

TO: Maui County Charter Commissioners
FROM: Kase Higa, County Attorney
SUBJECT: Recommended Technical Changes on First Draft of the
Charter of the County of Maui

The following changes are recommended to clarify the intent of some of the sections of the charter and also to provide for more consistency:

1. Revise Section 3-4 (Vacancy in Office) to read as follows:

"Section 3-4. Vacancy in Office--Except as herein-after provided, a vacancy in the office of any councilman shall be filled by the appointment, by the mayor, of the person who received the highest number of votes among the losing candidates at the last election for councilmen. In the event such person is not qualified or is unavailable to fill the vacancy, the vacancy shall be filled by special election to be called by the council within ten days and to be held within sixty days after the occurrence of the vacancy. If any special or general election is to be held in the county after thirty days and within one hundred eighty days after the occurrence of the vacancy, then the election shall be held in conjunction with such other election. At such election the person receiving the highest number of votes shall be declared elected to fill the vacancy for the unexpired term.

In case, however, a vacancy occurs in the seat of the Molokai or Lanai councilman, as the case may be, if the unexpired term is for less than one year, the council shall, by ^{an affirmative vote of five or more} ~~a majority vote of all the members~~, elect a person with the requisite qualifications from the island of Molokai or the island of Lanai, as the case may be, for the unexpired term; but if the unexpired term is for

one year or more, the vacancy shall be filled by special election to be called by the council in the manner set forth in the foregoing paragraph."

2. Delete Section 3-8 (Duties of Council). What is included in Section 3-8, with exception of item 4, is actually covered by Section 3-9 (Powers) and Article IX (Financial Procedures).

Section 3-9 (Powers of County Council) should then be renumbered Section 3-8.

As to item 4 (Audit) of Section 3-8, omit sentence (a), "The council shall provide for the continuous verification of receipts and expenditures of all agencies of the county." This refers to internal audit and is a function to be performed by the Finance Director. Item 4 (b) should be a separate section and should read as follows:

"Section 3-9. Audit--Within ten days after the close of each fiscal year or at the close of every second fiscal year if the council should so decide, and at any other time as may be deemed necessary, the council shall cause an independent audit of all county funds and accounts to be made by a certified public accountant or a firm of certified public accountants. The council shall determine the type and scope of audit. A copy of the audit report shall be filed with the county clerk and shall be of public record."

3. Revise Section 4-1 (Actions of the Council) to read as follows:

"Section 4-1. Actions of the Council--Every legislative act of the council shall be by ordinance, except as may be authorized by general law, provided that for the purposes of this section"

The exception as to when authorized by general law is for the purpose of recognizing statutory procedures authorizing the

use of resolutions or certain legislative acts, such as traffic regulations.

4. Paragraph 3 (a) of Section 4-2 (Ordinances and Resolutions) should be designated paragraph 3. Paragraph 3 (b) should be designated paragraph 4.

5. Revise paragraph 7 of Section 4-2 to read as follows:

^{six}"7. Should the council find by an affirmative vote of ~~five~~ or more members of the council, the existence of an emergency . . . "

6. A new paragraph should be added under Section 4-2 to read as follows:

"8. Resolutions authorizing proceedings in eminent domain shall be adopted in such manner as may be provided by general law."

7. Revise the fifth sentence in paragraph 1 of Section 4-3 to read as follows:

"If the bill, upon reconsideration, is again passed by the affirmative vote of ^{six}~~five~~ or more members of the council, the presiding officer . . . "

8. Revise the sixth sentence in paragraph 1 of Section 4-3 to read as follows:

^{six}"If the bill fails to receive the vote of at least ~~five~~ members of the council, it shall be deemed finally lost."

9. Delete the second sentence in paragraph 1 of Section 4-4 pertaining to revisions or amendments. The Office of the Corporation Counsel of the City and County of Honolulu recommends this omission.

10. Revise Article V in the following respects:

(a) Change the title to Office of the County Clerk.

(b) "Section 5-1. Organization--There shall be an office of the county clerk which shall be headed by the county clerk."

"Section 5-2. County Clerk--The county clerk shall be appointed and may be removed by the chairman of the council. The council shall fix the salary of the county clerk.

Section 5-3. Powers, Duties and Functions--The county clerk shall:

1. Be the clerk of the council.
2. Take charge of, safely keep and dispose of all books, papers and records which may properly be filed in his office and keep in separate files all ordinances, resolutions and regulations and cumulative indices of the same, or exact copies thereof, enacted or adopted by the council.
3. Have custody of the county seal, which shall be used to authenticate all official papers and instruments requiring execution or certification by the county clerk in the exercise of his office.
4. Conduct all elections held within the county pursuant to this charter or the laws of the State.
5. Perform such other functions as the council may prescribe.
6. Have the same powers as the department heads of other departments."

The Corporation Counsel advises against placing the County Clerk's position in the position classification plan since the Clerk should be equal in status to the head of a department in the executive branch.

