

Maui County Charter

Article 3

County Council Term Limits

Proposed Charter Amendment

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

- (a) change the term of office for Council members from two (2) to four (4) years; and
- (b) limit the term to no more than three (3) consecutive terms or twelve (12) years; and
- (c) have the terms be staggered?

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

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

5. The term of office of councilmembers 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, from any residency area, shall serve more than [five consecutive full terms] three (3) consecutive terms, whether such terms are two-year or four-year terms of office, or more than twelve(12) consecutive years, whichever time is longer.

TRANSITIONAL PROVISIONS RELATING TO STAGGERING OF COUNCILMEMBERS' TERMS

****There have been 2 different methods of transition discussed by the Charter Commissioners and both are presented below**

1. STAGGERING BY HIGHEST VOTE GETTERS

The terms of councilmembers shall be staggered commencing on January 2, 2015, and shall be implemented in accordance with this section as follows: in the 2014 election, the five (5) councilmembers who receive the highest number of votes shall be elected to serve four (4) year terms; the remaining four (4) councilmembers shall be elected to serve a two (2) year term commencing on January 2, 2015, provided that in the 2016 election, these council positions serving such two (2) year terms shall be elected to serve four (4) year terms commencing on January 2, 2017.

2. STAGGERING USING THE TRANSITION UTILIZED BY THE CHARTER OF THE CITY AND COUNTY OF HONOLULU

030512 - Proposal #1

Section 3-1. There shall be a council composed of nine members who shall be elected-at large. Of the nine members elected to the council, one shall be a resident of the Island of Lāna`i, which shall be Residency Area 8, one a resident of the Island of Moloka`i, which shall be Residency Area 9, one a resident of the residency area of East Maui, which shall be Residency Area 1, one a resident of the residency area of West Maui, which shall be Residency Area 2, one a resident of the residency area of Makawao-Ha`ikū-Pā`ia, which shall be Residency Area 3, one a resident of the residency area of "Upcountry" comprising Pukalani-Kula-`Ulupalakua, which shall be Residency Area 4, one a resident of the residency area of South Maui, which shall be Residency Area 5, one a resident of the residency area of Kahului, which shall be Residency Area 6, and one a resident of the residency area of Wailuku-Waihe`e-Waikapū, which shall be Residency Area 7. The county clerk shall prepare the nomination papers in such a manner that candidates desiring to file for the office of council member shall specify the residency area from which they are seeking a seat. The ballots shall, nevertheless, be prepared to give every voter in the county the right to vote for each and every council seat.

1. The East Maui (Hana-Keanae-Kailua) residency area shall be described as follows:

Beginning at shoreline and Kakipi Gulch

Proceed to Kepuni Gulch

North along Kepuni Gulch to Kahikinui Forest Reserve boundary

Easterly along Kahikinui Forest Reserve boundary to Haleakalā National Park boundary

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

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

West on Ka`ili`ili Road to Opana Gulch

North along Opana Gulch to jeep trail

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

North along Halehaku Gulch to Kakipi Gulch

North along Kakipi Gulch to point of beginning

2. The West Maui residency area shall be described as follows:

Beginning at shoreline and Lahaina-Wailuku District boundary at Po`elua Bay

Proceed south along boundary to shoreline (Manawainui Gulch)

Northwest, north, then northeast along shoreline to point of beginning

(includes the islands of Molokini and Kaho`olawe)

