting the public interact with proposed districts to help preserve communities and ensure representation that reflects community needs.

To provide flexibility in meeting the needs of organizations of different sizes, Esri Redistricting is available as Software as a Service (SaaS) on a subscription basis or as a configured offering that can be hosted and managed by Esri or deployed on premises. With either deployment choice, users can create, edit, publish, review, and collaborate on plans through a web browser. Boundaries can be developed that take into consideration race, existing communities, voting age population, and other variables. Esri Redistricting includes basemaps (street, imagery, and topographic), census data from 2000 and 2010, and Public Law 94-171 data. Data from previous censuses, proprietary information, and existing legislative boundaries can be added.



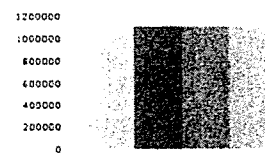
User roles controlling access and functionality can be established. Undo and redo options for editing tools and the ability to add comments and map notes aid collaboration. Integrity checks validate contiguity, dual assignments, district counts, null assignments, and population summaries. Esri Redistricting also helps create documentation to verify compliance with Section 5 of the Voting Rights Act, which prohibits its discriminatory redistricting practices.

Alabama was one of the first states to adopt this platform and has brought its entire redistricting process online. The Alabama legislature chose Esri Redistricting because it could securely incorporate input from many locations without requiring the state to purchase, install, and maintain desktop software. Plans can be developed, shared, and evaluated before being submitted to the Reapportionment Office for final review.

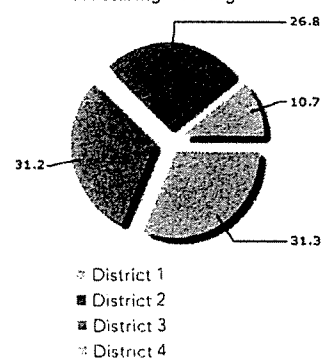
The combination of Internet access and smartphones is creating a new and qualitatively different connection between government and citizens. The Internet has become the primary entry point for citizen involvement in government processes. This has led to different expectations of the transparency and responsiveness of government.

By removing the barriers of technology cost, data availability, and accessibility for the public and advocacy groups, Esri Redistricting has the potential to make the redistricting process following the 2010 Census one of the most open yet seen. To learn more, visit [esri.com/redistricting](http://esri.com/redistricting). A free 30-day trial is available.

District Statistics



Fracturing/Packing



**Lisa Kahuhu - 050911 Communication for the charter commission from Sally Raisbeck**

**From:** Lisa Kahuhu  
**To:** Charter Commission Members  
**Date:** 5/11/2011 2:16 PM  
**Subject:** 050911 Communication for the charter commission from Sally Raisbeck  
**Attachments:** [Possible SPAM] communication for the charter commission; [Possible SPAM] Communication for the charter commission

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This is a communication meant for Josh Stone, the Chair of the Charter Commission, and for the members of the Commission. Please forward it to them.

If this is Lisa receiving this email, will you confirm that you received it and forwarded it? thank you.

to: Josh Stone, Chair, Maui County Charter Commission, and Members  
from: Sally Raisbeck, 427 Liholiho St Wailuku HI 96793 808-244-9604, [sallyraisbeck@earthlink.net](mailto:sallyraisbeck@earthlink.net)  
Date: 5/9/11  
Subject: RELATION OF COMMISSION RECOMMENDATIONS TO THE COUNTY COUNCIL

Dear Chairman Stone and Members: At the meeting 5-9-11, the commission seemed unsure about their relation to the Council in regard to proposed amendments.

Sections 14-1 and 14-2 of the Charter describe the manner in which the Council can propose amendments, or the public can propose them with council approval.

Section 14-3 of the Charter is separate. It says quite clearly that the Commission may propose amendments or draft a new charter, "which shall be submitted to the county clerk within 16 months after such commission has been appointed." The clerk shall submit those amendments or the new charter to the voters. There is no requirement that the Council approve the proposals by the Commission. They have no power to amend your proposals.

I think it would be unwise of the Commission to consider that their freedom of action is limited by what the Council would approve.

Aloha, Sally Raisbeck

052311- Item No. II. H. page 1 of 1



**From:** Sally Raisbeck <sallyraisbeck@earthlink.net>  
**To:** <letters@staradvertiser.com>, <reps@Capitol.hawaii.gov>, <sens@Capitol.h...>  
**CC:** <charter.commission@co.maui.hi.us>  
**Date:** 5/14/2011 4:25 AM  
**Subject:** [Possible SPAM] TIME FOR DISTRICT VOTING ON MAUI

To the Editor of the Star-Bulletin:

It's time for district voting for the Council on Maui.

In the past ten years many people have agitated for district voting on Maui. Now is the time to actually do something about it.

The Charter Commission will meet twice a month during the next 16 months to consider amendments to the county Charter, or even a whole new Charter.

The special value of this Commission is that their proposals do not need approval from the Mayor or the Council. The only approval they need is that of the voters at the general election of 2012.

The County Council doesn't want district voting. That is natural, since they were elected under the present system. But many people in the county consider the present system unfair.

Under the present system, a Council member can be elected even if his "residence district" has voted for another candidate. That happens fairly often. The present system means every candidate must run county-wide. That makes it much harder, and more expensive, to run for Council than for the State Legislature.

Make your thoughts count. Make your proposals detailed and practical. Provide evidence that what you want will work in practice. Consider the special needs of Lanai and Molokai, who are such population minorities that any implementation of "one-man-one-vote" works a hardship on them. Get your friends involved.

Now is the time for district voting on Maui. Let's do it.

Sally Raisbeck  
427 Liholiho street Wailuku HI 96793 808-244-9604

**REVISED DRAFT RULES**  
**MAY 23, 2011**

**RULES OF THE 2011 MAUI COUNTY CHARTER COMMISSION**  
(Adopted \_\_\_\_\_ 2011)

**Section 1. Authority and Scope of Rules.**

- Rule 1.1. Effective date of rules.
- Rule 1.2. Force and effect of rules.
- Rule 1.3. Amendment or rescission of rules; new rules.
- Rule 1.4. Suspension of rules.

**Section 2. Meetings.**

- Rule 2.1. Regular Commission meetings.  
Special Commission meetings.
- Rule 2.3. Emergency Commission meetings.
- Rule 2.4. Executive sessions.
- Rule 2.5. Avoidance of improper meetings.
- Rule 2.6. Limitation on duration of recess.

**Section 3. Quorum; Voting.**

- Rule 3.1. Quorum.
- Rule 3.2. Six votes generally required for Commission action.
- Rule 3.3. (RESERVED)
- Rule 3.4. (RESERVED)
- Rule 3.5. Votes required in committee or subcommittee.
- Rule 3.6. Voting generally required.
- Rule 3.7. Abstention from voting.
- Rule 3.8. Discharge of committee's consideration.
- Rule 3.9. Limitations on members' speaking opportunities.
- Rule 3.10. Other voting procedures.

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**Section 4. Officers and Their Duties.**

- Rule 4.1. Commission Chair.
- Rule 4.2. Support Staff.
- Rule 4.3. (RESERVED)

**Section 5. Committees and Subcommittees.**

- Rule 5.1. Establishment of standing committees.
- Rule 5.2. Purpose of standing committees.
- Rule 5.3. Committee Chair and Vice-Chair.

- Rule 5.4. Committee recommendation generally required.
- Rule 5.5. Discharge of committee's consideration.
- Rule 5.6. Direct referrals.
- Rule 5.7. Subcommittees.
- Rule 5.8. Special committees.
- Rule 5.9. Minutes.
- Rule 5.10. Site inspections. (RESERVED)
- Rule 5.11. Expiration of committee items.

## **Section 6. Committee Reports.**

- Rule 6.1. Contents.
- Rule 6.2. Signing.

## **Section 7. Roll Call Votes.**

- Rule 7.1. Clerk shall call roll.
- Rule 7.2. Clerk shall announce result.

## **Section 8. Agendas.**

- Rule 8.1. Deadline for Commission agenda.
- Rule 8.2. Posting of Commission agenda.
- Rule 8.3. Posting of committee and subcommittee agendas.
- Rule 8.4. Notification.
- Rule 8.5. Adequate notice.

## **Section 9. Order of Business.**

- Rule 9.1. Commission meetings.
- Rule 9.2. Committee and subcommittee meetings.

## **Section 10. Rules of Procedure.**

- Rule 10.1. Robert's Rules of Order.

## **Section 11. Testimony; Protocol.**

- Rule 11.1. Acceptance of testimony.
- Rule 11.2. Oral testimony.
- Rule 11.3. Written testimony.
- Rule 11.4. Presentations.
- Rule 11.5. Participation by resource persons.
- Rule 11.6. Discussion period.
- Rule 11.7. Reconvened meetings.
- Rule 11.8. Respect during speaking.

- Rule 11.9. Chair's authority.  
Rule 11.10. Public forum not created.

## **Section 12. Commission Expenditures.**

- Rule 12.1. Commission Chair's prior approval required.  
Rule 12.2. Report required.

## **Section 13. Meetings by Videoconference.**

- Rule 13.1. Authorized.  
Rule 13.2. Definition.  
Rule 13.3. Reasonable necessity for meeting by videoconference.  
Rule 13.4. Agenda.  
Rule 13.5. Testimony.  
Rule 13.6. Failure of system.  
Rule 13.7. Requirement of audio and visual interaction.

## **Section 14. (RESERVED).**

# **SECTION 1. AUTHORITY AND SCOPE OF RULES.**

**Rule 1.1. Effective date of rules.** These rules shall become effective upon adoption by the Commission and shall remain in effect until [November 5, 2012] **after the general or special election as referenced in Section 14-3 of the Revised Charter of the County of Maui (1983), as amended (the "Charter"), unless [superceded] superseded** earlier by new rules.

**Rule 1.2. Force and effect of rules.** Unless otherwise indicated, these rules shall apply to the Commission, the Commission's standing committees, the Commission's special committees, the subcommittees of the Commission's standing committees, individual Commission members, the Commission's officers and support staff, and individuals who attend or participate in Commission, committee, or subcommittee meetings. To the extent that they are not in conflict with other law, these rules shall have the force and effect of law pursuant to Chapter 50 of the Hawai'i Revised Statutes; provided, that they may be amended, rescinded, or suspended as provided in these rules. References to "Chair" in these rules shall be read to include the Commission Chair, committee chairs, and subcommittee chairs, unless the context indicates that such a reading is not intended.

**Rule 1.3. Amendment or rescission of rules; new rules.** The amendment or rescission of a rule, or adoption of a new rule, under this provision shall become effective upon the affirmative vote of a majority of the Commission.

**Rule 1.4. Suspension of rules.** These rules may be suspended by the affirmative vote of a majority of the Commission; provided, that duration of the



suspension shall not be longer than necessary to further the purpose of the suspension.

## SECTION 2. MEETINGS.

**Rule 2.1. Regular Commission meetings.** Regular Commission meetings shall be held [in the County Council's Committee Room at the County Building, Wailuku, Hawai'i, on Mondays as set forth in the attached schedule.] on dates, times and places as determined by the Commission Chair. If a regular meeting date is a holiday or is in conflict with an important public event, the Commission Chair may reschedule the meeting date. The Commission may reschedule a regular meeting for a different time, date, and place.

**Rule 2.2. Special Commission meetings.** Special Commission meetings may be called at any time by the Commission Chair, or by a majority of the Commission.

**Rule 2.3. Emergency Commission meetings.** Emergency Commission meetings shall be governed by Section 92-8 of the Hawai'i Revised Statutes. To ensure compliance with these provisions, the following guidelines shall apply:

A. If time permits, the Chair shall confer with Commission members for the limited purposes of determining whether an emergency exists and making a written finding to that effect. If [two-thirds] at least eight of all the Commission members agree that an emergency exists, then an emergency meeting shall be scheduled, and the emergency meeting agenda and written finding of an emergency shall be filed with the County Clerk for posting at least [24] twenty-four hours prior to the emergency meeting. Persons requesting notification on a regular basis shall be contacted by mail or telephone as soon as practicable.

B. If there is not sufficient time for such conferral to determine whether an emergency exists and to make a written finding, the Commission Chair shall prepare a draft written finding that an emergency exists and schedule the emergency meeting. The emergency meeting agenda and draft written finding shall be filed with the County Clerk for posting. Persons requesting notification on a regular basis shall be contacted by mail or telephone as soon as practicable. When the Commission convenes the emergency meeting, the first order of business shall be the adoption of the draft written finding (or an amended written finding) that an emergency exists by [a two-thirds vote] at least eight of all Commission members. If such a finding is made, the Commission can proceed with the emergency meeting. If the Commission does not find that an emergency exists by a [two-thirds] vote of at least eight of all Commission members, then the meeting must adjourn immediately.

**Rule 2.4. Executive sessions.** Executive sessions shall be held in accordance with Sections 92-4 and 92-5 of the Hawai'i Revised Statutes. An executive session is a portion of a meeting that is closed to the public to allow for a confidential discussion in accordance with law. An affirmative vote of at least two-thirds of the members present, taken in open session, shall be required to hold an executive session; provided, that the affirmative vote constitutes a majority of all of the voting members of the Commission, the committee, or the subcommittee holding the meeting. The reason for holding an executive session shall be publicly announced and included as part of any motion to hold an executive session. In addition to members, only necessary staff and necessary resource persons shall attend an executive session. The information provided in executive session shall be confidential and may be protected by the attorney-client privilege. The attorney-client privilege may only be waived by a majority of the Commission. Any action taken in executive session shall be announced in open session; provided, that the announcement shall not reveal confidential information.

**Rule 2.5. Avoidance of improper meetings.** Two members of the Commission may communicate or interact privately to gather information from each other about official Commission matters to enable them to perform their duties, as long as no commitment to vote is sought or made. To avoid meeting without proper notice and to ensure compliance with the letter and spirit of the Sunshine Law (Part I, Chapter 92, Hawai'i Revised Statutes), Commission members shall scrupulously avoid discussing matters under the Commission's supervision, control, jurisdiction, or advisory powers with more than one other member of the Commission at any time except during a properly noticed meeting. Any Commission member may attend and participate in any properly noticed meeting.

**Rule 2.6. Limitation on duration of recess.** A meeting shall [be] not be in recess for longer than six calendar days.

### **Section 3. QUORUM; VOTING.**

**Rule 3.1. Quorum.** A majority of all of the members of the Commission shall constitute a quorum. A majority of all of the voting members of a committee or subcommittee shall constitute a quorum for that committee or subcommittee. The loss of quorum shall automatically adjourn a meeting. No meeting may be convened without a quorum. Any member may be excused by the Chair from attendance at a meeting. If a member is not in attendance and has not been excused by the Chair, the member shall be deemed absent. A member who abstains pursuant to Rule 3.7 shall not be counted as present for purposes of quorum with regard to the matter upon which the member is abstaining; provided, that if a quorum is lost on a matter because of one or more abstentions, the meeting can continue for the purpose of considering other matters for which a quorum is present.



**Rule 3.2. Six votes generally required for Commission action.** The affirmative vote of six members shall be necessary to take any Commission action, unless otherwise provided by law or these rules.

**Rule 3.3. (RESERVED)**

**Rule 3.4. (RESERVED)**

**Rule 3.5. Votes required in committee or subcommittee.** A committee recommendation on any matter shall be made by a simple-majority vote of all of the members of the committee or subcommittee, even if Commission action on the matter ultimately requires a super-majority vote.

**Rule 3.6. Voting generally required.** No member shall refrain from voting on any matter unless abstaining pursuant to Rule 3.7. A failure to vote by a [present] member who is present or who, having been present, has withdrawn from the meeting without being excused, shall be deemed an affirmative vote and shall be so recorded.

**Rule 3.7. Abstention from voting.** Notwithstanding Rule 3.6, a member shall abstain from voting on any matter in which the member has a financial interest, or on any matter involving the member's official conduct. Prior to discussion on the matter, a member who will be abstaining from voting shall advise the Chair in open session of the reason for the abstention. An abstaining member shall be permitted to participate in the discussion of the matter, except in executive session; provided, that the member shall refrain from advocating the member's financial or other personal interests during the discussion.

**Rule 3.8. Limitation on members' speaking opportunities.** No member shall speak more than twice on any pending matter, except upon the majority consent of the other members. The movant of a matter shall not be permitted to speak in a reply to arguments of other members until every member choosing to speak shall have spoken.

