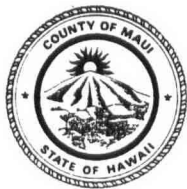


JAMES "KIMO" APANA  
MAYOR



**OFFICE OF THE MAYOR**

Ke'ena O Ka Meia

COUNTY OF MAUI  
Kalana O Maui

August 21, 2001

RECEIVED  
2001 AUG 22 AM 7:28  
200 South High Street  
Wailuku, Maui, Hawaii USA  
96793-2155  
Telephone (808) 270-7855  
Fax (808) 270-7870  
e-mail: mayors.office@co.maui.hi.us

RECEIVED  
Charter Commission  
SEP 17 2001

Honorable James "Kimo" Apana  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawai'i 96793

For transmittal to:

Ms. Terry VencI, Chair  
Charter Commission  
200 South High Street  
Wailuku, Hawai'i 96793

Dear Ms. VencI:

**SUBJECT: Request for Possible Charter Amendment Recommendations**

In response to your letter of May 18, 2001, please be advised that the Cost of Government Commission, at its meeting on July 17, 2001, decided that it has no recommendations for amendments to the Maui County Charter.

If you should have any questions, you may contact me at 879-7904 or Lance Taguchi, Executive Assistant, at 270-6287.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jack Crow".

for Jack Crow  
Chair, Cost of Government Commission

George "ALOHA" Peabody  
HC01 Box 770 K'Kai  
Molokai, HI 96748  
ph.558-8253

Myles  
F3481

RECEIVED  
Charter Commission  
AUG 20 2001

Dear Maui Charter Commission Members

August 8, 2001

1. Please let voters decide to reduce the size, complexity, and expense of government by including the following proposed change under County Departments :

Dissolve the appointed Molokai and Maui Planning Commissions effective immediately, and require the Planning Department and our elected representatives ( Maui County Councilmembers) to handle the land use issues as they are authorized to do according to law.

2. Please support the Rights of all Hawaii people by adopting the Bill of Rights as an Ordinance:

The Bill of Rights, consisting of the first ten amendments to the Constitution of the united States of America, shall be adopted as a Maui County ordinance, to be enforced by penalty of sentence to jail of at least 30 days in all cases of violation, and to bind the Maui County government down from violations of the Rights of all residents of Maui County.

3. Please let voters decide to keep the right to self-reliance and help lower the cost of housing by including the following proposed addition to the Maui Charter :

Persons who chose to repair, modify or construct electrical and plumbing systems in compliance with all lawful construction material quality standards, and safety standards, for their own use or the use of their immediate family in lawfully approved single family residential dwellings shall not be prohibited from doing so by any County authority; and further, the County shall establish appropriate inspection procedures to regulate such activity.

3. Please establish Hemp cultivation to be free from any criminal prohibition or enforcement action.

Any person who grows hemp for food and/or fiber in Maui County is hereby protected from any criminal prohibition or enforcement action for such cultivation in Maui County.

Thank you,

  
George ALOHA Peabody

Post-it* Fax Note	7671	Date	8/20/01	# of pages	1
To	Terry Veneel	From	Tessa		
Co./Dept	Hawai Hotel & Res	Co.	Mayor's Ofc.		
Phone #		Phone #	270-7209		
Fax #	244-3094	Fax #			

RECEIVED  
*Charter Commission*  
AUG 21 2001

Terryl Vencel  
Maui Charter Commission Chairperson  
1727 Wili Pa Loop Suite B  
Wailuku, HI 96793

Aloha Terryl Vencel,

August 20, 2001

Attached is a proposal for an amendment to our county charter to establish a Fire Commission for Maui County. **The adoption of this proposal will establish a Fire Commission to ensure qualified and professional leadership and personnel for the Fire Department, as well as enhance public oversight of the departmental operations.**

The Maui Fire Commission is fashioned after the Honolulu Fire Commission. Aside from the obvious, the important elements include:

- Qualifications of the Fire Chief
- The Fire Chief may be removed by the Commission only after formal charges and a hearing.
- The Fire Chief is authorized to appoint the Deputy Fire Chief and any private secretarial help.
- Transition provisions. Please refer to provisions in proposal.

Your support to review the proposal for a Fire Commission will be greatly appreciated by both our Maui Fire Fighters and our association. I urge you to ask questions regarding the proposal. Thank you for your time and consideration. For any questions please call me at 875-0898.

Mahalo,

Elvin Kamoku  
Hawaii Fire Fighter's Association  
Maui Division Chairperson

Council Chair  
Patrick S. Kawano

Council Vice-Chair  
Dain P. Kane

Residing Officer Pro Tempore  
Charmaine Tavares

Council Members  
Alan M. Arakawa  
Robert Carroll  
G. Riki Hokama  
Jo Anne Johnson  
Michael J. Molina  
Wayne K. Nishiki

RECEIVED  
CORPORATION COUNCIL

2001 AUG 15 AM 7:50



COUNTY COUNCIL  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

August 10, 2001

RECEIVED

2001 AUG 13 AM 11:15

OFFICE OF THE MAYOR

Director of Council Services  
Ken R. Fukuoka

RECEIVED  
*Charter Commission*  
AUG 24 2001

Honorable James "Kimo" Apana  
Mayor, County of Maui  
Wailuku, Hawai'i 96793

APPROVED FOR TRANSMITTAL

*Brane Ym Chun* 8/14/01  
Mayor Date

For transmittal to:

Ms. Terryl Vencel, Chair  
and Members of the Charter Commission  
County of Maui  
Wailuku, Hawai'i 96793

Dear Ms. Vencel and Members:

SUBJECT: **FOUR-YEAR COUNCIL TERMS (PAF 01-221)**

Thank you for seeking Council members' comments on proposed Charter amendments.

May I request that the Charter Commission consider proposing a Charter amendment that would achieve the following:

**Four-year Council terms**, with a limit of **three consecutive terms**  
and **staggered election dates**.

Please allow me to explain some of the rationale for this request.

### **Four-year Council terms**

I believe two-year Council terms do not provide sufficient time for new Council members to develop the aptitude necessary to best serve their constituents.



Ms. Terryl Venci, Chair  
and Members of the Charter Commission  
August 10, 2001  
Page 2

Moreover, two-year Council terms are inefficient and wasteful of public resources because Council members are effectively required to spend time and energy campaigning for re-election every other year—time and energy that would be better spent on official County business.

In addition, some critics of two-year Council terms have alleged that some Council members would be more willing to make "tough decisions," with long-term benefits to the County, if they did not have to face re-election within such a short period of time.

Others contend that growing communities, such as Maui County, need to have some level of stability in government leadership to ensure the existence of well-informed, long-term municipal planning.

Also, the lack of continuity that can be created by short Council terms can result in staff members possessing undue influence because of their greater experience with government procedures.