3. The Wailuku-Waihe`e-Waikapū residency area shall be described as follows:

Beginning at shoreline and Lahaina-Wailuku District boundary

Proceed southeast along shoreline to Kanaloa Avenue extension

Southwest on Kanaloa Avenue extension to Kahului Beach Road

Southeast on Kahului Beach Road to Ka`ahumanu Avenue

West on Ka`ahumanu Avenue to Mahalani Street

Southwest on Mahalani Street to Pu`umele Street

Southwest on Pu`umele Street to Wai`inu Road

West on Wai`inu Road to Wai`ale Road

South on Wai`ale Road to East Waikō Road

East on East Waikō Road to Kū`ihēlani Highway

Southwest on Kū`ihēlani Highway to Honoapi`ilani Highway

South on Honoapi`ilani Highway to Pohākea Gulch

West, then northwest along Pohākea Gulch to point of beginning

4. The Kahului residency district area shall be described as follows:

Beginning at shoreline and Kanaloa Avenue extension

Proceed east along shoreline to Kanahā Beach Park boundary

Southeast along Kanahā Beach Park boundary to Kalialinui Gulch

Southeast along Kalialinui Gulch to Haleakalā Highway

Southeast on Haleakalā Highway to Lowrie Ditch

Southwest along Lowrie Ditch to Spanish Road

West, then northwest on Spanish Road to East Waikō Road

West on East Waikō Road to Wai`ale Road

North on Wai`ale Road to Wai`inu Road

East on Wai`inu Road to Pu`umele Street

North on Pu`umele Street to Mahalani Street

East, then north on Mahalani Street to Ka`ahumanu Avenue

East on Ka`ahumanu Avenue to Kahului Beach Road

Northwest on Kahului Beach Road to Kanaloa Avenue extension

Northeast on Kanaloa Avenue extension to point of beginning

5. The South Maui residency area shall be described as follows:

Beginning at Lahaina-Wailuku District boundary and Pohākea Gulch

Proceed southeast, then east along Pohākea Gulch to Honoapi`ilani Highway

North on Honoapi`ilani Highway to Kū`ihēlani Highway

Northeast on Kū`ihēlani Highway to East Waikō Road

East on East Waikō Road to Spanish Road

Southeast, then east on Spanish Road to Lowrie Ditch

South along Lowrie Ditch to Pūlehu Gulch

Southeast along Pūlehu Gulch to Waiakoa Road

South on Waiakoa Road to Kīhei CDP boundary

South along Kīhei CDP boundary to unnamed road

Southwest, then south on unnamed road to unnamed stream (west of Keonekai Road)

East on unnamed stream to Kula Highway

Southwest on Kula Highway to jeep trail (abutting Tiger 2000 line 85098642)

West, then south on jeep trail to Kanaio-Kalama Park Road (Ulupalakua Road)

Southeast along Kanaio-Kalama Park Road to Pi`ilani Highway

Southeast, then east on Pi`ilani Highway to Kepuni Gulch

Southeast along Kepuni Gulch to shoreline

Southwest, west, north, northwest, southwest then northwest along shoreline to Lahaina-Wailuku District boundary (Manawainui Gulch)

North along boundary to point of beginning

6. The Makawao-Ha`ikū-Pā`ia residency area shall be described as follows:

Beginning at shoreline and Kanahā Beach Park boundary

Proceed east along shoreline to Kakipi Gulch

South along Kakipi Gulch to Halehaku Gulch

South along Halehaku Gulch to Pālama Gulch

Southeast along Pālama Gulch to unnamed jeep trail

Northwest, then southwest along jeep trail to Opana Gulch

South along Opana Gulch to Ka`ili`ili Road
 East on Ka`ili`ili Road to Waikamoi Stream
 South along Waikamoi Stream to Haleakalā National Park boundary
 Northwest, then southwest along Haleakalā National Park boundary to Kailua Gulch
 Northwest along Kailua Gulch to Lowrie Ditch
 Southwest along Lowrie Ditch to Haleakalā Highway
 Northwest along Haleakalā Highway to Kalialinui Gulch
 Northwest along Kalialinui Gulch to `Āmala Place
 Northwest along Kanahā Beach Park boundary to point of beginning
 7. The Upcountry (Pukalani-Kula-`Ulupalakua) residency area shall be described as follows:
 Beginning at Lowrie Ditch and Kailua Gulch
 Proceed southeast along Kailua Gulch to Haleakalā National Park boundary
 Southwest, southeast, east, then southwest along Haleakalā National Park boundary to Kahikinui
 Forest Reserve boundary
 Southwest along Kahikinui Forest Reserve boundary to Kepuni Gulch
 South along Kepuni Gulch to Pi`ilani Highway
 West on Pi`ilani Highway to Kanaio-Kalama Park Road (`Ulupalakua Road)
 Northwest along Kanaio-Kalama Park Road to jeep trail
 Northeast on jeep trail to Kula Highway (abutting Tiger 2000 line 85098642)
 Northeast along Kula Highway to unnamed stream
 Northwest, then west along unnamed stream to unnamed jeep trail
 North on unnamed jeep trail to unnamed road
 North on unnamed road to Kīhei CDP boundary
 North on Kīhei CDP boundary to Waiakoa Road
 North on Waiakoa Road to Pūlehu Gulch
 Northwest along Pūlehu Gulch to Lowrie Ditch
 North, then northeast along Lowrie Ditch to point of beginning
 (Amended 2002, 1998, 1992, 1990)

Section 3-2. Election of Council and Term of Office.

