

BENJAMIN J. CAYETANO
GOVERNOR



EARL I. ANZAI
ATTORNEY GENERAL

THOMAS R. KELLER
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

February 21, 2002

Brian T. Moto, Esq.
First Deputy Corporation Counsel
Department of Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Dear Mr. Moto:

Re: Request For An Opinion Relating To Act 253, Session Laws Of Hawai'i
2000, And The Adjustment Of Salary And Other Terms And Conditions
Of Employment For Cabinet Members Whose Salaries Are
Currently Determined By The Salary Commission Of The County Of Maui

For the reasons discussed below, we believe that Act 253, 2000 Hawai'i Session Laws, commonly referred to as the "Civil Service Modernization Act," is a general law of statewide concern. As such, Act 253 supersedes county charter provisions that are repugnant to the act.

Specifically, Section 8-16.1 of the Revised Charter of Maui, which provides that the Salary Commission "shall determine the compensation of elected officials and appointed directors and deputy directors of all departments of the county," is contrary to and therefore superseded by the provisions of Act 253, which require the "appropriate authority" to determine the adjustments that are relevant for their respective excluded employees. Act 253 provides that the "appropriate authority" of the counties are the respective mayors, not the Salary Commission.

A. Act 253, Including, In Particular, Its Provisions Relating To The Adjustment Of Compensation And Benefit Packages For Excluded Employees Such As Cabinet Members, Is A Law Of Statewide Concern.

1. The Provisions Of Act 253.

Act 253 was enacted by the Legislature of the State of Hawai'i ("Legislature") during the regular session of 2000. The stated purpose of Act 253 was to "enact statewide legislation to reform the existing public employment laws that were enacted to implement two constitutional

mandates – that there be a civil service based on merit and that public employees have the right to bargaining collectively.” (Section 1 of Act 253, 2000 Haw. Sess. Laws 853).

Among the provisions of Act 253 are the following amendments to Hawai‘i Revised Statutes (HRS) Chapter 89C, relating to public officers and employees excluded from collective bargaining, to take effect on July 1, 2002:

- i. A new definitions section is to be added, to provide in relevant part:

“Appropriate authority” means the governor, the respective mayors, the chief justice of the supreme court, the board of education, the board of regents, the Hawai‘i health systems corporation board, the auditor, the ombudsman, and the directors of the legislative reference bureau. These individuals or boards may make adjustments for their respective excluded employees.

(Section 105 of Act 253, 2000 Haw. Sess. Laws 905).

- ii. Section 89C-1 is amended to provide:

Purpose. The legislature finds that the appropriate authorities do not have sufficient flexibility to adjust the wages, hours, benefits, and other terms and conditions of employment for their respective excluded public officers and employees. The organizational status and employment conditions of these individuals in the excluded group are diverse and include: cabinet members, board and commission members, managerial employees, and non-managerial employees; appointees, civil service employees, and employees exempt from civil service; permanent and temporary employees; and full-time, part-time, seasonal, casual, and intermittent employees. Sufficient flexibility must be provided so that timely and relevant adjustments can be made. To this end, the legislature grants appropriate authorities the necessary flexibility to make adjustments as provided in this chapter; provided that nothing in this chapter shall be construed to interfere with or diminish authority already provided to them.

(Section 106, 2000 Haw. Sess. Laws 905).

iii. Section 89C-2 is amended to provide:

Adjustments authorized; limitations, restrictions. Each appropriate authority may make adjustments for their respective excluded employees subject to the following guidelines and limitations:

- (1) The compensation of excluded employees, whose pay is presently limited or fixed by legislative action, shall not be adjusted under this chapter and shall continue to be limited or fixed by the respective legislative body;
- (2) The compensation of excluded employees exempt from civil service coverage, whose pay is set at the discretion of the appointing authority, shall continue to be adjusted at the discretion of the appointing authority from funds allowed for this purpose;
- (3) Any adjustment made for excluded civil service employees shall be consistent with the merit principle and shall not diminish any rights provided under chapter 76;
- (4) For excluded employees under the same classification systems as employees within collective bargaining units, adjustments shall not be less than those provided under collective bargaining agreements for employees hired on a comparable basis;
- (5) For excluded employees other than those under paragraph (4), adjustments shall, to the extent practicable, uniformly apply to every excluded employee within a homogeneous grouping, such as, cabinet members or managerial employees, to ensure fairness. This does not preclude variable adjustments based on performance or other job criteria and specific adjustments warranted based on the nature of work performed or working conditions; and
- (6) No adjustment shall be made in benefits provided under chapter 88 unless specifically authorized by that chapter, or with respect to any other matter that the legislature may specifically prohibit or limit by law.

(Section 107 of Act 253, 2000 Haw. Sess. Laws 905-07).

- iv. Section 89C-4 is amended to provide:

Adjustments for excluded employees exempt from civil service. Each appropriate authority shall determine the adjustments that are relevant for their respective excluded employees who are exempt from civil service in consideration of the compensation and benefit packages provided for other employees in comparable agencies.

(Section 109 of Act 253, 2000 Haw. Sess. Laws 907-08).

- v. Section 89C-5 is amended to provide:

Implementation; approval and appropriations.

- (a) Adjustments that do not require appropriations by the respective legislative bodies may be implemented without legislative action.
- (b) All other adjustments requiring appropriations shall be submitted to the respective legislative body for appropriations, at such time and in such manner as the legislative body may require. The legislative body shall appropriate funds of the amount requested or funds of a different amount after discussing the reasons with the appropriate authority.
- (c) No adjustments shall be made and no funds shall be used for purposes of this chapter unless the legislative body has appropriated the funds necessary to implement the adjustment.

(Section 110 of Act 253, 2000 Haw. Sess. Laws 908-09).

- vi. Finally, Section 89C-6 is amended to provide:

Chapter takes precedence, when. Adjustments made in accordance with this chapter shall take precedence over all contrary local ordinances, executive orders, legislation, or rules adopted by the State or a county, or any department, agency, board, or commission thereof, including the personnel departments or the merit appeals boards.

(Section 111 of Act 253, 2000 Haw. Sess. Laws 909).

2. The Nature Of "General Laws" As Opposed To "Local Laws."

The meaning of the term "general law" as it relates to the powers granted to political subdivisions of the State was discussed in some detail in Attorney General Opinion No. 61-36. In it, our office quoted 50 American Jurisprudence, Statutes, section 6, page 17, defining a general law as follows:

A statute is ordinarily regarded as a general law, if it has a uniform operation. Within the meaning of this rule, a statute has a uniform operation, if it operates equally or alike upon all persons, entities, or subjects within the relations, conditions, and circumstances prescribed by the law, or affected by the conditions to be remedied, or, in general, where the statute operates equally or alike upon all persons, entities, or subjects under the same circumstances. Mere classification does not preclude a statute from being a general law. A law is a general one where it relates to persons, entities, or things as a class, or operates equally or alike upon all of a class, omitting no person, entity, or thing belonging to the class.

(Op. No. 61-35 at 2). By contrast, a law is "special" if it relates to particular persons or things, or to particular persons or things of a class instead of all the class. (Id. at 2). So also, a law is "local" if it operates over a particular locality instead of over the whole territory of the state or any properly constituted class or locality therein. (Id. at 2). Thus, a general law is one that:

[O]perates equally, without discrimination as to particular localities, upon all of the people or certain things within territorial jurisdiction of the State of Hawai'i, or operates equally and affects particular persons or things of a class based upon a reasonable and proper classification.

(Id. at 3). Accordingly, based upon this definition, we concluded in Opinion No. 61-35 that legislation attempting to create a board of water supply for the County of Maui only would be a local law and not general law.

Similarly, the distinction between a "general law" and a "special law" was expressed in Attorney General Opinion No. 62-11:

A general law, broadly speaking, is a law which affects all the people of the State or all persons or things of a particular class. On the other hand, a special or local law is one which relates to a particular person or thing, or to particular persons or things of a class, or which operates on or over a portion of a class instead of all of

the class. Thus, it has been held that a special law relates to particular places rather than the whole territory or a state.

(Id. at 1-2). For example, Opinion No. 62-11 discussed an act that amended the Revised Laws of Hawai'i to provide for a gradual reduction in the number of fire stations for the County of Kaua'i from seven to three. The Opinion concluded that the act was an example of a "special or local law," as opposed to the enactment of a "general" statute that would have uniform operation in all of the political subdivisions (counties) of the State (id. at 2).

3. Act 253's Amendment To HRS Chapter 89C
Appears To Be A General Law Of Statewide Concern.

As discussed in your request, the Hawai'i Supreme Court in HGEA v. County of Maui, 59 Haw. 65, 576 P.2d 1029 (1978), considered charter provisions which are repugnant to state laws in the areas of personnel and procedure, and concluded that the final authority on all civil service and compensation matters remain with the legislature. The Court discussed the policy considerations underlying the civil service and compensation laws, stating in part:

The merit system has become an established policy of government. This has been a policy of state-wide application. Uniformity in the administration of the law is essential to its success. How well the system works and whether its ultimate objectives are to be achieved depends in relevant part upon the manner in which the laws pertaining to it are administered.