In recognition of these and related concerns, the Buffalo (N.Y.) City Charter was amended in 1999 to provide District Members of the Common Council with four-year terms (the same as At-Large Members). In support of the change, the Buffalo Charter Review Commission reported:

The new Charter extends the term of office of District Council Members from 2 to 4 years. This will reduce the time, energy and money expended on campaigning and, by allowing them to be judged by the voters on performance over a period of four years, will encourage District Council Members to accept greater risk by taking positions in the public interest despite immediate controversy and opposition by constituency and support groups.

Aggressive drives are currently underway to replace two-year terms with four-year terms for members of the San Antonio (Tex.) City Council<sup>1</sup> and St. Cloud (Fla.) City Council.<sup>2</sup>

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<sup>1</sup> Bruce Davidson, "No perfect time for term limits vote," San Antonio (Tex.) Express-News (July 29, 2001), at 2G (attached)

<sup>2</sup> Colleen Moore, "MOVE IS AFOOT TO DOUBLE ST. CLOUD COUNCIL TERMS", Orlando (Fla.) Sentinel (June 30, 2001), at 1 (attached).

Ms. Terryl VencI, Chair  
and Members of the Charter Commission  
August 10, 2001  
Page 3

### **Three consecutive terms**

Subsection 3-2(5) of the Charter currently provides: "No member of the county council shall serve more than five consecutive full terms of office."

Barring service in a partial term, this provision effectively limits each Council member to 10 consecutive years of office. The creation of four-year terms would, therefore, require the amendment of Subsection 3-2(5) (simply because a 10-year cap would be illogical with four-year terms).

To remain close to the existing term limits, the obvious choice would be between a limit of two terms (eight years) and three terms (12 years). Certainly, reasonable people can disagree on the appropriate length of term limits, if any, for elected officials. My strong preference is for a limit of three consecutive terms. With a limit of just two terms, Council members would immediately become "lame ducks" upon reelection. This creates a risk that, after less than five years in office, some Council members might tend to become less focused on their Council work (as they consider running for a different office) or become less motivated (as they recognize that they will not again face the electorate).

These negative possibilities exist with any form of term limits, but they can at least be deferred by the creation of term limits of a slightly longer duration. Among the many counties that have enacted a limit of three four-year terms for legislators are Cass County, N.D.; Howard County, Md.; and San Mateo, Calif..<sup>3</sup>

### **Staggered election dates**

In my opinion, if term limits are retained, a move to four-year Council terms must be accompanied by the creation of staggered election dates to ensure that all nine Council members do not reach their maximum number of terms in the same year. A complete turnover in the Council would be disastrous for County government. With staggered terms, only four or five Council seats would be on the ballot each election year. I would suggest that four Council seats be contested in the same year as the mayoral election, with the other five Council seats contested in mayoral off-years. A similar arrangement applies to Honolulu City Council terms.<sup>4</sup>

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<sup>3</sup> "Term Limits on County Officials," National Association of Counties, Washington, D.C. (1996) (attached).

<sup>4</sup> § 16-122, Revised Charter of Honolulu (2000) (attached).

Ms. Terryl Venci, Chair  
and Members of the Charter Commission  
August 10, 2001  
Page 4

Thank you for your consideration of my views. Please do not hesitate to let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Robert Carroll".

ROBERT CARROLL  
Councilmember

paf:dmr:01-221a  
attachments

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San Antonio Express-News

July 29, 2001, Sunday , METRO

SECTION: EDITORIAL; Our Turn ; Pg. 2G

LENGTH: 629 words

HEADLINE: No perfect time for term limits vote

BYLINE: Bruce Davidson

BODY: An attempt to win voter approval of changes in San Antonio's strict City Council term limits is inevitable.

The only question is timing. Several council members want to put the issue on the ballot in November with Mayor Ed Garza's accountability measures.

A public debate hearing on the issue is set for Thursday at 6 p.m. City Council must decide by Aug. 16 whether term limits will be on the November ballot.

San Antonio has the most restrictive term limits in the nation, and the city's draconian rule - two terms of two years each - has been a disaster at City Hall.

Inexperienced council members come and go in rapid succession while city staff has gained power. As a result, voters have less direct impact on policy, and the number of controversies over contracts and staff performance has increased dramatically.

Staff isn't necessarily pleased with the situation either. Former City Manager Alex Briseo said his people were burdened by the constant need to train new members.

"Most of them don't really know what they're getting into and how hard they're going to have to work," Brisen

said. "I don't think the citizens in the community really know what these folks do."

Garza is planning to offer voters a couple of ways to improve accountability in November. The mayor intends to seek voter approval of an internal auditor who monitors city business and reports directly to the council instead of the city manager, and he wants to give council some control over the city attorney.

Councilman Bobby Perez argues that extending the length of council terms to allow a total of eight years is merely another step to improve city government.

In the last two elections, almost every city candidate has advocated adding time to the four-year maximum that council members are allowed to serve under the Charter amendment approved by voters in 1991.

And voters who are interested enough to attend neighborhood meetings and other forums are increasingly supportive of the idea. Councilman Carroll Schubert said when he was meeting with voters during this spring's campaign everybody was talking about changing term limits."

Perez said, "I think it's time for people to quit talking about it. Let's take some action."

Mayor Ed Garza has expressed concerns about putting the issue before voters in November. Garza says he doesn't want to damage the prospects of the Better Jobs initiative, which he intends to put on the May ballot.

Perez said he sees no connection. A voter's position on term limits does not dictate his feelings about the Better Jobs initiative, he said.

"Term limits have been discussed (thoroughly). The only people opposed (to modification) are the same people that hate everything," Perez said.

Since Better Jobs involves a tax increase, it may be more controversial than modifying term limits.

Still, a sticking point could come when details are discussed. Perez wants to move forward with a proposal adding two terms, for a maximum of four two-year terms.

Others favor two four-year terms.

For those who support the change, a heavy dose of caution is mixed with hope.

Two of the last three mayors wanted to change term limits, but they never did. They lost big votes on other issues, they focused on other goals and, of course, they ran out of time because of term limits.

Garza has said he wants to get a slam-dunk election under his belt with accountability issues, and a vote on term limits could complicate that.

But several of his colleagues are convinced term limits has enough support to pass.

The decision is less than three weeks away. But if council members wait for a perfect time, they'll never find it.

LOAD-DATE: July 29, 2001

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THE ORLANDO SENTINEL

June 30, 2001 Saturday, FLORIDA

SECTION: OSCEOLA SENTINEL; Pg. 1

LENGTH: 561 words

HEADLINE: MOVE IS AFOOT TO DOUBLE ST. CLOUD COUNCIL TERMS

BYLINE: By Colleen Moore, Sentinel Staff Writer

BODY:

ST. CLOUD -- Hundreds of city residents will hear a knock on the door this morning -- but the culprits won't be traveling salesmen or evangelists.

Instead, 30 civic-minded volunteers will hit the streets with petitions. They say it's time to change City Council elections from two- to four-year terms because the current system hampers the council's ability to plan for long-range growth and economic development. No sooner do newly elected council members get a handle on complicated infrastructure, annexation and zoning issues than they have to focus their time and energy on getting re-elected, organizers say.