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

On _____, the county clerk shall certify the total votes counted for all mayoral candidates in the special election at which the mayor was elected for the regular term commencing January 2, 2015. The county clerk shall transmit the certificate to the council chair and maintain in the clerk's office a copy available for public inspection during normal business hours.

- (a) If the total votes counted, as certified by the county clerk, is an odd number, the councilmembers for council Residency Areas 1, 3, 5, 7 and 9 shall be elected to four-year regular terms commencing on January 2, 2015. Councilmembers for other districts shall be elected to two-year regular terms commencing on the same date.
- (b) If the total votes counted, as certified by the county clerk, is an even number, the councilmembers for council districts 2, 4, 6, and 8 shall be elected to four-year regular terms commencing on January 2, 2015. Councilmembers for other council residency districts shall be elected to two-year regular terms commencing on the same date.

For the purpose of this subsection, a "vote counted" for a mayoral candidate shall not include ballots which are blank, spoiled or otherwise invalid in connection with the mayoral contest. "Special election at which the mayor was elected for the regular term commencing January 2, 2015" means either the first or second special election, held in conjunction with the 2014 primary or general election, at which a candidate for mayor was elected for the term commencing January 2, 2015. The phrase does not mean both the first and second special elections if a second special election was held.

After the expiration of the two-year regular terms established by this section, the subsequent regular terms of the pertinent councilmembers shall be subject to Section _____.

A person elected as councilmember to a two-year regular term in 2014 shall be eligible for election to two more consecutive four-year terms as a councilmember.

A person elected as councilmember to a four-year regular term in 2014 shall be eligible for election for election to two more consecutive four-year terms as a councilmember.

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.

030512 - Proposal #2

Maui County Charter

Establish an Independent Office of the County Auditor

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 County Council, to define the County Auditor’s duties and powers in order to increase accountability and efficiency of County operations, to attach the Cost of Government Commission as an advisory board to the County Auditor, and to make other clarifying, conforming, transitional, and related amendments?”

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

1. Add a new section to Chapter 3, County Council as follows:

Office of the County Auditor

Section 3- -1 . Declaration of Policy

It is declared to be the policy of the county to promote economy, efficiency and improved service in the transaction of the public business in the legislative and executive branches of county by:

1. Limiting expenditures to the lowest amount consistent with the efficient performance of essential services, activities, and functions.
2. Eliminating duplication and overlapping of services, activities, and functions.
3. Consolidating services, activities, and functions of a similar nature.
4. Abolishing services, activities, and functions not necessary to the efficient conduct of government.

Section 3- -2. Office of County Auditor and County Auditor

1. There is established an office of the county auditor, to be headed by a county auditor who shall be appointed by the county council, by a majority vote of its membership, and shall serve for a term of six years. The county auditor may be re-appointed, or a successor appointed, by the Council for subsequent terms of six years. The county auditor may hold over until a successor is appointed. The salary of the county auditor shall be determined by the salary commission. The

030512 - Proposal #3¹

council, by a two-thirds vote of its membership, may remove the county auditor from office at any time for cause. The county auditor shall be exempt from the civil service.

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

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

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

Section 3- - 3 . Powers, Duties and Functions.

1. The county auditor shall have the duty and power to conduct or cause to be conducted:

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

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

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

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

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

Section 3- -4. Cost of Government Commission.

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

The commission shall have the power and duty to:

1. Prepare and submit to the mayor annual requests for appropriations for the operation of the commission.

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

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

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

Section 3- -5. Definitions.

For the purpose of this section, the following definitions shall apply:

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

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

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

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- . 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.”

4. Delete Section 8-16 as follows:

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

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

2. Eliminating duplication and overlapping of services, activities, and functions.
3. Consolidating services, activities, and functions of a similar nature.
4. Abolishing services, activities, and functions not necessary to the efficient conduct of government.