59 Haw. at 87, 576 P.2d at 1042. Although in the present case the compensation at issue pertains to positions exempt from civil service, and thus is distinguishable, the Court's reasoning in HGEA v. County of Maui is instructive. Here, Act 253 is promulgating a policy of state-wide application. The achievement of the Act's objectives (i.e., timely and relative adjustments to the compensation of excluded employees) depends upon granting the appropriate authorities the necessary flexibility to make the adjustments provided for in Chapter 89C.

Similarly, in City and County of Honolulu v. Ariyoshi, 67 Haw. 412, 689 P.2d 757 (1984), the Hawai'i Supreme Court considered an act designed to increase the salaries of certain government officials and to freeze the salaries of others who had been receiving mandatory increases over a period of time. The legislative history revealed that the intent behind the act was to alleviate existing pay inequities in the public sector, by increasing salaries of certain executive branch officers, judges and judicial officers and legislative agency officers of the state government which were limited by statute, and freeze the salaries of certain county officers and employees exempt from civil service. The Court found the provisions of the act to be constitutionally valid, concluding:

We agree that the area of compensation of county officials is a matter of statewide concern where a salary structure integrated with that of the state structure will provide for more efficient and effective government for the people of Hawai'i. It is a matter within the powers of the legislature and does not intrude upon the executive, legislative or administrative structure or organization of the counties.

67 Haw. at 421, 689 P.2d at 764.

Based upon the reasoning of the Hawai'i Supreme Court and the Attorney General opinions discussed above, we conclude that the amendments to HRS Chapter 89C contained in Act 253 are general laws of state-wide concern.

4. Act 253 Supersedes County Charters That Are Repugnant To It.

As a general law of statewide concern, the provisions of Act 253 at issue here would supersede county charter provisions that are repugnant to it.

The effect of general laws on county home rule is governed by the Hawai'i State Constitution. Article VIII, Section 1, provides:

The Legislature shall create counties, and may create other political subdivisions within the State, and provide for the government thereof. Each political subdivision shall have and exercise such powers as shall be conferred under general laws.

(Emphasis added). Section 2 of Article VIII provides:

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.

(Emphasis added).

The fundamental principle in construing a constitutional provision is to give effect to the intentions of the framers and the people adopting it. HGEA v. County of Maui, 59 Haw. at 80-81, 576 P.2d at 1039. As noted by the Hawai'i Supreme Court, the Standing Committee Report No. 53 stated, with respect to Section 2 of Article VIII, in relevant part:

[T]his proposal will give a county charter a higher status within a prescribed area. The designated provisions will become of superior authority to a statute.

* * *

Your Committee omitted from the draft presented . . . the words "personnel" and "procedure." The word "personnel" was omitted because your Committee was convinced that the legislature should not be deprived of the power to enact, and maintain in effect, laws such as At 188, S.L.H. 1961.¹

* * *

The word "procedure" was omitted in order to preserve the authority of statutes such as the Administrative Procedures Act.

As presented by your Committee, therefore, 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. For example, the legislature could not change the composition of the legislative body of a county. However, the proposal specifically preserves the authority of the legislature to enact general laws allocating and reallocating powers and functions. This means that the legislature could transfer a function from the county to the state level even if the result would be to eliminate a department of the county government provided for in its charter.

Vol. I, Proceedings of the Constitutional Convention of Hawaii of 1968, at 229.

¹ Act 188, 1961 Session Laws of Hawai'i, established the Public Employees Compensation Appeals Board (PECAB), and had the legislative purpose to provide uniform policies and procedures in matters of compensation for public employees among the state and its political subdivisions in order to assure "equal pay for equal work." HGEA v. PECAB, 10 Haw. App. 99, 102-03, 861 P.2d 747, 750 (1993).

In HGEA v. County of Maui, the Hawai'i Supreme Court examined the Hawai'i State Constitution's inclusion of county charter provisions with respect to executive, legislative and administrative structure, along with the exclusion of matters of "personnel" and "procedure," concluding:

The constitutional amendments made to article VII [currently article VIII of the Hawai'i State Constitution], on local government, did not grant to the political subdivisions complete home rule; such amendments . . . only gave the local governments limited freedom from legislative control.

Thus, we hold that these amendments do not enable a political subdivision to adopt provisions in its charter which are repugnant to existing or future laws in the areas of personnel and procedure which were stricken by the Committee on Local Government from the proposal finally adopted by the people. . . . From an examination of the framers' Standing Committee Report No. 53 (majority), we think it is clear that they intended the final authority on all civil service and compensation matters to remain with the legislature. The committee report refers to "personnel" and "personnel matters," and these words and phrases should be given their literal and ordinarily accepted meaning unless the context indicates otherwise.

59 Haw. at 85, 576 P.2d at 1041. Accordingly, the Court held that where there is a fatal conflict between laws on civil service and provisions of a county charter, the statute is prevailing. *Id.* at 88-889, 576 P.2d at 1042-43.

Similarly, the Hawai'i Supreme Court in County of Honolulu v. Ariyoshi concluded that the area of compensation of county officials is a matter of statewide concern and is a matter within the powers of the legislature. 67 Haw. at 421, 689 P.2d at 764.

Finally, HRS section 46-1.5, governing the general powers and limitation of the counties, subjects the counties' power to the legislature's enactment of general law. Section 46-1.5 provides in relevant part:

Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

- (1) Each county shall have the power to frame and adopt a charter for its own self-government, which shall establish the county executive, administrative, and legislative structure and organization, including, but

not limited to, the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office.

(Emphasis added).

Based upon the provisions of Sections 1 and 2 of Article VIII of the Hawai'i State Constitution, as well as the Hawai'i Supreme Court's interpretation of those provisions, we conclude that Act 253, as a general law of statewide concern, supersedes county charter provisions that are repugnant to it.

B. The Charter Provision Providing That The Salary Commission Shall Determine The Compensation Of Appointed Directors And Deputy Directors Of All Departments Of The County Is Superseded By Act 253.

The Salary Commission is provided for in Section 8-16.1 of the Charter, County of Maui, which states:

Section 8-15.1. Organization and Functions. There shall be a salary commission which shall consist of nine members appointed by the mayor with the approval of the council. The term of office of the salary commission members shall end with the term of office of the mayor. The commission shall determine the compensation of elected officials and appointed directors and deputy directors of all departments of the county provided, however, in establishing the compensation of appointed department heads and their deputies, the salary commission shall consult with those boards and commissions which have appointing authority for department heads.

As you discuss in your request, pursuant to Charter Section 8-16.1, the Salary Commission determines the compensation of Maui County's mayor, nine council members, and directors and deputy directors. The determinations made by the Salary Commission are final and are not subject to the approval or disapproval of another authority, such as the mayor or county council.

On the other hand, Sections 106 and 107 of Act 253 grant the "appropriate authority" the necessary flexibility to make adjustments to the compensation of excluded public officers and employees, including cabinet members. Section 105 of Act 253 in turn provides that "appropriate authority" means the respective mayors of the counties, and does not include the County's Salary Commission. Finally, Section 109 of Act 253 provides in relevant part:

Each appropriate authority shall determine the adjustments that are relevant for their respective excluded employees who are exempt from civil service in consideration of the compensation and benefit packages provided for other employees in comparable agencies.

Accordingly, while Sections 106 and 107 are permissive (the appropriate authority “may” make adjustments), the plain language² of Section 109 of Act 253 requires the “appropriate authority,” i.e., the respective mayors, to determine the adjustments that are relevant for their respective excluded employees who are exempt from civil service. Thus, the plain language of Act 253 conflicts with the plain language of Section 16.1 of the Charter. As discussed above, Act 253 takes precedence.

It does not appear that an argument could be made that the Salary Commission is a proper delegation of fact finding/recommendation duties. The general principle is that where a legislature has made clear its intent that one public official is to exercise a specified discretionary power, that power may not be exercised by others in the absence of statutory authorization. 63C Am. Jur. 2d, Public Officers and Employees, section 235. While it is reasonable for an official to seek assistance from his or her subordinates in gathering facts and making recommendations, the ultimate decision-making power cannot be delegated. Id. For example, in Bagley v. City of Manhattan Beach, 553 P.2d 1140 (Cal. 1976), the statute in question provided that “[b]y resolutions or ordinance, the city council shall fix the compensation of all appointive officers and employees.” While the court acknowledged that standards might be established to govern the fixing of compensation, and the city council might delegate functions relating to the application of those standards, the ultimate act of applying those standards and of fixing compensation could not be delegated. Here, the plain language of the County’s Charter exceeds mere fact finding/recommendation duties. The Charter requires the Salary Commission to set the compensation for directors and deputy directors, without necessity of approval by the Mayor.

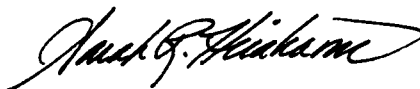
Accordingly, to the extent that Act 253 amends HRS Chapter 89C to require the Mayor to set the compensation, there is conflict between Act 253 and section 8-16.1 of the County’s Charter. Act 253, as a general law of statewide concern, supersedes conflicting provisions of the County’s Charter.

² “In interpreting statutes, the fundamental starting point is the language of the statute itself, and where the statutory language is plain and unambiguous, [the court’s] sole duty is to give effect to its plain and obvious meaning.” Williamson v. Hawai’i Paroling Authority, 97 Hawai’i 183, 197, 35 P.3d 210, 224 (2001).

