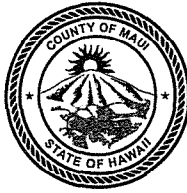


ALAN M. ARAKAWA  
MAYOR



JEFFREY A. MURRAY  
CHIEF

ROBERT M. SHIMADA  
DEPUTY CHIEF

**COUNTY OF MAUI**  
DEPARTMENT OF FIRE AND PUBLIC SAFETY

200 DAIRY ROAD  
KAHULUI, MAUI, HAWAII 96732  
(808) 270-7561  
FAX (808) 270-7919  
EMAIL: fire.dept@mauicounty.gov

November 23, 2011

Joshua Stone, Chairperson  
And Members of the Charter Commission  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

RECEIVED  
CHARTER COMMISSION  
2011 NOV 28 PM 1:38

Dear Chair Stone and Members of the Commission:

Please allow me to provide responses to the Charter Commission, in reference to Mayor Arakawa's letter to the Commission dated October 24, 2011:

1. What agency and national standards is the department using to guide them in the accreditation process and are other fire departments using the same agency and national standards?

*We are using Commission on Fire Accreditation International (CFAI), Centers for Public Safety Excellence (CPSE). There are currently 144 departments within the United States and Internationally.*

2. What is the accreditation status of the department and what specific impacts, if any, will the merger have on the department's accreditation status?

*We are currently a Registered Agency with (CFAI, CPSE). Impacts: We are currently seven (7) uniform positions short at our fire stations and an estimated 10 at the end of 2011. We are planning for a new recruit class sometime in the second quarter of 2012. I want to point out that we have had **great support on all levels** in this area! Our main issue, and has been for several years now, is a lack of support staff to include key management positions, uniform and clerical. We*

121211 - Item No. II.A. pgs 1-3

*have 300 uniform personnel and only 12 non-uniform, which include three (3) mechanics. Our employee's in the support areas are overwhelmed as we speak, to add more responsibility would prove detrimental to our operations.*

*(CFAI, CPSE) Under section 4 Categories & Criteria: This is where the Ocean Safety Program would fall. Complete files of all Actual Training, Staffing Procedures, Response Reports, Response Times, Standard Operating Procedures, HIPAA Compliance, Public Education, Established Goals, Objectives and Strategic Plan, Documented Maintenance Program for All Response Equipment, Facility Compliance, Memorandums of Agreement, Human Resources Management and Comprehensive Annual Financial Reports to name a few, but not limited to. All of these Performance Indicators and Criteria must meet complete and detailed documentation for a minimum of 3 to 5 years prior to finalizing the accreditation.*

3. What specific staff and budgetary impacts will the merger have on the Maui Fire Department?

*We are working on the organizational chart that will address the needs for this proposed merger. We hope that the current budget in place is sufficient to fulfill these goals.*

4. Are there any specific policies, or procedures Ocean Safety is not following which may be causing the department to have concerns?

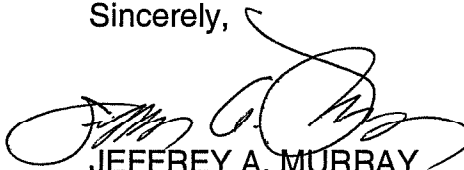
*We have seen a few procedures and feel that it is not adequate, incomplete and needs to be updated. Through proper planning and a fair amount of time, these areas will be addressed and personnel will be provided proper training. I would like to refer to the **e-mail dated October 22, 2011 by Dr. Monty Downs**. This e-mail touches on many positives in which I agree. On page 3, first paragraph. **He states "I am very pleased that Maui County is carefully working its way through these deliberations and not just plowing into the merger as we did here." (Kauai)**. Our department feels it is being rushed.*

Joshua Stone, Chairperson  
And Members of the Charter Commission  
November 23, 2011  
Page 3

*Yes, this idea has been around for many years, and we agree that we could manage the merger properly with a well thought out plan and resources in place.*

I would like to thank you and the members of the Charter Commission for allowing me the opportunity to provide input on this very important decision. Should you have any further questions or concerns, please feel free to contact me at 270-7561.

Sincerely,



JEFFREY A. MURRAY  
Fire Chief

**Charter Commission - Charter Commission Nov. 28**

**From:** "EditorMolokai Advertiser-News George Peabody" <MolokaiMAN@BasicISP.net>  
**To:** <charter.commission@mauicounty.gov>, <Molokaiman@basicisp.net>  
**Date:** 11/25/2011 1:56 PM  
**Subject:** Charter Commission Nov. 28

Dear Maui County Charter Commission: Our elected Mayor should be in control of the MPD and appoint the Chief of MPD so that We The People can hold him responsible for police abuse of American Citizens in Maui County. The MPD is just a corrupt rogue street gang with nice uniforms facade but without any commitment to limited government powers per the Constitution for the United States of America and the State of Hawaii, and there is no accountability for their violations and abuses against American Citizens.

Include in the Charter amendments that the Chief of Police shall be appointed and answer to the elected Mayor of Maui County.

Also, Maui County has no SHERIFF, i.e., the top law enforcement officer ELECTED by THE PEOPLE to enforce the Constitution for the United States of America against all enemies and violators such as Obama/Bush/Clinton/Abercrombie/Lingle et al. Since MPD is not obligated to protect anyone from crime as act mainly as a punitive tax collection racketeering goon squad without any consent from We The People, its is way past time for Maui County to elect our top law enforcement officer Sheriff to assist the public in law enforcement against so called government criminals who obviously have no desire to respect the rights of the People to be free from tyranny.

PLEASE REPLY, ASAP.

George Peabody editor Molokai Advertiser-News since 1984 <http://www.MolokaiAdvertiserNews.com> weekly and archives

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Maui County Charter Commission will continue making preliminary decisions on what proposed charter amendments should be placed before the public at its next meeting, Monday Nov.28, Commission Chair Josh Stone announced.