Spearheaded by the St. Cloud Chamber of Commerce, volunteers also will collect signatures at the city's Fourth of July celebration at East Lake Tohopekaliga on Wednesday. They hope to gather 1,200 signatures -- 10 percent of the city's population. That's the minimum necessary for a referendum.

If approved at the next council meeting July 12, the issue will go on the ballot for the Aug. 21 general election to replace District 18 state Sen. Charles Bronson, who was named agriculture commissioner in May.



Four-year terms would add stability to the council as it deals with tremendous growth that shows no signs of slowing, said chamber president David Lane. The city's population grew by 7,600 from 1990 to 2000 and now numbers more than 20,000 residents.

"Those growth issues need attention and planning for the long haul," Lane said.

"It takes council members at least a year to learn the process in a significant way. There's a lot of detail and research that goes into learning the issues. By the time they've learned those issues they have to focus on re-election," Lane said.

Four-year terms also would encourage the council to vote on critical issues according to their conscience -- not the opinions of voters, said Rayelynn Woeste, a volunteer.

"Politicians are very cautious about voting on anything controversial while running for office. That has big impact on our community. Having elections every four years will provide more stability," she said.

"There's also the cost factor of having elections every two years," Woeste added.

During St. Cloud's most recent election in March, the city paid \$5,100 for ballots and the mailing of sample ballots, said Osceola County Supervisor of Elections Donna Bryant.

Darlene Maresco, who ran unsuccessfully for council in 1999, said she thinks most residents will support the change.

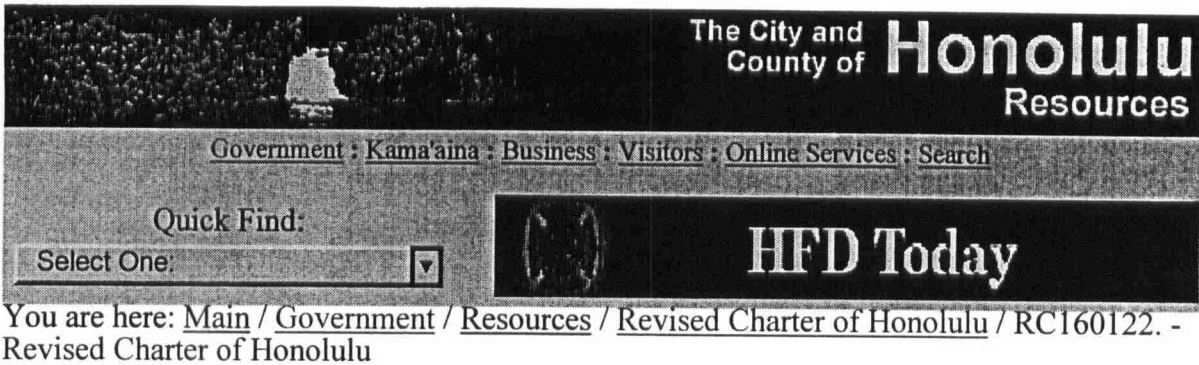
"The president is left in for four years. Why isn't the City Council? . . . No sooner do they get into office than they have to turn around again and deal with elections."

Florida League of Cities spokesman Ken Small said there are no current statistics, but studies years ago found most Florida cities had two-year terms.

Lane said there is nothing wrong with that if a city is small and doesn't have to contend with rapid growth issues. While that system may have been fine in St. Cloud in years past, those days are over, he said.

"When you have very strong forces of change and you have a population explosion, suddenly you're dealing with difficult issues that are not as parochial. This is not going to go away in St. Cloud. Our growth will continue at an explosive rate, and to not address those issues today will create problems of a serious magnitude in the future."

LOAD-DATE: June 30, 2001



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Revised Charter of Honolulu

## Revised Charter of Honolulu 2000 Edition

### Section 16-122. Transitional Provisions on the Staggering of Councilmembers' Terms --

1. The staggering of the terms of councilmembers shall commence on January 2, 2003 and be implemented in accordance with this section.

2. On January 3, 2001, the city 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, 2001. The city 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 city clerk, is an odd number, the councilmembers for council districts I, III, V, VII, and IX shall be elected to four-year regular terms commencing on January 2, 2003. 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 city clerk, is an even number, the councilmembers for council districts II, IV, VI, and VIII shall be elected to four-year regular terms commencing on January 2, 2003. Councilmembers for other 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, 2001" means either the first or second special election, held in conjunction with the 2000 primary or general election, at which a candidate for mayor was elected for the term commencing January 2, 2001. The phrase does not mean both the first and second special elections if a second special election was held.

3. 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 3-102.

4. Except as provided in the next paragraph, a person elected as councilmember to a two-year regular term in 2002 shall be eligible for election to two more consecutive four-year terms as councilmember.

A person elected as councilmember to a four-year regular term in 1998 and a two-year regular term in 2002 shall be eligible for election in 2004 to a four-year regular term as councilmember. Such a person, however, shall not be eligible for election in 2008 to a four-year regular term as councilmember.

A person elected as councilmember to two consecutive four-year regular terms in 1994 and 1998 shall not be eligible in 2002 for election as councilmember. (1998 General Election Charter Amendment Question No. 8(V))

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(As of February 20, 2001)  
**Revised Charter**

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### Term Limits On County Officials

Sharon Lawrence, Director of Research  
National Association of Counties January 1996

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- [Selective Restrictions](#)
- [County Term Limitations](#)
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For government reformers, one of the hottest topics of concern relates to the merits of term limitations for elected officials. To date, most of the media attention has focused on efforts to impose restrictions on members of the United States Congress. Few individuals may realize that controls on the length of service are a fact of life for a growing number of county officials.

#### *Comprehensive Restrictions*

Term limits have been placed on government service in New Mexico for decades, as some type of restriction has been in the Constitution since the early 1910s. Originally, the constitutional restriction (Article X, Section 2) applied only to the county clerk and probate judge. It limited them to one four-year term. State legislators put a constitutional amendment before the voters in 1914, however, to expand the scope of the limitation to include all county officials. Even then, term limits were popular with the voters as the amendment (which also reduced the term length to two years) passed by a wide 20,293 - 12,125 vote margin.