**Rule 3.9. Other voting procedures.** Once the Chair calls for a vote, no member shall be permitted to explain the member's vote; only the Chair is authorized to call for a vote. After the Chair or staff announces the result of a vote, no member shall be allowed to change the member's vote. For Commission meetings, the staff shall record the vote of each member upon the minutes of the Commission; for committee or subcommittee meetings, staff shall also record the vote of each member in the minutes of the committee.

## **SECTION 4. OFFICERS AND THEIR DUTIES.**

**Rule 4.1. Commission Chair.** The Commission Chair shall be the presiding officer of the Commission. In the absence or disability of the Commission Chair, the Commission Vice-Chair shall act as the presiding officer. In the event of the absence or disability of all of these officers, a majority of the members present shall select a temporary Commission Chair; provided that, if necessary, the Commission Chair may designate a Commission member to convene the meeting; and further provided, that the first action at the meeting shall be the selection of a temporary Chair.

In addition to those duties prescribed by law or by these rules, it shall be the duty of the Commission Chair to:

- A. Open all meetings of the Commission at the appointed hour by taking the Chair and calling the Commission to order.
- B. Reasonably administer the receipt of oral and written testimony on Commission agenda items, pursuant to Section 11 of these rules.
- C. Call for the approval of the minutes of a prior meeting.
- D. Maintain order and proper decorum.
- E. Announce the business before the Commission in the order prescribed by these rules.
- F. Receive all communications and present them to the Commission or committee before which the subject matter is pending.
- G. Dispose of matters properly brought before the Commission, subject to appeal to the Commission.
- H. Authenticate by signature all acts of the Commission.
- I. Make known all rules of order when so requested and decide all questions of order and procedure subject to appeal to the Commission.
- J. Announce the result of any matter voted on by the Commission.
- K. Coordinate all intergovernmental meetings, functions, and activities on behalf of the Commission.
- L. Manage the staff and activities of the Commission.



M. Develop organizational and staffing plans and budgets pertaining to the Commission.

N. Plan, assign and coordinate studies and research, compile data, and reports on matters requested by the Commission, committees, or subcommittees.

O. Plan and coordinate meetings and public hearings[.], including the preparation and posting of Commission agendas.

**Rule 4.2. Support Staff.** It shall be the duty of the staff to:

A. Review communications, reports, and other material received by the Commission or its Chair, prepare digests, and compile necessary information, and recommend disposition for Commission action.

B. Read matters to the Commission, as directed by the Chair.

C. Transmit upon receipt all communications or other matters to the proper parties.

D. Deliver to the appropriate committee all matters, as may be duly referred to such committee.

E. Record all matters that come before the Commission.

F. Make a list of all items and communications, and other matters set for consideration on particular dates.

G. Have charge of all records of the Commission, including the minutes of the Commission, communications, and other business matters transmitted to the Commission.

H. Serve in all matters as Clerk of the Commission and to perform or coordinate all clerical functions as the Chair or Commission shall from time to time direct.

I. Assist the Commission in preparing publication of proposed charter amendments, form of the ballot, including such explanatory information as may be necessary.

J. Assist the Commission Chair in coordinating all intergovernmental meetings, functions and activities.

**Rule 4.3. (RESERVED)**

## **SECTION 5. COMMITTEES AND SUBCOMMITTEES.**

**Rule 5.1. Establishment of standing committees.** The Commission by resolution may establish standing committees, along with their composition of Commission members, Chair and Vice-Chair, and jurisdictional authority.

**Rule 5.2. Purpose of standing committees.** The purpose of the standing committees is to obtain information, deliberate and to provide recommendations to the Commission on matters referred to the standing committees by the Commission.

**Rule 5.3. Committee Chair and Vice-Chair.** The Chair of a committee shall call meetings and preside over the same. In the absence of the Chair, the Vice-Chair shall preside. In the absence of both, a majority of the members present shall select a temporary Chair; provided that, if necessary, the Commission Chair may designate a committee member to convene the meeting; and further provided, that the first action at the meeting shall be the selection of a temporary Chair.

**Rule 5.4. Committee recommendation generally required.** The Commission may refer matters to a standing committee and shall receive the committee's recommendation; provided, that the Commission may waive this requirement by an affirmative vote of the majority of the Commission; and further provided, that this rule shall not apply to the adoption of new or amended rules.

**Rule 5.5. Discharge of committee's consideration.** A majority of the Commission may discharge a committee from further consideration of any matter.

**Rule 5.6. Direct referrals.** Notwithstanding Rule 5.4, the Commission Chair may directly refer a new matter to a committee without Commission action if there is a time limit for Commission action; provided, that the Chair shall concurrently place on the next available Commission meeting agenda a written notice to enable the Commission to take such action as may be necessary. In addition, with respect to existing committee matters, the Commission Chair and staff members shall directly refer communications relating to those matters to the appropriate committees.

**Rule 5.7. Subcommittees.** A subcommittee within any standing committee may be created for the purpose of providing recommendations to the standing committee, particularly on matters that require in-depth research or technical expertise. The standing committee shall appoint the subcommittee's Chair and Vice-Chair, at least one of whom shall be a Commission member; appoint the subcommittee's voting and non-voting members; specify the subcommittee's objectives; and set a date on which the subcommittee shall be dissolved. Subcommittees shall comply with the rules applicable to standing committees to the extent practicable.



**Rule 5.8. Special committees.** The Commission may create any special committee for the purpose of providing well-considered recommendations to the Commission, particularly on matters that are not clearly within the jurisdictional authority of any standing committee. The Commission shall appoint the special committee's Chair and Vice-Chair, at least one of whom shall be a Commission member; appoint the special committee's voting and non-members; specify the special committee's objectives; and set a date on which the special committee shall be dissolved. Special committees shall comply with the rules applicable to standing committees to the extent practicable.

**Rule 5.9. Minutes.** The Chair of a committee shall approve minutes of committee meetings. In the absence of the Chair, the Vice-Chair shall approve minutes. Minutes shall comply with the requirements of Section 92-9 of the Hawai'i Revised Statutes.

**Rule 5.10. Site inspections. (RESERVED)**

**Rule 5.11. Expiration of committee items.** All pending matters listed on each committee's master agenda shall expire at the conclusion of the Commission term.

## **SECTION 6. COMMITTEE REPORTS.**

**Rule 6.1 Contents.** All committee reports shall clearly and [consisely] concisely state the committee's recommendations for Commission action and describe the committee's deliberations in reaching those recommendations. A committee report shall state clearly the intent and purpose of the recommended action. Proposed amendments to the Charter shall be set forth in Ramseyer format.

**Rule 6.2 Signing.** The Chair of the committee shall sign committee reports. The Vice-Chair of the committee may sign in the absence or disability of the Chair. In signing a report, the Chair or Vice-Chair may write "with reservations" or "I do not concur" at the end of the report or next to certain sections of the report. Other committee members shall also be afforded the opportunity to sign committee reports and may write "with reservations" or "I do not concur" at the end of a report or next to certain sections of the report. Notwithstanding the foregoing, a member who has abstained from voting on a matter pursuant to Rule 3.7 shall not sign the committee report on the matter.

## **SECTION 7. ROLL CALL VOTES.**

**Rule 7.1. Clerk shall call roll.** [During Commission meetings, the staff or Chair shall call the roll of members as determined by the Commission Chair.] If

**determined by the Chair that a roll call vote is necessary for any Commission action, the Clerk or the Chair shall call for the vote.**

**Rule 7.2. Chair shall announce result.** The Clerk or Chair shall announce the result of roll call votes.

## **SECTION 8. AGENDAS.**

**Rule 8.1. Filing deadline for Commission agenda.** In order to be placed on the Commission agenda of a meeting scheduled in accordance with Rule 2.1, all items supporting documentation communications shall be filed with the Clerk before **[12:00 noon] 4:30 p.m.** on the day that the agenda is posted. Agenda requests received later than the applicable deadline shall be placed on the agenda of the following meeting.

**Rule 8.2. Posting of Commission agenda.** The agenda for any Commission meeting scheduled in accordance with Rule 2.1 shall be posted and made available to members of the Commission and the public no later than six calendar days before the meeting day, provided that the day of this deadline shall not be a Saturday, Sunday or County holiday. **[The communications for any Commission meeting scheduled in accordance with Rule 2.1 shall be made available to the members by 3:30 p.m. three calendar days prior to the meeting; provided, that this provision shall not apply with respect to emergency meetings.]**

**Rule 8.3. Posting of committee and subcommittee agendas.** Committee and subcommittee agendas shall be posted and made available to members and the public no later than six calendar days prior to the meeting.

**Rule 8.4. Notification.** A meeting agenda shall be sent to individuals who have requested notification of the meeting pursuant to Section 92-7 of the Hawai'i Revised Statutes on the same day that the agenda is posted. To the extent that it is practicable to do so, the notification shall be accomplished by facsimile or e-mail when so requested. An e-mail notification may either transmit the agenda itself or provide the Internet address for the official website where the meeting agenda is located.

**Rule 8.5. Adequate notice.** Pursuant to the Sunshine Law (Part I, Chapter 92, Hawai'i Revised Statutes), meeting agendas shall list all items to be considered.

## **SECTION 9. ORDER OF BUSINESS.**

**Rule 9.1. Commission meetings.** The following shall be the order of business for meetings, unless altered by majority vote of the Commission:



1. Roll Call
2. **[Presentation of Written or Oral Testimony] Minutes**
3. **[Minutes] Presentation of Written or Oral Testimony**
4. Committee Reports
5. Communications
6. Unfinished Business
7. New Business
8. Announcements

**Rule 9.2. Committee and subcommittee meetings.** The order of business for committee and subcommittee meetings shall be determined by the chairs of the committees and subcommittees.

## **SECTION 10. RULES OF PROCEDURE.**

**Rule 10.1. Robert's Rules of Order.** The rules of parliamentary practice set forth in Robert's Rules of Order, Newly Revised, shall govern Commission, committee, and subcommittee meetings in all cases in which they are not inconsistent with law or these rules.

## **Section 11. TESTIMONY; PROTOCOL.**

**Rule 11.1. Acceptance of testimony.** At any meeting (including public hearings), written and oral testimony pertaining to items on the meeting agenda (or hearing notice) shall be accepted as provided herein.

**Rule 11.2. Oral testimony.** For each item on the meeting agenda, oral testimony shall be accepted before the item's discussion period commences. Persons wishing to provide oral testimony shall register with staff prior to testifying. The following procedures shall apply to oral testimony.

A. **Testimony-registration period.** Any individual shall be permitted to register for oral testimony during the testimony-registration period for any item. The testimony-registration for each item shall open no later than **[10] ten** minutes prior to the beginning of the meeting. The Chair shall close the testimony-registration period, after the meeting has commenced, only after: (a) all registrants to that point have been afforded

on opportunity to testify on the item; or (b) the Chair provides notice at least five minutes before [the closing.] **closing the testimony-registration period.**

**B. Order and duration of testimony.** The Chair shall accept testimony in the order in which testimony forms are submitted. Each testifier shall be allowed to speak for three minutes on each item. For each item, at the end of three minutes, the Chair may allow a person an additional minute to conclude the testimony on the item. After all registered testifiers have testified once on the item, an additional three minutes per person shall be allowed to those who were unable to conclude the testimony. An individual's request to testify shall be deemed withdrawn if the individual is not present when called to testify.

**C. Chair decides whether all testimony shall be accepted at beginning of meeting.** The Chair may either: (a) accept testimony on all items prior to the discussion period for any of the items; or (b) accept testimony on each item immediately prior to the discussion period for the item.

**Rule 11.3. Written testimony.** Hand-delivered written testimony shall be accepted before or during the testimony-registration period; provided, that the Chair may (but is not required to) accept and distribute relevant documentary information at any time, which shall not have the effect of re-opening the oral testimony-registration period. Written testimony that is submitted by letter, facsimile, or e-mail should be received by the Commission staff at least [24] **twenty-four** hours prior to the meeting to ensure its timely distribution; provided, that written testimony for a meeting by videoconference should be received by the Commission staff at least [72] **seventy-two** hours prior to the meeting to ensure its distribution. If a Commission member receives a written communication that reasonably appears to have been intended as written testimony, the Commission member shall promptly forward the written communication to the appropriate recipient.

**Rule 11.4. Presentations.** Prior to the acceptance of oral testimony on an item, the Chair may allow a member or resource person to make an informational presentation on the item; provided, that the presentation shall not be considered testimony. The decision on whether to allow a presentation and on the allowable form and duration of any presentation shall be made at the Chair's discretion.

**Rule 11.5. Participation by resource persons.** The Chair may allow Administration officials, attorneys from the Department of the Corporation Counsel, State officials, Federal officials, and other resource persons to participate in meetings for the purpose of providing information or advice to facilitate the deliberative process. For purposes of these rules, a resource person is anyone designated by the Chair as possessing special knowledge or experience with respect to an item on the meeting agenda. Participation in the meeting by a



resource person pursuant to this rule shall not constitute testimony; provided, that a resource person may also submit written or oral testimony pursuant to these rules.

**Rule 11.6. Discussion period.** The discussion period on any item shall not commence until all persons who have registered to testify during the testimony-registration period for the item have been afforded an opportunity to testify. During the discussion period, the Chair may invite a testifier, a resource person, or any other person to appear for the purpose of responding to questions. Such an appearance shall not re-open the testimony-registration period for that item.

**Rule 11.7. Reconvened meetings...**When a meeting has reconvened after being in recess, no one may register to testify on an item if the testimony-registration period has closed for that item.

**Rule 11.8. Respect during speaking.** When a member, a testifier, or another person is properly speaking during a meeting, no one shall engage in private discourse. All speakers during meetings shall direct their remarks only to the Chair, be recognized by the Chair before proceeding, confine their remarks to matters within the scope of the meeting agenda, and avoid abusive language.

**Rule 11.9. Chair's authority.** Nothing in this section shall diminish the responsibility or the authority of the Chair to maintain order and decorum.

**Rule 11.10. Public forum not created.** The conduct of meetings, including the receipt of testimony or presentations, shall not constitute the creation of a public forum.

## **SECTION 12. COMMISSION TRAVEL.**

**Rule 12.1. Commission Chair's prior approval required.** All expenditures from the accounts shall require the prior approval of the Commission Chair or a representative designated for such purpose.

**Rule 12.2. Report required.** The Commission Chair shall require a written report, as the Chair deems appropriate, from any officer or employee who expends public funds on off-island travel. Unless specifically required by the Commission Chair, this requirement shall not apply to travel required to attend a Commission, committee, or subcommittee meeting, or to travel required between a Commission member's residence and the [County Building, Wailuku, Hawai'i.] meeting place for a scheduled meeting.

## **SECTION 13. MEETINGS BY VIDEOCONFERENCE.**

**Rule 13.1. Authorized.** Meetings by videoconference shall be held in accordance with Section 92-3.5 of the Hawai'i Revised Statutes and these rules.

**Rule 13.2. Definition.** A meeting by videoconference is a meeting in which one or more members participate in the meeting by means of a system of audio and visual interaction.

**Rule 13.3. Reasonable necessity for meeting by videoconference.** The Chair may authorize a meeting by videoconference when the Chair finds that it is reasonably necessary to do so; provided, that an adequate system of audio and visual interaction is readily available for use and that the expenses and administrative burden of conducting such a meeting are not unreasonable; and further provided, that the Commission Chair provides written approval at least [10] **ten** calendar days prior to the meeting.

**Rule 13.4. Agenda.** The meeting agenda shall be posted at each site at which a member will be participating in the meeting at the same time that the agenda is posted elsewhere.

**Rule 13.5. Testimony.** Each site at which a member will be participating in the meeting shall be open to the public during the meeting. At each site, oral testimony shall be accepted pursuant to Rule 11.2. Written testimony for a meeting by videoconference must be received by the Commission staff at least [72] **seventy-two** hours prior to the meeting to ensure its distribution.

**Rule 13.6. Failure of system of audio and visual interaction.** A meeting by videoconference shall adjourn immediately if the system of audio and visual interaction fails to allow adequate audio and visual communication. In such an instance, the meeting shall adjourn irrevocably and in its entirety, even if there are enough remaining members in communication who would otherwise constitute a quorum.

**Rule 13.7. Requirement of audio and visual interaction.** A meeting shall not be conducted by telephone or other means in which audio interaction is not accompanied by visual interaction. Oral testimony by telephone or other means in which audio interaction is not accompanied by simultaneous visual interaction shall not be accepted. Nonetheless, the Chair may permit participation in a meeting by non-member resource persons by telephone or other means of audio interaction even without accompanying visual interaction; provided, that such participation shall [be] not be permitted during an executive session.

