

Charter Commission - FW: Maui Police Commission and the LEOSA Law.

From: "Lenie Lawrence" <lenie@shaka.com>
To: <charter.commission@mauicounty.gov>
Date: 12/5/2011 3:32 PM
Subject: FW: Maui Police Commission and the LEOSA Law.

Dear Members of the Charter Commission, this is an example of how the Maui Police Commission fails to do their duty. Please read the two following emails.

Lenie Lawrence Retired Maui Police Lieutenant

From: Lenie Lawrence [mailto:lenie@shaka.com]
Sent: Tuesday, November 29, 2011 10:20 AM
To: 'tina@maui.net'
Subject: FW: Maui Police Commission and the LEOSA Law.

From: Lenie Lawrence [mailto:lenie@shaka.com]
Sent: Tuesday, November 29, 2011 10:18 AM
To: 'molokai@panchoalconltd.com'
Subject: FW: Maui Police Commission and the LEOSA Law.

From: Lenie Lawrence [mailto:lenie@shaka.com]
Sent: Tuesday, November 29, 2011 7:44 AM
To: 'aceman.maui@gmail.com'
Subject: FW: Maui Police Commission and the LEOSA Law.

Dear Mr. Koch,

The Maui Police Commission only receives sanitized news from the chief of police. The morale in the police department is at an all time low. The Okudara standoff case in Kahului was a prime example. Police officers were caught on video tape sleeping on post. There were acts of cowardice displayed. The situation was out of control. The order was given to the SRT three times to storm the house. They retreated each time because they wimped out. The department ran out of tear gas. The department did not establish a safe perimeter for someone armed with a rifle. That is just one example of the spin that MPD puts on what is released to the commission. Chief Yabuta is in violation of the federal law known as LEOSA. Many members of the department think the chief is suffering from mental problems. This includes officers of high rank. The misconduct in the Maui Police Department will not slow down because the chief himself refuses to follow the law. The man on man rape committed by officer Gamble in Kihei while on duty will be in the news again as the court date nears. This will be another "Black Eye" for MPD and there are many other bad cases of misconduct to follow. The chief is a poor leader. His responses to these incidents have only been reactive and not proactive. He has taken a once proud department and run it into the ground. If the commission thinks MPD is in good shape, you guys have been looking through "Rose Colored Glasses". I'm in contact with many retired officers of all ranks. They all agree that Chief Yabuta is the worse chief Maui County has had since it was started. The commission should establish a confidential phone line so that officers can report problems with the chief.

The good men and women of the Maui Police Department deserve a police commission that will ask the hard

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questions of the chief. His failure to follow the LEOSA law is just one facet of the multitude of problems facing MPD. This week there will be other retired officers going to see the mayor and members of the county council to complain about Chief Yabuta. The commission is out of touch with the true state of MPD. As a former Lieutenant in MPD I know when someone is breaking the law.

Lenie Lawrence

From: Lenie Lawrence [mailto:lenie@shaka.com]
Sent: Monday, November 28, 2011 1:59 PM
To: 'Richard Camara Jr.'; 'Charles Hirata'; 'ah6gr@arri.net'
Subject: FW: Maui Police Commission and the LEOSA Law.

From: Lenie Lawrence [mailto:lenie@shaka.com]
Sent: Monday, November 28, 2011 1:58 PM
To: 'md.office@mauicounty.gov'; 'Mike.Molina@co.maui.hi.us'; 'mayors.office@mauicounty.gov'
Subject: Maui Police Commission and the LEOSA Law.

Mayor Arakawa, Mike Molina, Keith Regan,

I sent a letter to the Maui Police Commission regarding the Leosa Law being broken by Chief Yabuta. I attached a letter from attorney Kevin Jenkins showing his research into the matter and where the law is being broken. They sent me a two sentence letter that states that the leosa law is beyond their "Purview".