Subsequently, voters approved a hike in term length to four years. As a result, elected county officials who accrue the maximum years of allowable consecutive service must be out of office for two years before they may seek election again. Opinions of the state's attorney general have clarified that the ban covers all elected offices that an individual might pursue, not just the office currently held. It also bars an individual from being appointed to fill a vacancy in an elected county office. Furthermore, an individual may not circumvent the restriction by resigning for a brief period to restore eligibility. Service does not count against the cap, however, if the individual was appointed to fill a vacancy or otherwise if the individual did not serve a full term. On numerous occasions, state voters have been asked to strike the term limit. To date, however, they have rejected all proposed

repeals. In 1957, for example, voters narrowly turned down a repeal measure, HJR 9, by a 41,443 - 44,442 vote margin. That was the closest that proponents came to striking the cap on consecutive years of service. Another repeal attempt, HJR 2, was rejected in 1975 on a 91,755 - 190,645 vote margin. Again in 1986, a proposal to change the term limit, HJR 6, went down to defeat. Voters refused to approve this constitutional amendment, which sought to give elected officials four consecutive terms before the limitation would apply. Elimination of the practice of limiting terms failed to gain support during the 1969 constitutional convention as well. SJR 2, an effort to exempt sheriffs from the term limitation, also met with failure in 1982. Indiana also imposes term limits on many of its elected county officials (Constitution Article 6, Section 2). Auditors, circuit county clerks, coroners, recorders, sheriffs, and treasurers may serve only eight years in a 12 year period. Members of the county governing body and surveyors, among other elected officials, escape this constitutional restriction on service. As a result of a voter initiative, Idaho joined the ranks of states with comprehensive term limitations on county officials. During the November 1994 general election, voters approved the limitation measure, Proposition Two, by a wide margin, 234,060 - 160,816. Effective January 1, 1995, Idaho county commissioners may not run for reelection if they have been in office six of the previous 11 years. Other elected county officials may be in office only eight of the previous 15 years. Individuals may not resign to sidestep this barrier. Although these individuals may not be on the ballot legally, they may stage, or be the beneficiary of, a write-in campaign. Voters in Nebraska made their state the fourth one with broad based restrictions on the length of service allowed for county officials. Initiative Measure Number 408, approved in November 1994, prohibits county commissioners or supervisors from serving more than two consecutive terms in office. The cap covers those terms of office beginning on or after January 1, 1995. (Article XV, Section 20 also applies to governing body members of certain cities. Other sections of the Initiative extended limitations to the state's Congressional delegation as well as many state officials.) If the term of office is two years or shorter, however, the restriction goes into force after three consecutive terms. For purposes of this provision, terms are deemed consecutive unless they are at least four years apart. A degree of local flexibility, however, has been retained. The Constitution allows voters to "lengthen, shorten, or eliminate the limitations on terms of office imposed by ... Section 20."

### ***Selective Restrictions***

In some cases, a particular office has been targeted for term limits. Although West Virginia places no constraints on the length of service of most of its county officials, voters have singled out the county sheriffs (who also collect county taxes) for service restrictions. At a special election in November 1973, they ratified a constitutional amendment stating that sheriffs may be in office only two consecutive terms. A subsequent effort to repeal that limitation was rejected by the voters in the November 1982.

### ***County Term Limitations***

A number of counties with elected county executives impose term limitations on those chief elected officials. Research to date uncovered



11 counties, however, that have imposed service restrictions on some of their other elected officials.

**Telfair County, Georgia** (population 11,000) blazed the trail in 1963, as county residents voted 1,125 - 234 to limit the service of the county's constitutional officers (Local Constitutional Amendment, Georgia Laws 1963, p. 705; Georgia Laws 1986, p. 4527). As a result, the court clerk, probate judge, sheriff, and tax commissioner may stay in office only two consecutive terms. Before any of those officials may be eligible to hold office again, four years must pass from the end of their last term of office.

**Delaware County, Pennsylvania** also was among the pioneers in the imposition of term limitations on elected county officials. Members of that county's Government Study Commission proposed a home rule charter (later adopted by county voters) that barred county officials from more than "two full elective terms in the same office, or a combined total of ten years service in the same office, whichever is greater."

**San Mateo County, California** followed in 1980, when voters gave their approval to a proposal placed on the ballot by the county board itself. Endorsed by 62 percent of the voters, the measure restricts supervisors to three consecutive four-year terms.

That same year, voters of **Pierce County, Washington** adopted a home rule charter that included term limitations on not only the county executive, but also all council members and separately elected department heads. Office holders were limited to no more than "two consecutive four-year terms in the same position." Section 4.90 of the charter declared, however, that service prior to the adoption of the charter did not count. Establishment of residency in an alternate district, the charter further states, "will not circumvent this restriction."

Effective January 1, 1993, supervisors in **Santa Clara County, California**, also became subject to term limitations. As provided by Section 202 of the County Charter, supervisors may be in office only two consecutive four-year terms. Before they are eligible for reelection, they must be out of office four years.

Individuals appointed to fill a vacancy for more than two years of the four-year term, according to the county charter, are deemed to have served one full term. The county charter also provides that supervisors who resign with less than two full years remaining on their term will be treated as having served a full four-year term.

Service restrictions have been adopted in three suburban Maryland counties. When the county council refused to enact term limits, **Howard County, Maryland** voters put the issue on the ballot themselves. Voters passed Question C by an overwhelming 71,758 to 19,726 vote margin at the polls in November 1990.

As approved, Question C capped the time that council members may serve to three consecutive terms. If an individual originally was an appointee to the council and served two or more years of that term, after two more full terms on the council, the ban would apply. Time in office before November 6, 1990 does not count.



During the November 1992 general election, two other Maryland counties saw voters approve term limitation proposals. In **Anne Arundel County** at that time, the county executive already was subject to a service cap (i.e., two consecutive four-year terms). Via referendum, however, voters imposed a similar restriction on county council members. Effective January 1, 1994, council members could serve only two consecutive four-year terms. As a result, three of the seven council members were prohibited from seeking reelection in 1994.

**Prince George's County** voters also recorded their support for term limitations at that election. They approved a ballot proposal which allows the county executive and members of the county council to serve only two consecutive four-year terms. That action affected six of the nine council members in office at the time, as well as the county executive.

Two New York counties also have imposed term limitations on some of their leaders. During the November 1992 general election, **Suffolk County** voters limited their county legislators and all other officials elected countywide to 12 consecutive years in one elective post. Resolution #580-1993, which passed by a wide 137,302 - 69,686 vote margin, took effect in 1994.

**Monroe County** residents agreed a year later to a charter amendment which capped the allowable service of county legislators at ten consecutive years. In the event that the ten year limit is reached in mid-term, the county charter further states that a vacancy in the office shall be declared. Former county legislators may seek the office of county legislator again only after a two-year absence from that post. Section 202 of the county charter, as amended, applies this restriction to individuals elected in 1995 and thereafter. It further states that these prohibitions shall not apply to county legislative service prior to January 1, 1996.

Finally, voters in **Cass County, North Dakota** approved a new home rule charter in 1994 that restricts county commissioners to three successive four-year terms.

Broome County, New York residents, however, are among those that have rejected service caps on their local office holders. During the November 1993 election, they rejected a three term limitation on county legislators.

### ***Outlook***

Political fortune tellers, no doubt, can see signs of either the decreasing or increasing popularity of term limitations in recent events.

Mississippi's Initiative Measure 4, put before the voters last November, would have restricted all elected and appointed non-judicial officials to two consecutive terms in office. The official could have served again legally only after a four year break in service. If the individual served more than one-half of a term (perhaps because he/she was appointed to fill a vacancy), that would have counted as a full term. Voters turned down that Initiative, however, by almost a 50,000 vote margin. Although efforts reportedly are underway to revive this type of initiative, supporters apparently will restrict its scope to state

lawmakers.