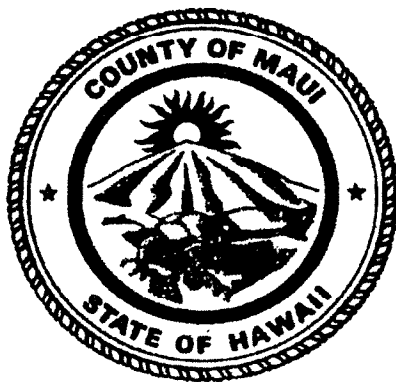
## **SECTION 14. (RESERVED)**

**052311 - Item No. III.B. pages 1-16**



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**2001 - 2002**  
**MAUI COUNTY CHARTER COMMISSION**



**REVISED**  
**FINAL REPORT**

052311 - Item No. IV.A. pages 1-50

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## TABLE OF CONTENTS

### BACKGROUND

### ORGANIZATION

### CHARTER COMMISSION REPORT

#### PROPOSAL ONE

AMEND ARTICLE ONE TO CONFIRM THE EQUAL WORTH AND DIGNITY OF EVERY INDIVIDUAL (Section 1-1)

#### PROPOSAL TWO

LENGTHEN TERMS OF COUNCILMEMBERS FROM TWO (2) TO FOUR (4) YEARS (Section 3-2(5))

#### PROPOSAL THREE

CLARIFY THE RESPONSIBILITIES OF THE CORPORATION COUNSEL (Section 8-2.3)

#### PROPOSAL FOUR

BROADEN THE RESPONSIBILITIES OF THE DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT TO INCLUDE ENVIRONMENTAL MANAGEMENT AND CHANGE ITS TITLE TO THE "DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT" (Section 8-5(3))

#### PROPOSAL FIVE

RENAME THE DEPARTMENT OF FIRE CONTROL TO BE THE "DEPARTMENT OF FIRE AND PUBLIC SAFETY," RENAME THE PUBLIC SAFETY COMMISSION TO BE THE "FIRE AND PUBLIC SAFETY COMMISSION," GIVE THIS COMMISSION THE RESPONSIBILITY TO HIRE AND FIRE THE FIRE CHIEF (WITH DUE PROCESS PROTECTIONS GIVEN TO THE CHIEF) AND TO REVIEW THE BUDGET OF THE DEPARTMENT OF FIRE AND PUBLIC SAFETY, AND CLARIFY THE DUTIES OF THE FIRE CHIEF (Article 8, Chapter 7)

#### PROPOSAL SIX

CLARIFY THE RESPONSIBILITIES OF THE DEPARTMENT OF PLANNING WITH REGARD TO LONG-RANGE PLANNING, CULTURAL RESOURCES, ENFORCEMENT, TIMELY DECISION-MAKING, AND THE COMMUNITY PLANS (Section 8-8)

#### PROPOSAL SEVEN

CLARIFY THE ROLE OF THE CITIZEN ADVISORY COMMITTEES AS BODIES THAT SHOULD REVIEW AND RECOMMEND REVISIONS TO THE COMMUNITY PLANS, AND STAY IN EXISTENCE UNTIL ITS RECOMMENDATIONS ARE ACTED UPON, AND CLARIFY THAT APPROVED COMMUNITY PLANS BECOME PART OF THE GENERAL PLAN.

#### PROPOSAL EIGHT

PROVIDE DUE PROCESS PROTECTION IN THE EVENT OF THE TERMINATION OF THE DIRECTOR OF PERSONNEL SERVICES (Section 8-9(2))

**PROPOSAL NINE**

RESTRUCTURE THE DEPARTMENT AND BOARD OF WATER SUPPLY TO GIVE IT MORE AUTONOMY (Section 8-11(1))

**PROPOSAL TEN**

CREATE A NEW DEPARTMENT OF TRANSPORTATION (Section 8-14)

**PROPOSAL ELEVEN**

STAGGER THE TERMS OF MEMBERS OF THE SALARY COMMISSION (Section 8-16(1))

**PROPOSAL TWELVE**

COMMIT THE COUNTY TO A PLAN OF OPEN-SPACE ACQUISITION (Article 9 & Section 8-6)

**PROPOSAL THIRTEEN**

ALLOW BOARDS AND COMMISSIONS TO MEET IN ACCESSIBLE, PRIVATELY-OWNED LOCATIONS (Section 13-9(2))

**PROPOSAL FOURTEEN**

HOUSEKEEPING CHANGES

- A. UTILIZE GENDER-NEUTRAL LANGUAGE THROUGHOUT THE CHARTER
- B. UTILIZE HAWAIIAN LANGUAGE SPELLING FOR HAWAIIAN PLACE NAMES
- C. REDESCRIBE THE COUNCIL RESIDENCY AREAS IN GEOGRAPHICAL TERMS (Section 3-1)
- D. ELIMINATE REFERENCES TO POLITICAL PARTIES TO FILL COUNCIL VACANCIES
- E. CHANGE "CRIME OF MORAL TURPITUDE" TO "FELONY" IN SECTION 7-3 INVOLVING DISQUALIFICATION OF THE MAYOR
- F. CLARIFY RESTRICTIONS ON COUNTY EMPLOYEES APPEARING BEFORE BOARDS AND COMMISSIONS
- G. ELIMINATE OBSOLETE SECTIONS
- H. RENUMBER SECTIONS 8-14, 8-15, AND 8-16

**COMMISSION POLICY RECOMMENDATIONS**

**EXHIBIT A**

BALLOT LANGUAGE FOR THE PROPOSED AMENDMENTS TO THE CHARTER OF THE COUNTY OF MAUI

## 2001 - 2002 MAUI COUNTY CHARTER COMMISSION REVISED FINAL REPORT

### BACKGROUND

The eleven members of the 2001-2002 Maui County Charter Commission were nominated by Mayor James "Kimo" Apana on January 30, 2001, and were subsequently confirmed by the County Council on April 20, 2001. The members originally appointed and confirmed were:

Terryl VencI, Chair  
Carole Ameral  
Vince Bagoyo, Jr.  
William Fuhrmann  
Gwen Hiraga  
Stephen Holaday  
R. Sean McLaughlin  
Karolyn Mossman  
Stephen Petro  
Erlinda Rosario  
Donn Takahashi

Commission member Carole Ameral resigned on September 23, 2001, and was replaced by Ray DeMello on January 22, 2002.

### ORGANIZATION

The Commission's first meeting was held on April 30, 2001. The Commission elected R. Sean McLaughlin to serve as Vice-Chair of the Commission at its second meeting on May 21, 2001. The Commission adopted organizational and procedural rules for the conduct of its business. The Commission hired Ke'ala Pasco to serve as its Assistant. The Commission has also been aided throughout by representatives of the Department of the Corporation Counsel, particularly James Takayesu, Corporation Counsel, and Brian Moto, First Deputy Corporation Counsel.

The procedures governing Charter Commissions listed in the Charter itself, Section 14-3, differ in

some respects from those laid out in Chapter 50 of the Hawai'i Revised Statutes, so the Commission had to decide which procedures to follow. The Commission determined that the Charter Commissions in the other counties have generally followed their own rules rather than those listed in Chapter 50. The Commission requested an opinion on this matter from the State Attorney General, but no answer was received from that office. Based on the advice received from Maui's Corporation Counsel, James Takayesu, and in order to avoid any possibility of challenge to the Commission's work, the Commission decided to follow the timetable and procedures established in H.R.S. Chapter 50.

The Commission established a website and put all its documents, agendas, and schedules on that website in a timely fashion. 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 its meetings. Commission documents and the minutes of its meetings have also been made available to the public at the County building, at public libraries, and at councilmembers' offices in Hāna, Lāna'i, and Moloka'i.

The Commission met for discussion and deliberations at Kalana O Maui on June 4, 2001, and June 18, 2001. The Commission held eight public meetings after its initial organizational meetings in order to develop a record of public concerns regarding the Maui County Charter. These public meetings were held at the following dates and locations (all starting at 6:30 p.m.):

June 20, 2001	Hannibal Tavares Center, Pukalani
June 26, 2001	Lahaina Civic Center
July 25, 2001	Kihei Community Center
August 1, 2001	Pā'ia Community Center
August 8, 2001	Old Hāna High School
August 15, 2001	Mitchell Pau'ole Center, Moloka'i
August 22, 2001	Lāna'i Community Center
August 29, 2001	County Council Chambers, Wailuku

The Commission then held a series of meetings to discuss the issues that had been raised and to make its initial recommendations to take back to the community for further public input. The

Commission's deliberative meetings were held in the County building in Wailuku on September 10, 2001, September 24, 2001, October 8, 2001, October 22, 2001, November 5, 2001, November 19, 2001, December 10, 2001, January 7, 2002, and January 15, 2002 (in October 2001, the Commission selected Jon M. Van Dyke to serve as its Analyst). The subsequent eight public meetings were held at the following dates and locations, all beginning at 6 p.m.:

February 6, 2002	Kihei Community Center
February 13, 2002	Kaunakakai School Cafetorium, Moloka'i
February 20, 2002	Hale Kūpuna, Lāna'i
February 27, 2002	Pā'ia Community Center
March 6, 2002	Old Hāna School Cafeteria
March 13, 2002	Wailuku Community Center
March 20, 2002	Hannibal Tavares Center, Pukalani
March 27, 2002	Lahainaluna Chorus Room, Lahaina

After this second round of public hearings, the Commission met again in Wailuku for a series of meetings to make its final recommendations. These meetings were held on April 1, April 3, April 10, and April 17, 2002.

The Commission approved its proposals on April 17, 2002, along with a report for transmission to the Mayor and County Council. After receiving the alternatives and recommendations from the Council (which met as the Committee of the Whole on May 8 and 9), the Commission convened for a final meeting on June 5, 2002. At this final meeting, the Commission eliminated several of its proposals, altered the language of several others, approved ballot language, and adopted this Final Report with proposed Charter amendments.

## CHARTER COMMISSION REPORT

The report that follows presents the proposed amendments of the Revised Charter of the County of Maui (1983), as amended, resulting from the deliberations of the 2001 - 2002 Charter Commission.

RECOMMENDATIONS FOR SUBSTANTIVE CHANGES TO  
THE MAUI COUNTY CHARTER

PROPOSAL ONE - AMEND ARTICLE ONE TO CONFIRM THE EQUAL WORTH AND DIGNITY OF  
EVERY INDIVIDUAL (Section 1-1)

The Commission recommends that the first section of the Maui County Charter be amended to confirm as the primary basis for county governance that each individual is recognized as having equal worth and dignity. This recognition forms the foundation for the democratic form of government established in this Charter.

The specific language change proposed is as follows (the proposed new material is underlined and the material proposed for deletion is bracketed):

Section 1-1. Incorporation. The people of the county of Maui, as a basis for this incorporation confirm the equal worth and dignity of every individual, and by this Charter shall be and continue as a body politic and corporate by the name of "County of Maui," hereinafter in this charter called "county." By that name it shall have perpetual succession.

In reaching the conclusion that this change should be recommended, the Commission considered the following competing arguments:

PROS:

\* A commitment to equal worth and dignity is essential in the diverse community that makes up Maui County, and it affirms the fundamental basis for democratic governance.

CONS:

\* Equality is a complex term, and has led to different interpretations in matters regarding, for instance, affirmative action programs.



## PROPOSAL TWO - LENGTHEN TERMS OF COUNCILMEMBERS FROM TWO (2) TO FOUR (4) YEARS

(Section 3-2(5))

The Commission proposes that the term of each councilmember be extended from two years to four years, with staggered terms for councilmembers (*i.e.*, five will be elected in one election, and the four others will be elected two years later).

The Commission, after much deliberation based on extensive public testimony that expressed concern about the accumulation and potential abuse of power, decided to maintain term limits for councilmembers, but to adjust them slightly to accommodate the increased length of the terms for councilmembers. The Commission thus decided to allow councilmembers to have three consecutive four-year terms (for a total of twelve consecutive years) rather than the five consecutive two-year terms (for a total of ten consecutive years) allowed in the present Charter. Because some present councilmembers may have some two-year and some four-year terms, the proposed Charter revision would permit a total of twelve consecutive years on the Council for those councilmembers serving at the time of transition. (But if, for instance, a councilmember in the year 2012 has served consecutively one two-year term and two four-year terms, that individual will not be eligible for reelection, because another term would exceed the 12-year maximum). The 12-consecutive-year maximum will apply even if an individual switches residency districts during the 12-year period.

If this proposal is adopted, in the 2004 election, the five elected councilmembers receiving the largest number of votes will be given four-year terms, and the next four elected councilmembers will be given two-year terms. (This will ensure that in the year when the Mayor is elected, four Council seats will be filled, and two years later, five Council seats will be filled, thus having five contested elections in each election cycle). Thereafter, all elected councilmembers will have four-year terms, with five elected in those elections divisible by four and four elected two years thereafter. The proposed transitional

language also says that if one of the five top Council vote-getters in the 2004 election will exceed twelve consecutive years with a four-year term, that person will be awarded a two-year term, and the next highest vote-getter will be awarded the four-year term.

The specific language to be changed would be as follows:

Section 3-2(5). The term of office of councilmembers shall be for [two] four years, beginning at twelve o'clock meridian on the second day of January following their election. No member of the County Council shall serve more than [five] three consecutive full terms of office or more than twelve consecutive years in office, whichever shall be longer.

Section 15-1. Council Elections. In the 2004 election for members of the county council, the five elected councilmembers who will have received the largest number of votes shall have four-year terms of office, and the remaining four elected councilmembers shall have two-year terms of office. Thereafter, all councilmembers shall serve for four-year terms. If any of the five elected councilmembers receiving the largest numbers of votes in the 2004 election would exceed the twelve consecutive years in office limitation by serving for four years, those members shall be given a two year term, and the elected councilmembers with the next largest number of votes shall be given a four year term.

The Commission considered the issues raised by the lengthening of Council terms to be as follows:

PROS:

\* Councilmembers would have the time to develop and pursue a more comprehensive legislative agenda during their term and would take a longer view of County activities.

\* The Council would have greater continuity, and a complete changeover of councilmembers would never occur. Currently all nine council seats could change hands, bringing in a completely new, and inexperienced, group of councilmembers.

\* Councilmembers would not have to campaign as frequently, thus reducing the need to raise campaign contributions and to engage in countywide campaigns.

CONS:

\* Councilmembers would be somewhat less accountable to the electorate, because they would not have to face reelection as frequently.

\* The two-year term reduces the need to utilize the recall procedure to remove ineffective Councilmembers.

**PROPOSAL THREE - CLARIFY THE RESPONSIBILITIES OF THE CORPORATION COUNSEL (Section 8-2(3))**

The Commission proposes to clarify the role of the Corporation Counsel to recognize the broad responsibility of this office to represent the County in a variety of situations (1) by changing the present language of 8-2(3)(b) ("Be the chief legal advisor and legal representative of the council, the mayor, all departments, all boards and commissions, and of all officers and employees in matters relating to their official duties.") to a broader formulation ("Be the chief legal advisor and legal representative of the County of Maui; of the council, the mayor, all departments, and all boards and commissions[,]; and of all officers and employees in matters relating to their official duties.") and (2) by changing the present language of 8-2(3)(d) ("Perform such other duties and functions as shall be assigned by the mayor.") to a broader formulation ("Perform such other duties and functions as may be incident to the department or required by law.").

The specific language to be changed would be as follows:

**Section 8-2(3). Powers, Duties, and Functions.** The corporation counsel shall:

- a. Appoint such deputy corporation counsel and necessary staff as shall be authorized by the council. Deputy corporation counsel shall be exempt from civil service and shall serve at the pleasure of the corporation counsel.
- b. Be the chief legal advisor and legal representative of the County of Maui; of the council, the mayor, all departments, and all boards and commissions[,]; and of all officers and employees in matters relating to their official duties.
- c. Represent the county in all legal proceedings.
- d. Perform such other duties and functions [as shall be assigned by the mayor] as may

be incident to the department or required by law.

The Commission recognized the issues raised by this proposal as follows:

**PROS:**

\* This change would make it clear that the Corporation Counsel is responsible for **representing the County of Maui in all respects**, and does not solely represent the Mayor. With this change, it would be clear that the Corporation Counsel represents the Council and the boards and commissions as well as the executive branch of the County.

**CONS:**

\* The Corporation Counsel may face conflicts when the interests of the Mayor conflict with those of the Council or the boards and commissions.