I was telling them that the chief is breaking the law (Federal Law) and they say that they can't do anything about it. This is not right. MPD has a 44 million dollar budget and it seems the chief is untouchable. He never attempted to meet with us to resolve the matter. We dedicated our lives to serve this community and now Chief Yabuta turns his back on us and he is breaking the law.

Chief Yabuta is in full control of the police commission. They should have assigned an impartial investigator to interview Kevin Jenkins. They did not do this because Yabuta would be found to be breaking the law.

WE are not going to stop until the chief is following the law. The police department has a monster sized budget (Tax payers money) and it seems the chief answers to no one. The commission is useless because they are pals with the chief and no longer have an adversarial relationship. The commission is not protecting the public. The police department is a para military organization that is equipped with machine guns and tear gas, stun grenades and a chief that answers to no one and operates in a vacuum.

Lenie Lawrence

Charter Commission - [Possible SPAM] Statement to the Charter Commission

From: "tairak001@hawaii.rr.com" <tairak001@hawaii.rr.com>
To: <charter.commission@mauicounty.gov>
Date: 12/8/2011 5:00 PM
Subject: [Possible SPAM] Statement to the Charter Commission

Mr. Chair and members of the commission

I am disappointed that the Charter commission chose not to offer district representation to the voters for their decision.

Population for the residential districts range from approximately 2,000 for Hana, to Kahului - around 40,000. Fair???

In addition to the wide disparity of population from which candidates are drawn, there have been challenges on a council member's or candidate's residency. There have also been cases of a candidate being elected to council without winning the residential district he/she allegedly represents.

What If the council member had two or more residences, each in a different district? What if the councilor lived in one district and voted in another? We have had allegations of this nature in the past.

The Charter commission chose not to offer district representation, then they should clearly define what is meant by "live in the resident district".

Otherwise, let the people decide who will represent them in council.

Thank you for taking my statement

Kenneth Taira

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ALAN M. ARAKAWA
Mayor



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

December 16, 2011

MEMORANDUM

T O: Donald G. Couch, Jr.
Council Member

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

SUBJECT: PROPOSED CHARTER AMENDMENT RELATING TO PENALTIES (PAF 11-233)

In response to your request dated December 12, 2011, attached is the proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO PENALTIES", approved as to form and legality.

Should you have any questions, please contact me.

ESK:lk

Enclosure

cc: Patrick K. Wong, Corporation Counsel (w/enclosure)

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Resolution

No. _____

PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO PENALTIES

WHEREAS, Section 13-10 of the Revised Charter of the County of Maui (1983), as amended ("Charter") authorizes the Council to enact legislation to punish violations of the Charter and ordinances and rules having the force and effect of law, but does not permit a penalty to exceed the amount of \$1,000 or one year's imprisonment, or both; and

WHEREAS, this provision has not been amended since 1983, and the \$1,000 maximum may no longer be an appropriate punishment or deterrent in all circumstances; and

WHEREAS, removing the uniform limitation on penalties would allow the Council to fix the amount of a penalty to vary more meaningfully according to the violation at stake; now, therefore,

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

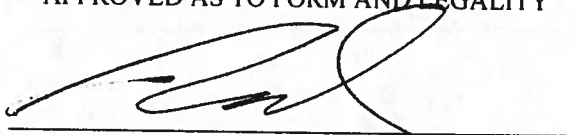
1. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 13-10 of the Charter, pertaining to penalties, be amended as follows:

"Section 13-10. Penalties. The council shall, by ordinance, provide for the punishment of violations of any provisions of this charter and may provide for punishment of violations of ordinances and rules having the force and effect of law[, but no penalty shall exceed the amount of \$1,000.00, or one (1) year's imprisonment, or both]."; and
2. That material to be repealed is bracketed; and
3. 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
4. That the County Clerk prepare the necessary ballot for presentation to the voters at the next general election; and

5. 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 Section 13-10 of the Charter be amended to remove the limitation on the amount of a penalty that may be imposed, which has been restricted since 1983 to \$1,000 or one year's imprisonment, or both?"; and
6. That pursuant to Section 14-2(2) of the Charter, the County Clerk publish this proposed amendment in a newspaper of general circulation; and
7. 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
8. That certified copies of this resolution be transmitted to the Mayor and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY



Department of the Corporation Counsel
County of Maui

paf:cmn:11-233a

December 20, 2011

To: Mr. Frank De Rego, Commissioner, Maui Charter Commission
From: John L. Buck III, Executive Assistant to the Mayor
Subject: Ocean Safety Officers Moving to Fire and Public Safety Department.