Brian T. Moto, Esq.
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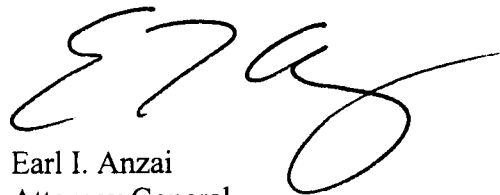
We hope this satisfactorily answers your questions. If you have further questions, please do not hesitate to contact our office at 587-2900.

Respectfully submitted,



Kathleen N. A. Watanabe
Sarah R. Hirakami
Deputy Attorneys General

APPROVED:



Earl I. Anzai
Attorney General

SHR:srh

GEORGINA K. KAWAMURA

P.O. BOX 630416
LANA'I CITY, HAWAII 96763

February 20, 2002

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

Dear Chair Vencel and Members of the Charter Commission:

Welcome to Lana'i. Thank you for the opportunity to provide input into your review of our County Charter.

I have the same comments that I made at the beginning of your review process pertaining to Section 10-4.c. regarding "Prohibitions" for officers or employees of the County. This section states that no officer or employee shall "engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties".

I was disappointed to see that there are no provisions in your proposals to take a look at the current language of this section. If we are employees of Castle & Cooke Resorts (the "Company"), we are not considered for appointments to various boards and commissions that may review issues concerning the Company. There is a perception that our employment will cause undue influence on our judgment and that we are not capable of making independent decisions.

In our community, it is no secret that we are dependent on the Company. They provide most of our jobs. However, there is only a handful of individuals that really have a financial interest and the rest of us receive a paycheck. I think there is a big difference between having a financial interest and receiving a paycheck, especially on Lana'i. We should be treated as individuals from a small, rural community that love our island and we are interested in what happens to our home.

It is interesting to note that Proposal Ten will create community district boards that will make the citizen advisory committees permanent and expand its power. However, most of us will not be considered for appointment to this board or any other board or commission because we choose to live here and we need to work. This unfairly limits the number of people who are eligible for appointment and involves the same people in all of the government processes.

This is very unfair to the people of Lana'i. There are those who believe that as Company employees every decision we make will favor the Company. Well, this may be the perception, but there are also those of us who believe that the Company deserves a fair review so that our residents can remain employed. The key to fair and equitable government is to appoint people who are truly interested in these basic standards of conduct. We need to appoint people whom we trust will make good decisions, and not be judged on where we receive our paycheck.

Please give some consideration to amending the Charter to be more reasonable with the definition of a financial interest.

I have one final comment regarding Proposal Three. From a Lana'i perspective, please do not eliminate the term limits. A person from Lana'i will always have a difficult time running and winning against an incumbent. You all know I speak from experience. If a candidate is truly a resident of Lana'i, where we work and live here, it is very difficult to campaign from here when all of the votes are on Maui. If there are no term limits, we will never have new faces and "new blood" and our Council representative will become less and less interested in actually representing us. They never have to come home because as long as people on Maui continue to see them and hear about them, they don't need our votes. It's sad, but it's true, so I hope you reconsider this proposal.

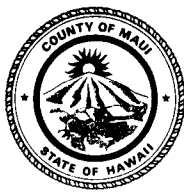
Thank you for coming to Lana'i and good luck with your future discussions and deliberations.

Sincerely,



GEORGINA K. KAWAMURA

JAMES "KIMO" APANA
Mayor



FLOYD S. MIYAZONO
Director

GLENN T. CORREA
Deputy Director

(808) 270-7230
Fax (808) 270-7934

DEPARTMENT OF PARKS & RECREATION

1580-C Kaahumanu Avenue, Wailuku, Hawaii 96793

February 21, 2002

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

For transmittal to:

Terryl Vencel, Chair
Maui County Charter Commission
c/o Department of Corporation Counsel
Wailuku, Hawaii 96793

Dear Ms. Vencel:

**SUBJECT: AMENDMENT TO THE MAUI COUNTY CHARTER PERTAINING
TO THE DEPARTMENT OF PARKS AND RECREATION,
CHAPTER 6**

The Department requests that an additional item be included under Chapter 6, Section 8-6.3 Powers, Duties and Functions as listed below:

3. Provide lifeguard service protection to the residents and visitors of the County.

The above function is not currently included in the County Charter but it is a vital service that is provided by the Department of Parks and Recreation.

Your favorable consideration would be appreciated. Should there be any questions, please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Miyazono", is written over a horizontal line.

Fom
FLOYD S. MIYAZONO
Director, Department of Parks & Recreation

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COMMUNICATIONS SECTION

Castle & Cooke Resorts, LLC

**Proposed Amendment to Maui Charter Section 10-4.f. relating to conflict of interest
Maui Charter Commission Meeting, February 20, 2002, Lanai City**

Chairman Terry Vencl and Commission Members:

Castle & Cooke respectfully submits for re-consideration a revised proposal for clarification of Charter Section 10-4.f. This proposal addresses the concerns raised in testimony presented at the August 22, 2001 Commission meeting, with simplified language which more closely tracks parallel ethics provisions of the City & County of Honolulu and the State of Hawaii.

Current Version of Charter Provision

Section 10-4. Prohibitions. 1. No officer or employee of the county shall:

* * *

f. Fail to disclose a financial interest in any matter which may be affected by an action of a county agency or vote on any matter affected by such interest.

PROPOSED REVISED PROVISION to Section 10-4 f

f. Fail to disclose a financial interest in any matter which may be affected by an action of a county agency, or vote [on any matter affected by such interest] or otherwise take official action on a matter directly affecting a business or undertaking in which he or she has a substantial financial interest, or in which he or she is engaged for pay as legal counsel, advisor, consultant or other representative capacity. For purposes of this section, the terms "financial interest" and "official action" shall have the meaning assigned in the State of Hawaii Standards of Conduct, Hawaii Revised Statutes, Section 84-3, or its successor statute. (bracketed material deleted and underscored material added).

EXMPLANATION OF AMENDMENT

Existing provision (1) mandates disclosure and (2) prohibits voting on matters in which a county officer or employee has a financial interest. Proposed amendment preserves the disclosure requirement verbatim and clarifies the voting prohibition standard by adding language from the parallel provisions of the City & County of Honolulu Standards of Conduct (Revised Ordinances of Honolulu), Section 3-8.2 (copy attached) and language and definitions from the State of Hawaii Standards of Conduct, Hawaii Revised Statutes Section 84-3 (copy attached)

Thank you for your consideration of this proposal.



Richard K. Mirikitani
Senior Corporate Counsel & Vice President
Castle & Cooke Resorts, LLC

"Business" means and includes (1) a corporation; (2) a partnership; (3) a sole proprietorship; (4) institutions; (5) trusts; (6) foundations; or (7) any other individual or organization carrying on a business, whether or not operated for profit.

"City" means the City and County of Honolulu.

"Compensation" means (1) any money; (2) thing of value; and (3) economic benefit conferred on or received by any person in return for services rendered or to be rendered by such person or another.

"Controlling interest" means an interest which is sufficient in fact to control, whether the interest be greater or less than 50 percent.

"Financial interest" means an interest held by an individual, the individual's spouse or minor children which is: (1) an ownership interest in a business; (2) a creditor interest in an insolvent business; (3) an employment, or prospective employment for which negotiations have begun; (4) an ownership interest in real or personal property; (5) a loan or debtor interest; or (6) a directorship or officership in a business.

"Former employee" means any person who has served the city in a position involving the taking of official action, as hereinafter defined.

"Official act" or "official action" means a decision, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority.

"Officers and employees" shall be given the meaning as prescribed in subsections 3 and 4 of Revised Charter Section 13-101; provided, that the term "officers and employees" shall also include officers and employees under a personal services contract with the executive branch of the city as prescribed in subsections (f) and (g) of Revised Charter Section 6-303, or under equivalent contracts with the legislative branch of the city as prescribed in subsection (f) of Revised Charter Section 6-304, but excluding independent contractors; and provided further, that an individual shall not be deemed an officer or employee solely by reason of such person's receipt of a pension, disability payments, or other payments not made for current services. (Sec. 6-1.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 94-49)

Sec. 3-8.2 Additional standards of conduct.

No officer or employee of the city, except as hereinafter provided, shall:

- (a) Participate, as an agent or representative of a city agency, in any official action directly affecting a business or matter in which (1) such person has a substantial financial interest; or (2) by or for which a firm of which such person is a member, an associate or an employee has been engaged as a legal counsel or advisor or consultant or representative in a matter directly related to such action; provided, that a councilmember is not precluded from voting on such matter before the council so long as a written disclosure has been made in the event there is a conflict of interest involving this subsection and relating to such matter.
- (b) Acquire financial interest in business enterprises which such person has reason to believe may be directly involved in official action to be taken by such person.
- (c) Appear in behalf of private interests before any agency other than a court of law, nor shall such person represent private interests in any action or proceeding against the interests of the city in any litigation to which the city is a party; provided, however, that a member of any board, commission or committee, whose board, commission or committee does not exercise either quasi-judicial or quasi-legislative power, may appear for compensation in behalf of private interests before agencies other than the one on which such person serves and other than those agencies that have the power to review the actions of the agency on which such person serves, or to act on the same subject matter as the agency on which such person serves; provided further, that no officer or employee shall be denied the right to appear before any agency to petition for redress of grievances caused by any official act or action affecting such person's personal rights, privileges or property, including real property. This prohibition shall not apply to any architect, landscape architect, surveyor or engineer registered as such under the provisions of HRS Chapter 464, who is a city employee or officer, with respect to the affixing by such registered professional of such person's registered stamp to any plans, specifications, drawings, etc., to be submitted to the city for permits for such person's principal residence or that of members of such person's immediate family; provided, that the stamp is accompanied by a signed statement that the work was prepared by the person stamping the document or under such person's supervision; and provided further, that the registered professional may not, in the capacity of a city employee or officer, review, approve or otherwise act upon the plans, specifications, drawings, etc., such

§ 84-12. Confidential information.