**PROPOSAL FOUR - BROADEN THE RESPONSIBILITIES OF THE DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT TO INCLUDE ENVIRONMENTAL MANAGEMENT AND CHANGE ITS TITLE TO THE "DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT"**

(Section 8-5(3))

The Commission proposes to change the title of the Department of Public Works and Waste Management to become the "Department of Public Works and Environmental Management" and to change the "Powers, Duties, and Functions" of this Department to broaden its responsibilities regarding environmental management and eliminate the explicit reference to maintaining County buildings. The County's buildings are, for the most part, maintained by the departments that use them, with the current Department of Public Works and Waste Management maintaining those not connected with any particular department. Environmental issues are diverse and complicated, but at least those concerned with managing pollution and degradations should be centralized in one department, and this

Department appears to be the most logical home for these responsibilities, because it already deals with solid waste, sewers, and waste waters.

The specific language change under this proposal would be as follows:

CHAPTER 5  
DEPARTMENT OF PUBLIC WORKS AND [WASTE] ENVIRONMENTAL MANAGEMENT

Section 8-5(1). Organization. There shall be a department of public works and [waste] environmental management consisting of a director and the necessary staff.

Section 8-5(2). Director of Public Works and [Waste] Environmental Management. The director of public works and [waste] environmental management shall be appointed and may be removed by the mayor. The director of public works and [waste] environmental management shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.

Section 8-5(3). Powers, Duties, and Functions. The director of public works and [waste] environmental management shall:

1. Administer the building, housing, and subdivision ordinances and rules adopted thereunder.
2. Approve proposed subdivision plans, which are in conformity with the subdivision ordinance.
3. [Supervise] Plan, design, build, and maintain the county's highways, drainage and flood control systems and sewer systems [and maintain the county's buildings.]
4. Supervise environmental management and control of pollution, including recycling, litter control, and protection of the unique beauty of Maui County.
5. Plan, design, build, operate, and maintain solid waste collection, processing and disposal systems, including recycling programs.
6. Plan, design, build, operate, and maintain the county's sewer treatment plants, pump stations, sewer lines, reclaimed water distribution systems, and related programs.
- [4] 7. Perform such other duties and functions as shall be assigned by the mayor.

The Commission understands the issues raised by this proposal as follows:

PROS:

\* This Department currently has responsibility over waste management, but the Charter makes no mention of other aspects of environmental management, such as recycling, litter control, and

protecting the universally-recognized unique beauty of Maui County; this proposed amendment will give this Department expanded power to take responsibility over these areas and expanding this Department seems preferable to creating a new department at this time.

\* The Charter currently gives this Department responsibility over the maintenance of County buildings, but in practice the different departments maintain their own buildings – *i.e.*, the Fire Department and Parks Department each maintain their own structures; the proposal to eliminate a specific reference to maintaining county buildings will recognize the current situation, but this Department will still maintain those buildings that are not the specific responsibility of other departments.

CONS:

\* These proposals will lead to an expansion of governmental responsibilities and will require additional personnel and resources.

\* Creating a separate Department of Environmental Management would give this area even greater focus and emphasis.

\* The Department of Public Works and Waste Management is already the largest county department, by far, and these additional responsibilities may become lost among all the other responsibilities of the Department.

\* The Planning Department also has some responsibilities for environmental matters.

PROPOSAL FIVE - RENAME THE DEPARTMENT OF FIRE CONTROL TO BE THE "DEPARTMENT OF FIRE AND PUBLIC SAFETY," RENAME THE PUBLIC SAFETY COMMISSION TO BE THE "FIRE AND PUBLIC SAFETY COMMISSION," GIVE THIS COMMISSION THE RESPONSIBILITY TO HIRE AND FIRE THE FIRE CHIEF (WITH DUE PROCESS PROTECTIONS GIVEN TO THE CHIEF) AND TO

REVIEW THE BUDGET OF THE DEPARTMENT OF FIRE AND PUBLIC SAFETY, AND CLARIFY THE DUTIES OF THE FIRE CHIEF (Article 8, Chapter 7)

The Commission proposes restructuring the Department of Fire Control and the Public Safety Commission. The Department would be renamed the "Department of Fire and Public Safety," the Commission would be renamed the "Fire and Public Safety Commission," the Commission would be given power to hire and fire the Fire Chief (giving the Fire Chief the same due process protections now provided to the Police Chief in Section 8-12(3)), and the same power to review the budget of the Department that the Police Commission has regarding the Department of Police (in Section 8-12.2(2)) (the Department can continue, of course, to refer to itself as the "Maui Fire Department" in common speech and in its presentation to the public). In addition, the duties of the Fire Chief would be clarified, and expanded in certain respects. The Civil Defense Agency would continue to be reviewed by the renamed Fire and Public Safety Commission.

The specific language changes are as follows:

CHAPTER 7  
DEPARTMENT OF FIRE [CONTROL] AND PUBLIC SAFETY

Section 8-7(1). Organization. There shall be a department of fire [control] and public safety consisting of a fire and public safety commission, a fire chief, and the necessary staff.

Section 8-7([4] 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:

[3] 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.

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

[2] 4. Receive, review, and investigate any charges brought forth by the public against the conduct of the department of fire [control] 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 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.

[4]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.

Section 8-7([2]3). Fire Chief. The fire chief shall be appointed [by the mayor] and may be removed by the [mayor] fire and public safety commission. The fire chief may be removed by the fire and public safety commission only after being informed in writing of the charges that are resulting in his or her dismissal, and after being given a hearing before the commission. The fire chief shall have had a minimum of five years of experience in fire control, at least three years of which shall have been in an administrative capacity.

Section 8-7([3]4). Powers, Duties, and Functions of the Fire Chief.

A. The fire chief shall:

1. Be the administrative head of the department.

[1]2. Provide [fire protection to the people and property of the county] and perform fire fighting, rescue, 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 and public safety.

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

[2]5. Investigate the cause, origin and circumstances of fires.

[3]6. Adopt rules relating to the protection of persons and property against fires.

[4]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.

[5. Coordinate and provide rescue protection to persons in the county.]

[6. Provide for the mitigation and stabilization of hazardous materials and incidents relating to the same.]

[7]8. Exercise such other powers and duties as may be assigned by the [mayor] commission or as may be provided by law.



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## CHAPTER [15]16 CIVIL DEFENSE AGENCY

Section 8-[15]16(1). **Organization and Functions.** There shall be a civil defense agency whose powers, duties, functions and organization shall be as provided by law. The fire and public safety commission, as established in Section 8-7([4]2) herein, shall review the operations of the agency and make recommendations for changes which may be desirable to improve the performance of emergency functions and the provision of public safety services. The commission shall receive and investigate any complaints brought forth by the public against the conduct of the agency or any of its members and submit a written report of its findings and recommendations to the civil defense administrator for his disposition.

\*\*\*\*\*

### Section 15-2. Transition Provisions Concerning Fire and Public Safety Commission.

1. Upon adoption of the proposed 2002 amendments to article 8, chapter 7, the fire chief serving on January 1, 2003 shall continue serving as interim fire chief until the appointment or reappointment of a chief by the fire and public safety commission. Should the office of fire chief become vacant before appointment of a fire and public safety commission, the mayor may appoint an interim fire chief, or, in the absence of such an appointment, deputy fire chief shall serve as interim fire chief.

2. Upon adoption of the proposed 2002 amendments to Article 8, Chapter 7, the current members of the Public Safety Commission shall continue to serve on the new Fire and Public Safety Commission until the end of their term of appointment.

In deciding to propose these changes, the Commission considered the following competing arguments:

#### PROS:

\* These changes will give the Public Safety Commission responsibilities similar to those now held by the Police Commission, namely the power to hire and fire the Fire Chief and the power to review the budget of the Department of Fire Control.

\* The proposed changes would give the Fire Chief the same due process protections now given to the Police Chief in the event of an effort to terminate the employment of the Chief.

CONS:

\* These proposed changes would reduce the power of the Mayor over the Department of Fire Control, and would thereby, to some extent, reduce the direct accountability regarding activities of the Department.

PROPOSAL SIX - CLARIFY THE RESPONSIBILITIES OF THE DEPARTMENT OF PLANNING WITH REGARD TO LONG-RANGE PLANNING, CULTURAL RESOURCES, ENFORCEMENT, TIMELY DECISION MAKING, AND THE COMMUNITY PLANS (Section 8-8)

The Commission proposes revising the responsibilities of the Department of Planning and the Planning Commissions by:

\*\* Requiring the Department to prepare and administer (a) long range planning programs to implement the General Plan and (b) a cultural resources management program (Section 8-8(3)). The Planning Department is currently in the process of establishing a Long Range Planning Division and currently provides administrative support for the County's Cultural Resources Commission. The proposed amendments would identify these functions as an integral part of the Department's responsibilities.

\*\* Requiring the Department to enforce zoning ordinances (Section 8-8(3)).

\*\* Requiring the Planning Commissions to review and take action on revisions to the General Plan and other land use ordinances and amendments within defined time limits (180 days and 120 days respectively) after the final public hearing (Section 8-8(4)). These deadlines will provide for timely review by the Planning Commissions of General Plan revisions and proposed land use ordinances and amendments.

\*\* Clarifying the purpose and nature of the General Plan by incorporating language from Hawai'i

Revised Statutes Section 226-58 regarding county General Plans (Section 8-8(5)). These changes will provide a more specific description of the General Plan, consistent with State law, and will provide a framework for further legislative initiatives in defining the process and other requirements for the development of the General Plan. Details regarding the boundaries for community plan districts will be addressed by County ordinances rather than in the Charter.

**\*\* Clarifying the role of the Citizen Advisory Committees in the planning process, by adding language saying that the community plans, once approved, will become part of the General Plan. (Section 8-8(5)).**

**\*\* Requiring the Council to review and take action on revisions to the General Plan and other land use ordinances and amendments within defined time limits (one year and 180 days, respectively) after transmittal (Section 8-8(6)).**

The specific language changes proposed by the Commission are as follows:

**Section 8-8(3). Powers, Duties, and Functions. The planning director shall:**

1. Be the administrative head of the department of planning.
2. Serve as the chief planning officer of the county and as the technical advisor to the mayor, council and planning commissions on all planning and related matters.
3. Recommend revisions of the general plan at least every ten years to guide the development of the county.
4. Prepare, administer, and enforce long-range planning programs.
5. Prepare, administer, and enforce a cultural resource management program.
- [4]6. Prepare, [and] administer, and enforce zoning ordinances, zoning maps and regulations and any amendments or modifications thereto.
- [5]7. Review the lists of proposed capital improvements projects contemplated by the county and recommend the order of their priority to the mayor.
- [6]8. Perform such other duties and functions as shall be required by law or as shall be assigned by the mayor.

**Section 8-8(4). Planning Commissions.** Each planning commission shall consist of nine members appointed by the mayor with the approval of the council. The members of each planning commission shall be residents of the island of the planning commission on which the member serves. The director of the department of public works and waste management and the

director of the department of water supply shall be non-voting ex-officio members of each commission.

Each planning commission shall exercise its powers, duties, and functions as follows:

1. The Maui planning commission shall be concerned with the area encompassing the islands of Maui and Kaho'olawe and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto.
2. The Moloka'i planning commission shall be concerned with the area encompassing the island of Moloka'i and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto, except that portion of the island known as Kalaupapa, Kalawao, and Waikolu and commonly known and designated as the Kalaupapa Settlement.
3. The Lāna'i planning commission shall be concerned with the area encompassing the island of Lāna'i and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto.

The appropriate planning commission shall:

1. Advise the mayor, council, and the planning director in matters concerning planning programs.
2. Review the general plan and revisions thereof prepared by the planning director or at the request of the council. The commission shall hold public hearings on such plans and revisions thereof and shall transmit them, with its findings and recommendations to the council for consideration and action no later than one hundred and eighty (180) days after the final public hearing.
3. Review other proposed land use ordinances and amendments thereto prepared by the director or the council and, after public hearings, transmit such ordinances with its findings and recommendations thereon to the council for consideration and action no later than one hundred and twenty (120) days after the final public hearing.
4. Act as the authority in all matters relating to the Coastal Zone Management law.
5. Adopt rules pursuant to land use ordinances or law.
6. Have such other powers and duties as may be provided by law.

**Section 8-8(5). General Plan.** [The General Plan shall recognize and state the major problems and opportunities concerning the needs and the development of the county and the social, economic and environmental effects of such development and shall set forth the desired sequence, patterns and characteristics of future development.]

1. The General Plan shall be developed after input from state and county agencies and the general public, and shall be based on sound policy and

information.

2. The General Plan shall indicate desired population and physical development patterns for each island and region within the county; shall address the unique problems and needs of each island and region; shall explain the opportunities and the social, economic, and environmental consequences related to potential developments; and shall set forth the desired sequence, patterns, and characteristics of future developments. The General Plan shall identify objectives to be achieved, and priorities, policies, and implementing actions to be pursued with respect to population density, land use maps, land use regulations, transportation systems, public and community facility locations, water and sewage systems, visitor destinations, urban design, and other matters related to development.
3. The planning director shall issue a report annually providing a detailed explanation of the implementation and enforcement of the General Plan and the community plans to the mayor and the council.

#### **Section 8-8(6). Adoption of General Plan and Other Land Use Ordinances.**

1. The County shall adopt revisions to the General Plan by ordinances.
2. Any revisions of the General Plan, zoning ordinance or other land use ordinance may be proposed by the council and shall be reviewed by the appropriate planning commission as if prepared by the planning director. Any such revision shall be referred to the appropriate planning commission by resolution. If the planning commission disapproves the proposed revision or recommends a modification thereof, not accepted by the council, or fails to make its report within a period of the hundred twenty (120) days after receipt of the referral, the council may nevertheless pass such revision, but only by the affirmative vote of at least two thirds of the council's entire membership.
3. Revisions to the General Plan proposed by the planning director shall be reviewed and acted upon by the council no later than one (1) year after receipt of the transmittal from the planning director.
4. Revisions to zoning and land-use ordinances proposed by the planning director shall be reviewed and acted upon by the council no later than one hundred and eighty (180) days after receipt of the transmittal from the planning director.

The Commission adopted these recommendations after considering the following arguments regarding them:

PROS:

\* These proposed changes will clarify the Department of Planning's responsibilities, particularly

with regard to the central role of the General Plan in guiding the County's growth.

- \* The importance of long-range planning and protection of cultural resources will be emphasized.

- \* These changes will emphasize the necessity to enforce zoning ordinances.

- \* These changes will promote timely action regarding changes to the General Plan and other land use ordinances and amendments.

CONS:

- \* These changes will impose greater workload responsibilities on the Department of Planning.

- \* By requiring timely action on proposed amendments to the General Plan and on other land use ordinances and amendments, these changes may require that action be taken before full consideration of the changes has been completed.

PROPOSAL SEVEN – CLARIFY THE ROLE OF THE CITIZEN ADVISORY COMMITTEES AS BODIES THAT SHOULD REVIEW AND RECOMMEND REVISIONS TO THE COMMUNITY PLANS, AND STAY IN EXISTENCE UNTIL ITS RECOMMENDATIONS ARE ACTED UPON, AND CLARIFY THAT APPROVED COMMUNITY PLANS BECOME PART OF THE GENERAL PLAN.

The Commission recommends that the Citizen Advisory Committees should be given formal recognition in the County Charter and that their role and function should be clarified. The Commission recommends that the present method of selecting these bodies continue (with the mayor appointing four members of each Committee and each council member appointing one), that each Committee be charged with the responsibility to review and recommend revisions to its community plan, and that each Committee remain in existence until its recommendations are adopted, modified, or rejected by the Council and Mayor. Once adopted, the community plans will become part of the General Plan. The specific language recommended is as follows:

Section 8-8(5). General Plan and Community Plans.

\*\*\*\*\*

4. There shall be a citizen advisory committee for each community plan area. Each citizen advisory committee shall consist of 13 members, with nine appointed by the council and four appointed by the mayor. Each citizen advisory committee is charged with reviewing and recommending revisions to the community plan for its community plan area. Each citizen advisory committee shall remain in existence until its revisions are adopted, modified, or rejected by the council and until such action is approved, modified, or rejected by the mayor.

5. The community plans created and revised by the citizen advisory committees shall set forth, in detail, land uses within the community plan regions of the county. The objectives of each community plan shall be to implement the policies of the general plan. Each community plan shall include implementing actions that clearly identify priorities, timelines, estimated costs, and the county department accountable for the completion of the implementing actions.

6. The community plans generated through the citizen advisory councils and accepted by the planning commission, council, and mayor are part of the general plan.