Despite the failure in Mississippi, the concept may be treated more favorably in other jurisdictions. As state legislatures reconvene this year, term limitation bills are expected to be under active consideration in several states. Individual jurisdictions also may be called upon to consider restrictions. (A term limits initiative, for example, is being circulated in Napa County, California.) Only time will tell, therefore, whether term limitations become a wide spread concept or remain an isolated phenomenon.

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Please contact Jacqueline Byers for more information.

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JAMES "KIMO" APANA  
Mayor



JAMES B. TAKAYESU  
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI

200 SOUTH HIGH STREET

WAILUKU, MAUI, HAWAII 96793

TELEPHONE: (808) 270-7740 FAX (808) 270-7152

August 3, 2001

RECEIVED  
*Charter Commission*  
AUG 06 2001

The Honorable Earl Anzai  
Attorney General  
Office of the Attorney General  
425 Queen Street  
Honolulu, HI 96813

Re: Request for an opinion relating to Chapter 50, Hawaii Revised Statutes, pertaining to county charter commissions

Dear Attorney General Anzai:

The purpose of this letter is to respectfully request the Attorney General's opinion on the applicability of Chapter 50, Hawaii Revised Statutes ("HRS"), pertaining to county charter commissions.

Background.

Earlier this year, a Charter Commission for the County of Maui ("Commission") was appointed by Mayor James H. Apana, Jr., and confirmed by the Maui County Council ("Council"). The Commission consists of eleven members and is charged with the study and review of County government and with the task of proposing amendments to the Revised Charter of the County of Maui (1983), as amended ("Charter"), or a new charter. The Commission has convened a number of meetings thus far and is led by Ms. Terryl Vencl, Chair.

The Department of the Corporation Counsel, as legal advisor to all County of Maui boards and commissions, has advised the Commission, for reasons discussed further below, that HRS Chapter 50 constitutes the enabling statutory law on county charter commissions and, as such, governs, among other matters, the duties and functions<sup>1</sup> and the powers<sup>2</sup> of the Commission. The Department of the Corporation Counsel has also advised the Commission that,

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<sup>1</sup>See HRS §50-6 ("Duties and functions of commissions.").

<sup>2</sup>See HRS §50-7 ("Powers of the commission.").

The Hon. Earl Anzai  
Attorney General  
August 3, 2001  
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pursuant to HRS Section 50-8,<sup>3</sup> relating to the submission of a proposed charter to the legislative body of the County, the Commission should submit its written report of its activities, findings, and recommendations to the Council within one year of its appointment.

Through informal discussions, we have become aware that the various counties are of different opinions on the issue of whether HRS Chapter 50 continues to be valid and applicable to the operation and procedures of county charter commissions. In particular, other county jurisdictions within the State of Hawaii have apparently adopted the position that HRS Chapter 50 does not apply to their respective charter commissions when such commissions are convened. In view of these differences of opinion, our office believes it prudent to seek the Attorney General's opinion.

To assist you in responding to our request, we set forth a brief summary of the legislative and legal history of HRS Chapter 50 and arguments against, and in favor of, the continuing validity and relevancy of HRS Chapter 50.

#### Legislative and legal history of HRS Chapter 50.

The legislative and legal history of HRS Chapter 50 may be summarized as follows:

- In 1963, the Second State Legislature passed Act 73, which provides for the framing and adopting of charters by the counties. Conference Committee Report 1 on H.B. No. 18 H.D.2,

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<sup>3</sup>HRS §50-8 states:

Within one year of its appointment, the charter commission shall submit a report in writing on its activities, findings, and recommendations to the legislative body of the county together with a draft of the proposed charter. The legislative body of the county may in turn propose one or more sections as alternative, or alternatives to any section of the proposed charter; provided that there shall not be more than a single proposition under any alternative proposal. Within thirty days after the receipt of the proposed charter from the commission, the legislative body shall return the proposed charter with the alternatives to the commission for its study.

S.D.3, states that the purpose of the bill "is to enable the counties of this State to create charter commissions, whic [sic] in turn will study the existing government of the respective counties, recommend whether or not a charter should be drafted and draft of [sic] charter, if it so recommends." The provisions of Act 73 are codified as Chapter 143A, Revised Laws of Hawaii 1955.

- In 1965, Chapter 143A, Revised Laws of Hawaii 1955, is amended by Act 65. Among other changes, Act 65 repeals Section 143A-11, Revised Laws of Hawaii 1955, that required ratification of county charters by the State Legislature.
- In Opinion No. 65-3, dated February 15, 1965, the Attorney General opines that "Act 73, S.L.H. 1963, does not provide authority for the establishment of more than one charter commission for each county, and that accordingly legislation will be necessary for the appointment of additional commissions." Op. No. 65-3, at 1.
- In Kimura v. County of Hawaii, 49 Haw. 336, 350 (1966), the Supreme Court of Hawaii, in deciding the effect of a ballot used by the County of Hawaii at an August 13, 1966 special election on a proposed charter, suggests that "the best solution would be legislation supplying the details as to the form of the ballot, manner of voting, and vote required when alternatives are submitted, which are absent from the statute at this time."
- In 1967, Act 235 is passed amending Chapter 143A, Revised Laws of Hawaii 1955. Among other changes, Act 235 amends Section 143A-3 to make clear that successive charter commissions can be appointed. Act 235 also clarifies that portion of Chapter 143A pertaining to the preparation of the ballot to be used in submitting a proposed charter to voters.

I. Arguments Against the Continuing Validity of HRS Chapter 50.

We are aware of a number of arguments that have been made to the effect that HRS Chapter 50 no longer governs the formation and procedures of county charter commissions. Although, as discussed above, our office is of a different position, we briefly summarize some of these arguments below for your information and convenience.



- A. The original intent and purpose of Act 73 having already been accomplished, HRS Chapter 50 no longer serves any valid purpose.

Act 73 was enacted at a time when not all counties had charters and when counties lacked the degree of self-governance they currently exercise. Act 73, and its amendments, were intended to authorize counties to form charter commissions and establish their own form of local government.<sup>4</sup> Now that all of the counties have charters, HRS Chapter 50 (except for HRS Section 50-15, reserving to the Legislature the power to enact all laws of general application throughout the State on matters of concern and interest) is an anachronism.

- B. HRS Chapter 50 was implicitly repealed by the amendments made to the State Constitution as a consequence of the Constitutional Convention and election of 1968.

Article VIII, section 2 of the State Constitution, pertaining to local self-government and county charters, reflects amendments proposed by the Constitutional Convention of 1968, which amendments were ratified in the general election of November 2, 1968. As amended, Article VIII,<sup>5</sup> section 2 of the State Constitution, states:

Section 2. Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law. Such procedures, however, shall not require the approval of a charter by a legislative body.

Charter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.

A law may qualify as a general law even though it is inapplicable to one or more counties by reason of the provisions of this section.

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<sup>4</sup>See Act 73, §1, S.L.H. 1963.

<sup>5</sup>This Article was renumbered from Article VII to be Article VIII by the Constitutional Convention of 1978 and election of November 7, 1978. The former Article VIII is now Article IX.