As you know I was in attendance at the December 13, 2011, Charter Commission meeting that was held in South Maui. It appeared to me that some of the commissioners may have had some questions or concerns about the Ocean Safety Officers moving to the Fire Department. This confusion or concern could be due to conflicting testimony from various Ocean Safety Officers at recent public hearings.

Someone who has been involved with the Parks department for over 25 years and has had an extensive Aquatic background, I thought it was appropriate for me to take the time to share with you my thoughts on the subject.

After last Tuesday's public hearing (12-13-2011) I contacted the Operations Supervisor for the Ocean Safety Officers about the conflicting testimonies from Ocean Safety Officers. In our discussion he informed me that well over 80% of the staff was in full support of the move

He also did state that those who were not in support fell into two categories. 1) They were still waiting for various questions from both Park and Fire Administration to be answered. 2) There is a small group who do not want change for they would have to change some of their ways, especially if they are held to a higher standard in their overall job performance

Currently, the Ocean Safety Officers perform a public safety service. It makes sense for this public safety service organization to be in the Department of Fire and Public Safety. The mind set for the Department of Parks and Recreation is the concept of recreation, having fun and not concentrating fulltime on public safety service functions.

The plan is for the whole Ocean Safety Unit to move from Parks department to Fire. The organization would be the same operation but in a different department with no intermingling of personnel.

One of the questions that came up was related to the union. The Ocean Safety Officers would stay in their current bargaining unit, Unit 3 of the HGEA. I will say that there are statewide plans for all Ocean Safety Officers, when Maui County finishes the transition of Ocean Safety Officers moving from Parks to Fire and Public Safety. At a statewide level, the plan is for the Ocean Safety Officers to form a new bargaining unit

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that addresses the needs of the public safety aspect of their job and not be part of the clerical bargaining unit.

The Ocean Safety Officers would also receive additional training as being part of the Fire and Public Safety Department. This would allow them to provide a better service to the public. Having Ocean Safety with the Fire Department would provide a more efficient operation that the public would definitely benefit from.

If you have any additional questions or comments please feel free to contact me at (808) 270.1795 or at John.Buck@co.maui.hi.us.

Thank you for your time.

Charter Commission - [Possible SPAM] Comments regarding the Charter

From: "tairak001@hawaii.rr.com" <tairak001@hawaii.rr.com>
To: <charter.commission@mauicounty.gov>
Date: 12/21/2011 11:44 AM
Subject: [Possible SPAM] Comments regarding the Charter

Members of the Charter commission:

Transparency is something that I have been advocating in my letters to the editor and in communicating with this commission.

Interestingly, in the current charter one of the functions of the Mayor state, "In addition to the annual report, make periodic reports informing the public as to county policies, programs and operations." Since this charter was adopted in 2003, I have yet to see an annual report for this county. The annual report should coincide with the fiscal year and should be published within 90 days of the end of the fiscal year,

This commission should require all reports be published. Placing the reports on the website could be considered published. Ordinances should be clearly identified with a short, clear title. The question is who or which agency should be responsible to insure the publication of all public reports. Auditor?

The following are my comments on the proposals as published in the Maui News 12/11/11. I did not comment of each proposal and is limited to the verbiage of what was published.

The proposals include:

*** Changing County Council terms from two to four years, with an absolute three-term limit.**

Comment – I would suggest that the only a portion of the council be up for election every 2 years. Having only a portion be filled every 2 years would enable the voters to really study the candidates. Having only a portion of the council facing turnover every 2 years would provide the council needed continuity and institutional knowledge.