The topics the Commission is scheduled to consider at this meeting include: the role of districts in the County Council elective process; whether Maui County should be involved with the issues of Environmental Protection and Sustainability; governance of the Fire Department; and changing the rules for initiatives, referendums and recalls.

At recent meetings the Commission made tentative decisions to propose: increasing the County Council's term of office from two to four-year terms; returning to a partisan election system; establishing the position of County Auditor; establishing a biennial budgeting process; and leaving the governance of the Department of Water Supply under the Mayor and County Council. Ultimately, the Commission will make its proposals for changing the Charter to the voters in the 2012 election.

"Our goal is to reach tentative approval of these issues before December so that we can take these proposals to public hearing countywide and hear the residents' opinions on these complex and diverse issues," said Commission Chair Josh Stone.

The Charter Commission is an 11-member board appointed by the Mayor and approved by the Maui County Council to conduct a review of the County Charter. The Charter is the equivalent to the County's constitution, the blueprint that sets the structure of County government. The Commission may make recommendations to amend the Charter to the voters in the next election.

The commission will also take testimony from the public on any subject related to the County Charter.

The Nov. 28 meeting will be held from 10 a.m. to 4 p.m. at the Planning Commission Conference Room in the county complex on High Street in Wailuku. For more information about the meeting, call 270-7742.  
email: [charter.commission@mauicounty.gov](mailto:charter.commission@mauicounty.gov) and website

121211 - Item No. II.B. pg 1-1

## Charter Commission - [Possible SPAM] County Manager

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**From:** "Mark Hyde" <hydem001@hawaii.rr.com>  
**To:** <charter.commission@mauicounty.gov>  
**Date:** 12/1/2011 12:08 PM  
**Subject:** [Possible SPAM] County Manager

---

I have not been following your work, but am glad that a commission is looking into how to make our county government function more effectively.

I have two suggestions for your consideration (perhaps you already have):

1. Establish a firm deadline for completion of each general plan. This requirement speaks for itself in light of the fact that the current general plan revision is now in its 11th year. Too long. I think we would benefit from firm deadlines akin to California's requirement to produce an approved budget by June 30th of each fiscal year.

2. Create the position of county manager to whom the county directors would report. The county manager would report to the mayor. In my business life I found that one of the key elements of success is a good organizational structure. Without good structure, populated by high performing personnel, results are sub-optimal. I think we suffer from that here in Maui County. Elected mayors are not necessarily good managers and both skill and knowledge are needed to run a complex governmental organization well. The position should not be subject to civil service and should not be subject to reappointment whenever we elect a new mayor. In other words, it should not be a political post and able to attract the best talent available to assist a sitting mayor with operations, mission and vision.

Thanks for listening.

Mark Hyde  
4320 E. Waiola Loop  
Wailea  
[hydem001@hawaii.rr.com](mailto:hydem001@hawaii.rr.com)  
(808) 874-3839

121211 - Item No. II.C. pg 1-1

## Charter Commission - Department of Water Supply

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**From:** "Mark Hyde" <hydem001@hawaii.rr.com>  
**To:** <charter.commission@mauicounty.gov>  
**Date:** 12/2/2011 2:08 PM  
**Subject:** Department of Water Supply

---

One more thought for your consideration, please.

Edwin Tanji's column this morning references the 1978 realignment of the reporting relationship of the Maui County Board of Water Supply from a semi-autonomous organization to an executive department with a direct reporting relationship to the Mayor and to the Council. It would be interesting to revisit why this was done in light of the results achieved subsequently, which are very disappointing. A dispassionate examination of the current situation reveals a county with water shortages due to failure to develop new sources of water, recommend/implement thoughtful conservation measures and re-use "waste" water.

I recommend that the Charter Commission investigate best practices in other communities, then make recommendations for a charter amendment that would put these best practices to work.

Mark Hyde  
4320 E. Waiola Loop  
Wailea, Hawaii 96753  
(808) 874-3839

121211 - Item No. II.D. pg 1-1

Maui County Charter

Article 3

County Council Term Limits

Proposed Charter Amendment

[added material is underlined, deleted material is bracketed.]

Amend Section 3-2. Election of Council and Term of Office, Paragraph 5. as follows:

The term of office of council members shall be for [two (2) years] four (4) years, beginning at twelve o'clock meridian on the second day of January following their election. No member of the county council shall serve more than [five consecutive] three full terms of office, whether consecutive or not consecutive. The terms shall be staggered.

The staggering of the terms of councilmembers shall commence on January 2, 2015 and be implemented in accordance with this section.

The five councilmembers who have received the highest number of votes shall be elected to four year terms. The remaining four council members shall be elected to two-year regular terms commencing on the same date.

**Questions on details**

How many years at the time of implementing this staggered system can a person who is elected to the two year term serve? Should it be two or three additional terms – ten or fourteen years?

How many additional terms currently elected council members should have in this staggered system? Should these council members have the time served count toward the twelve year limit? Under the current system, council members do not have to count time already served, so long as it is not consecutive. Should that same rule apply if these proposed new limits are submitted to and adopted by the voters? In other words, should a break in time allow the candidate to start all over again?

102411 - Item No. IV. B. pg 1-1 Deferred  
111411 - Deferred  
11/28/11 - Item No. IV. D. pg 1-1  
12/12/11 - Item No. IV. A. 1 pg 1-1

Maui County Charter

Article 8

County Departments

Chapter 9

Department of the Personnel Services

Proposed Charter Amendment

[added material is underlined, deleted material is bracketed.]