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August 3, 2001  
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In granting home rule to the counties with regard to "executive, legislative and administrative structure and organization", HRS Chapter 50 became in irreconcilable conflict with the State Constitution, and was repealed by implication.<sup>6</sup>

C. The constitutional amendments ratified in 1968 elevated charter provisions to a status superior to that of statutes and, therefore, charter provisions relating to charter commissions supersede HRS Chapter 50.

The records of the Constitutional Convention of 1968 indicate that the aim of the amendments regarding county charters was to "give a county charter a higher status within a prescribed area" and that "the area which the proposal places beyond legislative control is limited to charter provisions as to the executive, legislative and administrative structure and organization of the political subdivision."<sup>7</sup>

In HGEA v. County of Maui, 59 Haw. 65 (1978), the Supreme Court of Hawaii held that certain challenged provisions of the revised charter of the County of Maui regarding the departments of water supply, police and liquor control were related directly to the organization and government of the County of Maui and, therefore, superseded all laws of the State on the same subject in conflict therewith.

Maui County's Charter makes provision for the appointment of a charter commission composed of eleven members "to study and review the operation of the government of the county under this charter."<sup>8</sup> The Charter has a number of provisions concerning the formation and procedures of the County charter commission that are

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<sup>6</sup>Gardens at West Maui v. County of Maui, 90 Hawai'i 334, 341 (1999) (citing Moyle v. Director, Office of Workers' Compensation Programs, 147 F.3d 1116, 1120 (9<sup>th</sup> Cir. 1998) (repeal by implication is found "where provisions in the two acts are in irreconcilable conflict," or "if the later act covers the whole subject of the earlier one and is clearly intended as a substitute.")).

<sup>7</sup>Standing Comm. Rep. No. 53 (majority), Comm. on Local Gov't, Vol. 1 Proceedings of the Constitutional Convention of Hawaii of 1968, 229.

<sup>8</sup>Charter §14-3.

inconsistent with HRS Chapter 50.<sup>9</sup> Because such Charter provisions are arguably matters directly relating to the organization and government of the County, and, in particular, to one of its administrative agencies, such Charter provisions should, under Article VIII, Section 2 of the State Constitution, and under HGEA v. County of Maui, supersede State laws, such as HRS Chapter 50, in conflict therewith.

II. Arguments in Favor of the Continuing Validity of HRS Chapter 50.

Set forth below are arguments supporting the validity and relevancy of HRS Chapter 50. These arguments have served as a basis for our Department's position on this matter.

A. The language of HRS Chapter 50 is plain and unambiguous with regard to its application to successive, and not just initial, county charter commissions.

The fundamental starting point for interpreting a statute is the language of the statute itself. Kaiser Foundation Health Plan, Inc. v. Department of Labor and Industrial Relations, 70 Haw. 72, 82 (1988). And "where there is no ambiguity in the language of the statute, and the literal application of the language would not produce an absurd or unjust result clearly inconsistent with the purposes and policies of the statute, there is no room for judicial construction and interpretation, and the statute must be given

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<sup>9</sup>For example, Charter §14-3 requires that the commission submit to the county clerk its proposed charter amendments or new charter within sixteen months after the commission has been appointed; however, HRS §50-8 requires that the commission submit a report to the council of the county "[w]ithin one year of its appointment". Further, Charter §13-2.13 states that "members of boards and commissions shall receive no compensation but shall be entitled to be paid for necessary expenses incurred by them in the performance of their duties"; however, HRS §50-13 states that "[m]embers of the charter commission shall receive as compensation for their services the sum of \$1,000 each, and shall be reimbursed by the county for their necessary expenses incurred in the performance of their duties." Further, Charter §13-2.9 provides that "[e]ach board or commission shall select a chairman from its membership annually"; however, HRS §50-3 states that one of the members "shall be appointed by the mayor as the chairperson of the commission."

The Hon. Earl Anzai  
Attorney General  
August 3, 2001  
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effect according to its plain and obvious meaning." Carl Corporation v. Department of Education, 93 Hawai'i 155, 171-72 (2000).

HRS Section 50-3 states, in part: "The mayor of each county may appoint successive charter commissions with the approval of the legislative body of the county." (Emphasis added.) The language of HRS Section 50-3 is plain and unambiguous in its reference to "successive" charter commissions, and the literal application of this language would not produce an absurd or unjust result clearly inconsistent with the purposes and policies of the statute. Therefore, HRS Section 50-3 and, by extension, the other sections of HRS Chapter 50, continue to serve as the enabling legislation for county charter commissions.

B. HRS Chapter 50 has not been explicitly repealed, and repeals by implication are disfavored.

HRS Chapter 50 remains a part of codified state law, and, to date, no bill has been enacted effecting its explicit repeal. Moreover, HRS Chapter 50 has not been repealed by implication. With regard to repeals by implication, the Supreme Court of Hawaii has stated:

As a general rule, repeals by implication are disfavored. . . . [I]f effect can reasonably be given to two statutes, it is proper to presume that the earlier statute is to remain in force and that the later statute did not repeal it. . . . However, 'when the latter act is exclusive, that is, when it covers the whole subject to which it relates, and is manifestly designed by the legislature to embrace the entire law on the subject, it will be held to repeal by implication all prior statutes on that matter whether they are general or special, even though they are not repugnant, unless it is expressly provided that prior special acts shall not be affected.'

Gardens at West Maui v. County of Maui, 90 Hawai'i 334, 340 (1999) (citations omitted) (quoting Fasi v. City and County of Honolulu, 50 Haw. 277, 285 (1968)).

With regard to the procedures and functions of the Maui County Charter Commission, effect can reasonably be given to HRS Chapter 50. Therefore, it is proper to presume, under Gardens at West Maui v. County of Maui, that the "earlier statute" (i.e., HRS Chapter 50) is to remain in force and that the later measure (i.e., the

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constitutional amendments ratified in 1968) did not repeal it by implication.

Moreover, under Gardens at West Maui v. County of Maui, it cannot be unequivocally said that Article VIII, Section 2 of the State Constitution covers the whole subject of the earlier legislative enactment and was clearly intended as a substitute. On the contrary, Article VIII itself reserves unto the State Legislature the power to enact laws of statewide concern.<sup>10</sup> Therefore, HRS Chapter 50 was not repealed by implication by the 1968 constitutional amendments.

- C. HGEA v. County of Maui confirms, not rejects, the continuing validity of HRS Chapter 50, and demonstrates that HRS Chapter 50 addresses matters of statewide concern and interest and has not been superseded by county charter provisions.

Often cited as authority for county home rule, HGEA v. County of Maui evinces the Supreme Court's evaluation of the purpose and significance of HRS Chapter 50. In particular, the Supreme Court describes HRS Chapter 50 as "constituting the enabling statutory law on charter commissions."<sup>11</sup> Further, the Supreme Court quotes HRS Section 50-6 in discussing a charter commission's duties and functions.<sup>12</sup> These citations and quotations implicitly recognize the statute's continuing validity and relevancy.