No legislator or employee shall disclose information which by law or practice is not available to the public and which the legislator or employee acquires in the course of the legislator's or employee's official duties, or use the information for the legislator's or employee's personal gain or for the benefit of anyone. [L 1972, c 163, pt of § 1; am imp L 1984, c 90, § 1]

§ 84-13. Fair treatment.

No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

(1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.

(2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.

(3) Using state time, equipment or other facilities for private business purposes.

(4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of the legislator's legislative functions. Every legislator shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator believes may be affected by legislative action. [L 1972, c 163, pt of § 1; am imp L 1984, c 90, § 1]

RESEARCH REFERENCES

Hawaii Legal Reporter.

As to negotiations by legislature with deputy

attorney general representing state agency, see 82-2 Haw. Legal Rep. 82-0999.

§ 84-14. Conflicts of interests.

(a) No employee shall take any official action directly affecting:

(1) A business or other undertaking in which he has a substantial financial interest; or

(2) A private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

A department head who is unable to disqualify himself on any matter described in items (1) and (2) above will not be in violation of this subsection if he has complied with the disclosure requirements of section 84-17; and

A person whose position on a board, commission, or committee is mandated by statute, resolution, or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which he has a substantial financial interest; provided that the substantial financial interest is related to the member's particular qualifications.

(b) No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

(c) No legislator or employee shall assist any person or business or act in a representative capacity before any State or county agency for a contingent compensation in any transaction involving the State.

(d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator.

(e) No employee shall assist any person or business or act in a representative capacity before a state or county agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if he has official authority over that state or county agency unless he has complied with the disclosure requirements of section 84-17. [L 1972, c 163, pt of § 1; am L 1978, c 245, § 2]

Cross references. — As to lobbyists, see Chapter 97. For prohibition against interest in certain government contract by officers or

heads of departments of the State or of political or municipal subdivisions thereof, see § 103-58 et seq.

CASE NOTES

Matter not "directly affected" is not prohibited. — Since this section only prohibits a public employee from participating in official action which "directly affects" a business or matter in which he has a substantial financial interest, participation in official action of the

state land use commission concerning changes in the classification of land was not prohibited because the effect of the official action upon the union which employed the public employee was indirect at the most. *Tangen v. State Ethics Comm'n*, 57 Haw. 87, 550 P.2d 1275 (1976).

OPINIONS OF ATTORNEY GENERAL

Legislator appointed as judge. — A representative is not required to resign from his legislative office upon being nominated to, and upon being confirmed for appointment to, the circuit court, but if the legislature passes legis-

lation increasing the emoluments of circuit judges during the legislator's term, he will not be able to occupy that judicial office. Op. Att'y Gen. No. 80-2 (1980).

“Financial interest” means an interest held by an individual, the individual's spouse, or dependent children which is:

- (1) An ownership interest in a business.
- (2) A creditor interest in an insolvent business.
- (3) An employment, or prospective employment for which negotiations have begun.
- (4) An ownership interest in real or personal property.
- (5) A loan or other debtor interest.
- (6) A directorship or officership in a business.

“Official act” or **“official action”** means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

“Official authority” includes administrative or legislative powers of decision, recommendation, approval, disapproval, or other discretionary action.

“State agency” includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices, the University of Hawaii, and all independent commissions and other establishments of the state government but excluding the courts. [L 1972, c 163, pt of § 1; am L 1978, c 245, § 1; am L 1979, c 91, § 4; am imp L 1984, c 90, § 1]

CASE NOTES

Cited in *Tangen v. State Ethics Comm'n*, 57 Haw. 87, 550 P.2d 1275 (1976).

RESEARCH REFERENCES

Hawaii Legal Reporter. As to court appointment of former deputy attorney general where state is represented by employee of his former division, see 80-2 Haw. Legal Rep. 80-1369.

PART II. CODE OF ETHICS

§ 84-11. Gifts.

No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the legislator or employee in the performance of the legislator's or employee's official duties or is intended as a reward for any official action on the legislator's or employee's part. [L 1972, c 163, pt of § 1; am imp L 1984, c 90, § 1]

OPINIONS OF ATTORNEY GENERAL

Gifts to assist official duties. — The Department of Agriculture has the inherent authority to accept gifts from the private sector such as money, animals, or other items, to

assist in its efforts to brown tree snakes into Att'y Gen. No. 92-04 (1

[§ 84-11.5]. Report

(a) Every legislator the state ethics conditions are met

(1) The legislator or employee, received valued singly or in form of money, service

(2) The source of official action or

(3) The gift is under this subsection

(b) The report shall year through June

(c) The gifts disclosed

(1) A description

(2) A good faith

(3) The date of

(4) The name of

or on behalf of whom

(d) Excluded from following:

(1) Gifts received

(2) Gifts received trust established

(3) Gifts from a consanguinity or any such person intermediary for

(4) Political campaign

(5) Anything a regard to the official

(6) Gifts that, delivered to a person organization with for tax purposes;

(7) Exchanges special occasions.

(e) Failure of a legislator required by this section

(f) This section shall 322, pt of § 1]

February 11, 2002

Charter Commission
Maui County
200 South High Street
Wailuku, Hawaii 96793

**TESTIMONY TO THE CHARTER COMMISSION COUNTY OF MAUI
PROPOSED AMENDMENTS TO CHARTER, COUNTY OF MAUI.**

By: Michael D. Tancayo, Jr.
P.O. Box 836
Lot 69 Likelike Ave.
Kaunakakai, Hawaii 96748

Mr. Chairperson, members of the Charter Commission, My name is Michael D. Tancayo. Jr.
Of Lot 69 Likelike Ave., P.O. Box 836, Kaunakakai, Hawaii 96748.

I am testifying in opposition to proposal change:

**Proposal Two (3-2) LENGTHEN TERMS OF COUNCILMEMBERS FROM TWO (2)
FOUR (4) YEARS.**

Article 3-2.5 Reads as:

Article 3-2.5 the term of office of council members shall be for two years, beginning

At twelve o'clock meridian on the second day of January following their election. No

Member of the county council shall serve more than five consecutive full terms of office.

(Amended 1998, 1992)

**Article 3-2.5 of the Charter County of Maui remains as written, with no
changes as proposed.**

Proposal Three (3-2) ELIMINATE TERM LIMITS FOR COUNCILMEMBERS

**Article 3.2 Term Limits. Article 3-2.5 of the Charter County of Maui, to
remains as written, with no changes.**

**(Reads as: No member of the county council shall serve more than five consecutive full
terms of office.**

(Proposal Three will reduce the opportunities for "new blood" and new ideas.)

With the exception of Proposal Two Article 3-2.5 and Proposal Three Article 3-2.5.

I support the other proposed proposal change as presented.

Thank you, for the opportunity to present my testimony before the Charter Commission.


Michael D. Tancayo, Jr.
2/11/02

2002 FEB 12 AM 9:14

COPY

February 8, 2002

MEMO TO: Honorable Patrick S. Kawano, Chair
and Members of the Council

FROM: Roy T. Hiraga, County Clerk 

SUBJECT: TIMETABLE FOR PROPOSED CHARTER AMENDMENTS

The purpose of this correspondence is to advise you of the opinion that our office has received as it relates to the operation of the Maui County Charter Commission. I would note that the opinion was requested to clarify discrepancies between the provisions of the Charter of the County of Maui and the Hawaii Revised Statutes.

In light of the fact that the Charter Commission anticipates submitting its proposals to the Council on April 22, 2002, the Special Council meeting scheduled for May 21, 2002, may also include alternative proposals recommended by the Council on its agenda to meet the 30 day deadline as noted in the opinion. However, please note that an earlier meeting may be necessary should the Charter Commission decide to submit its proposals before April 22, 2002. Please keep this in mind during your deliberations as the proposals may be referred directly to committee, and as such, we may not be aware of the specific date of receipt.

Thank you for your consideration of this matter and please feel free to contact myself, or Diane, should you have any questions.

Attachment

cc: Diane A. Wakamatsu, Deputy County Clerk
Ken Fukuoka, Director of Council Services
✓ Brian T. Moto, First Deputy Corporation Counsel
Teryl Vencl, Chair, Charter Commission

Occ:Leg:Correspondence:CharterCommissionSchedule

02/06/02

Charter Commission Note:

* Original proposed County Charter Amendment for a Fire Commission was a basic proposal to provide the groundwork for future discussions.

* This revision has taken into consideration the issues, which lie with the Maui County Charter Commission, and incorporates language from two other jurisdictions (County of Hawaii and City and County of Honolulu) and preserves the Public Safety Commission to exist as the Fire and Public Safety Commission.

Language added to the existing charter are value-based and provide for positive preparation and performance on the job.

* Separate review of The Civil Defense Agency under County Charter Chapter 15, Section 8-15.1 is recommended due to the proposed new language and or amendments concerning the fire department and the proposed fire and public safety commission may have impact on Section 8-15.1.