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

Each such commission shall:

1. Prepare and submit to the mayor a request for an appropriation for the operation of the commission.
2. Study and investigate the organizations and methods of operations of all departments, commissions, boards, offices and other instrumentality of all branches of the county government and determine what changes, if any, may be desirable to accomplish the policy set forth herein.
3. Be authorized to secure directly from any department, commission, board, office, or any other instrumentalities of all branches of the county government or from any individual officer or employee of the county, information, suggestions, estimates, and statistics necessary to carry out its duties.
4. Submit a report of its findings and recommendations to the mayor and council not later than eleven (11) months after its appointment.

Section 8-16.3. Term of Commission. Members of the cost of government commission shall serve for staggered terms of two (2) years, with an initial appointment of four members to serve two (2) year terms and five members to serve one (1) year terms. A member may be reappointed, but shall not serve on the commission for more than a total of four (4) years.]

Maui County Charter

Article 3, County Council, Section 3-5, Procedure; Meetings; Rules and Journal; Voting

Require Interactive Communications Access for Public Testimony at

All County Council and County Council Committee Meetings

Proposed Charter Amendment

Shall Article 3, County Council, of the Charter of the County of Maui be amended to require Interactive Communications Access for Public Testimony at All County Council and County Council Committee Meetings for the Residents of Hana, Lanai , Molokai and other geographic areas as the Council deems appropriate and reasonable.

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

Amend Article 3, County Council, to add a new section:

Section ____ . To the extent capable, the council shall provide interactive communications access for the residents of Hana, Lānaʻi, Molokaʻi and other geographic areas as the Council shall deem appropriate and reasonable to all County Council meetings and County Council Committee meetings. Said access shall include, but not be limited to, the ability of the public to testify, of council members to ask questions, and of the public to respond to questions.

** 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.

030512 - Proposal #4

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 in its entirety following any special or general election on any proposed charter, or revision or amendment thereto to include all new significant amendments adopted.

030512 - Proposal #5

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)).

Maui County Charter

Article 3

County Council Residency Requirements

Proposed Charter Amendment

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

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

Amend Section 3-3. Qualifications as follows:

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

030512 - Proposal #8

Maui County Charter

Article 7

Mayor Residency Requirements

Proposed Charter Amendment

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

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

Amend Section 8-3. Qualifications as follows:

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

030512 - Proposal #9

Maui County Charter

Article 8, Chapter 7

Department of Fire and Public Safety

Proposed Charter Amendment

Shall Section 8-7 of the Charter of the County of Maui be amended as follows:

(a) to add a new section entitled "Declaration of Policy" for the Department of Fire and Public Safety, which section would include statements concerning qualified and professional leadership, standards of recruitment, fair and appropriate personnel actions, and appropriate training opportunities?

(b) to add a new paragraph to the Powers, Duties and Functions of the Fire and Public Safety Commission to authorize the commission to review personnel actions within the department for conformance with the policies set forth in "a" above?

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

Amend Section 8-7. as follows:

1. Add a new section.

Declaration of Policy.

It is hereby declared to be the purpose of this chapter of the charter to establish in the county a system of fire protection and prevention and emergency rescue which shall be based on qualified and professional leadership and personnel. In order to achieve this purpose, the Department of Fire and Public Safety shall be conducted in accordance with the following:

(a) The goal of the county shall be to have qualified and professional leadership and personnel in this department.

(b) Standards for recruitment shall be designed to attract into the department persons with high degrees of education, intelligence, and personal stability.

(c) Promotions and other personnel actions shall be based upon fair and appropriate standards of merit, ability, and work performance.

(d) Appropriate training shall be provided to the maximum extent possible and practicable.

030512 - Proposal #10

2. Add a new paragraph.

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

The fire and public safety commission shall:

1. Adopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law.
2. Review and submit to the mayor the department's request for an annual appropriation for the operation of the department.
3. Review the operations of the department of fire and public safety and the civil defense agency and make recommendations for changes that may be desirable to improve the performance of emergency functions and the provision of public safety services.
4. Receive, review, and investigate any charges brought forth by the public against the conduct of the department of fire and public safety or any of its members and submit a written report of its findings and recommendations to the fire chief for disposition.
5. Evaluate at least annually 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. Review personnel actions within the department for conformance with Declaration of Policy for the Department of Fire and Public Safety of this charter.
8. 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.