The Commission adopted this proposal after considering the following arguments:

PROS:

\* These changes will strengthen the importance of the community plans generated by the Citizen Advisory Committees (CACs).

CONS:

\* By strengthening the importance of the community plans generated by the Citizen Advisory Committees, these changes may reduce the role of trained planners in the Department of Planning.

ALTERNATIVE PROPOSAL SEVEN

The County Council has proposed an alternative to the Commission's recommendation regarding the Community Advisory Committees that would give these Committees the additional powers to monitor the implementation and enforcement of the general and community plans and to review comprehensive revisions to the general and community plans at least every ten years. Also, under the Council's proposal, these Committees would be permanent for each community plan district

(the Planning Director opposed making the Committees permanent because of the increased burdens that staffing such permanent bodies would impose upon the Planning Department).

The language proposed by the Council is as follows:

Section 8-8.8. Citizen Advisory Committees. There shall be a citizen advisory committee for each community plan region of the county. Each citizen advisory committee shall consist of 13 members, with nine appointed by the council and four appointed by the mayor. Terms and qualifications for service on citizen advisory committees shall be established by ordinance. The citizen advisory committees shall be administratively attached to the department of planning, which shall provide adequate personnel and other resources reasonably required by the citizen advisory committees in the performance of their duties. The planning director shall facilitate official communication between the citizen advisory committees and other entities, including the council. Each citizen advisory committee shall:

1. Develop a community vision to guide the improvement and development of its community plan region.
2. Promote public participation by serving as a coordinating body between individual citizens, community associations, and other interested groups.
3. Formulate proposed implementing actions that support the improvement and development of the community plan, including priorities, timelines, estimated costs, and the county department accountable for completion of the implementing actions.
4. Monitor the implementation and enforcement of the general plan and community plans.
5. Review comprehensive revisions to the general plan and community plans at least every ten years as proposed by the planning director.
6. Have such other powers and duties as may be provided by law.

PROPOSAL EIGHT - PROVIDE DUE PROCESS PROTECTION IN THE EVENT OF THE TERMINATION OF THE DIRECTOR OF PERSONNEL SERVICES (Section 8-9(2))

The Commission recommends providing the Director of Personnel Services with the same due process protections, in the event of a termination, that are now provided to the Chief of Police in Section 8-12(3).

The specific language changes proposed are as follows:

Section 8-9(2). Director of Personnel Services. The director of personnel services shall be appointed and may be removed by the civil service commission. The director may be removed by the civil service commission only after being informed in writing of the charges that are resulting in his or her dismissal, and after being given a hearing before the commission. The director of personnel services shall be thoroughly familiar with the principles and methods of



personnel administration and shall believe in applying merit principles and scientific administrative methods to public personnel administration.

The Commission makes this recommendation after considering the following arguments regarding this proposal:

PROS:

\* This change would give the Director of Personnel Services the same protections in the event of termination that are currently provided to the Chief of Police, *i.e.*, written notice of the charges and a hearing before the commission, which in this case would be the Civil Service Commission. These same protections are also being proposed for the Fire Chief in Proposal Six.

CONS:

\* This change would limit the flexibility of the Civil Service Commission somewhat.

**PROPOSAL NINE - RESTRUCTURE THE DEPARTMENT AND BOARD OF WATER SUPPLY TO GIVE IT MORE AUTONOMY** (Section 8-11(1))

The Commission recommends that the Charter provisions governing the Department and Board of Water Supply be restructured to give these bodies greater autonomy than they now have. These bodies are now "semi-autonomous," because the rules of the Board of Water Supply (including rules setting rates and fees) take effect only if approved by the Mayor and the Council, and the Mayor's approval can be vetoed by a two-thirds vote of the Council. The Commission recommends that the Board of Water Supply become more autonomous, with the power to set rates, adopt regulations, and make decisions regarding the development of water supplies, unreviewable by any other county authority. To ensure proper expertise and coordination with other County operations, the Director of the Department of Planning and the Director of the Department of Public Works and Waste Management (or the

Department of Public Works and Environmental Management if Proposal Five is adopted) would be voting members of the nine-member Board. The Director of the Department of Water Supply would be evaluated annually by the Board, and the accounts, financial status, and management operation of the Department would be audited annually by an outside certified public accountant. The Board would be empowered to hire outside legal counsel when necessary.

The Commission also recommends that the Board be authorized to coordinate private water systems to promote the public trust interests in water, while respecting private property rights. This language recognizes that because water is a public-trust resource, and because the water itself is not subject to private ownership, private development and delivery of water resources must be under the public domain, and must be undertaken for the public good. Under the Commission's proposal, the Board would be empowered to monitor private development of water sources and ensure that these undertakings are coordinated with public development of water sources and that, together, these private and public developments would be designed to promote sound utilization of water and to maintain this resource for future generations. Undertaking these responsibilities is be consistent with Article XI, Section 7 of the Hawai'i Constitution and Hawai'i's Water Code (H.R.S. Chapter 174C).

The specific language changes proposed by the Commission are as follows:

#### **CHAPTER 11 DEPARTMENT OF WATER SUPPLY**

**Section 8-11(1). Organization.** There shall be a department of water supply consisting of a board of water supply, a director, a deputy director, and the necessary staff.

**Section 8-11(2). Functions of the Department.**

1. All water systems owned and operated by the county, including all county water rights and water sources, together with all materials, supplies and equipment and all real and personal property used in connection with such water systems shall be under the control of the department.

2. The department shall have full and complete authority to manage, control and operate

water systems and properties used in connection with such water systems. The department shall also have authority to coordinate private water systems in order to promote the policies stated in the Hawai'i State Constitution and other applicable state laws, while also respecting existing private property rights.

3. The department shall implement the county's General Plan and community plans in the administration of its affairs. The department shall prepare a water use and development plan for each community plan district, which shall be consistent with land-use and zoning classifications, the county's general plan and community plans, and which shall include an inventory of existing water uses and sustainable yields, projected water demand, proposed public and private water system improvements and water source developments (along with alternative options), storage, and costs. [There shall be] The department shall also prepare a long-range capital improvement plan [of the department which] designed to ensure proper maintenance of existing public water systems and to increase the publicly-owned and publicly-maintained water systems and infrastructure. The water use and development plans for each community plan district and capital improvement plans shall be completed by January 2, 2004, shall be subject to the approval of the county council, as provided by law, and shall be updated, as required by the board, at least every five (5) years.

4. The county council shall have the authority to issue general obligation bonds for the benefit of the department and may provide capital appropriations for the department.

**Section 8-11(3). Board of Water Supply.** The board of water supply shall consist of nine voting members, seven of whom [who] shall be appointed by the mayor with the approval of the council, one of whom shall be the director of the department of planning, and one of whom shall be the director of the department of public works. The appointed members shall serve for three year terms, and can be reappointed once (subject to reconfirmation by the council).

**Section 8-11(4). Powers, Duties, and Functions.** The board of water supply shall:

1. Appoint, evaluate annually, and remove the director of the department of water supply.
2. Have the authority to create and abolish positions.
3. Adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the water works of the county, as well as the establishment and adjustment of rates and charges for furnishing water, [; such rules and regulations shall be adopted as provided under Section 8-11(8) below.]
4. Adopt an annual operating and capital budget.
5. Have the authority to issue revenue bonds under the name of the board of water supply.
6. Have the authority to acquire by eminent domain, purchase, lease or otherwise, and to sell, lease, or otherwise convey real property in the name of the board of water supply.
7. Perform such other duties and functions as shall be prescribed by law.

**Section 8-11(5). Director of Water Supply.** The director of the department of water shall be appointed and evaluated by the board of water supply, and may be removed by the board of water supply. The director shall have a minimum of three years of experience in an

administrative capacity, either in public service or private business, or both. The director or [his] the deputy director shall be a registered engineer.

**Section 8-11(6). Powers, Duties, and Functions.** The director shall:

1. Recommend rules and regulations for adoption by the board.
2. Administer the affairs of the department, including the rules and regulations adopted by the board and be responsible for the day-to-day management and control of all water systems of the county.
3. Prepare and implement long-range capital improvement plans, which have been adopted by the board.
4. Appoint a deputy director.
5. Prepare an annual operating and capital budget for the board's review and action.
6. Coordinate the affairs of the department with the mayor and the county council and submit an annual report concerning the department to the mayor and the council.
7. Perform such other duties and functions as shall be prescribed by law.

**Section 8-11(7). Revenues.** The revenues of the department shall be kept in a separate fund and shall be such as to make the department self-supporting.

[Section 8-11(8). **Approval of Rules.** The adoption, amendment, and repeal of all rules adopted pursuant to Subsection 8-11(4)(3) shall require action by both the mayor and the council. The mayor shall either approve or disapprove and transmit the request to the council within fifteen (15) days of receipt. The request shall be deemed approved and transmitted to the council on the sixteenth day if the mayor takes no action.]

[Within forty-five (45) days of receipt from the mayor, the council may confirm the mayor's action by majority vote or may override any action by the mayor by a two-thirds (2/3) vote of its entire membership. If the council takes no action within forty-five (45) days, the proposal shall be deemed approved.]

**Section 8-11(8). Independent Audit and Council Oversight.** The accounts, financial status, and management operation of the department shall be examined and audited annually by a certified public accountant whose services shall be contracted for by the council and whose fees shall be paid by the council. After the audit is prepared, its results shall be made public, and the council shall review it and make recommendations for any changes that may be appropriate.

**Section 8-11(9). Legal Counsel.** The corporation counsel of the county shall be the primary legal adviser of the department, but the board of water supply shall be empowered, by a two-thirds vote of its entire membership, to hire special counsel for any special matter presenting a real necessity for such employment, without regard to the requirements of section 3-6(6) of this charter. All legal services required by the department and the board shall be paid from the revenues of the department.

The Commission adopted this proposal after considering the following arguments on this

issue:

PROS:

\* This proposal is based somewhat on the model provided by the Board of Water Supply in the County of Honolulu, where the Board has **greater autonomy and greater rate-setting authority**. Under this model, the Department and the Board would operate as an autonomous business, and would be expected to operate in a self-sufficient and self-sustaining fashion.

\* Having a more autonomous water board would promote **greater continuity** and thus permit more long-term planning.

\* Even though the Board of Water Supply will have more autonomy, the Planning Department will still review CIP projects to determine if they conform to the Community and General Plans.

CONS:

\* This proposal would **reduce direct political accountability**, and would not allow voters to affect water decisions directly through their votes for Mayor and Councilmembers.

\* The annual audit would be somewhat expensive.

ALTERNATIVE PROPOSAL NINE

The Council has put forward its own alternative proposal regarding restructuring the Department and Board of Water Supply, which would have the effect of making the Department a regular County agency subject to the Mayor's executive management and the Council's legislative oversight. The Council's proposal would recast the Board of Water Supply as an advisory body (with the power to recommend budget proposals and rate adjustments), would assign the Mayor the power to appoint the Director (with the approval of the Council), and would maintain the power of the Mayor and Council to have final approval of rates and regulations. Under this alternative proposal, the Department would have the responsibility to survey public and private water sources and to prepare and annually

update a long-range capital improvement plan (subject to Council approval) and to implement such approved plans. The Council would have the power to issue general obligation bonds and provide appropriations for capital improvements of the water system. The language of the Council's proposed alternative is as follows:

**Section 8-11.2. Functions of the Department.**

1. [All water systems owned and operated by the county, including all county water rights and water sources, together with all materials, supplies and equipment and all real and personal property used in connection with such water systems shall be under the control of the department.] The department of water supply shall manage and operate all water systems owned by the county.

2. [The department shall have full and complete authority to manage, control and operate water systems and properties used in connection with such water systems.] In order to protect and manage the water resources in the county, the department of water supply shall make studies, surveys, and investigations relating to the locations and sources of water supply within the county, the amounts available for current and prospective uses, the water resources which may be available for such uses and the maximum sustainable yield of such sources.

3. The department of water supply shall implement the county's general plan and community plans in the administration of its affairs. [There shall be a long-range plan of the department] The department of water supply shall prepare and annually update a long-range capital improvement plan and an updated water use and development plan, which shall be subject to the approval of the [county] council, as provided by law.

4. The county council shall have the authority to issue general obligation bonds for the benefit of the department and may provide capital appropriations for the department.]

**Section 8-11.3. Board of Water Supply.** The board of water supply shall consist of nine members who shall be appointed by the mayor with the approval of the council. The [planning] director of the department of planning and the director of the department of public works and waste management shall be non-voting ex-officio members of the board of water supply. The board of water supply shall act as advisor to the director of the department of water supply, the mayor and the council in all matters concerning the county's water system.

**Section 8-11.4. Powers, Duties and Functions.** The board of water supply shall:

1. [Appoint, evaluate and remove the director of the department of water supply.] Review and submit to the mayor the department of water supply's request for an annual appropriation for operations and capital improvements.

2. Have the authority to create and abolish positions.

3. Adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the water works of the county, as well as the establishment and adjustment of rates and charges for furnishing water; such rules and regulations shall be adopted as provided under Section 8-11.8 below.]

2. Recommend the establishment and adjustment of rates and charges for furnishing water; such rates and charges shall be submitted to the mayor for review and approval. If approved by the mayor, proposed rates and charges shall be submitted to

the council for enactment by ordinance.

- [4. Adopt an annual operating and capital budget.
5. Have the authority to issue revenue bonds under the name of the board of water supply.
6. Have the authority to acquire by eminent domain, purchase, lease or otherwise, and to sell, lease, or otherwise convey real property in the name of the board of water supply.
- 7.] 3. Perform such other duties and functions as shall be prescribed by law.

**Section 8-11.5. Director and Deputy Director of Water Supply.** The director of the department of water supply shall be appointed [and evaluated] by the [board of water supply] mayor with the approval of the council, and may be removed by the [board of water supply] mayor with the approval of the council. The director of the department of water supply shall have a minimum of [three] five years of experience in [an administrative] a management capacity, either in public service or private business, or both. The deputy director of the department of water supply shall be appointed by the mayor and may be removed by the mayor. The director or [his] deputy of the department of water supply shall be a registered engineer.

**Section 8-11.6. Powers, Duties and Functions.** The director of the department of water supply shall:

- [1. Recommend rules and regulations for adoption by the board.
- 2.] 1. Administer the affairs of the department[, including the rules and regulations adopted by the board] of water supply, and be responsible for the day-to-day management and control of all water systems of the county.
- [3.] 2. Prepare [and implement long range] long-range capital improvement plans and up-to-date water use and development plans [which have been adopted by the board] for review by the board of water supply and enactment by the council by ordinance.
- [4. Appoint a deputy director.
- 5.] 3. Implement enacted long-range capital improvement plans and water use and development plans.
4. Prepare an annual operating and capital budget for the [board's] board of water supply's review and [adoption] submit the department of water supply's request for an annual appropriation to the mayor.
- [6. Coordinate the affairs of the department with the mayor and the county council and submit an annual report concerning the department to the mayor and the council.
- 7.] 5. Perform such other duties and functions as shall be prescribed by law.

**Section 8-11.7. Revenues.** The revenues of the department of water supply shall be kept in a separate fund and shall be such as to make the department of water supply self-supporting, provided that the council may issue general obligation bonds on behalf of the department of water supply and may provide capital improvement appropriations for the department of water supply.

[Section 8-11.8. **Approval of Rules.** The adoption, amendment and repeal of all rules adopted pursuant to Subsection 8-11.4(3) shall require action by both the mayor and the council. The mayor shall either approve or disapprove and transmit the request to the council within fifteen (15) days of receipt. The request shall be deemed approved and transmitted to the council on the sixteenth day if the mayor takes no action.

Within forty-five (45) days of receipt from the mayor, the council may confirm the mayor's action by majority vote or may override any action by the mayor by a two-thirds (2/3) vote of its entire membership. If the council takes no action within forty-five

(45) days, the proposal shall be deemed approved.]

#### PROPOSAL TEN - CREATE A NEW DEPARTMENT OF TRANSPORTATION (Section 8-14)

The Commission proposes to create a new Department of Transportation to address the serious transportation issues that are facing the County of Maui. During the past 30 years, the population of Maui County has tripled in size, but no major new roads have been built during that period. Residents and visitors now spend substantial amounts of time stuck in traffic, causing widespread dissatisfaction and inefficiencies.

This new Department, if adopted, would have responsibility for the planning of new highways, but the Public Works Department would continue to have responsibility for the building and maintaining of these roads. In addition to roads, this new Department will have responsibility for planning, developing, and regulating public transportation and for planning, developing, and regulating transportation by sea and air. This Department will coordinate closely with state and federal agencies, but would take initiatives specifically addressing Maui's needs to solve its traffic problems.