Amend Section 8-9.3. Powers, Duties, and Functions. The director of personnel services shall:

Add a new paragraph as follows:

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

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

The civil service commission shall:

1. Adopt rules having the force and effect of law to carry out [the] applicable provisions of the civil service laws [of the state] as prescribed by the Hawaii Revised Statutes.

102411 - Item No. IV.C. pg 1-1  
111411 - Deferred  
11/28/11 - Item No. IV.E. pg 1-1  
12/12/11 - Item No. IV.A.2 pg 1-1



Maui County Charter

Article 3

County Departments

Chapter 8

Department of the Prosecuting Attorney

Proposed Charter Amendment

Amend Section 8-3.3. Powers, Duties and Functions as follows [added material is underlined, deleted material is bracketed.]

The prosecuting attorney shall:

1. Appoint such deputy prosecuting attorneys and necessary staff, including investigators who shall have all the powers and privileges of a police officer of the county, as shall be authorized by the council. Deputy prosecuting attorneys shall be exempt from civil service and shall serve at the pleasure of the prosecuting attorney.

and

Add a new paragraph 8.

8. Prosecute offenses against the laws of the State under the authority of the attorney general of the State.

102411 - Item No. IV, D. pg 1-1  
111411 - Deferred  
112811 - Item No. IV, F. pg 1-1  
121211 - Item No. IV, A. 3 pg 1-1

MAUI COUNTY CHARTER

ARTICLE 3  
ELECTION OF COUNCIL AND TERM OF OFFICE

ARTICLE 7  
ELECTION OF MAYOR AND TERM OF OFFICE

Proposed Charter Amendments

[added material is underlined, deleted material is bracketed]

Amend Section 3-2. Election of Council and Term of Office, Paragraphs 1 through 4, as follows:

1. Council members shall be elected by [nonpartisan special elections. Such special elections shall be held in conjunction with the primary and general elections every two (2) years commencing in 2000. The special election held in conjunction with the primary election every two (2) years shall be known as the first special election. The special election held in conjunction with the general election every two (2) years shall be known as the second special election] partisan elections in accordance with the election laws of the state, insofar as applicable.

[2. The names of all candidates for each council seat shall be placed on the ballot for the first special election; provided, that for any council seat with two or fewer candidates, the names of the candidates shall appear only on the ballot for the second special election.

3. For any council seat with three or more candidates, the names of the two candidates receiving the highest number of votes for each council seat in the first special election shall be placed on the ballot for the second special election; provided, that if two or more candidates tie for the highest number of votes received in the first special election, the names of the candidates tied for the highest number of votes shall be placed on the ballot for the second special election; and further provided, that if a single candidate receives the highest number of votes in the first special election and two or more candidates tie for the second-highest number of votes received, the names of the candidate receiving the highest number of votes and the candidates tied for the second-highest number of votes shall be placed on the ballot for the second special election.

4. At the second special election, the candidates receiving the highest number of votes for each council seat shall be deemed elected. If there is no more than one candidate for a council seat, such person shall be deemed elected regardless of the number of votes received.]

102411 - Deferred  
111411 - Deferred  
112811 - Item No. IV. G. pgs 1-2  
121211 - Item No. IV. A. 4 pgs 1-2

Amend Section 7-2. Election of Mayor and Term of Office, Paragraphs 1 through 4, as follows:

1. The mayor shall be elected by [nonpartisan special elections. Such special elections shall be held in conjunction with the primary and general elections every four (4) years commencing in 2002. The special election held in conjunction with the primary election every four (4) years shall be known as the first special election. The special election held in conjunction with the general election every four (4) years shall be known as the second special election.] a partisan election in accordance with the election laws of the state, insofar as applicable.

[2. The names of all candidates for mayor shall be placed on the ballot for the first special election; provided, that if there are two or fewer candidates, the names of the candidates shall appear only on the ballot for the second special election.

3. If there are three or more candidates, the names of the two candidates receiving the highest number of votes in the first special election shall be placed on the ballot for the second special election; provided, that if two or more candidates tie for the highest number of votes received in the first special election, the names of the candidates tied for the highest number of votes shall be placed on the ballot for the second special election; and further provided, that if a single candidate receives the highest number of votes in the first special election and two or more candidates tie for the second-highest number of votes received, the names of the candidate receiving the highest number of votes and the candidates tied for the second-highest number of votes shall be placed on the ballot for the second special election.

4. At the second special election, the candidate receiving the highest number of votes shall be deemed elected. If there is no more than one candidate for mayor, such person shall be deemed elected regardless of the number of votes received.]

#### PROPOSED BALLOT QUESTION

Shall Sections 3-2 and 7-2 of the Revised Charter of the County of Maui (1983) be amended to delete the reference to nonpartisan elections, and provide that Council members and the Mayor shall be elected by partisan elections in accordance with the election laws of the State of Hawaii ?

Maui County Charter

Article 8, County Departments, Section 7, Fire Department and Public Safety

Adopt New Name for Department of Fire and Public Safety Department and Commission

Proposed Charter Amendment

Shall Section 8-7 of the Charter of the County of Maui be amended to provide that the name of Department of Fire and Public Safety and Fire and Public Safety Commission be amended to be the Maui County Fire Department and the Maui County Fire Commission?

[added material is underlined, deleted material is bracketed.]

CHAPTER 7

MAUI COUNTY FIRE DEPARTMENT [OF FIRE AND PUBLIC SAFETY]

Section 8-7.1. Organization. There shall be a Maui County Fire Department [department of fire and public safety] consisting of a Maui County Fire Commission [fire and public safety commission], a fire chief, and the necessary staff.

Section 8-7.2. Maui County Fire Commission [Fire and Public Safety Commission]. The Maui County Fire Commission [fire and public safety commission] shall consist of nine members appointed by the mayor with the approval of the council.