*** Returning the county to partisan elections.**

Comment – it may not be a good idea. The recent intransigence of our congress based strictly on party lines regardless of merit and possible compromise may be reflected in our council. That would not be good for this county.

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*** Changing from an annual to a two-year budget.**

Comment – Sounds good. One would think this would require the agency or department to plan better but what can be expected is a supplemental budget request for off budget year. The department and agencies lack the financial expertise to provide sound estimations. As you are aware, EUTF, ERS, vacation cost are centrally kept and reported via the Finance Department. Departments requesting additional positions make no attempt to classify these positions, so the council does not even budget these position for 6-9 months.

*** Establishing an independent Office of the County Auditor.**

Comment – Very much in favor of this. Any finding of an audit should be made public and the agency or department audited must respond,

*** Moving ocean lifeguards from the Department of Parks and Recreation to the fire department.**

Comment – The Fire department must be prevented from commingling the duties and responsibilities of the fire and lifeguard classes. This should preclude jurisdictional disputes between the unions and other personnel problems.

*** Adding "sustainability" to the purview of the Department of Environmental Management.**

Comment – In 2008 the State of Hawaii published their 2050 sustainability plan in that plan "sustainability" is defined as "A Hawai'i that achieves the following:

N Respects the culture, character, beauty and history of our state's island communities

N Strikes a balance between economic, social and community, and environmental priorities

N Meets the needs of the present without compromising the ability of future generations to meet their own needs."

Based on the definition above, one would think application of the term within the county would require a taskforce made up of members from the various departments, state and private sector. Having one department responsible would not be appropriate.

*** Requiring candidates for County Council to be residents of their district for one year before running for office.**

Comment – Since the commission chose not to place the question regarding district representation before the voters, the commission should have a precise definition of "resident". What happens if the candidate owns more than

one home in the county? Clearly council members from Molokai and Lanai would more than likely rent or buy a home in Wailuku or Kahului. Would you define resident where the council member sleeps most of the time? Where he votes? Where mail is received?

*** Requiring the Fire Commission to review the fire chief's personnel actions.**

Comment – What does it mean to review? Does it mean submit proposal for approval? Can the commission reverse any personnel action?

*** Adding a new "declaration of policy" to the charter that would affirm a commitment to qualified leadership, standards for recruitment and fairness in other personnel actions.**

Comment – As you are aware not all employees of the county are civil service. All civil service employees are recruited by the Department of Personnel Service. The department runs the process via rule and procedures. Each position is classified and has qualification requirements. Each applicant is screened and determined to be qualified or not by the personnel department. All qualified applicant are ranked via examination or by background.

Positions in the Mayor's office are classified to establish pay scale. Persons filling these positions are solely within the purview of the Mayor. Department Heads duties and responsibilities are in Charter and are filled by appointment of the Mayor. Certain department heads would require approval of council.

Filling Council Service personnel are solely within the purview of the council.

If this new "declaration of policy" is for non-civil positions in the administration and council, who would be responsible to determine qualified leadership, establish standards of recruitment and fairness in personnel actions?

*** Requiring Charter Commission members to be appointed for five-year terms, starting 2017.**

Comment – Why? The commission's work is almost finished when the proposals are put forth for public vote. Term ending three months after the vote to insure the modified charter is published should be sufficient.