The specific language proposed to adopt this new Department is as follows:

#### CHAPTER 14 DEPARTMENT OF TRANSPORTATION

Section 8-14(1) Organization. There shall be a department of transportation consisting of a director and necessary staff.

Section 8-14(2). Director of Transportation. The director of transportation shall be appointed and may be removed by the mayor. The director of transportation shall have a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.

Section 8-14(3). Powers, Duties, and Functions. The director of transportation shall:

1. Be the administrative head of the department of transportation.
2. Be responsible for the planning and implementation of all modes of transportation in Maui County, including those in the air and those on water and land.
3. Be responsible for planning and developing an efficient program to facilitate the rapid, safe, and economical movement of people and goods in Maui County.



4. Coordinate Maui County's transportation programs with other county departments and with agencies of the state and federal government.
5. Perform such other duties and functions as shall be assigned by the mayor.

The Commission adopted this proposal after considering the following arguments regarding this issue:

PROS:

\* The Public Works Department currently has responsibility over highways, but the Charter makes no mention of public transportation; with the increasing need for the development of systems of public transportation, it is necessary to determine where responsibility for this development should lie; creating a new department will recognize the importance of addressing Maui's transportation problems immediately.

CONS:

\* Transportation issues are now being addressed by the County Transportation Coordinator, who is administratively assigned to the Department of Management, and located within the Department of Planning for purposes of coordinating with long-term planning. Some testifiers said it was premature to establish a separate Department of Transportation at this time.

\* Responsibility for transportation could be assigned to the Department of Human Concerns or to the Planning Department.

PROPOSAL ELEVEN - STAGGER THE TERMS OF MEMBERS OF THE SALARY COMMISSION

(Section 8-16(1))

The Commission recommends amending the appointment process of the Salary Commission so that the nine members of this Commission will have staggered five-year terms, with two being appointed (with approval of the Council) every year (one in the fifth year), to provide greater continuity.

The specific language changes being proposed are as follows:

CHAPTER [16]17  
SALARY COMMISSION

Section 8-[16]17(1). Organization and Functions. There shall be a salary commission, which shall consist of nine members appointed by the mayor with the approval of the council. [The term of office of the salary commission members shall end with the term of office of the mayor.] The members of this commission shall have five-year terms, and can be reappointed once to a second five-year term. Two members shall be appointed or reappointed each year, except that only one member shall be appointed or reappointed every fifth year. The commission shall determine the compensation of elected officials and appointed directors and deputy directors of all departments of the county provided, however, in establishing the compensation of appointed department heads and their deputies, the salary commission shall consult with those boards and commissions which have appointing authority for department heads.

\*\*\*\*\*

Section 15-3. Salary Commission. Upon adoption of the proposed 2002 amendment to Section 8-16.1, the current members of the salary commission shall determine by lot the lengths of their terms to facilitate the appointment or reappointment pursuant to the annual sequence adopted in the 2002 amendment beginning in 2003.

The Commission adopted this recommendation after considering the following arguments regarding this proposal:

PROS:

\* This change is designed to provide greater continuity to the Salary Commission, which currently has an entirely new composition after each mayoral election.

CONS:

\* This change will reduce the authority of an incoming Mayor, who, at present, has the power to name all the members of the Salary Commission.

PROPOSAL TWELVE - COMMIT THE COUNTY TO A PLAN OF OPEN-SPACE ACQUISITION (Article 9 & Section 8-6)

The Commission recommends that Maui County commit to a program of acquiring more land for open space, by adding language to the Charter that would annually set aside a minimum of one percent

(1%) of the certified real property tax revenues to establish a fund to purchase and conserve lands that are valuable to the public and visitors as parks, recreation areas, open space, view corridors, natural resources, and wildlife habitats, including beaches, coastal areas, forests, watersheds, and cultural and historic sites, with the requirement that the remaining balance in the fund at the end of each fiscal year will not lapse, but will remain in the fund, accumulating from year to year.

The specific language proposed by the Commission is as follows:

**Section 9-19. Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund.**

1. In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one percent (1%) of the certified real property tax revenues to a fund known as the open space, natural resources, cultural resources, and scenic views preservation fund. The revenues in this fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the county of Maui for the following purposes: public outdoor recreation and education; preservation of historic or culturally important land areas; protection of significant habitat or ecosystems, including buffer zones; preserving forests, beaches, coastal areas and agricultural lands; protecting watershed lands to preserve water quality; conserving land for the purpose of reducing erosion, floods, landslides, and runoff; and improving disabled and public access to, and enjoyment of, public land, open space, and recreational facilities.

2. Any balance remaining in this fund at the end of the fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The revenues in this fund shall not be used for any purpose except those listed in paragraph 1 of this section.

3. The council shall by ordinance establish procedures for the administration and expenditure of the revenues in this fund. The appropriations to this fund shall not substitute, but shall be in addition to, those appropriations historically made.

\*\*\*\*\*

**Section 9-11. Lapse of Appropriations.** Every appropriation, except an appropriation for a capital improvement or for the open space fund established in Section 9-19, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered by as written contract. An appropriation for a capital improvement shall continue in force until the purpose for which it was made has been accomplished or abandoned. The purpose of any such appropriation for a capital improvement shall be deemed abandoned six months after the close of the fiscal year to the extent that it has not been expended or encumbered by a written contract.

The Commission adopted this recommendation after considering the following arguments

regarding the creation of this Open Space Fund:

PROS:

\* This proposal will commit the County to a program of open-space acquisition, but will give the Mayor and Council flexibility to determine the actual budgetary amounts that should be committed to this program.

\* By establishing a fund that will retain and accumulate unspent moneys from year to year, the County will maintain a growing resource to utilize in purchasing land for open space as such land becomes available. Because the County will not always have to purchase property through condemnation, it will be able to buy properties before prices are inflated.

\* Having an established fund would allow the funds to be leveraged to increase the amount of land that can be purchased.

CONS:

\* This proposal could encourage the County to protect additional land for open space only by direct acquisition rather than also utilizing other strategies, such as zoning of privately-owned land, to maintain open space.

\* This proposal will require the appropriation of one percent of certified real property tax revenues regardless of changing economic or fiscal conditions and, to that extent, may reduce the Council's ability to adjust budgets accordingly.

PROPOSAL THIRTEEN - ALLOW BOARDS AND COMMISSIONS TO MEET IN ACCESSIBLE PRIVATELY-OWNED LOCATIONS (Section 13-9(2))

The Commission proposes amending Section 13-9(2) requiring meetings of boards and commissions to be held "in the county building or other publicly owned place" to read "in the county

building or in facilities that are accessible to the public." This provision is designed to give boards and commissions greater flexibility in scheduling meetings, in light of the limited number of publicly-owned buildings and the increase in the number of public meetings. The Commission recommends that meetings be held in publicly owned buildings whenever possible because of the appearance of neutrality and inclusiveness that flows from such locations, but recognizes that some flexibility is needed on occasion and recommends this amendment to permit meetings to be held in other publicly-accessible venues when necessary in light of the nature of the meeting or the crowded schedule of public meetings. The proposed terminology will allow meetings to be held in privately owned facilities, but is designed to limit meetings to locations that meet the requirements of the Americans with Disabilities Act.

The specific language proposed is as follows:

#### Section 13-9. Records and Meetings Open to Public

.....

2. All meetings of boards and commissions shall be held in the county building or other publicly owned place. In the event that a publicly owned building is not available or appropriate for the meeting, the meeting can be held in another facility that is accessible to the public.

The Commission adopted this recommendation after considering the following competing perspectives:

#### PROS:

\* The present language restricts the locations that boards and commissions can use, sometimes preventing them from meeting when they need to. The proposed change will allow such bodies to use the many privately-owned facilities that can accommodate public events.

#### CONS:

\* This change will lead to meetings being held in more diverse locations.



\* Public meetings held in private facilities may lead to perception of favoritism associated with the private facility.

#### PROPOSAL FOURTEEN - HOUSEKEEPING CHANGES

The Commission proposes a series of language changes designed to clean up the Charter, eliminate sections that have no further purpose or are inconsistent with other sections, and conform the language to current usage. None of these proposed changes are designed to have any substantive impact on the governance of Maui County or the rights of any individuals, but they are designed to give the Charter consistency, clarity, and conformity to modern usage.

##### A. UTILIZE GENDER-NEUTRAL LANGUAGE THROUGHOUT THE CHARTER.

The Commission proposes revising all language that is not gender-neutral and substituting for such language words that are gender neutral. Under this proposal "chairman" and "vice-chairman" in Sections 3-5(1), 3-5(2), 9-13, 9-18(3), and 13-2(9) will become "chair" and "vice-chair"; "he" in Sections 4-3(1), and 4-3(2) will become "the mayor; "he" in Sections 10-2(5) and 10-4(1)(b) will become "the officer or employee"; "he" in Section 12-5(2) will become "the clerk"; "he" in Section 12-9 will become "the officer"; "his" in Sections 3-8(1) and 4-3(1) will become "the mayor's," "his" in Section 3-8(2) will become "the councilmember's," "his" in Section 8-4(3)(1) will become "the director's," "his" in Section 8-15(1) will become "the administrator's," "his" in Section 8-7(4)(2) will become "the chief's" (if Proposal Six is not adopted), "his deputy" in Section 8-11.5 will become "deputy director" (if Proposal Nine is not adopted), "his" in Sections 8-12.2(3) and 8-12(3) will become "the chief's," "his" in Section 8-15(1) will become "the administrator's," "his" in Sections 10-4(1)(a), 10-4(1)(b), and 10-4(1)(c) will become "the officer or employee's," "his" in Section 12-3(4)(b) will become "the circulator's," "his" in Sections 5-3(2), 11-4(2), 11-5(3), 12-4(2), and 12-5(2), will become "the clerk's," "his" in Section 12-8 will become "that person's,"

"his" in Sections 14-1(2) and 14-1(3) will become "the"; "of him" in Section 8-1(3)(f) will be eliminated, "him" in Section 10-4(1)(a) will be replaced with "the officer or employee"; and "governs himself" in Section 10-3(5) will be replaced with "acts." In addition, this proposal would eliminate as unnecessary the second sentence in 13-15 "When any personal pronoun appears in this charter, it shall be construed to mean either sex."

These proposed changes will emphasize the inclusive nature of the Maui County Government and confirm the commitment of Maui County to recognizing the equal worth of every individual. Previous Charter Commissions have sought to remove gender-specific language, but a few gender-specific terms can still be found in the Charter. These changes will make the Charter consistent with other governing documents, including the Hawai'i State Constitution and the Hawai'i Revised Statutes.

**B. UTILIZE HAWAIIAN LANGUAGE SPELLING FOR HAWAIIAN PLACE NAMES**

The Commission proposes that the language referring to geographical boundaries of geographical areas for Council seats in Section 3-1 and the references to Hawai'i, Lāna'i, Kaho'olawe, and Moloka'i, in other parts of the Charter utilize the diacritical marks in Hawaiian place names to honor the Hawaiian language and conform to current usage.

**C. REDESCRIBE THE COUNCIL RESIDENCY AREAS IN GEOGRAPHICAL TERMS** (Section 3-1)

Section 3-1 currently describes the seven Council residency areas on the island of Maui in terms of election precincts, which change every ten years, requiring changes in the Charter language. In order to avoid having to make these regular changes, the Commission proposes that the residency areas be redescribed in geographical terms (see Attachment; Exhibit A).

**D. ELIMINATE REFERENCES TO POLITICAL PARTIES TO FILL COUNCIL VACANCIES.**

The Commission recommends eliminating the specific references to political parties in Sections 3-

4(1) regarding the filling of vacancies for Council seats, because the elections for the Council are now nonpartisan in nature after the 1998 amendments (see Sections 3-2 and 7-2). (The Commission does not recommend a change in the language of Section 13-2(2) requiring membership on boards and commissions to be balanced between the political parties, because it remains important to have diversity and balance on these bodies, and because state and federal elections still recognize political affiliation.)

**E. CHANGE "CRIME OF MORAL TURPITUDE" TO "FELONY" IN SECTION 7-3 INVOLVING DISQUALIFICATION OF THE MAYOR.**

The Commission recommends that the phrase "crime of moral turpitude" be changed to "felony" in Section 7-3 in the sentence specifying when a Mayor forfeits office. This change is designed to make the terminology in Section 7-3 concerning the disqualification of the Mayor (which says termination of office occurs when the Mayor "is adjudicated guilty of a crime involving moral turpitude") consistent with that of Section 3-3, which concerns disqualification of councilmembers.(which says termination occurs when "a council member is adjudicated guilty of a felony"). Because "felony" is a more precise term than "crime of moral turpitude," this terminology is preferable.

**F. CLARIFY RESTRICTIONS ON COUNTY EMPLOYEES APPEARING BEFORE BOARDS AND COMMISSIONS.**

The Commission recommends eliminating Section 10-4(1)(d) which prohibits County officers and employees from representing private interests before boards and commissions. This change is recommended to correct an inconsistency in the present Charter. In 1992, Section 10-4(4) was added to the Charter to explain in detail when County officers and employees could represent private interests before boards and commissions. When this section was added, the Charter Commission wanted to eliminate the more general language in Section 10-4(1)(d), but this change was inadvertently not made. Because the sections are inconsistent, it is appropriate to eliminate the earlier general provision and retain

the later more specific provision.

**G. ELIMINATE OBSOLETE SECTIONS.**

The Commission recommends eliminating Section 14-4, which required special charter commissions to be established in 1983 and 1987, and the language now found in Article 15, which contains transitional provisions that are no longer relevant or applicable. Section 14-4 required special charter commissions to be established in 1983 and 1987 to study specific sections of the Charter. These commissions met and completed their work long ago, so it is not necessary to keep this section in the Charter. Article 15 governed the transition from the earlier governing document to the Charter that took effect in 1983, and no longer has any further relevance.

**[Section 14-4. Special Charter Commissions.**

1. Not later than the first day of March, 1983, the mayor, with the approval of the council, shall appoint a special charter commission composed of eleven members to study and review Sections 3-1, 3-2 and 3-3 of this charter. The special charter commission may propose amendments to Sections 3-1, 3-2 and 3-3 of this charter which shall be submitted to the county clerk within twelve months after such special charter commission is appointed. Upon receipt of the amendments, the county clerk shall provide for the submission of such amendments to the voters of the county at the general election to be held in 1984. The county clerk shall have the proposed amendments published in a newspaper of general circulation in the county at least forty-five (45) days prior to the general election of 1984.
2. Not later than the first day of March, 1987, the mayor, with the approval of the council, shall appoint a special charter commission composed of eleven members to study and review Article 8, Chapter 11 of the charter. The special charter commission may propose amendments to Article 8, Chapter 11 and such other sections of this charter as it deems necessary to effectuate the changes to Article 8, Chapter 11; provided, however, no amendments to any portion of this charter may be proposed which does not specifically relate to the operation or financing of the Department of Water Supply. Any amendment proposed by the special charter commission shall be submitted to the county clerk within twelve months after such special charter commission is appointed. Upon receipt of the amendments, the county clerk shall provide for the submission of such amendments to the voters of the county at the general election to be held in 1988. The county clerk shall have the proposed amendments published in a newspaper of general circulation in the county at least forty-five (45) days prior to the general election of 1988.]

**ARTICLE 15  
TRANSITIONAL PROVISIONS**

**[Section 15-1. Schedule. After the approval of this charter by the voters, this charter shall**

take full effect on January 1, 1983, except that the election of the council in 1982 shall be in accordance with the then existing provisions of the charter of the County of Maui. Thereafter, the mayor and the members of the county council shall be elected in accordance with the provisions of this revised charter, and will assume their duties according to this revised charter both as to their terms of office and powers thereunder.]

[Section 15-3. Status of Departments and Transfer of Functions. When this charter takes full effect all departments, the status of which are not specifically changed or abolished by this charter, are hereby recognized, continued and established and shall have such powers, duties and functions as provided by this charter.]

[Section 15-4. Transfer of Records and Property. All records, property and equipment whatsoever of any department which are assigned to another department by this charter, shall be transferred and delivered to the department to which said functions are so assigned.]

[Section 15-5. Lawful Obligations of the County. All lawful obligations of the county and its departments existing on the effective date of this charter, and all fines, taxes, penalties, forfeitures, obligations and rights due, owing or accruing to the county and its departments, and all writs, prosecutions, actions and proceedings by or against the county and its departments shall remain unaffected by the adoption of this charter.]