Order of Contents:

1. Issues facing the Maui County Charter Commission
2. Revision of proposed charter amendment regarding Fire and Public Safety Commission
3. Original proposed charter amendment for Fire Commission
4. County of Hawaii charter amendment to establish a Fire Commission
5. City and County of Honolulu charter amendment to establish a Fire Commission
6. Maui County Charter Chapter 7, Department of Fire Control
7. Maui County Charter section 13-2, Boards and Commissions
8. County of Maui, Department of Fire Control, Mission Statement
9. Maui County Code 16.04A..010, The State Fire Code incorporated.

Submitted by Elvin Kamoku, Maui Division Chairperson – Hawaii Fire Fighters Association.
February 6, 2002

PROPOSAL EIGHT G ¶ GIVE THE PUBLIC SAFETY COMMISSION THE
RESPONSIBILITY TO HIRE
AND FIRE THE FIRE CHIEF (WITH DUE PROCESS PROTECTIONS GIVEN TO THE
CHIEF),
AND TO REVIEW THE BUDGET OF THE DEPARTMENT OF FIRE CONTROL.

(8-7.4) Public Safety Commission. Give the Public Safety Commission the power to hire and fire the Fire Chief (providing the Fire Chief the same due process protections now provided to the Police Chief in Section 8-12.3), and also give the Public Safety Commission the same power to review the budget of the Department of Fire Control that the Police Commission has regarding the Department of Police (in Section 8-12.2(2)).

Pros:

- * These changes will give the Public Safety Commission responsibilities similar to those now held by the Police Commission, namely the power to hire and fire the Fire Chief and the power to review the budget of the Department of Fire Control.
- * The proposed changes would give the Fire Chief the same due process protections now given to the Police Chief in the event of an effort to terminate the employment of the Chief.

Cons:

- * These proposed changes would reduce the power of the Mayor over the Department of Fire Control, and would thereby, to some extent, reduce the direct accountability regarding activities of the Department.

PROPOSAL NINE G ¶ CLARIFY THE RESPONSIBILITIES OF THE DEPARTMENT OF
PLANNING
WITH REGARD TO LONG-RANGE PLANNING, CULTURAL RESOURCES,
ENFORCEMENT, TIMELY
DECISION MAKING, AND THE COMMUNITY PLANS.

- * (8-8) Department of Planning G ¶ Revise the responsibilities of the Planning Commission by:
- ** Requiring the Department to prepare and administer (a) long range planning programs to implement the General Plan and (b) a cultural resources management program (Section 8-8.3).
- ** Requiring the Department to enforce zoning ordinances (Section 8-8.3). ** Requiring the Planning Commissions to review and take action on revisions to the general plan and other land use ordinances and amendments within defined time limits (180 and 120 days) after the final public hearing (Section 8-8.4).
- ** Clarify the purpose and nature of the General Plan, incorporating language from Hawai'i Revised Statutes Section 226-58 regarding county general plans (Section 8-8.5).
- ** Clarify the role of the Citizen Advisory Councils in the planning process, by adding language saying that "The community plans generated through the citizen advisory councils and accepted by the planning commission and county council pursuant to the deadlines in this chapter are part of the general plan." (Section 8-8.5).
- ** Require the County Council to review and take action on revisions to the general plan and other land use ordinances and amendments within defined time limits (one year and 180 days) after transmittal (Section 8-8.6).

Pros:

* (Article 8) Deputy directors - are they needed in all departments?

* (8-2) Corporation Counsel - process of giving assignments to - can Council and its members give assignments directly, or must they go through the Mayor?

* (8-2) Public Justice Commission to provide oversight over Corporation Counsel - to determine its proper role - is it to be as an advocate or adversary, or to provide legal advice - how to balance responsibilities to Mayor with those to County Council? - How are assignments to be given to the Corporation Counsel?

* (8-6) Should there be a Parks Commission? - What would be its role? Who should it report to?

* (8-7) Should there be a Fire Commission? - to replace (or supplement) the Public Safety Commission (which now has jurisdiction over Fire and Civil Defense)? With power to hire and fire the Fire Chief? - what due process should be included before any action would be taken? - should Civil Defense remain with the Public Safety Commission? Handle citizen complaints? Should lifeguards be under this Commission? Emergency medical services (now run by the State)? Should it be called the Fire and Public Safety Commission? Should the same due process protections governing removal of the Chief of Police cover the Fire Chief?

* (8-8) Planning Commission - responsibilities in relation to County Council (regarding, instance, SMA permits and other CZM issues) - right to intervene - role of CACs - what role should Community Plans play? - deadlines - neighborhood boards?

* (8-11) Water Board - Should it have more autonomy? - Or less? - Should it have the power to determine rates? [Now rates are determined by the Board, but come into force only if approved by the Mayor and the Council, and the Mayor's approval can be vetoed by a two-thirds vote of the Council.] Should Board members have engineering experience? At least some? Should board members be paid? Does the Water Dept. need a second Deputy Director?

* (Article 9) Budget process - should there be a cap on indebtedness? Should the dates regarding the development of the budget be coordinated more closely with the dates utilized by the legislature?

* (Article 9 & 8-6) Open space - Should 1% (or more) of the annual budget designated for the purchase of open space?

* (Article 10) Issues related to ethics - problem on Lana'i related to employees of Lana'i Company - eliminate 10-4.1.d (because it is inconsistent with other provisions)?

* (Articles 11 & 12) Initiative and recall - are the number of signatures required too high? Should they be based on actual voters or registered voters?

* (13-2) Gender equality on boards and commissions?

PROPOSED COUNTY CHARTER AMENDMENT

The following question to amend the Charter of the County of Maui is being submitted to the people to be voted upon at the General Election on November 5, 2002:

QUESTION NO. _____

Shall the County Charter be amended by changing the name of the Department of Fire Control to the **Maui Fire Department**, and by designating the Public Safety Commission as the **Fire and Public Safety Commission** with the responsibility of appointing and removing the Fire Chief and performing other duties concerning the Fire Department and the Civil Defense Agency.

YES _____

NO _____

The adoption of this proposal will establish a Fire and Public Safety Commission to ensure qualified and professional leadership and personnel for the Fire Department, as well as enhance public oversight of Fire Department operations.

1. It is hereby proposed that Article 8, Chapter 7 of the Charter of the County of Maui be amended to read as follows:

Section 8-7.1 Organization. There shall be a fire department consisting of a fire and public safety commission, a fire chief, a deputy fire chief and the necessary staff.

Section 8-7.2. Fire Chief. The fire chief shall be appointed and may be removed by the fire and public safety commission. The fire chief may be removed by the fire and public safety commission only after being informed in writing of the charges, which are resulting in his or her dismissal, and after being given a hearing before the commission. The fire chief shall have had a minimum of five years of training and experience in a fire department, at least three of which have been in a responsible administrative capacity.

Section 8-7.3. Powers, Duties, and Functions of the Fire Chief. The fire chief shall:

- (1.) Perform as the administrative head of the fire department.
- (2.) Provide and adequately perform fire fighting, rescue, and 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.) Train, equip, maintain, and supervise a force of fire fighting and emergency rescue personnel.
- (4.) Investigate the cause, origin, and circumstances of fires. Monitor the construction and occupancy standards of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law. Review, update, and enforce the State Fire Code, which code adopts, with modifications the "Uniform Fire Code", and the "National Fire Code", as amended under the Maui County Code, "Chapter 16.04A".
- (5.) Provide public education programs related to fire prevention and public safety.
- (6.) Appoint the deputy fire chief and a private secretary to the fire chief.
- (7.) Perform such other duties, powers or functions as shall be provided by law or assigned by the mayor.

Section 8-7.4. Fire and Public Safety Commission. The commission shall consist of nine members broadly representative of the community, appointed by the mayor with the approval of the council. The commission may appoint such staff and engage consultants as necessary for the performance of its duties. The provisions of Section 13-2 shall govern the commission of this charter. 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 the annual budget prepared by the fire department and make recommendations thereon to the mayor, the managing director, and the council.
- (3.) Review the operations of the fire department and the civil defense agency and make recommendations for changes, which may be desirable to improve the performance of emergency functions and the provision of public safety services.
- (4.) Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.
- (5.) Review personnel actions within the fire department for conformance with the policies under Section 8-7.5. of this charter.
- (6.) Receive, review and investigate any charges brought forth by the public against the conduct of the fire department or any of its members and submit a written report of its findings and recommendations to the fire chief on appropriate corrective actions.
- (7.) Submit an annual report to the mayor and the council on its activities.
- (8.) Have such other powers and duties as may be provided by law.

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

Section 8-7.5. Statement of Policy. It is hereby declared to be the purpose of this chapter of the charter to establish in the county a system of fire protection consisting of fire suppression, fire prevention, rescue, and emergency services which, shall be based on qualified and professional leadership and personnel. In order to achieve this purpose, the fire department shall be conducted in accordance with the following:

- (1.) Standards for recruitment shall be designed to attract into the fire department persons with high degrees of education, physical performance and personal stability.
- (2.) Promotions and other personnel actions shall be based upon fair and appropriate standards of merit, comprehension, and work performance.
- (3.) Appropriate updated training shall be provided that meets or exceeds national standards.