The Maui County Fire Commission [fire and public safety commission] shall:

1. Adopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law.
2. Review and submit to the mayor the department's request for an annual appropriation for the operation of the department.
3. Review the operations of the Maui County Fire Department [department of fire and public safety] and the civil defense agency and make recommendations for changes that may be desirable to improve the performance of emergency functions and the provision of public safety services.
4. Receive, review, and investigate any charges brought forth by the public against the conduct of the Maui County Fire Department [department of fire and public safety] or any of its members and submit a written report of its findings and recommendations to the fire chief for disposition.
5. Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.
6. Submit an annual report to the mayor and the council on its activities.
7. Have such other powers and duties as may be provided by law.

111411 - Deferred  
112811 - Item No. IV. H. pgs 1-2  
12/12/11 - Item No. IV. A. 5. pgs 1-2

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 8-7.3. Fire Chief. The fire chief shall be appointed and may be removed by the Maui County Fire Commission [fire and public safety commission]. The fire chief may be removed by the Maui County Fire Commission [fire and public safety commission] only after being informed in writing of the charges that are resulting in the fire chief's 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.

## Article 15

### Transitional Provisions

Add a new section.

Upon adoption of the proposed 2012 amendment to Section 8-7, the Maui County Fire Department shall provide the timetable for the transition to its new name.

Maui County Charter

Article 8, County Departments, Section 7, Department of Fire and Public Safety

Assign Ocean Safety and Rescue to Department of Fire and Public Safety

Proposed Charter Amendment

Shall Section 8-7.4 (4) of the Charter of the County of Maui be amended to assign ocean safety and rescue to the Department of Fire and Public Safety?

[added material is underlined, deleted material is bracketed.]

CHAPTER 7

DEPARTMENT OF FIRE AND PUBLIC SAFETY

Section 8-7.4. Powers, Duties, and Functions. The fire chief shall:

1. Be the administrative head of the department.
2. Provide and perform fire fighting, rescue, ocean rescue and safety, and first-responder emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same.
3. Provide public education programs related to fire prevention, ocean rescue and safety and public safety.
4. Train, equip, maintain, and supervise the force of fire fighting, ocean rescue and safety and emergency rescue personnel.
5. Investigate the cause, origin and circumstances of fires.
6. Adopt rules relating to the protection of persons and property against fires.
7. Monitor the standards for construction and occupancy of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law.
8. Exercise such other powers and duties as may be assigned by the commission or as may be provided by law.

Add a new section.

Upon adoption of the proposed 2012 amendment to Section 8-7, the Maui County Fire Department shall provide the timetable for the transition to include the functions of ocean rescue and safety.

111411 - Deferred  
112811 - Item No. IV. I. Pg 1-1  
121211 - Item No. IV. A. 6 Pg 1-1

Maui County Charter

Article 9, Financial Procedures

Adopt Biennial Budget and Capital Program in Non-election Years

Proposed Charter Amendment

Shall Section 9.2 of the Charter of the County of Maui be amended to provide that the Budget and Capital Program be prepared on a biennial basis and in non-election years?

[added material is underlined, deleted material is bracketed.]

Section 9-1. Fiscal Year. The fiscal year shall begin on the first day of July and end on the thirtieth day of June of the succeeding year. All fiscal affairs of the county during any fiscal year shall be controlled by a budget ordinance and a capital program ordinance adopted on a biennial basis for that fiscal year.

Section 9-2. Preparation and Submission of Budget and Capital Program.

1. On or before the fifteenth day of March before the ensuing fiscal year begins, in non-election years, the mayor shall submit to the council (a) an operating budget for the ensuing two fiscal year[s], including an executive operating budget and a legislative operating budget, (b) a capital program, and (c) an accompanying message.

2. Upon submission, the budget, the capital program and the message shall be a public record in the office of the county clerk and shall be open to public inspection. The mayor shall at the same time make available copies of the budget, the capital program and the message for distribution to interested persons.

Section 9-3. Scope of Budget and Message.

1. The budget shall present a complete financial plan for the operations of the county and its departments for the ensuing two fiscal year[s], showing all county funds on hand whether encumbered or unencumbered and estimated reserves and revenues. It shall be set up as provided by the council after consultation with the mayor.

2. The estimated revenues, proposed expenditures and total appropriations for the ensuing two fiscal year[s] shall be equal in amount.

3. The mayor's message shall explain the budget both in fiscal terms and in terms of work to be done. It shall outline the proposed financial policies of the county for the ensuing two fiscal year[s] and describe the most important features of the budget plan. It shall indicate any major changes in financial policies and in expenditures, appropriations and revenues as compared with the two fiscal year[s] currently ending, and shall set forth the reasons for the changes. The message shall include a list of pending and proposed capital improvements together with the mayor's comments on such list. The message shall also include such other supporting or explanatory material as the mayor deems desirable.

1  
111411 - Deferred  
112811 - Item No. IV.J. pgs 1-2  
121211 - Item No. IV.A. 7 pgs 1-2

Section 9-5. Budget: Council Action.

1. After the public hearing, the council may pass the budget with or without amendment. In amending, it may add new items or increase items in the budget. It may decrease or delete items, except appropriations required by law and appropriations to pay any indebtedness. In all cases the estimated revenues, proposed expenditures and total appropriations for the ensuing fiscal year shall be equal in amount.

2. The council shall pass the budget on or before the thirty-first day of May of the fiscal year currently ending in a non-election year. If it fails to do so, the budget submitted by the mayor shall be deemed enacted as the budget for the ensuing two fiscal year[s].

3. The enacted budget shall be in effect on and after the first day of the two fiscal year[s] to which it applies. By virtue of the adoption of the budget, the several amounts listed in the budget column entitled "Appropriations" shall be appropriated to the specified departments and programs.