#### H. RENUMBER SECTIONS 8-14, 8-15, AND 8-16.

Proposal Ten creating a new Department of Transportation, if adopted, logically should be put at Section 8-14, after the other County departments and before the three commissions. If Proposal Ten is adopted, the numbering of the sections governing the three commissions should then be changed as follows:

### CHAPTER [14] 15 COST OF GOVERNMENT COMMISSION

Section 8-[14]15(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-[14]15(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. (Amended 1988).

**Section 8-[14]15(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.

\*\*\*\*\*

#### COMMISSION POLICY RECOMMENDATIONS

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 strongly recommends that the Council act promptly to give the investigators who work for the Department of the Prosecuting Attorney the same powers as police officers while they are working within the scope of their official duties. These investigators have the frequently-dangerous obligation to find and apprehend individuals, and at present they must coordinate their duties with the police, raising costs and causing delays. Every other county gives their prosecutorial investigators the power to carry firearms and make arrests, like police officers, and Maui is alone in denying these powers.

The Commission originally proposed a Charter amendment to address this problem, but subsequently learned that Hawai'i County had dealt with the issue by ordinance rather than by Charter amendment. The Commission agrees that the investigators in the Prosecuting Attorney's Office need authority to exercise police power while operating within the scope of their official duties, but decided that it would be better to address this issue through a County ordinance than by a Charter amendment. The Commission thus recommends to the Council that it enact such an ordinance at the earliest possible opportunity.

\* The Commission recommends that notices of public hearings and of the meetings of boards and commissions be conveyed to the public through accessible technology and by widespread posting of notices at appropriate locations. The Commission decided not to propose a specific amendment on this matter, because it realized that flexibility is needed, particularly in light of rapidly changing technology. But the Commission concluded that it would be appropriate to post notices of the meetings and hearings of all boards and commissions on a common County website so that the public with access to computers could easily determine when and where such events would be held. Similarly, email messages should be sent to all those requesting such notification. The Commission also recommends that local newspapers be utilized in Lāna'i and Moloka'i, when possible, and that notices be posted at community bulletin boards, particularly in the more remote communities.

\* The Mayor should appoint and utilize a geographically-diverse nominating committee to generate names of individuals for appointment to County boards and commissions.

\* The provisions of the Charter should be followed and enforced more vigorously than they have been in the past. The Commission members urge all County officials to pay particular attention to Sections 10-5 and 13-10 of the Charter, and urges the Council to enact the ordinances called for in those provisions.



\* The council and administration should review the non-charter boards and commissions and consider consolidating them and combining their responsibilities.

\* When available, addresses as well as TMK references should be included in public notices.

\* The Council should continue to review and revise the planning process through ordinance to ensure and facilitate community participation. All county bodies should fulfill their responsibilities regarding the planning process in a timely fashion.

## EXHIBIT A

### COUNCIL RESIDENCY DISTRICTS

#### EAST MAUI

Beginning at shoreline and Kakipi Gulch

Proceed to Kepuni Gulch

North along Kepuni Gulch to Kahikinui Forest Reserve boundary

Easterly along Kahikinui Forest Reserve boundary to Haleakalā National Park boundary

Northwest, west, northerly, then southeast along Haleakalā National Park boundary to Waikamoi Stream

North along Waikamoi Stream and continuing due west to Ka'ili'ili Road

West on Ka'ili'ili Road to Opana Gulch

North along Opana Gulch to jeep trail

Easterly on jeep trail to Pālama Gulch then northeasterly to Halehaku Gulch

North along Halehaku gulch to Kakipi Gulch

North along Kakipi gulch to point of beginning

#### MAKAWAO-HA'IKU-PĀ'IA

Beginning at shoreline and Kanahā Beach Park boundary

Proceed east along shoreline to Kakipi Gulch

South along Kakipi Gulch to Halehaku Gulch

South along Halehaku Gulch to Pālama Gulch

Southeast along Pālama Gulch to unnamed jeep trail

Northwest, then southwest along jeep trail to Opana Gulch

South along Opana Gulch to Ka'ili'ili Road

East on Ka'ili'ili Road to Waikamoi Stream

South along Waikamoi Stream to Haleakalā National Park boundary

Northwest, then southwest along Haleakalā National Park boundary to Kailua Gulch  
Northwest along Kailua Gulch to Lowrie Ditch  
Southwest along Lowrie Ditch to Haleakalā Highway  
Northwest along Haleakalā Highway to Kalialinui Gulch  
Northwest along Kalialinui Gulch to 'Āmala Place  
Northwest along Kanahā Beach Park boundary to point of beginning

## KAHULUI

Beginning at shoreline and Kanaloa Avenue extension  
Proceed east along shoreline to Kanahā Beach Park boundary  
Southeast along Kanahā Beach Park boundary to Kalialinui Gulch  
Southeast along Kalialinui Gulch to Haleakalā Highway  
Southeast on Haleakalā Highway to Lowrie Ditch  
Southwest along Lowrie Ditch to Spanish Road  
West, then northwest on Spanish Road to East Waikō Road  
West on East Waikō Road to Wai'ale Road  
North on Wai'ale Road to Wai'inu Road  
East on Wai'inu Road to Pu'umele Street  
North on Pu'umele Street to Mahalani Street  
East, then north on Mahalani Street to Ka'ahumanu Avenue  
East on Ka'ahumanu Avenue to Kahului Beach Road  
Northwest on Kahului Beach Road to Kanaloa Avenue extension  
Northeast on Kanaloa Avenue extension to point of beginning

## WAILUKU-WAIHE'E-WAIKAPU

Beginning at shoreline and Lahaina-Wailuku District boundary  
Proceed southeast along shoreline to Kanaloa Avenue extension  
Southwest on Kanaloa Avenue extension to Kahului Beach Road  
Southeast on Kahului Beach Road to Ka'ahumanu Avenue  
West on Ka'ahumanu Avenue to Mahalani Street  
Southwest on Mahalani Street to Pu'umele Street  
Southwest on Pu'umele Street to Wai'inu Road  
West on Wai'inu Road to Waiale Road  
South on Wai'ale Road to East Waikō Road  
East on East Waikō Road to Kū'ihēlani Highway  
Southwest on Kū'ihēlani Highway to Honoapi'ilani Highway  
South on Honoapi'ilani Highway to Pohākea Gulch  
West, then northwest along Pohākea Gulch to point of beginning

## WEST MAUI

Beginning at shoreline and Lahaina-Wailuku District boundary at Po'elua Bay  
Proceed south along boundary to shoreline (Manawainui Gulch)  
Northwest, north, then northeast along shoreline to point of beginning (includes the islands of Molokini and Kaho'olawe)

## SOUTH MAUI

Beginning at Lahaina-Wailuku District boundary and Pohākea Gulch  
Proceed southeast, then east along Pohākea Gulch to Honoapi'ilani Highway  
North on Honoapi'ilani Highway to Kū'ihēlani Highway  
Northeast on Kū'ihēlani Highway to East Waikō Road  
East on East Waikō Road to Spanish Road  
Southeast, then east on Spanish Road to Lowrie Ditch  
South along Lowrie Ditch to Pūlehu Gulch  
Southeast along Pūlehu Gulch to Waiakoa Road  
South on Waiakoa Road to Kihei CDP boundary  
South along Kihei CDP boundary to unnamed road  
Southwest, then south on unnamed road to unnamed stream (west of Keonekai Road)  
East on unnamed stream to Kula Highway  
Southwest on Kula Highway to jeep trail (abutting Tiger 2000 line 85098642)  
West, then south on jeep trail to Kanaio-Kalama Park Road ('Ulupalakua Road)  
Southeast along Kanaio-Kalama Park Road to Pi'ilani Highway  
Southeast, then east on Pi'ilani Highway to Kepuni Gulch  
Southeast along Kepuni Gulch to shoreline  
Southwest, west, north, northwest, southwest then northwest along shoreline to Lahaina-Wailuku District boundary (Manawainui Gulch)  
North along boundary to point of beginning

## UPCOUNTRY

Beginning at Lowrie Ditch and Kailua Gulch  
Proceed southeast along Kailua Gulch to Haleakalā National Park boundary  
Southwest, southeast, east, then southwest along Haleakalā National Park boundary to Kahikinui Forest Reserve boundary  
Southwest along Kahikinui Forest Reserve boundary to Kepuni Gulch  
South along Kepuni Gulch to Pi'ilani Highway  
West on Pi'ilani Highway to Kanaio-Kalama Park Road ('Ulupalakua Road)  
Northwest along Kanaio-Kalama Park Road to jeep trail  
Northeast on jeep trail to Kula Highway (abutting Tiger 2000 line 85098642)  
Northeast along Kula Highway to unnamed stream  
Northwest, then west along unnamed stream to unnamed jeep trail  
North on unnamed jeep trail to unnamed road  
North on unnamed road to Kihei CDP boundary  
North on Kihei CDP boundary to Waiakoa Road  
North on Waiakoa Road to Pūlehu Gulch  
Northwest along Pūlehu Gulch to Lowrie Ditch  
North, then northeast along Lowrie Ditch to point of beginning

The Ballot Language for the amendments proposed by the Charter Commission and for the alternatives proposed by the Council will be as follows:

**BALLOT LANGUAGE FOR THE PROPOSED AMENDMENTS TO  
THE CHARTER OF THE COUNTY OF MAUI**

1. Should the Article 1 of the Charter be amended to confirm the equal worth and dignity of every individual?
2. Should the terms of Councilmembers be lengthened from two (2) to four (4) years, with term limits of three (3) consecutive terms or twelve (12) consecutive years (whichever shall be longer), beginning in 2004, with terms to be staggered?
3. Should the responsibilities of the Corporation Counsel be clarified to state explicitly that the Corporation Counsel is the legal advisor and representative of the County of Maui, the Council, the Mayor, all county departments, and all boards and commissions, and to state that the Corporation Counsel shall perform additional duties "as may be incident to the department or required by law" instead of the current "as shall be assigned by the mayor"?
4. Should the name of the Department of Public Works and Waste Management be changed to be the "Department of Public Works and Environmental Management" and should its responsibilities be broadened to include supervision of environmental management and pollution, including solid waste collection, recycling, litter control, and protection of the unique beauty of Maui County?
5. (A) Should the name of the Department of Fire Control be changed to be the "Department of Fire and Public Safety," (B) should the name of the Public Safety Commission be changed to be the "Fire and Public Safety Commission," (C) should this Commission be given the responsibility to hire and fire the fire chief and the power to review the Department's budget, and (D) should the duties of the Fire Chief be clarified to include responsibilities over rescue and first-responder emergency services, public education, training, and monitoring the standards for construction and occupancy of buildings?
6. Should the planning process be clarified whereby (A) the duties of the Department of Planning would include long-range planning and management of cultural resources, (B) the Department would be required to enforce zoning ordinances, (C) the Planning Commissions would be required to review and take action on revisions to the General Plan and on amendments to land-use ordinances within 180 and 120 days respectively after the final public hearing, (D) the purpose and nature of the General Plan would be clarified by incorporating language from Section 226-58 of the Hawai'i Revised Statutes, (E) the Planning Director would be required to issue an annual report on the implementation and enforcement of the General Plan and the community plans, and (F) the County Council would be required to take action on revisions to the General Plan proposed by the Planning Director within one year and on proposed revisions to zoning and land-use ordinances within 180 days?
7. Should the role of the Citizen Advisory Committees be to review and recommend revisions to the community plans and to stay in existence until their recommended revisions are approved, modified,

or rejected by the Council and the Mayor, and should the community plans once approved become part of the General Plan?

Alternative 7. Should the role of the Citizen Advisory Committees be to review and recommend revisions to the community plans, to monitor the implementation and enforcement of the general and community plans, and to review comprehensive revisions to the general and community plans at least every ten years, and shall these Citizen Advisory Committees be permanent for each community plan district?

8. Should the Civil Service Commission have the power to remove the Director of Personnel Services, but only after the Director has been given notice of charges and has been granted a hearing?

9. Should the Department and Board of Water Supply be restructured to have more control to operate, whereby (A) the Department would have the authority to coordinate private water systems (while respecting existing property rights), and (B) the Department would have the responsibility to prepare water use and development plans for each community plan district and a long-range capital improvement plan (both of which would be updated every five years); whereby (C) the Board of Water Supply would be restructured so that the Directors of the Departments of Planning and Public Works become voting members of the Board and the other seven members would be appointed by the Mayor with approval by the Council for three-year terms (subject to being reappointed once), (D) the Board would be given the power to establish rules and set rates without further review, (E) the Board would be required to evaluate the Director annually, and (F) the Board could hire (using the Department's revenues) independent legal counsel by a two-thirds vote when necessary; and whereby (G) an independent audit would be conducted annually, after which the Council could make recommendations for changes?

Alternative 9. Should the Department and Board of Water Supply be restructured in a manner whereby (A) the Department would become a regular County agency subject to the Mayor's executive management and the Council's legislative oversight and (B) the Board would be recasted as an advisory body (with the power to recommend budget proposals and rate adjustments), whereby (C) the Mayor would be assigned the power to appoint the Director (with the approval of the Council) and (D) the Mayor and Council would continue to have final approval of rates and regulations; whereby (E) the Department would have the responsibility to survey public and private water sources and (F) prepare and annually update a long-range capital improvement plan (subject to Council approval) and implement such approved plans, and whereby (G) the Council would have the power to issue general obligation bonds and provide appropriations for capital improvements of the water system?

10. Should a new Department of Transportation be created, to be directed by a Director of Transportation, who would have responsibility for planning and coordinating the development of new highways and public transportation as well as transportation in the air and on water?

11. Should the terms of the members of the Salary Commission be staggered so that two of the nine members would be appointed (or reappointed) each year (except that only one would be appointed or reappointed every fifth year)?

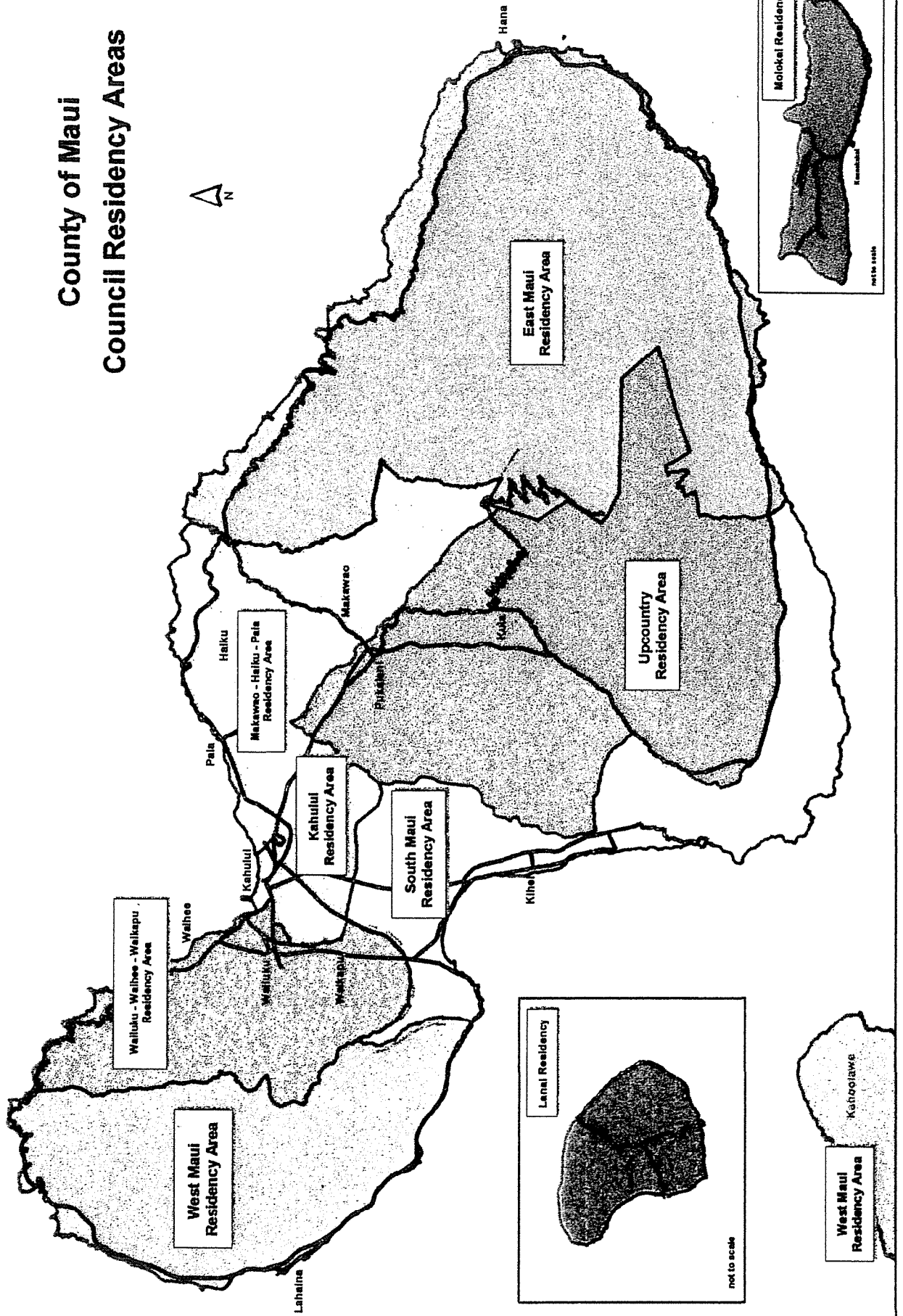
12. Should a minimum of one percent (1%) of the real property tax revenues be put each fiscal year into the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund to be used for purchasing lands or other property entitlements to preserve open space, and should the unspent revenues in this Fund remain in the Fund, and not lapse, thereby accumulating from year to year?