*** A housekeeping measure to allow the county prosecuting attorney to appoint investigators with police powers and prosecute offenses against state law.**

Comment – There are civil service investigators in the prosecutor's office. It is not known if these investigators have police powers Providing subordinates in the prosecutor's office with police powers may have unintended

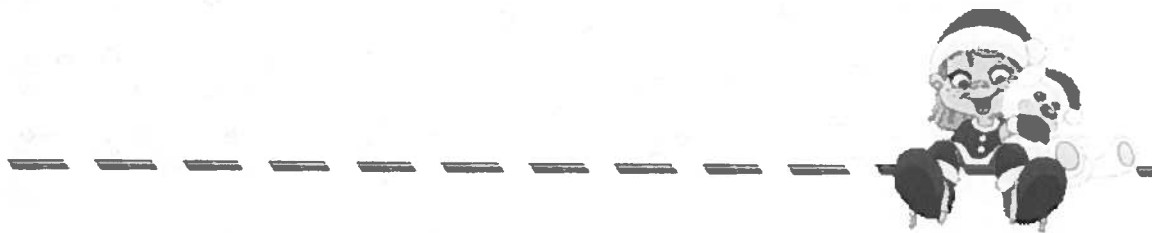
consequences. My understanding of the current system is the police conducts investigations and arrest the suspect. The prosecutor decides whether to charge and pursue action in court. Giving prosecutors subordinates with police powers could lead to prosecutorial misconduct.

Thank You for accepting my comments,

Ken Taira

Tairak001@hawaii.rr.com

572-9379



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From: Sylvia Cabral <cabral@maui.net>
To: <charter.commission@mauicounty.gov>, <sylviacabralmaui@gmail.com>
Date: 1/19/2012 2:40 PM
Subject: District Voting is an Issue Mauians do care about

There has been proven interest in this subject and making the decision
for all of maui was wrong.
We need one man/one vote for Maui.
Please put it on the ballot for a vote.

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1 page

From: Hana Steel
To: charter.commission @mauicounty.gov
Date: 1/23/2012 11:08 AM
Subject: Keep elections non-partisan

Please! We don't benefit as a small community by being divisive because elections then focus on the party, and not the person.

Thanks,

Hana

Hana Steel, Ph.D., Recycling Coordinator
Solid Waste Division
Department of Environmental Management
County of Maui
200 South High Street
Wailuku, Hawaii 96793
hana.steel@co.maui.hi.us
ph: 808-270-7847
fax: 808-270-7843

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1 page

Ananda Stone
1595 Kuuipo St.
Lahaina, Hawaii
96761
(808) 667-6761
splashvideo@yahoo.com

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

SUBJECT: Support For Proposal #19

Dear Chair Stone and Members of the Commission,

I am a student at UH Maui College in the Sustainability program. Because of my busy school schedule, I will not be available for testimony at a hearing, but would like to strongly encourage creating a new emphasis to focus on sustainability issues, and adding "sustainability" to the Department of Environmental Management.

Sustainability is essential for the future of our island. Maui is ecologically fragile. The planning for this island is vitally important. So what happens if the plane, ship, and supplies do not come in? How many days would we live without food shipped into us? How will we mitigate sea level rising, ocean acidification, climate change, Tsunami debris arriving, algae blooms, reef degradation, flooding, invasive species take-over, habitat loss for native species, over development, run-off pollution, unclean water, unclean air, and the list goes on. Do we have a scope to measure if or when, or how much will occur and is there money and management to really help protect us from these issues before they happen?

We need an immediate tool to guide these big decisions. Our success on Maui should be measured by the triple bottom line, 1) the well being of our people, 2) our environment, and 3) our economy, which are all connected. We need to recognize and account for the interconnections between various policy areas such as land use, housing, environment, transportation, and economic development. A Sustainability manager is essential to meet these needs.

If you visit <http://www.sustainlane.com/us-city-rankings/> and can see what initiatives city all over the world are doing to promote a better way of life. Portland, Oregon for example was ranked #1 most sustainable city in 2008. They ranked highest considering: city commuting, metro transit ridership; metro congestion; air quality; tap water quality; planning and land use; city innovation; energy & climate change; knowledge & communications; local food & ag; green economy; housing affordability; natural disaster risk; water supply; and waste management. Perhaps having a Sustainable Development Director helped them earn that rating. The good news is that Honolulu ranked 15 out of

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50 cities. Visit the website to find out how: <http://www.sustainlane.com/us-city-rankings/cities/honolulu> if you would like to learn more.