Maui County Charter

Article 8, Chapter 15

Department of Environmental Management Proposed Charter Amendment

Shall Section 8-15 of the Charter of the County of Maui be amended to add the following to the Powers, Duties and Functions of the Director of the Department of Environmental Management:

(a) Guide efforts to maximize opportunities for natural resource protection, conservation, and restoration: and

(b) Coordinate and develop policies and initiatives that integrate sustainable resource development, support local food and energy production, and establish partnerships with agencies and organizations to implement programs, policies and projects that promote sustainability?

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

Amend Section 8-15.3 to add a new paragraph as follows:

Section 8-15.3. Powers, Duties, and Functions. The director of environmental management shall:

1. Supervise waste management and control of pollution, including recycling, litter control, and protection of the unique beauty of Maui County.

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

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

4. Guide efforts to maximize opportunities for natural resource protection, conservation, and restoration.

5. Coordinate and develop policies and initiatives that integrate sustainable resource development, support local food and energy production, and establish partnerships with agencies and organizations to implement programs, policies and projects that promote sustainability.

6. Perform such other duties and functions as shall be assigned by the mayor.

030512 - Proposal # 11

Maui County Charter

Article 8 County Departments

Article 8, Chapter 7, Department of Fire and Public Safety, Section 8-7.2; Article 8, Chapter 9, Department of Personnel Services, Section 8-9.4; Article 8, Chapter 12, Department of Police, Section 8-12.2; Article 8, Chapter 13, Department of Liquor Control, Section 8-13.2, to create consistency in the powers, duties and functions of the Fire and Public Safety Commission with the Civil Service, Police, and Liquor Commissions.

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

- (a) charges for removal being given in writing;
- (b) opportunity for hearing before the commission;
- (c) periodic review and evaluation of director's/chief's performance; and
- (d) report to the Mayor and Council covering the review and evaluation?

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

1. Amend Section 8-7.2 as follows:

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

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

030512 - Proposal #12

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.

2. Amend Section 8-9.4 as follows:

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

The civil service commission shall:

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

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

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

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

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

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

3. Amend Section 8-12.2 as follows:

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

The police commission shall:

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

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

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

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

5. Have such other powers and duties as may be provided by law.
(Amended 1992)

4. Amend Section 8-13.2 as follows:

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

The liquor control commission shall:

1. Prepare and submit a request for an annual appropriation for the operation of the department.
2. Adopt rules having the force and effect of law for the administration of liquor control in the county and to carry out provisions of the liquor control laws of the State, including, but not limited to, the fixing of liquor license fees.
3. Grant, renew or refuse applications for licenses for the manufacture, importation and sale of liquor in the county under applicable laws and regulations.
4. Remove the director of liquor control only after being informed in writing of the charges which are resulting in the director's dismissal, and after being given a hearing before the commission.
5. Annually review and evaluate the performance of the director of liquor control and submit a report to the mayor and the council.
6. Have such other powers and duties as may be provided by law not in conflict with the provisions of this section.

Maui County Charter

Article 8, County Departments

County Departments Declaration of Policy Proposed Charter Amendment

Shall Section Article 8 of the Charter of the County of Maui be amended to add a new section entitled "Declaration of Policy" which would be applicable to all County departments, and include statements concerning qualified and professional leadership, standards of recruitment, fair and appropriate personnel actions, and appropriate training opportunities?

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

Amend Article 8 to add a new section as follows:

Declaration of Policy.

It is hereby declared to be the purpose of this chapter of the charter to establish in the county a system for every department which shall be based on qualified and professional leadership and personnel. In order to achieve this purpose, every department shall be conducted in accordance with the following:

- (a) The goal of the county shall be to have qualified and professional leadership and personnel in every department.
- (b) Standards for recruitment shall be designed to attract into every department persons with high degrees of education, intelligence, and personal stability.
- (c) Promotions and other personnel actions shall be based upon fair and appropriate standards of merit, ability, and work performance.
- (d) Appropriate training shall be provided to the maximum extent possible and practicable.

030512 - Proposal #13