Section 9-6. Capital Program: Scope; Council Action.

1. The capital program shall contain at least the following:

a. A simple, clear general summary of the detailed contents of the program.

b. The capital improvements pending or proposed to be undertaken within the ensuing two fiscal year[s], together with the estimated cost of each improvement and the pending or proposed method of financing it.

c. The capital improvements proposed for the five (5) years next succeeding the ensuing fiscal year, together with the estimated cost of each improvement and the proposed method of financing it.

2. Capital expenditures to be financed from current revenues in the ensuing two fiscal year[s] shall be included in the budget as well as in the capital program. Appropriations for such expenditures shall be included in the budget.

3. After the public hearing on the capital program, the council may pass the program with or without amendment.

4. The council shall pass the capital program on or before the thirty-first day of May of the fiscal year currently ending in a non-election year. If it fails to do so, the program submitted by the mayor shall be deemed enacted as the program for the ensuing two fiscal year[s]. The enacted program shall be in effect on and after the first day of that fiscal year in a non-election year.

5. At any time during a fiscal year the capital program may be amended by ordinance.



Maui County Charter

Establish an Independent Office of the County Auditor and Define its Duties and Provide that the County Auditor be Appointed and Removed by the Cost of Government Commission

Proposed Charter Amendment\*\*

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

\*\* STAFF COMMENTS - The commission's current proposal would greatly increase the power/authority of the COG from the current charter-created, advisory commission whose task is to complete and submit a report to the council to a board/commission similar in power/authority to the Police or Fire commissions, which directly appoint its "CEO", i.e., the Fire and Police chiefs. Accordingly, Section 8, Chapter 16, would probably need to be amended further to reflect the creation of such authority.

\*\* STAFF COMMENTS - It might make sense for the Charter Commission to consider moving the independent office of the county auditor from Article 8, County Departments, Section 16, Cost of Government Commission to create a separate department. The motion that passed seemed to continue its existence in Article 8, Chapter 16, Cost of Government Commission. See Active Proposal #8.16.8

\*\*STAFF COMMENTS -- In addition to its appointing authority, the Cost of Government Commission would also be making budget/funding requests to the council for the new department as well as other matters.

111410 - Item No. IV.M. pgs 1-6 - Deferred  
112811 - Item No. IV.K. pgs 1-6  
121211 - Item No. IV.A.8 pgs 1-6

[added material is underlined, deleted material is bracketed.]

1. Amend Article 8, County Departments, Section 16, Cost of Government Commission, as follows:

Chapter 16

[Cost of Government Commission]

Office of the County Auditor

**Section 8-16-4. 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 cost of government commission, 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 Commission 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 cost of government commission, 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 commission. Persons appointed to such positions shall be exempt from the civil service and shall serve at the pleasure of the county auditor.

**Section 8-16-5. 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;

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

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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. Amend Section 9-13 of the Charter, pertaining to Audit of Accounts, as follows:

**Section 9-13. Audit of Accounts.** Within six (6) months after the beginning of each fiscal year, [the county council shall provide for] the county auditor shall conduct or cause to be conducted an independent financial audit of the funds, accounts and other evidences of financial transactions of the county and of all operations for which the county is responsible[.] for the audited fiscal year. The audit shall be [made] conducted by a certified public accountant or firm of certified public accountants[, designated by the council,] who have no personal interest, direct or indirect, in the fiscal affairs of the county or any of its operations. The audit shall include both financial accountability and adequacy of the financial and accounting system. If the State makes such an audit, the [council] county auditor may accept it as satisfying the requirements of

this section. The scope of the audit shall be in accordance with the terms of a written contract [to be] recommended by the county auditor and signed by the council chair[,] as the contracting officer for the legislative branch, which contract shall encourage recommendations for better financial controls and procedures and shall provide for the completion of the audit within a reasonable time after the close of the previous fiscal year. A copy of the audit reports shall be filed with the county clerk and shall be a public record[.], unless otherwise provided by law.

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

3. Amend Article 15 of the Charter, pertaining to Transitional Provisions, 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.

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."

Maui County Charter

Article 13, General Provisions, Section 13-2, Boards and Commissions, Subsection 2

Non Partisan Board and Commissions

Proposed Charter Amendment

Shall the Maui County Charter be amended to provide that all County of Maui boards and commissions be nonpartisan?

[added material is underlined, deleted material is bracketed.]

Amend Section 13.2, Boards and Commissions, Subsection 2 as follows:

2. [Not more than a bare majority of the members of any board or commission shall belong to the same political party.] Members of boards and commissions shall be appointed on a nonpartisan basis.

112811 - Item No. IV.L - pg 1-1  
121211 - Item No. IV.A.9 pg 1-1

Maui County Charter

Article 13, General Provisions, Section 13-2, Boards and Commissions, Subsection 17

Require Interactive Communications Access for the Public to

All County Council and County Council Committee Meetings

Proposed Charter Amendment

Shall Article 13, General Provisions, of the Charter of the County of Maui be amended to require Interactive Communications Access to All County Council and County Council Committee Meetings for the Residents of Hana, Lanai and Molokai and residents of other geographic areas as the Council deems appropriate and reasonable.

[added material is underlined, deleted material is bracketed.]

Amend Article 13, General Provisions, to add a new section:

Section \_\_\_\_\_. The County Council shall hold provide interactive communications access for the residents of Hana, Lānaʻi, and Molokai and residents of other geographic areas as the Council shall deem appropriate and reasonable to all County Council Meetings and and County Council Committee Meetings. Said access shall include but not be limited to the ability of the public to testify, of council members to ask questions, and of the public to respond to questions.