13. Should boards and commissions be allowed to meet in accessible privately owned locations when publicly owned buildings are not available or appropriate for their meeting?

14. Should the provisions of the Maui County Charter be modified by nonsubstantive "housekeeping" changes including (A) removing obsolete provisions, (B) using gender-neutral language throughout the Charter, (C) using Hawaiian language spellings for Hawaiian place names, (D) describing the Council residency areas in geographical terms (instead of by reference to voting precincts), (E) eliminating references to political parties to fill Council vacancies, (F) changing "crime of moral turpitude" to "felony" with reference to the disqualification of the Mayor, (G) clarifying restrictions on County employees appearing before boards and commissions, and (H) renumbering sections as appropriate in light of other amendments?



# County of Maui Council Residency Areas



**From:** Rod Antone  
**To:** Lisa Kahuhu  
**CC:** Mike Molina  
**Date:** 5/19/2011 3:47 PM  
**Subject:** please review the Charter Commission press release and provide corrections if necessary

The Maui Charter Commission will be accepting public testimony for charter amendment proposals at noon on May 23.

This is the second of a series of meetings held by the new 2011 Maui County Charter Commission. It is during these meetings that the public is urged to submit proposed changes to the County Charter.

Some examples of proposed changes which became actual amendments include the creation of the County Department of Transportation and the splitting of the Department of Public Works and the Department of Environmental Management.

Other proposals such as changing Council term limits from four years to two years did not pass but can be brought up again this year.

"This is a unique opportunity for everyday citizens to initiate real change in government," said newly appointed Charter Commission Chairman Josh Stone. "All submitted proposals will be acknowledged and addressed. We want the people of Maui County to know we are listening to them."

These meetings are also a good chance for the public to meet and greet new Charter Commission members. Attached to this press release are the bios and pictures of most of the new members.

Those interested in submitting a proposal may do so by sending it to:

Charter Commission  
c/o Department of the Corporation Counsel  
200 S. High Street  
Wailuku, HI 96793

Proposals may also be submitted via email at [Charter.commission@co.maui.hi.us](mailto:Charter.commission@co.maui.hi.us). Past minutes and agendas of the commission may also be viewed on their County website at <http://www.co.maui.hi.us/index.aspx?NID=1791>

For more information about submitting proposals or the Charter Commission itself please call Corporation Counsel at 270-7742.

052311 - Item No. IV. B. page 1 of 1

**From:** "Josh Stone" <joshstonemaui@gmail.com>  
**To:** "'Lisa Kahuhu'" <Lisa.Kahuhu@co.maui.hi.us>, <edward.kushi@co.maui.hi.us...  
**Date:** 5/10/2011 7:08 AM  
**Subject:** charter meetings

Aloha Lisa and Ed,

Thanks again for all your support yesterday at the meeting. You guys are going to be our most valuable assets I can tell.hahahaha!

I was wondering if it would be OK to discuss meeting times with the other committee members via email. I'd like to start thinking about scheduling our community outreach meetings as soon as possible. It looks like the previous charter commission met with the community very early on and the public testimony was an integral part of the commission's proposals:

June 20th - Pukalani - Hannibal Tavares Center

June 26th - Lahaina - Lahaina Civic Center

July 25th - Kihei - Kihei Community Center

Aug 1st - Paia - Paia Community Center

Aug 8th - Hana - Hana High School

Aug 15th - Molokai - Mitchell Pau'ole Center

Aug 22nd - Lanai - Lanai Community Center

Aug 29th - Wailuku - County Council Chambers

Our next meeting is May 23. I would like to get a jump on the public outreach, so I want to start the ball rolling with the following proposed schedule. It seemed Tuesdays were best for everyone, however availability of the locations is the issue. I would propose 6:30pm for these outreach meetings.

May 31st - Pukalani - Hannibal Tavares Center

June 7th - Lahaina - Lahaina Civic Center

June 14th - Kihei - Kihei Community Center

(Take a small summer break)

June 27th - Paia - Paia Community Center

July 5th - Hana - Hana High School

July 12th - Molokai - Mitchell Pau'ole Center

July 19th - Lanai - Lanai Community Center

(Back to County)

July 25th - Planning Room (Or 26th if 2nd & 4th Tuesdays can work - Wailuku - County Council Chambers)

052311 - Item No. IV.C. page 1 of 2

How much notice time is appropriate for the community? We want to make sure we get good turn outs.

VERY IMPORTANT - AT THIS MEETING I REALIZED I HAD NOT RECEIVED THE AGENDA PACKAGE IN THE MAIL!!! I HAD MY WIFE CHECK IT BEFORE I CAME TO THE MEETING FROM THE AIRPORT. CAN YOU PLEASE SEND THAT TO ME AGAIN AND VERIFY MY MAILING ADDRESS:

JOSH STONE

PO BOX 790699

PAIA, HI 96779

Thanks very much for your time and all the best.

Mahalo,

Josh

stone@aloha.net

(808) 870 7227

052311 - Item No. IV.C. page 2 of 2

**From:** Alvin Kametani  
**To:** Kahuhu, Lisa  
**CC:** Sakumoto, Lisa  
**Date:** 5/17/2011 5:48 PM  
**Subject:** Re: Charter Commission - Use of County Community Centers

Lisa,

These are the dates available, as close to your request as possible (available date in **Bold**)

May 31 - Hannibal Tavares Community Center Pukalani **June 1, 2011, 4pm to 11 pm**

June 7 - Lahaina Civic Center **June 21, 2011, 4pm to 11 pm**

July 14 - Kihei Community Center **July 21, 2011, 4pm to 11 pm**

June 27 - Paia Community Center **June 27, 2011, 5pm to 11 pm**

July 5 - Hana High School (Is there a community center?) **Still checking on Helene Hall.**

July 12 - Molokai - Mitchell Pau'ole Center **July 11, 2011, 5pm to 11 pm**

July 19 - Lanai Community Center **July 20, 2011, 4pm to 11 pm**

Thank you;

Alvin

>>> Lisa Kahuhu 5/17/2011 1:32 PM >>>  
Yes, thank you.

>>> Alvin Kametani 5/17/2011 1:27 PM >>>  
Lisa;

So 5 pm to 10 pm is a good time frame to hold the Center, including for set up and break down.

Alvin

>>> Lisa Kahuhu 5/17/2011 1:24 PM >>>  
The Chair's recommended start time was 6:30 p.m. Probably until 9:00 p.m. or so. They will discuss this at the next meeting on 5/23/11. Set up shouldn't take more than 20 minutes.

As this is the first time for us, any suggestions you have with regard to holding these types of public meetings would be appreciated, including best times.

Thanks Alvin!

Lisa A. Kahuhu,  
Supervising Law Technician  
Department of the Corporation Counsel  
270-7585

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If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.

>>> Alvin Kametani 5/17/2011 1:17 PM >>>  
What time are the meetings planned for, start (Call to Order) to end. Also how much time do they need for setup.

Alvin

>>> Lisa Kahuhu 5/17/2011 7:52 AM >>>

052311 - Item No. IV. C. page 1 of 2

Thank you, Alvin! Helene Hall will work. Are all the others also available? How would I obtain keys? Is there any forms you need me to submit?

Thanks very much for your assistance with this!

Lisa A. Kahuhu,  
Supervising Law Technician  
Department of the Corporation Counsel  
270-7585

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>>> Alvin Kametani 5/16/2011 7:02 PM >>>  
Lisa;

Helene Hall is the Parks facility for Hana. If that is okay then I will proceed to hold. If not you need to contact Hana HS for any facility that they may have.

Alvin Kametani  
Recreation Leader III  
COM; Central Parks District

>>> Lisa Kahuhu 5/16/2011 3:59 PM >>>  
Aloha Alvin! Lisa Sakumoto referred me to you.

The Charter Commission has been established. They will be seeking public input through Community meetings twice during their 16 month term.

The tentative current dates for the first round of public outreach they are looking at are:

May 31 - Hannibal Tavares Community Center Pukalani

June 7 - Lahaina Civic Center

July 14 - Kihei Community Center

June 27 - Paia Community Center

July 5 - Hana High School (Is there a community center?)

July 12 - Molokai - Mitchell Pau'ole Center

July 19 - Lanai Community Center

Please let me know if these dates are available and the procedures I will need to follow to reserve them, obtain keys, etc.

Thanks very much,

Lisa A. Kahuhu,  
Supervising Law Technician  
Department of the Corporation Counsel  
270-7585

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052311 - Item No. IV.C. page 2 of 2

## NOTES RE: AVAILABLE ROOMS FOR MEETINGS:

### **COUNCIL CHAMBERS:**

As much as the Council would like to try and accommodate us, 1<sup>st</sup> and 3<sup>rd</sup> Tuesdays are already scheduled Committee meeting days. Inquired about 2<sup>nd</sup> and 4<sup>th</sup> Tuesdays, the Chair has already been receiving requests from Council Members for off-week committee meetings.

### **PLANNING CONFERENCE ROOM:**

2<sup>nd</sup> and 4<sup>th</sup> Tuesdays - Maui Planning Commission meetings  
1<sup>st</sup> Tuesdays - Urban Design Review Board

3<sup>rd</sup> Tuesdays - Available on 7/19/11, 8/16/11, 9/20/11, 10/18/11, 11/15/11, and 12/20/11 from noon on.

### **LIQUOR CONFERENCE ROOM:**

2<sup>nd</sup> and 4<sup>th</sup> Tuesday are available from noon to 3:00 p.m. only. Conference room is located within the Department, so Commission and public would need to be out by 3:00 p.m. on 2<sup>nd</sup> Tuesdays and 3:30 p.m. on 4<sup>th</sup> Tuesdays. No sound system, no internet access, room for approximately 15 members of the public.

### **WAIKAPU OR WAILUKU COMMUNITY CENTER:**

Waikapu Community Center - Kaunoha Senior Services uses the facility

Wailuku Community Center - Already has scheduled parties and other scheduled matters for a majority of Tuesdays.

### **MAUI BEACH:**

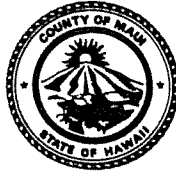
5/20/11 - Spoke with Tanya at Maui Beach 872-9324. Requested information on meeting space for a minimum of 20, but possibly upwards of 50. The only room that could accommodate us was the ElleAir Ballroom at a cost of \$1,000 per meeting.

### **HOSPICE CONFERENCE ROOM:**

Inquired as to availability of conference room for 2<sup>nd</sup> and 4<sup>th</sup> Tuesdays. Waiting for response however I have been informed that the office closes at 4 p.m. so meetings would have to adjourn prior to the closing of the office.



ALAN M. ARAKAWA  
Mayor



**COPY**

PATRICK K. WONG  
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 270-7741  
FACSIMILE: (808) 270-7152

May 3, 2011

**MEMORANDUM**

**T O:** Mike White  
Council Member

**F R O M:** Edward S. Kushi, Jr.  
First Deputy Corporation Counsel

**SUBJECT:** PROPOSED CHARTER AMENDMENT TO ESTABLISH AN OFFICE OF THE  
COUNTY AUDITOR (PAF 11-055)

In response to your request dated April 6, 2011 and pursuant to discussions with council staff, attached is the proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR", approved as to form and legality.

Should you have any questions, please contact me.

ESK:lk  
Enclosure

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# Resolution

No. \_\_\_\_\_

## PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR

WHEREAS, the need for accountability in government has led to a heightened demand for information about government programs and services; and

WHEREAS, taxpayers, voters, and the public as a whole are entitled to know whether government funds are being handled in compliance with laws and regulations, and whether government agencies and programs are achieving their purposes and operating economically and efficiently; and

WHEREAS, auditing is an essential tool in holding government accountable to the public; and

WHEREAS, performance audits may include the following objectives:  
(1) examination and testing of processes to determine whether the laws, policies, and programs of the county are being carried out in the most effective and efficient manner;  
(2) examination and testing of internal control systems to ensure that such systems are properly designed to safeguard public assets against loss from waste, fraud, or error, to promote efficient operations, and to encourage adherence to prescribed management policies; and (3) recommendations for changes in organization, management, and processes which will produce greater efficiency and effectiveness in meeting program and operational objectives; and

WHEREAS, through their respective charters, the City and County of Honolulu has established an Office of the City Auditor, the County of Kauai an Office of the County Auditor, and the County of Hawaii an Office of the Legislative Auditor; and

WHEREAS, the Council wishes to establish an Office of the County Auditor to strengthen the auditing function in County government and to ensure that the agencies and programs of the County are held to the highest standard of accountability to the public; and

WHEREAS, establishing an Office of the County Auditor in the Revised Charter of the County of Maui (1983), as amended ("Charter"), will insulate the County Auditor from undue influence by the legislative and executive branches, foster objectivity, openness, and fairness, and promote the credibility of the County Auditor's recommendations; now, therefore,

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

1. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Article 3 of the Charter, pertaining to the County Council, be amended to add new sections to read as follows:

**"Section 3-9. Office of the County Auditor Established.**

1. There is established an office of the county auditor, to be headed by a county auditor who shall be appointed by the 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 the council. Persons appointed to such positions shall be exempt from the civil service and shall serve at the pleasure of the county auditor.

**Section 3-10. Office of the County Auditor; Powers, Duties and Functions.**

1. It shall be the duty of the county auditor to conduct or cause to be conducted:

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

052311-Item No. IV.D.1. page 3 of 7

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. 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."

2. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that  
Section 9-13 of the Charter, pertaining to Audit of Accounts, be amended as follows:

052311 - Item No. IV.D.1. page 4 of 7

**"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."; and

3. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Article 15 of the Charter, pertaining to Transitional Provisions, be amended to add a new section to read as follows:

**"Section 15-4. 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.

652311 - Item No. IV.D.1. page 5 of 7

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.”; and

4. That material to be repealed is bracketed. New material is underscored;  
and

5. That, pursuant to Section 14-2(1) of the Charter, this resolution be submitted to the voters of the County of Maui at the next general election; and

6. That the County Clerk prepare the necessary ballot for presentation to the voters at the next general election; and

7. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that the following question be placed on the next general election ballot:

“Shall the Charter be amended to establish an Office of the County Auditor, to provide for the appointment of the County Auditor, to define the County Auditor’s duties and powers in order to increase accountability and efficiency of County operations, and to make other clarifying, conforming, transitional, and related amendments?”; and

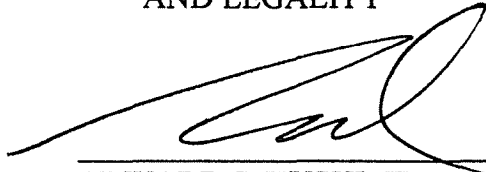
8. That, pursuant to Section 14-2(2) of the Charter, the County Clerk publish this proposed amendment in a newspaper of general circulation; and

9. That, upon approval by the majority of the voters as indicated by the number of votes cast and upon official certification of such result, the amendment proposed herein shall take effect; and

052311 - Item No. IV.D.1. page 6 of 7

10. That certified copies of this resolution be transmitted to the Mayor and the Corporation Counsel.

APPROVED AS TO FORM  
AND LEGALITY



EDWARD S. KUSHI, JR.  
First Deputy Corporation Counsel  
County of Maui

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052311 - Item No. IV.D.1. page 7 of 7