2. It is hereby proposed that Article 15 of the Charter of the County of Maui be amended by adding new section to be designated and to read as follows:

Section 15-6. Transition Provisions Concerning Fire and Public Safety Commission. The fire chief serving on January 1, 2003 shall serve as interim fire chief. Should the fire chief vacate or be removed from office before appointment of a fire and public safety commission:

- (1.) The deputy fire chief shall serve as interim fire chief; or
- (2.) The mayor may commission an interim fire chief.

PROPOSED COUNTY CHARTER AMENDMENT

The following question to amend the Charter of the County of Maui is being submitted to the people to be voted upon at the General Election on November 5, 2002:

QUESTION NO. _____

Shall the County Charter be amended by changing the name of the Department of Fire Control to the Maui Fire Department, and by designating the Public Safety Commission as the Fire Commission with the responsibility of appointing and removing the Fire Chief and performing other duties concerning the Fire Department?

YES _____

NO _____

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.

It is hereby proposed that Article 8, Chapter 7 of the Charter of the County of Maui be amended to read as follows:

"Section 8-7.1. Organization. There shall be a fire department consisting of a fire commission, a fire chief, a deputy fire chief and the necessary staff.

Section 8-7.2. Fire Commission. The fire commission shall consist of nine members broadly representative of the community, appointed by the mayor with the approval of the council. The fire commission shall:

1. Adopt such rules, as it may consider necessary for the conduct 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 of any of its members and submit a written report of its finding and recommendations to the fire chief for his disposition.
4. Have such other powers and duties as may be provided by law.

Section 8-7.3. Fire Chief. The fire chief shall be appointed and may be removed by the fire commission. The chief may be removed by the fire commission only after being informed in writing of the charges, which are resulting in his dismissal, and after being given a hearing before the commission. The fire chief shall have had a minimum of five years experience in a fire department, at least three of which have been in a responsible administrative capacity.

Section 8-7.4. Duties and Functions of the Fire Chief. The fire chief shall:

1. Be the administrative head of the department.
2. Provide and perform firefighting and emergency rescue services in order to save lives and property from fires and from emergencies arising on land, on the sea and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same.
3. Train, equip, maintain and supervise a force of firefighting and emergency rescue personnel.
4. Investigate the cause, origin and circumstances of fires. Monitor the construction and occupancy standards of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law.
5. Adopt rules relating to the protection of persons and property against fires.
6. Appoint the deputy fire chief and private secretary to the fire chief.
7. Exercise such other duties, powers or functions as shall be provided by law or assigned by the mayor.

Section 8-7.5. Statement of Policy. It is hereby declared to be the purpose of this chapter of the charter to establish in the county a system of fire protection and prevention and emergency rescue, which shall be based on qualified and professional leadership and personnel. In order to achieve this purpose, the fire department shall be conducted in accordance with the following:

1. Standards for recruitment shall be designed to attract into the department persons with high degrees of education, intelligence and personal stability.
2. Promotions and other personnel actions shall be based upon fair and appropriate standards of merit, ability, and work performance.
3. Appropriate training shall be provided to the maximum extent possible and practicable.

It is hereby proposed that Article 15 of the Charter of the County of Maui be amended by adding a new section to be designated and to read as follows:

"Section 15-6. Transition Provisions Concerning Fire Commission. The fire chief serving on December 31, 2002 shall serve as interim fire chief. Should the fire chief vacate or be removed from office before appointment of a fire commission:

1. The deputy fire chief shall serve as interim fire chief; or
2. The mayor may commission an interim fire chief."

PROPOSED COUNTY CHARTER AMENDMENT

The following question to amend the Charter of the County of Hawaii is being submitted to the people to be voted upon at the General Election on November 7, 2000;

QUESTION NO. _____

Shall the County Charter be amended to establish a Fire Commission with the responsibility of appointing and removing the Fire Chief and performing other duties concerning the Fire Department?

YES _____

NO _____

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 departmental operations.

1. It is hereby proposed that Article XVI of the Charter of the County of Hawaii be amended by adding a new section to be designated and to read as follows:
"Section 16-11. Transition Provisions Concerning Fire Commission. The fire chief serving on December 31, 2000 shall serve as interim fire chief. Should the fire chief vacate or be removed from office before appointment of a fire commission:
(a) The deputy fire chief shall serve as interim fire chief; or
(b) The mayor may commission an interim fire chief."
2. It is hereby proposed that Article VI, Chapter 4, of the Charter of the County of Hawaii be amended as follows:
 - A. By amending Section 6-4.1 to read as follows:
"Section 6-4.1. Organization. There shall be a fire department consisting of a fire chief, a deputy fire chief, a fire commission and the necessary staff. The fire chief shall be the administrative head of the fire department."
 - B. By adding a new Section 6-4.2 to read:
"Section 6-4.2. Statement of Policy. It is hereby declared to be the purpose of this chapter of the charter to establish in the county a system of fire protection and prevention and emergency rescue which shall be based on qualified and professional leadership and personnel. In order to achieve this purpose, the fire department shall be conducted in accordance with the following:
 - (a) Standards for recruitment shall be designed to attract into the department persons with high degrees of education, intelligence and personal stability.
 - (b) Promotions and other personnel actions shall be based upon fair and appropriate standards of merit, ability, and work performance.
 - (c) Appropriate training shall be provided to the maximum extent possible and practicable."
 - C. By renumbering and amending the present Section 6-4.2 to read:
"Section [6-4.2] 6-4.3 Fire Chief, Qualifications. The fire chief shall be appointed by the fire commission. The chief may be removed by the fire commission only after being given a written statement of the charges and a hearing before the commission. The chief shall have had a minimum of five years of training in a fire department, at least three years of which shall have been in a responsible administrative capacity." [The fire chief shall be appointed by the mayor, confirmed by the council and may be removed by the mayor.]

- D. By renumbering and amending the present Section 6-4.3 to read:
"Section [6-4.3] 6-4.4. Powers, Duties and Functions. [The powers, duties and functions of the fire department shall be prescribed by ordinance and shall be exercised and performed by the fire department.] The fire chief shall:
- (a) Perform firefighting and emergency rescue work in order to save lives and property from fires and from emergencies arising on land, on the sea and hazardous terrain.
 - (b) Train, equip, maintain and supervise a force of firefighting and emergency rescue personnel.
 - (c) Monitor the construction and occupancy standards of buildings for the purposes of fire prevention and life safety.
 - (d) Provide educational programs related to fire prevention and life safety.
 - (e) Appoint the deputy fire chief and the private secretaries to the fire chief and the deputy fire chief.
 - (f) Have such other powers, duties and functions as may be required by law.

- E. By adding three new sections to read:
"Section 6-4.5. Fire Commission. There shall be a fire commission which shall consist of five members broadly representative of the community. The commission may appoint such staff and engage such consultants as necessary for the performance of its duties. The commission shall be governed by the provisions of section 13-4 of this charter.

- Section 6-4.6. Powers Duties and Functions. The fire commission shall:
- (a) Adopt rules necessary for the conduct of its business and review rules for the administration of the department.
 - (b) Review the annual budget prepared by the fire chief and make recommendations thereon to the mayor and the council.
 - (c) Review the department's operations, as deemed necessary, for the purposes of recommending improvements to the fire chief.
 - (d) Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.
 - (e) Review personnel actions within the department for conformance with the policies under section 6-4.2 of this charter.
 - (f) Hear complaints of citizens concerning the department or its personnel and, if necessary, make recommendations to the fire chief on appropriate corrective actions.
 - (g) Submit an annual report to the mayor and the council on its activities.
- Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department.

Section 6-4.7. Suspension; Removal; Appeals.
Suspension or removal of, and appeals from personnel actions by, any officer or employee shall be made pursuant to law and the rules of the department."

PROPOSED CITY CHARTER AMENDMENTS CITY AND COUNTY OF HONOLULU FOR THE 1996 GENERAL ELECTION

The following questions to amend the Charter of the City and County of Honolulu are being submitted to the people of the City and County of Honolulu to be voted upon at the General Election on Tuesday, November 5, 1996:

QUESTION NO. 1

Shall the Revised City Charter be amended to establish a Fire Commission with the responsibility of appointing and removing the Fire Chief and performing other duties concerning the Fire Department?

YES _____

NO _____

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 departmental operations.

The text of the RESOLUTION NO. 94-267, CD-2, is reproduced as follows:

RESOLUTION NO. 94-267, CD-2

INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973 (1994 EDITION), AS AMENDED, CONCERNING A FIRE COMMISSION.

WHEREAS, under the Revised Charter, as amended, the Fire Department is responsible for fire suppression and protection and emergency rescue activities within the City and County of Honolulu; and

WHEREAS, fire suppression and prevention and emergency rescue activities are necessary for the public health and safety and paramount among the governmental functions of the City; and

WHEREAS, thus, the activities must be performed by qualified, professional firefighting and rescue personnel; and

WHEREAS, more importantly, the leadership of the fire fighting and rescue personnel must also be qualified and professional, making imperative a selection and promotion system based on merit, ability, and work performance; and

WHEREAS, to ensure qualified and professional leadership and personnel for the Fire Department, as well as enhance public oversight of departmental operations, the Council finds that a Fire Commission should be established; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu:

1. That it propose and it is hereby proposed that the following question be placed on the 1996 general election ballot:

"Shall the Revised City Charter be amended to establish a Fire Commission with the responsibility of appointing and removing the Fire Chief and performing other duties concerning the Fire Department?"