\*\* Should the Charter Commissioners identify other locations from which the public should have the interactive facilities or should that matter be addressed by an ordinance to implement the details of this provision? Any requirements should be able to accommodate the changes in technology that might increase the locations from which access can be available at a reasonable cost.

112811 - Item No. IV. M. Pg 1-1  
121211 - Item No. IV.A. 10 Pg 1-1

Maui County Charter

Article 13, General Provisions, Section 13-2, Boards and Commissions, Subsection 17

Proposed Charter Amendment

Shall Article 13, General Provisions, Section 13-2, Boards and Commissions, Subsection 17 of the Charter of the County of Maui be amended to provide that the Mayor shall have 45 days from the receipt of notice of a vacancy to submit to the Council the name of the Mayor's nominee to fill the vacancy

[added material is underlined, deleted material is bracketed.]

Article 13, General Provisions, Section 13-2, Boards and Commissions

17. A vacancy on a commission or board due to death, resignation or removal shall be filled as follows:

Within [thirty (30) days of the occurrence] forty five days of the notification of a vacancy the mayor shall submit to the council the name of the mayor's nominee to fill the vacancy. Within sixty (60) days thereafter the council shall act to approve or disapprove the nominee. If the council disapproves the nominee it shall immediately so notify the mayor of its action. The mayor shall then submit the name of a second nominee to the council within ten (10) days and the council shall act thereon within sixty (60) days. This process shall continue until the vacancy is filled. In the event that the council fails to approve or disapprove a nominee within the time periods provided for herein, that nominee shall be deemed appointed to fill the vacancy upon its occurrence. If the mayor fails to submit the name of a nominee within the times provided for herein, the council may within sixty (60) days nominate and approve the appointment of an individual to fill the vacancy.

112811 - Item No. IV. N. pg 1-1  
121211 - Item No. IV. A.11 pg 1-1



## Maui County Charter

### Article 14, Charter Amendments, Section 14-1, Initiation of Amendments

Remove Authority of County Council to Propose Charter Amendments During the General or Special Election Cycle that the Charter Commission Is Conducting Its Mandatory Review

#### Proposed Charter Amendment

Shall Article 14, Charter Amendments, Section 14-1, Initiation of Amendments, be amended to remove the authority of the County Council to propose charter amendments during the general or special election cycle that the Charter Commission is conducting its mandatory review?

[added material is underlined, deleted material is bracketed.]

Amend Article, Article 14, Charter Amendments, Section 14-1, Initiation of Amendments, as follows:

Section 14-1. Initiation of Amendments. Amendments to this charter may be initiated only in the following manner:

1. By resolution of the council adopted after two readings on separate days and passed by a vote of six or more members of the council[.] provided that the council shall not propose amendments to the charter during the general and special election cycle that the Charter Commission is conducting its mandatory review pursuant to Section 14-3.

2. 2. By petition presented to the council, signed by not less than ten percent (10%) of the voters registered in the last general election, setting forth the proposed amendments[.] provided that a petition signed by not less than ten percent (10%) of the voters registered in the last general election shall not be available to propose amendments to the charter during the general and special election cycle that the Charter Commission is conducting its mandatory review pursuant to Section 14-3. Such petitions shall designate and authorize not less than three nor more than five of the signers thereto to approve any alteration or change in the form or language or any restatement of the text of the proposed amendments which may be made by the corporation counsel.

Upon filing of such petition with the council, the county clerk shall examine it to see whether it contains a sufficient number of apparently genuine signature of voters. The clerk shall complete the examination of the petition within fifteen (15) days.

The council shall then hold a public hearing and shall determine whether the amendments proposed shall be submitted to the voters for approval. The determination by the council to submit such proposed amendments to the voters shall be by resolution adopted by a

vote of five or more members of the council within forty-five (45) days after the receipt of the petition.

\*\* Section 14-3 provides that charter amendments may be submitted to the voters "by petition presented to the county clerk, signed by not less than twenty percent (20%) of the voters registered in the last general election, setting forth the proposed amendments." In that case, where there are twenty percent (20%) of the voters signing the petition, the proposed amendment is automatically on the ballot, assuming that it meets all the technical and other criteria, and the council is not involved in deciding whether the amendment shall be on the ballot.

The present wording of this draft includes changes to the voters' petition only when the council is involved in making a decision about submitting the proposed amendment to the voters.

Maui County Charter

Article 14, Charter Amendments

Amend Article 14, Charter Amendments, to Add a New Section to Require that the Charter be Revised and Published to Include All New Significant Amendments Adopted

Proposed Charter Amendment

Shall Article 14, Charter Amendments, be amended to add a new section to require that the Maui County Charter be Revised and Published to Include All New Significant Amendments Adopted?

{added material is underlined, deleted material is bracketed.]

Amend Article, Article 14, Charter Amendments, to add a new section as follows:

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

112811 - Item No. IV. P. Pg 1-1  
121211 - Item No. IV.A. 13 Pg 1-1

## Maui County Charter

### Article 14, Charter Amendments, Section 14-3, Mandatory Review

Amend the Charter Commission Appointment Process, Sec. 14.3, Mandatory Review, to Conform the Term of Appointment of Charter Commissioners to the Terms of Other Maui County Boards and Commissions

#### Proposed Charter Amendment

Shall Article 14, Charter Amendments, Section 14-3, Mandatory Review, be amended to conform the term of appointment of Charter Commissioners to the terms of other Maui County Boards and Commissions?

{added material is underlined, deleted material is bracketed.}

Amend Article, Article 14, Charter Amendments, Section 14-3, Initiation of Amendments, as follows:

Section 14-3. Mandatory Review. [Not later than the first day of March, 2001,] Not later than the first day of December 1, 2017, the mayor, with the approval of the council, shall appoint a charter commission composed of eleven members who shall serve for 5 years to study and review the operation of the government of the county [under this charter.] under such amendments or new charter and to propose amendments or to draft a new charter in the manner hereinafter set forth. Thereafter, the mayor with the approval of the council shall appoint a charter commission at ten year intervals.

