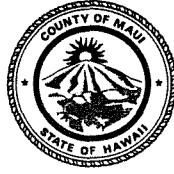


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May 25, 2012

The Honorable Danny A. Mateo  
Council Chair  
Maui County Council  
c/o 200 S. High Street  
Wailuku, Hawaii 96793

Re: Maui County Charter Commission Response to Council's Recommendations and Proposed Alternatives Received on April 27, 2012

Aloha Chair Mateo:

Pursuant to Section 50-9, Hawaii Revised Statutes, the Maui County Charter Commission ("Commission") herein responds to the Maui County Council's ("Council") proposed alternatives and recommendations received on April 27, 2012.

The Commission appreciates the work of the Council with regard to their review and comment on the Commission's report entitled "2011-2012 Maui County Charter Commission Final Report, March 30, 2012."

The Commission agrees with the recommendation of the Council to delete Proposal 6, to require the County of Maui to fund the members of all County of Maui boards and commissions and to indemnify all members, on the grounds that it was unnecessary.

With regard to the remaining ten proposals, the Commission believes that after many hours of public hearings, receipt of public and written testimony, and the Commission's study of the issues, its decisions relating to the remaining ten proposals were reasonable and based on its best judgment. Thus, the Commission decided that it should proceed and submit ten of its original eleven proposals to the electorate.

The Commission notes that the Council voiced concern over the number of proposed amendments to the Revised Charter of the County of Maui (1983), as Amended ("Charter"), and

“was reluctant to overburden the electorate with proposed changes to the Charter that could be accommodated through revisions to the Maui County Code or in another election cycle” (at p.2). The Commission respectfully disagrees.

The Commission has had the opportunity to observe the voters first hand through many months of hearings and active participation in the process by the public. The Commission listened very carefully to the concerns, reasoning, and presentation of facts and issues from the people of the County of Maui, including members of the public and government officials, and has developed these proposals based on this direct input. The Commission has determined that its proposed amendments are in the best interest of the people of the County of Maui.

The Council suggests that some of the matters may be handled by ordinance. First, there is no guarantee that there will be any such ordinances adopted. Second, the Commission decided to pose these important amendments to the voters and allow them to have the final decision on whether the proposed amendments should be included in the Charter.

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

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

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

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

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

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

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

The Commission recommends that:

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

**“Section 3-2(5).** The term of office of council members shall be for [two (2) years,] four (4) years, beginning at twelve o'clock meridian on the second day of January following their election. Effective January 2, 2015, no [No] member of the county council, from any residency area, shall serve more than [five consecutive full terms] three (3) consecutive terms, whether such terms are two-year or four-year terms of office.”

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

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

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

Should the terms of Council Members be lengthened from two (2) to four (4) years, with term limits of three (3) consecutive terms, whether such terms are two (2) or (4) years, beginning on January 2, 2015, with terms to be staggered?

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

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

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

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

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

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

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

The Commission recommends that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is the opinion of the Commission that it is absolutely critical to have a county auditor so that there can be financial and performance accountability for both the administrative and legislative branches of government. The Commission disagrees with the Council that the county auditor's office should be assigned to it. The county auditor should be independent above all else. All other counties already have a county auditor, which were used as reference by the Commission in order to develop a proposal.

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

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

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

The Commission recommends that:

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

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

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

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

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

**Section 3-8.2. Office of County Auditor and County Auditor.** 1. There \_\_\_\_\_ is established an office of the county auditor, to be headed by a county auditor who shall be appointed by the county council, by a majority vote of its membership, and shall serve for a term of six years. The county auditor may be re-appointed, or a successor appointed, by the council for subsequent terms of six years. The county auditor may hold over until a successor is appointed. The salary of the county auditor shall be determined by the salary commission. The

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

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

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

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

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

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

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

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

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

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

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

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

The commission shall have the power and duty to:

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

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

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

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

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

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

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

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

**“Section 9-13. Audit of Accounts.** Within six (6) months after the beginning of each fiscal year, [the county council shall provide for] the county auditor shall conduct or cause to be conducted an independent financial audit of the funds, accounts, and other evidences of financial transactions of the county and of all operations for which the county is responsible[.] for the audited fiscal year. The audit shall be [made] conducted by a certified public accountant or firm of certified public accountants[, designated by the council,] who have no personal interest, direct or indirect, in the fiscal affairs of the county or any of its operations. The audit shall include both financial accountability and adequacy of the financial and accounting system. If the State makes such an audit, the [council] county auditor may accept it as satisfying the requirements of this section. The scope of the audit shall be in accordance with the terms of a written contract [to be] recommended by the county auditor and signed by the council chair[,] as the contracting officer for the legislative branch, which contract shall encourage recommendations for better financial controls and procedures and shall provide for the completion of the audit within a reasonable time after the close of the previous fiscal year. A copy of the audit reports shall be filed with the county clerk and shall be a public record[.], unless otherwise provided by law.

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



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

**“Section 15-5. Transfer of Audit Functions to the Office of the County Auditor. 1.**

All lawful obligations and liabilities owed by or to the office of council services relating to financial and performance audits on June 30, 2013 shall remain in effect on July 1, 2013. The obligations and liabilities shall be assumed by the office of the county auditor.

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

All financial and performance audit activities administered by the office of council services on June 30, 2013 shall be assumed by the office of the county auditor on July 1, 2013.

2. On July 1, 2013, all records, data, and information held by the office of council services relating to financial and performance audits which have not been completed as of June 30, 2013 shall be transferred to the office of the county auditor.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Commission recommends that:

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

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

The ballot question would be as follows:

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, Lana`i, Moloka`i and other geographic areas as the Council deems appropriate and reasonable?

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

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

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

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

The Commission recommends that:

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

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

The ballot question would be as follows:

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?

## **PROPOSAL SEVEN – ARTICLE 3, COUNTY COUNCIL RESIDENCY REQUIREMENTS**

The Council recommended placing this proposed amendment on the ballot but had some questions regarding its clarity. The Commission believes that the proposal is precise – the person seeking election must be a resident in the area of the County from which the person seeks to be elected for a period of one year before the filing of nomination papers. Logically, should that person be a resident of the area, that person will also have to be a resident of the County for the same period as well “to be eligible for election.” The Commission found that it was very important for elected officials to be knowledgeable about, familiar with, experienced in, and cognizant of the community and people that they represent and their problems, resources, environment, economic situation, safety and general status. The one-year residency requirement will assist in developing these bases.

The Commission recommends that:

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

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

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

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?

## **PROPOSAL EIGHT – ARTICLE 7, MAYOR RESIDENCY REQUIREMENTS**

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

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

To reiterate, the Commission found that it was very important for elected officials to be knowledgeable about, familiar with, experienced in, and cognizant of the community and people

that they represent and their problems, resources, environment, economic situation, safety and general status. The one-year residency requirement will assist in developing these bases.

The Commission recommends that:

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

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

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

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?

**PROPOSAL NINE – ARTICLE 8, CHAPTER 15, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, TO ADD ENVIRONMENTAL PROTECTION AND SUSTAINABILITY TO THE POWERS, DUTIES, AND FUNCTIONS OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

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

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

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

Although there was testimony indicating that the Mayor could make this assignment without a Charter amendment, there are several reasons why it should be added to the Charter. There is a need for certainty about the policy and legal requirement for the implementation of these functions. A Charter amendment will provide direction to the Council and increase the chances of appropriations for a staff position or positions. Including these concepts in the Charter elevates its status as an issue to be considered.

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

The Commission recommends that:

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

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

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

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

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

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

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

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

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

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

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

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

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

The Commission recommends that:

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

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

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

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

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

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



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

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

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

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

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

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

The civil service commission shall:

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

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

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

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

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

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

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

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

The police commission shall:

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

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

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

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

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

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

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

The liquor control commission shall:

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

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

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

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

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

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

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

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

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 evaluation and removal of its directors or chiefs?

## PROPOSAL ELEVEN – PREAMBLE

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

The Commission recommends that:

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

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

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

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

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

Mahalo,



JOSHUA A. STONE, Chair  
Maui County Charter Commission