Yale University has designed criteria for measuring sustainability, and can be viewed at: <http://epi.yale.edu/>. The Environmental Performance Index (EPI) ranks 163 countries on 25 performance indicators tracked across ten policy categories covering both environmental public health and ecosystem vitality. Unfortunately they do not have a rating system for islands at this time. But it is interesting to see what and how they are measuring.

My point is Sustainability is a global initiative. Living on an island we are much more vulnerable to many of the issues addressed. We need a good quality of life for ourselves, our communities, our culture, and for future generations. We need to have a healthy environment, so that our native species survives, our food is healthy, our air is clean, our waters are swim able and fishable, our reefs are thriving, endangered species are protected and our host culture is in tact. All this needs to happen while we maintain a healthy economy.

Hawaii has developed Sustainability goals for 2050. Let us please make the commitment to having a successful future for our island in perpetuity, by adding a sustainability and environmental protection emphasis to the Department of Environmental Management.

This goal would cover a broader range of knowledge, experience and criteria to the table. It should be done through the Charter Commission so the foundational language can be set, and the governing body can continue to run smoothly, through changes in elected officials. It is important to bring this topic to the greater community.

“When sustainability is not considered in a plan any result will be conditional, short term, and have negative impacts.” Dr. J. Taylor

“ We can’t afford not to do it.” Mayor Alan Arakawa

Mahalo nui loa,
Ananda Stone

Sustainability Science Management
UH Maui College

p.s. Please let me know if there are any materials or data you might like to help you make this decision.

Friday, January 23, 2012

Mel Hipolito, Jr.
51 Koehana Place
Makawao, Hawaii
96768

January 24, 2012

Maui County Charter Commission Members
200 S. High Street
Wailuku, Hawaii 967693

Subject: Charter Amendment 19, Section 8-15.3

Aloha Charter Commission Members,

My name is Mel Hipolito, Jr. and my written testimony is in support of Charter Amendment 19, Section 8-15.3 as it is written.

I am a dislocated worker of the former Maui Pineapple Company, Ltd. and after closure; I enrolled at the University of Hawaii Maui College to 'retool' my skills and education in their Sustainable degree programs. During my studies I was able to see the importance of Sustainable programs for Maui County, our communities and for our families.

When we speak of Sustainability, we also refer to it as our survival. In order to protect, conserve and restore our natural resources from the mountain to the ocean; we need to implement structure and organization and I believe the Department of Environmental Management is the appropriate sector to lead, guide and direct Maui County in moving the multi-faceted sustainable programs forward.

We (Maui County) need to be more proactive and "start walking the talk." We cannot wait for a natural disaster to occur nor wait for the ships and planes to stop coming to Maui, then decide to take action. There is time to alter our present direction through policy, initiatives, programs and collaboration with all stakeholders and shareholders in Maui County.

Maui County cannot be held hostage by being dependent on fossil fuel or getting our food supplies other than our own aina. The last eight Presidents' of the United States spoke of the necessity of not being dependent on foreign oil... yet today, we are still dependent on fossil fuels which drive our cost of living higher and higher.

In closing, I apologize for not testifying in person due to a class requirement at the college. But, I wanted to express my support for this amendment in written testimony. The most difficult decision to make is not making a decision, procrastinating and leaving issues unaddressed. Now is the time to begin building a Maui County that is self sufficient, efficient and protects our natural resources for future generations to come.

I respectfully ask for your support in Amendment 19, Section 8-15.3

Imua,

Mel Hipolito, Jr.

University of Hawaii Maui Campus

Full-time Student – BAS, Sustainable Science Management

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?

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.

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.

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.]

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.

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.

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.

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.

[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

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.

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.**

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.

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. 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.

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)).

02/13/2012

AGENDA ITEM NOS.

IV.16.

IV.17.

IV.18.

IV.19.

IV.20.

IV.21.

Were not available at the time of the filing of the agenda.