2. That it propose and it is hereby proposed that Article XVI of the Revised Charter of the City and County of Honolulu 1973, as amended, be amended by adding a new section to be designated and to read as follows:

Section 16-113. Transition Provisions Concerning Fire Commission.

1. The fire chief serving on December 31, 1996 shall remain in office unless removed by the fire commission pursuant to section 6-503 of this charter.

2. Should the fire chief vacate or be removed from office before appointment of a fire commission:

(a) The deputy fire chief shall serve as interim fire chief or

(b) The mayor may commission an interim fire chief.

3. That it propose and it is hereby proposed that Article VI, Chapter 5, of the Revised Charter of the City and County of Honolulu 1973, as amended, be amended as follows:

A. By amending Section 6-501 to read:

Section 6-501. Organization-

There shall be a fire department (headed by) which shall consist of a fire chief, who shall be appointed and may be removed by the mayor, a fire commission, and the necessary staff. The fire chief shall be the administrative head of the fire department.

B. By adding a new Section 6-502 to read:

Section 6-502. Statement of Policy-

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

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

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

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

C. By renumbering and amending the present Section 6-502 to read:

Section [6-502.] 6-503. Fire Chief, Qualifications-

The fire chief shall be appointed by the fire commission. The chief may be removed by the fire commission only after being given a written statement of the charges and a hearing before the commission. The [fire] chief shall have had a minimum of five years of training and experience in a fire department, at least three years of which shall have been in a responsible administrative capacity.

D. By renumbering and amending the present Section 6-503 to read:

Section [6-503.] 6-504. Powers, Duties and Functions-

The fire chief shall:

(a) Perform firefighting and rescue work in order to save lives and property from fires and from emergencies arising on the sea and hazardous terrain.

(b) Train, equip, maintain and supervise a force of firefighting and rescue personnel.

(c) Monitor the construction and occupancy standards of [building] buildings for the purposes of fire prevention.

(d) Provide educational programs related to fire prevention.

(e) Appoint the deputy fire chief and the private secretaries to the fire chief and the deputy fire chief.

(f) Perform such other duties as may be required by law.

2. By adding three new sections to read:
Section 6-503. Fire Commission--

There shall be a fire commission which shall consist of five members. The commission may appoint such staff and engage consultants as necessary for the performance of its duties. The commission shall be governed by the provisions of section 13-103 of this charter.

Section 6-506. Powers, Duties and Functions--

The fire commission shall:

- (a) Adopt rules necessary for the conduct of its business and review rules for the administration of the department.
- (b) Review the annual budget prepared by the fire chief and make recommendations thereon to the mayor and the council.
- (c) Review the department's operations, as deemed necessary, for the purpose of recommending improvements to the fire chief.
- (d) Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.
- (e) Review personnel actions within the department for conformance with the policies under section 6-502 of this charter.
- (f) Hear complaints of citizens concerning the department or its personnel and, if deemed necessary, make recommendations to the fire chief on appropriate corrective actions.
- (g) Submit an annual report to the mayor and the council on its activities.

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

Section 6-507. Suspensions; Removal; Appeals--

1. Suspension or removal of any officer or employee shall be made pursuant to law and the rules of the department.

2. Appeals from personnel actions shall be in accordance with section 6-308 of this charter.

That it propose and it is hereby proposed that Section 5-103 of the Revised Charter of the City and County of Honolulu 1973, as amended, be amended to read as follows:

Section 5-103. Powers, Duties and Functions

The mayor shall be the chief executive officer of the city.

The mayor shall have the power to:

- (a) Except as otherwise provided, exercise direct supervision over all agencies enumerated in this article of the charter and other agencies as the mayor may deem desirable and through the managing director exercise supervision over all other executive agencies of the city. The mayor shall provide for the coordination of all administrative activities and see that they are honestly, efficiently and lawfully conducted. An exception to the mayor's supervisory power over a specified power, duty, or function of the public transit authority may be enacted by ordinance. If so enacted, the exception shall be deemed a valid exception for the purpose of this paragraph.

(b) Appoint the necessary staff for which appropriations have been made by the council. This paragraph shall not empower the mayor to appoint the staff of the public transit authority, or the deputy chief and private secretaries to the fire chief and the deputy fire chief.

(c) Except for positions in the public transit authority, create or abolish positions within the executive branch as provided by law. A monthly report of such creation or abolishment of positions shall be made to the council.

(d) Make temporary transfers of positions between departments or between subdivisions of departments; except that the mayor shall not be authorized to make temporary transfers of positions from, to, or within the public transit authority.

(e) Except as otherwise provided, recommend to the council a pay plan for all persons employed in the executive branch or any of its boards and commissions, whether as officers or otherwise.

(f) Appoint a personal representative who shall, subject to the mayor's direction, perform such ceremonial functions of the mayor's office and such other duties as the mayor may designate.

(g) Submit an operating and capital program and budget and necessary proposed budget ordinances annually to the council for its consideration and necessary action.

(h) Sign instruments requiring execution by the city, except those which the director of finance or other officer is authorized to sign by this charter, ordinance or resolution.

(i) Present information or messages to the council which, in the mayor's opinion, are necessary or expedient.

(j) In addition to the annual report, make periodic reports informing the public as to city policies, programs and operations.

(k) Call special sessions of the council.

(l) Veto ordinances, resolutions authorizing proceedings in eminent domain and resolutions adopting or amending the general plan.

(m) Have a voice, but no vote, in the proceedings of all boards provided for by this charter or by ordinance.

(n) Enforce the provisions of this charter, the ordinances of the city and all applicable laws.

(o) Exercise such other powers and perform such other duties as may be prescribed by this charter or by ordinance.

5. That it propose and it is hereby proposed that Section 4-104 of the Revised Charter of the City and County of Honolulu 1973, as amended, be amended by amending subsections 1 and 2 to read as follows:

1. All department heads and the managing director, as provided in sections 5-201, 5-301, 5-402, 6-101, 6-103, 6-104, 6-106, 6-201, 6-305, 6-401, (6-501), 6-701, 6-801, 6-902, 6-1002, 6-1101, 6-1201, 6-1301, 6-1401, 6-1501, shall be nominated and, by and with the advice and consent of the council, appointed and may be removed by the mayor, except as otherwise provided by this charter. Department heads shall be duly registered voters of the city and qualifications of department heads shall be as required by this charter.

2. When the position of head of an executive agency becomes vacant, and the mayor is the appointing authority, the mayor may temporarily fill the vacancy by granting a commission allowing the nominee to fulfill the responsibilities of the position. The commission shall begin when the mayor submits

to the council a request for confirmation. The commission shall expire when the council makes the confirmation decision. If the nominee fails to be confirmed by the council, the nominee shall not be eligible for another interim appointment to the same office."

6. That it propose and it is hereby proposed that Section 6-102 of the Revised Charter of the City and County of Honolulu 1973, as amended, be amended to read as follows:

"Section 6-102. Powers, Duties and Functions--

The managing director shall:

(a) Supervise the heads of all executive departments and agencies assigned to the managing director by section 4-102 of this charter.

(b) Evaluate the management and performance of each executive agency, including the extent to which and the efficiency with which its operating and capital program and budget have been implemented, appoint the necessary staff to assist in such evaluation and analyses and to assist the executive agencies in improving their performance and make reports to the mayor [and to the police commission, in the case of the police department] on the findings and recommendations of such evaluation and analyses. A report also shall be made to the police commission when an evaluation and analysis is performed on the police department. A report also shall be made to the fire commission when an evaluation and analysis is performed on the fire department.

(c) Prescribe standards of administrative practice to be followed by all agencies under the managing director's supervision.

(d) Attend meetings of the council and of any board, commission or committee, when requested by the mayor.

(e) Attend meetings of the council and its committees upon request and make available such information as they may require.

(f) Perform all other duties required by this charter or assigned in writing by the mayor."

7. Charter material to be repealed is bracketed. New Charter material is underscored. When revising, compiling, or printing these Charter provisions for inclusion in the Revised Charter of the City and County of Honolulu 1973, as amended, the Revisor of Charter need not include the brackets, the bracketed material, or the underscoring.

8. That the City Clerk be and is hereby directed:

A. To prepare the necessary ballots with the question contained in this Resolution and with spaces for "yes" or "no" votes on the question for presentation to the electors at the 1996 general election. The City Clerk may make technical and non-substantive changes to the form of the question presented in order to conform it to the form of other Charter amendment questions presented to the electors at the same election; and

B. To publish the above-proposed Charter amendments at length in a daily newspaper of general circulation in the City and County of Honolulu at least 45 days prior to its submission to the electors at the 1996 general election.

9. That upon approval of the Charter amendments proposed in this Resolution by a majority of voters voting thereon, as duly certified, the Charter amendments shall take effect on January 1, 1997.

CHAPTER 6 DEPARTMENT OF PARKS AND RECREATION

Section 8-6.1. Organization. There shall be a department of parks and recreation consisting of a director of parks and recreation and the necessary staff.

Section 8-6.2. Director of Parks and Recreation. The director of parks and recreation shall be appointed and may be removed by the mayor. The director of parks and recreation shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.

Section 8-6.3. Powers, Duties and Functions. The director of parks and recreation shall:

1. Plan, design, construct, maintain and operate all parks and recreational facilities administered by the county.
2. Develop and implement programs for cultural, recreational other leisure activities for the people of the county.
3. Perform such other duties and functions as shall be assigned by the mayor.