The following excerpt from the Court's opinion demonstrates the extent to which the Court relied upon, and cited, HRS Chapter 50 in reaching its decision:

It is clear to us that under HRS chapter 50, a charter commission is given broad powers necessary to formulate a charter for a county. In drafting such a charter the commission is required to delineate the structure of the county government. In so acting it must necessarily enumerate the powers and functions of each county department, board, commission and agency in local affairs within such relevant limits prescribed by HRS §50-6. Upon the adoption of the charter, it shall become the organic law of the county superseding any existing

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<sup>10</sup>Haw. Const. Art VIII, §6.

<sup>11</sup>HGEA v. County of Maui, 59 Haw. 65, 78 (1978).

<sup>12</sup>*Id.*

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charter and all laws affecting the organization and government of the county which are in conflict therewith. Of course, under HRS §50-15 the legislature has expressly reserved the power to enact all laws of general application throughout the State on matters of concern and interest and laws relating to the fiscal powers of the counties, consistent with article VII, sections 3 and 5 of the State Constitution.

HGEA v. County of Maui, 59 Haw. 65, 79 (1978) (footnote omitted).

Not only did the Supreme Court cite HRS Chapter 50 for the purpose of elucidating the powers, duties and functions of charter commissions, it also cited HRS Chapter 50 for the purpose of supporting its ultimate holding that county charter provisions could supersede conflicting State laws on the same subject. In particular, the Court stated:

All of the challenged provisions of the revised charter relative to the departments of water supply, police and liquor control are found valid and enforceable. We hold that these provisions relate directly to the organization and government of the County of Maui, and, under HRS §50-10, they supersede all laws of the State on the same subject in conflict therewith. Because the conflicting statutes are not of statewide concern or affect the fiscal powers of the county, the provisions of the revised charter are not invalid under article VII of the State Constitution and HRS §50-15.

HGEA v. County of Maui, 59 Haw. 65, 85 (1978) (emphases added).

The foregoing excerpts from the opinion show that the Supreme Court did not consider HRS Chapter 50 to have been repealed by implication or superseded by charter; rather, the Court recognized HRS Chapter 50 as authoritative. Further, the Court's decision demonstrates that HRS Chapter 50 addresses matters of statewide concern and interest, and not matters of merely local concern and interest. In particular, the Court identified the thrust of HRS Chapter 50 to be the framing and adopting of charters by the counties,<sup>13</sup> a matter of concern to the State as a whole. Consequently, HRS Chapter 50 does not relate to a county's "executive, legislative and administrative structure and

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<sup>13</sup>See HGEA v. County of Maui, 59 Haw. 65, 77-78 (1978).

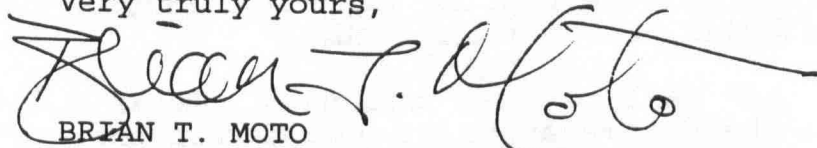


The Hon. Earl Anzai  
Attorney General  
August 3, 2001  
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organization", and, therefore, HRS Chapter 50 is superior to county charter provisions.<sup>14</sup>


The timing of the Court's decision in HGEA v. County of Maui is especially noteworthy. First, the decision concerns provisions of a revised charter that took effect in 1977 and which replaced a 1969 charter. This means that the Supreme Court recognized that HRS Chapter 50 applied not just to the formation and adoption of a county's first or original charter, but also to later charters that the county might adopt. Second, the decision was rendered in 1978, 15 years after the enactment of Act 73, the original version of what is now HRS Chapter 50. Accordingly, it cannot be said that HRS Chapter 50 has, simply by virtue of the passage of time since its enactment, lost its purpose and relevancy.

Very truly yours,



BRIAN T. MOTO  
Deputy Corporation Counsel

APPROVED FOR TRANSMITTAL:



JAMES B. TAKAYESU  
Corporation Counsel

cc: James B. Takayesu, Corporation Counsel  
Chair and Members of the Maui County Charter Commission  
The Hon. Patrick S. Kawano, Chair, Maui County Council  
Myles Inokuma, Executive Assistant, Office of the Mayor

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<sup>14</sup>See Kaiser Hawaii Kai Dev. Co. v. City & County of Honolulu, 70 Haw. 480, 488-89 (1989) (holding that state zoning enabling act is superior to charter provisions which permit initiative).

cc: JBT  
File

James "Kimo" Apana  
Mayor

Grant Y. M. Chun  
Managing Director



CHARTER COMMISSION  
County of Maui  
1727 Wili Pa Loop, Suite B  
Wailuku, Maui, Hawai'i 96793

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

July 31, 2001

Mr. Brian Moto, Corporation Counsel  
County of Maui  
200 South High Street  
Wailuku, HI 96793

RE: Charter Commission Request  
Enforcement of Community and General Plans

Dear Mr. Moto:

As the charter commission has been visiting the various communities of Maui County, one theme seems to be the same. That theme is one that revolves around the community plans and the general plan. The communities feel they spend a great deal of time giving their input about their community only to find out their wishes are not followed by the government branches. The commission respectfully asks for some legal opinion about how to better enforce the plans.

What are some ideas from other districts about how to gather community input? More importantly, what are some ideas on how to use that community input once we get it?

As you know, we are hoping to begin deliberations on issues in September. I would hope you can do your research and offer suggestions to the commission on how to further enforce the community's will with regard to community and general plans.

Thank you for your consideration.

Sincerely,

Terryl Vencel  
Chair, Maui County Charter Commission







275 UHU STREET - KAHULUI - HAWAII 96732 - (808) 270-7329 - FAX (808) 270-7953

KEOKI FREELAND, CHAIRMAN  
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ROSLYN MORESH  
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PHILIP THOMAS  
GENE THOMPSON

July 20, 2001

Terryl Vencl, Chair  
Maui County Charter Commission  
c/o Maui Hotel Association  
1727 Wili Pa Loop, Suite B  
Wailuku, HI 96793

RECEIVED  
*Charter Commission*  
JUL 24 2001

Dear Ms. Vencl and Fellow Commission Members,

As staff support to the Maui County Arborist Committee, I am forwarding the proposed amendment to the Ordinance 12:24A that governs the work of the Arborist Committee. It has taken many years for the members to define the goal that they would like to accomplish with this proposal. At the meeting of July 11, 2001, they voted unanimously to support the enclosed document for the Commission's consideration.

Presently 12:24A does mention tree abuse and a related fine of up to \$1,000. However, as it stands, that would take criminal prosecution and the ability to build a case "beyond reasonable doubt" before it could be acted upon. What we have proposed would allow an opportunity to send notice of violation and the ability to resolve the situation by administrative enforcement which does not entail criminal action.

We are hopeful that the Commission will share our concern about the welfare of trees and will accept this proposal. Trees are an important amenity for the infrastructure of our community. While the immediate benefits in energy saving and the enhancement to the quality of life may be hard to quantify, trees are of great value to Maui's citizens.