The commission may propose amendments to the charter or draft a new charter which shall be submitted to the county clerk within sixteen (16) months after such commission has been appointed. Upon receipt of the amendments or new charter, the county clerk shall provide for the submission of such amendments or new charter to the voters of the county at any general or special election as may be deemed by the commission. Any special election shall be held not less than forty-five (45) days and no more than seventy-five (75) days after the receipt of the amendments or the new charter by the county clerk.

The commission shall publish not less than forty-five (45) days before any election, at least once in the newspaper of general circulation within the county, a brief digest of the amendments or new charter and notice to the voters that copies of the amendments or new charter are available at the office of the county clerk.

[Following any special or general election on any proposed charter, or revision or amendment thereto, at intervals of ten (10) years, the mayor, with the approval of the council, shall appoint a charter commission composed of eleven members to study and review the

operation of the government of the county under such amendments or new charter and to propose amendments or to draft a new charter in the manner hereinabove set forth.]

\*\*Section 13-2. Boards and Commissions. provides for 5 year appointments. However it also provides for staggered terms. Thus other than the length of term, it did not seem applicable to the tenure of Charter Commissioners.

Starting the five year term on December 1, 2017 provides for the Charter Commissioners to hold their positions through the election cycle of 2022.

Maui County Charter

Article 13, General Provisions, Section 13-2, Boards and Commissions, Subsection 17

Require the County of Maui to Fund the Defense of Members of All County of Maui Boards and  
Commissions and to Indemnify Said Members

Proposed Charter Amendment

Shall Article 13, General Provisions, of the Charter of the County of Maui be amended to require the County of Maui to fund the defense of members of county of all Maui boards and commissions in the bona fide and good faith discharge of their official duties and indemnify said members in the event of civil action as a result of the lawful performance of their duties?

[added material is underlined, deleted material is bracketed.]

Amend Article 13, General Provisions, to add a new section:

Section \_\_\_\_\_. The county shall provide funds to pay for the defense of members of all Maui county boards and commissions and shall indemnify all members of boards and commissions in the event of a civil action as a result of the bona fide and good faith discharge of their official duties and indemnify said members in the event of the lawful performance of their duties. The county shall not indemnify a member for any portion of a judgment or settlement that represents punitive or exemplary damages.

**\*\*Commission Analyst Analysis and Comments**

Generally public officers are entitled to a defense at the expense of the public in a law suit arising from the performance of the officer's official duties and while serving a public purpose. Courts have authorized eligibility for such reimbursement only to those public officials who defend against misconduct occurring in connection with the good-faith performance of their official duties and while serving the public interest and who ultimately prevail in that underlying suit.

Courts have found that the public does have an interest in such a controversy and may pay the reasonable and necessary legal fees incurred by the public officer in successfully defending against unfounded allegations of official misconduct.

However, reimbursement provisions must not violate the general constitutional prohibition banning the expenditure of public funds for private purposes. It may be that this proposal is too broad.

1. This proposal makes it automatic that the attorneys' fees shall be paid from public funds although it does require that the reimbursement can be only for the bona fide and good faith and lawful discharge of official duties.

2. There are no checks and balance on the need for the retention of private/special counsel. Under the current Maui charter, the Council must approve the retention and authorize the funds. And implicit in the requirement that the corporation counsel ordinarily provide a defense, is the requirement that first there be a conflict of interest such that the corporation counsel cannot provide a defense and private/special counsel is required.

3. It is not clear from the proposal how the funds would be appropriated. Could the council be sued to be required to appropriate the public funds? Courts are generally reluctant to order legislative bodies to appropriate funds.

4. The proposal does not include employees and officers of the county, presumably on the theory that the members of boards and commissions serve pro bono. However, HRS Chapter Sec. 662D provides *immunity* for most acts or omissions to volunteers, a person serving without compensation, for governmental entities, which includes county boards and commissions.

HRS 662D-2 provides that

(a) A volunteer shall be *immune from civil liability* in any action on the basis of any act or omission of a volunteer resulting in damage or injury if:

(1) The volunteer was acting in good faith and within the scope of the volunteer's official functions and duties for a nonprofit organization, a nonprofit corporation, a hospital, or a governmental entity;

(2) The damage or injury was caused by the volunteer's negligent conduct. . .

Furthermore it is very clear that HRS 662D-2(b) provides that the county is responsible, not the volunteer, Thus in any lawsuit against a governmental entity for civil damages based upon the negligent act or omission of a volunteer, proof of the act or omission is sufficient to establish *the responsibility of the governmental entity under the doctrine of respondeat superior*, notwithstanding the immunity granted to the volunteer with respect to any act or omission.

There are circumstances under which a person may sue and recover civil damages from a volunteer. These circumstances are ones that it would seem that public funds should not be used for. These are factual situations based upon:

(1) Any conduct engaged in by the volunteer that would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct;

(2) Any act or omission in connection with the operation of a motor vehicle;

(3) Any conduct engaged in by the volunteer while the volunteer is unreasonably interfering with the lawful activities of another;

(4) Any conduct engaged in by the volunteer that takes place on private property when the volunteer's presence on the property was not consented to by the owner;

(5) Any act or omission within a volunteer's scope of practice for which the volunteer is licensed, certified, permitted, or registered under state law to perform; provided that this paragraph shall not apply to volunteer medical assistance services pursuant to HRS Sec. 321-2.5; and

(6) Any criminal offense committed by the volunteer.