CHAPTER 7 DEPARTMENT OF FIRE CONTROL

Section 8-7.1. Organization. There shall be a department of fire control consisting of a fire chief, public safety commission, and the necessary staff. (Amended 1986)

Section 8-7.2. Fire Chief. The fire chief shall be appointed by the mayor and may be removed by the mayor. The fire chief shall have had a minimum of five years of experience in fire control, at least three years of which shall have been in an administrative capacity.

Section 8-7.3. Powers, Duties and Functions. The fire chief shall:

1. Provide fire protection to the people and property of the county.
2. Investigate the cause, origin and circumstances of fires.
3. Adopt rules relating to the protection of persons and property against fires.
4. Approve building plans as provided by law.
5. Coordinate and provide rescue protection to persons in the county. (Amended 1984)
6. Provide for the mitigation and stabilization of hazardous materials and incidents relating to the same. (Amended 1992)
7. Exercise such other duties, powers or functions as shall be provided by law or assigned by the mayor.

Section 8-7.4. Public Safety Commission. (Amended 1986)
The public safety commission shall consist of nine members

appointed by the mayor with the approval of the council.

The public safety commission shall:

1. Review the operations of the department of fire control and make recommendations for changes which may be desirable to improve the performance of emergency functions and the provision of public safety services.
2. Receive and investigate any complaints brought forth by the public against the conduct of the department of fire control or any of its members and submit a written report of its findings and recommendations to the fire chief for his disposition.
3. 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.
4. Have such other powers and duties as may be provided by law.

Section 13-2. Boards and Commissions. 1. Unless otherwise provided, the members of all boards or commissions shall serve for staggered terms of five years beginning on April 1st and ending on March 31st five years thereafter. All members of boards and commissions recognized by this charter who hold office upon the effective date of this amendment shall continue in office for the balance of the term for which they were originally appointed and ninety (90) days thereafter to the following March 31st.

Each new board or commission established by this charter shall have nine members. Of the nine members initially appointed, three shall serve for a term of five years, two shall serve for a term of four years, two shall serve for a term of three years and two shall serve for a term of two years. (Amended 1988)

2. Not more than a bare majority of the members of any board or commission shall belong to the same political party.

3. In making appointments to all boards and commissions, the mayor shall give due consideration to balanced geographic representation.

4. Any vacancy occurring on any board or commission shall be filled for the unexpired term as provided for herein.

5. The members of boards and commissions appointed by the mayor, with approval of the council, may be removed for cause upon recommendation of such removal by the mayor and the approval of two-thirds of the entire membership of the council.

6. No member of any board or commission shall be eligible for a second appointment to the same board or commission prior to the expiration of two years, provided that members of any board or commission initially appointed for a term not exceeding two years shall be eligible to succeed themselves for an additional term. No member of any board or commission shall serve beyond the time when his or her term expires unless the member is specifically reappointed. A vacancy shall be automatically created upon the expiration of a member's term which vacancy shall be filled as provided for herein.

7. Employees and officers of the State or county shall be eligible to serve on boards and commissions, provided that such

service does not result in a conflict of interest.

8. A majority of the entire membership of a board or commission shall constitute a quorum to do business, and the affirmative vote of a majority of the entire membership of a board or commission shall be necessary to take any action.
(Amended 1988)

9. Each board or commission shall select a chairman from its membership annually.

10. All boards and commissions shall have the power to subpoena witnesses and administer oaths to witnesses as to all matters within the authority of such boards or commissions.

11. All boards and commissions shall hold public hearings whenever required or deemed necessary and shall provide due notice to the public by publication in a newspaper of general circulation in the county.

12. The deputies of the administrative head of any department shall be appointed by the administrative head without the necessity of confirmation by any commission or board.

13. The 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. Necessary expenses may be paid in advance as per diem allowances as may be established by ordinance.

14. Except for purposes of inquiry and as otherwise provided by this charter or by law, no board or commission nor its membership shall interfere in any way with the administrative affairs of the department.

15. Each board and commission shall have power to establish its own rules of procedures necessary for the conduct of its business, except as otherwise provided in this charter.

16. A vacancy on a commission or board due to the expiration of a member's term shall be filled as follows:

Not more than seventy (70) days nor less than sixty (60) before the vacancy is to occur the mayor shall submit to the council the name of the mayor's nominee to fill the vacancy. Within sixty (60) days thereafter the council shall act to approve or disapprove the nominee. If the council disapproves the nominee it shall immediately so notify the mayor of its action. The mayor shall then submit the name of a second nominee to the council within ten (10) days and the council shall act thereon within sixty (60) days. The process shall continue until the vacancy is filled. In the event that the council fails to approve or disapprove a nominee within the time periods provided for herein, the nominee shall be deemed appointed to fill the vacancy upon its occurrence.

17. A vacancy on a commission or board due to death, resignation or removal shall be filled as follows: Within thirty (30) days of the occurrence of a vacancy the mayor shall submit to the council the name of the mayor's nominee to fill the vacancy. Within sixty (60) days thereafter the council shall act to approve or disapprove the nominee. If the council disapproves the nominee it shall immediately so notify the mayor of its action. The mayor shall then submit the name of a second nominee to the council within ten days and the council shall act thereon within sixty (60) days. This process shall continue until the vacancy is filled. In the event that the council fails to approve or disapprove a nominee within the time periods provided

Department of Fire Control

Mission Statement: To protect life, property and the environment from fires, hazardous material releases and other life-threatening emergencies.

Fire Prevention Bureau: The Fire Prevention program is essential to abate fires and life-safety hazards before they can cause injury and property damage. This is accomplished by working with all fire fighters to inspect all schools, hospitals, and commercial buildings, and to seek the correction of any hazards found; to educate residents in fire prevention practices; to review plans for commercial buildings to insure all fire safety features are included before the building is built; to review, update and enforce the County Fire Code; to investigate fires to determine their origin and cause for information on future fire hazards awareness and the prosecution of arson cases; and to maintain inspection and investigation records and reports to measure the results.

- Code Enforcement
- Fire Education
- Plans Reviewing
- Fire Investigation
- Administration

Training: This program provides training for fire fighting, rescue and hazardous materials; develops new programs that include the latest methods, techniques, and skills; and researches and evaluates new equipment for safety, effectiveness and efficiency. It also utilizes equipment and apparatus to ensure that personnel are trained to the highest degree of proficiency and are able to use the equipment and apparatus in the most efficient way.

Fire/Rescue Operations: The Fire/Rescue Operations program provides fire protection, suppression, rescue and emergency services. It conducts commercial, hotel and industrial pre-fire planning. Pre-fire planning consists of building inspections to determine the building's construction material, contents (people as well as materials that determine "fuel load"), entrances and availability of fire protection equipment on property.

Administrative Services: The Administrative Services provides a variety of essential non-emergency and support services.

- Administration
- Maintenance Shop
- Equipment and Supplies

16.04A.010 The State Fire Code incorporated.

The State Fire Code as adopted by the State of Hawaii on March 27, 1992 pursuant to chapter 132, Hawaii Revised Statutes, which code adopts, with modifications, the Uniform Fire Code, 1988 Edition, herein referred to as the "Uniform Fire Code," as copyrighted and published in 1988 by the International Conference of Building Officials and the Western Fire Chief's Association, 5360 South Workman Mill Road, Whittier, California, and the 1989 and 1990 Uniform Fire Code Supplements, is incorporated by reference and made a part hereof, subject to the amendments set forth in this chapter. (Ord. 2509 § 3 (part), 1996)



Public Safety Commission

Charter Section 8-7.4. (Amended 1986) The public safety commission shall consist of nine members appointed by the mayor with the approval of the council. The public safety commission shall:



MAUI COASTAL LAND TRUST
PO BOX 330731
KAHULUI, HI 96733
(808) 244-LAND (244-5263)
Fax (808) 875-2306

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February 6, 2002

The Charter Commission: Public Hearing February 6, 2002

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I am here tonight to encourage the Charter Commission to support Mayor Kimo Apana's and the Maui Coastal Land Trust's proposal to create the 'Open Space, Natural Resources, Cultural Resources and Scenic Views Preservation Fund.' I encourage you to include in this amendment: 1. language to set aside a minimum of 1% annually of the County's unrestricted budget into this fund; 2. That this money shall not revert back to the General fund but shall accumulate from year to year if not spent; 3. That the purpose of the fund be to purchase or otherwise acquire land or property for land conservation purposes, whether this be acquired by the county or some other qualified land conservation organization; and 4. That a citizen's advisory board be established to support the purpose of this fund which would recommend any lands which would be considered for preservation by this fund.

The pressure on Maui's open space is accelerating. The need to preserve Maui's shoreline, forested areas, rural atmosphere and natural areas has never been more acute.

I understand that there has been concern by the Charter Commissioners about several aspects of the proposal. I would like to address these briefly.

1. Yes, the County has in many years spent more than 1% for open space. However, establishing a minimum of 1% would provide a minimum of funds annually which would 1. allow Maui County to act quickly when a special parcel becomes available or 2. when a bargain price is available.. 3. Also, bonds could be issued against the monies in the fund. 4. County funds such as these available in this fund would also allow the county to leverage money with other private and government grants, as matching funds, multiplying the county's money by a factor of two or three, which has not been taken advantage of by Maui County in the past.