The committee would also like to commend your members on their willingness to spend the time and work on such an important project. If I can be of further assistance, do not hesitate to call at 270-7329.

Sincerely,

*Sue Kiang*  
Sue Kiang

## **Information for the Charter Commission**

**RE: Arborist Committee 12.24A**

### **Civil sanctions for damage to publicly-owned trees**

Understanding that as a practical matter, criminal enforcement of tree abuse provisions is not effective, the Committee respectfully requests that the Charter Commission consider the following amendment and addition to Section 12.24A 100. In addition to provisions enabling criminal prosecution for tree abuse, the Arborist Committee recommends the following civil sanctions.

#### **Prohibited Acts**

Notice will be served upon any individual who has harmed a publicly-owned tree/shrub. The notice will provide a description of the action which is prohibited and will request that the individual complained to shall cease and desist from proscribed action. Notice will also advise individual of the fine which will attach if the complained of act is not remedied.

Whoever shall damage a publicly-owned tree/shrub by

- pruning without a permit.
- mutilating, carving or cutting so as to damage its bark.
- improperly maintaining a tree where there is a duty to do so, by inadequate watering, fertilizing, or weeding.
- soil damage - constructing an asphalt, concrete, brick, or gravel sidewalk or otherwise filling in soil around and causing an obstruction of air and water to roots.
- parking vehicle(s) under the tree's canopy in the publicly owned planting strip.
- damage caused by parked vehicle.
- damage to tree/shrub by use of wires, lights, or use of nails, tacks, or other intrusive objects.
- posting a sign on a tree/shrub.
- tying an animal to the tree/shrub.

#### **Penalties**

Where the above notice has been served by person or by mail, it is deemed received. Non compliance will result in a penalty of \$50 for failing to obey notice.

Where there are additional notices, \$100 fine will accrue on every violation thereafter. This provision does not pre-empt any criminal prosecution.

#### **Death of Tree or Shrub**

Whoever shall

- burn, by open fire, dumping hot coals, or by electrical source,
- debark the circumference of the trunk (girdling),
- poison - by use of harmful substance,
- remove tree/shrub by tree-felling, uprooting, knocking down,
- any other action that results in causing the tree or shrub to die,

...will be fined \$1,000 and will be held to replacement of the tree or shrub for cost of cure (restoration of property to pre-casualty conditions) which equals the value as determined by the latest edition of the International Society of Arboriculture Landscape, Tree, Shrub Appraisal Handbook and when appropriate, the Hawaii List of Tree Species Values for Tree Appraisal should also be used..

This section does not pre-empt any other section.

#### Administrative Enforcement

In lieu of, or in addition to, enforcement by criminal prosecution, if the Director of Parks and Recreation determines that any person or persons are violating any provisions of this code Chapter 12.24A, any rules adopted hereunder, or any permit issued thereto, that director will have the person served, by mail or personal delivery, with a notice of violation and order pursuant to this chapter and such administrative rules as that director may adopt.

A. Contents of the notice of violation. The notice shall include at least the following information:

1. Date of the notice;
2. The name and address of the person noticed;
3. The section number of the provision or rule, or the number of the permit which has been violated;
4. The nature of the violation; and
5. The location and time of the violation

B. Contents of the order. The order may require the person to do any or all of the following:

1. Cease and desist from the violation;
2. Correct the violation at the person's own expense before a date specified in the order;
3. Pay an initial civil fine not to exceed \$1,000 in the manner, at the place, and before the date specified in the order;
4. Pay a civil fine not to exceed \$1,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order; and

The order shall advise the person that the order shall become final thirty days after the date of its mailing or delivery. The order shall also advise that the director's action may be appealed to the Board of Variance and Appeals and shall specify the time limit for the appeal.

C. Effect of order; right to appeal

The provisions of the order issued by the Director of Parks and Recreation under this section shall become final thirty days after the date of the mailing or delivery of the order. The person may appeal the order to the Board of Variance and Appeals as provided for in this article. However, an appeal

to the Board of Variance and Appeals shall not stay any provision of the order.

D. Collection of unpaid civil fines.

In addition to any other procedures for the collection of civil fines available to the County by law or rules of the court, the County may add unpaid civil fines as herein defined to any County taxes, fees or charges except for residential water or sewer charges.

E. Judicial enforcement of order.

The Director of Parks and Recreation may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director or agency need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been appealed in a timely manner nor paid.

JAMES "KIMO" APANA  
Mayor



COUNTY OF MAUI  
DEPARTMENT OF PERSONNEL SERVICES  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

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Honorable James "Kimo" Apana  
Mayor, County of Maui  
Wailuku, HI 96793

APPROVED FOR TRANSMITTAL

Raymond Y. Kokubun 7/18/01  
Mayor Date

For transmittal to:

Ms. Terryl Vencl, Chairperson  
Charter Commission  
County of Maui  
Wailuku, HI 96793

Dear Chair Vencl:

We have reviewed your letter dated May 18, 2001 requesting recommendations on possible amendments to the Maui County Charter. Please be advised that at our regular meeting held on July 5, 2001, the Civil Service Commission reviewed Article 8, Chapter 9 of the Charter pertaining to the Department of Personnel Services and Civil Service Commission. We do not have any changes or amendments to recommend.

We appreciate the opportunity to provide comments on your review process.

Sincerely,

  
GORO HOKAMA, Chairperson  
Civil Service Commission  
County of Maui

cm



Council Chair  
Patrick S. Kawano

Council Vice-Chair  
Dain P. Kane

Acting Officer Pro Tempore  
Charmaine Tavares

Council Members  
Alan M. Arakawa  
Robert Carroll  
G. Riki Hokama  
Jo Anne Johnson  
Michael J. Molina  
Wayne K. Nishiki

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COUNTY COUNCIL  
OFFICE OF THE MAYOR  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

July 13, 2001

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CORPORATION COUNSEL

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Director of Council Services  
Ken R. Fukuoka

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Charter Commission  
JUL 20 2001

Honorable James "Kimo" Apana  
Mayor, County of Maui  
Wailuku, Hawai'i 96793

APPROVED FOR TRANSMITTAL

Grant Ym Ch 7/18/01  
Mayor Date

For transmittal to:

Ms. Terryl Vencel, Chair  
and Members of the Charter Commission  
County of Maui  
Wailuku, Hawai'i 96793

Dear Ms. Vencel and Members:

SUBJECT: **NEIGHBORHOOD BOARD SYSTEM (PAF 01-208)**

Thank you for seeking Council members' comments on proposed Charter amendments.

May I please call your attention to Committee of the Whole Committee Report No. 00-102, adopted on July 7, 2000. Please note that the Council referred to the Charter Commission the possible implementation of a Neighborhood Board system for Maui County. I have not yet seen this proposal on a Charter Commission meeting agenda. So, for your convenience, I have taken the liberty of transmitting Committee Report No. 00-102 and relevant excerpts from the Committee of the Whole meeting minutes from June 13, 2000.

Thank you for your consideration of this matter.

Sincerely,

PATRICK S. KAWANO  
Council Chair

paf:dmr:01-208c  
Attachments