Hawaii Revised Statutes, Section 26-35.5 then governs the defense and indemnification of members of state boards and commissions. It provides that:

**\*\*The State shall not indemnify a member who would otherwise be entitled to indemnification, if the member fails to cooperate fully in the defense of the civil action which is made available to the member.**

**\*\*The State shall not indemnify a member for any portion of a judgment that represents punitive or exemplary damages. The State shall not indemnify a member for any portion of a settlement which is deemed unreasonable by the legislature.**

**\*\*A member may retain counsel of the member's own choice at the member's own expense. If the member chooses to retain counsel at the member's own expense, the State shall not indemnify the member even though the member would have been entitled to indemnification.**

**\*\*Any moneys which the State is required to pay to a member under this section shall be paid from an appropriation made by the legislature at the next session after the requirement to pay inures to the member.**

Under the terms of the current Maui charter, the council clearly has the authority to decide whether or not to repay the legal fees incurred by an officer, employee, or member of a board or commission in an action arising out of his or her bona fide discharge of his or her official duties.

Section 2-2 of the Maui County charter provides that "[a]ll powers of the county shall be carried into execution as provided by this charter, or, if the charter makes no provisions, as provided by ordinance or resolution of the county council." Pursuant to the charter's section 8-2.3(b), the corporation counsel is "the chief legal advisor and legal representative to the council, the mayor, all departments, all boards and commissions, and of all officers and employees in matters relating to their official duties." Thus members of boards and commissions to the extent that they are sued in their official capacity are already entitled to a defense.

If a member of a board or commission were sued in his or her individual capacity, and if Maui corporation counsel determined that there was a conflict of interest, then the corporation counsel makes a determination of need and recommendation to the council regarding the need and justification for hiring outside counsel. Section 3-6(6) of the charter delineates the council's sole



prerogative in the hiring of outside attorneys: "the council shall have the power ... [t]o retain or employ, by a vote of two-thirds of its entire membership, special counsel for any special matter presenting a real necessity for such employment."

The requirement of a 2/3rds vote establishes a meaningful standard and high bar before the expenditure of public funds for hiring of special counsel.

In *Maui County Council v. Thompson*, 84 Hawai'i 105, 929 P.2d 1355 (Hawai'i, 1996), William P. and Jo Ann Carroll brought an action against the County of Maui (county) for wrongful discharge. Their complaint additionally alleged that Mayor Lingle and others had committed *willful and intentional wrongful acts in their individual capacities*.

Maui County Charter section 8-2.3(b) restricts the Office of Corporation Counsel's representation to "matters relating to ... official duties." In the *Thompson* case, county officers and employees were also sued in their individual capacities. To the extent that members of boards and commissions were sued in the official capacity, they were entitled to representation by Corporation Counsel. In the *Thompson* case, the defendants were advised by Maui's corporation counsel that conflicts could arise regarding the defenses that might be raised on behalf of the county. The corporation counsel recommended that the *named individual defendants* be separately represented, and authorized these individuals to retain attorneys of their choice at the county's expense.

The Office of the Director of Finance executed contracts for \$30,000 for one law firm and \$50,000 for another. Each contract was subsequently amended, such that the first amounted to \$140,000 and the latter \$450,000. The council was not asked to approve these contracts or amendments. On January 21, 1994, the council passed a resolution formally noting its disapproval of the executive branch's action. The council filed their complaint in this action on June 3, 1994. On November 10, 1994, the court granted the defendants' motion for summary judgment.

The Hawaii Supreme Court found that the Maui county council's power in the Maui charter necessarily implies the absence of any such power in the executive branch.

In analyzing the principles of paying for the attorneys' fees and indemnification of a county officer, the Hawaii Supreme Court quoted from a decision by the Territorial Supreme Court and explained that it is the law in Hawaii and other jurisdictions:

[i]t is within the *discretionary power* of a municipality to indemnify one of its officers against liability incurred by reason of any act done by him while in the *bona fide discharge of his official duties*, and the municipality has the right to employ counsel to defend the officer or to appropriate funds for the necessary expenses incurred by him in such defense.

*Machado v. Bal*, 31 Haw. 559, 564 (1930) (quoting 43 C.J. 695) [emphasis added]; see also E. McQuillin, *The Law of Municipal Corporations* § 29.14 (3d ed. 1990).

*Machado v. Bal* involved a dispute as to the power of the Maui council to indemnify a police officer for his legal expenses incurred in both criminal and civil proceedings arising out of an incident in which the officer shot a person in the course of executing an arrest warrant. The relevant statutory provision provided language similar to the current Maui Charter: [n]othing ... shall preclude the board of supervisors of any county from retaining or engaging special counsel when in their opinion such action may seem to be desirable or required.” *Id.* at 565. The court concluded “that it is within the power of a county board of supervisors to indemnify a police officer for attorney's fees incurred in defending himself in a civil action...” *Id.*

The Hawaii Supreme Court further explained that Maui County and other municipalities were under no legal obligation to provide such defense even for actions within the scope of official duties and reasoned that:

It would seem to be *wisest to leave the indemnification of the officer to the discretion of those who represent the interests of the city*, that, on the one hand, they should not be without the power to indemnify a meritorious officer, acting in good faith, for the consequences of his conduct, and, on the other hand, they should not be obliged to protect every officer, though acting in good faith, under circumstances which seem to them to indicate a blamable want of care and caution.

*Id.* at 1357, 157. Quoting from *Machado*, 31 Haw. at 564 (which was quoting *Moorhead v. Murphy*, 94 Minn. 123, 102 N.W. 219, 220 (1905)).

Charter Commission Meeting  
12/12/2011 - 10:00 a.m.  
Regular Meeting

The following agenda items were not available at the time of this mailing:

**AGENDA ITEMS IV.A.16 - IV.A.21**

They will be provided to you as soon as available.