11. Revise the second sentence in paragraph 1 of Section 6-2 to read as follows:

"Upon recommendation of the mayor, the council may by the affirmative vote of ^{six} five or more of its members change, abolish, combine or re-arrange the agencies of the county."

12. Revise paragraph 2 of Section 6-2 to read as follows:

"New functions may be assigned by the mayor to existing agencies, but to the extent that this is not practicable, the council by the affirmative vote of ^{six} ~~five~~ or more of its members may, upon the recommendation of the mayor, create additional departments."

13. Revise Section 6-3 to read as follows:

"Section 6-3. Other Agencies--No agency, department, board or commission shall be created after the effective date of this charter, unless otherwise provided in this charter, except as recommended by the mayor and approved by the affirmative vote of ^{six} ~~five~~ or more members of the council." (The words "unless otherwise provided in this charter" are inserted in order to make clear that some agencies, such as the Urban Redevelopment and Urban Renewal Agencies and the Office of the Prosecuting Attorney, may be created by less than two-thirds vote.)

14. Revise paragraph 4 of Section 6-6 to read as follows:

"4. Regulations affecting the public as may be necessary for the performance of the functions assigned to agencies may be issued as authorized by general law."

It is the opinion of the Corporation Counsel that the Administrative Procedure Act (Act 103, SLH 1961) supersedes the City and County Charter on such regulations.

15. Revise paragraph 7 of Section 7-4 to read as follows:

"7. Sign instruments requiring execution by the county, including deeds and other conveyances, except those . . . "

16. Delete "and assistant" in Section 8-1.4. This is to remove any ambiguity in the meaning of deputy county attorneys.

17. Revise the first sentence in Section 8-1.7 to read as follows:

"Upon the recommendation of the mayor and upon the affirmative vote of ^{six} ~~five~~ or more members of the council, . . . "

18. Revise Section 8-2.3 in the following respects:

(a) Add a new paragraph to be numbered 5. (Subsequent paragraphs should be renumbered.)

"5. Provide an internal audit of all agencies of the county, except for an agency which is governed by an independent board or commission."

(b) Revise present paragraph 5 to read as follows:

"6. Contract for services of independent contractors, including contractors for public works, and permit disbursements to be made pursuant to policies established by the council." (This change is suggested in order to make it clear that the Director of Finance shall advertise for and award public works contracts as well as service contracts.)

(c) Revise present paragraph 10 to read as follows:

"11. Sell real property upon which improvement assessments are not paid within the period prescribed, and dispose of real property or movable property not needed by any agency of the county pursuant to policies established by the council, provided that all deeds and other conveyances shall be executed by the mayor." (It is recommended that the Director of Finance be authorized to dispose of real property not needed by the county since this subject matter is not provided for in the charter.)

19. In Chapter 6 the qualification of the Personnel Director should be inserted--either that recommended by the City and County Charter or that recommended by the Maui County Civil Service Commission should be used.

20. In Chapter 7 there should be some qualification requirements for the Manager of the Board of Water Supply. Even though he need not be an engineer, he should be a person with some administrative experience.

21. Chapter 8--Police Department:

(a) Make clear whether Police Commission is only advisory.

(b) Make clear who hears appeals.

22. Chapter 10--Hospital Department:

(a) Should the 11 members be constituted as they are presently?

(b) Should the hospital administrators have some qualifications?

(c) At present pensioners needing medical service are processed by the County Chairman's Office. Perhaps this function should be transferred to the Hospital Department.

(d) At present the Maui Community Hospital has contracts with Dr. Kashiwa, Dr. Wong and Dr. Howell as County Physicians. The County has contracts with Dr. Stevens of Molokai and also Dr. Howell as County Physicians. Should all these be under the Hospital Department?

23. Revise Section 8-11.1 to read as follows:

"Section 8-11.1. Organization and Functions--Upon the affirmative vote of five or more members of the council, Urban Redevelopment and Urban Renewal Agencies may be created as provided by law."

24. The Corporation Counsel suggests that the budget procedures set forth in Article IX (Financial Procedures) are very much in detail, and from past experience he seriously questions the advisability of incorporating too much detail.

Suggested deletions and revisions:

(a) Delete paragraphs 2 and 3 of Section 9-2. This is only an internal matter. The provisions of these paragraphs are contained in Sections 9-3 and 9-6.

(b) Delete from paragraph 1 of Section 9-3 the third sentence to the end of the paragraph. These are details which can be worked out between the County Council and the Mayor.

(c) Delete the last sentence of paragraph 5 of Section 9-6.

(d) Revise paragraph 2 of Section 9-8 where it says "three-fourths of those elected" to "seven members of the council".

(e) Revise paragraph 1 of Section 9-11 to read as follows:

"1. No payment shall be authorized or made and no obligation incurred against the county except in accordance with appropriations duly made, and under such procedures and policies as may be established by the director of finance. If any county officer or employee knowingly authorizes or makes any payments or incurs any obligation in violation of the provisions of this charter, or in violation of the provisions of the procedures and policies established by the director of finance, or takes part therein, that action shall be cause for his removal."

(f) Delete Section 9-15 since the disposition of movable property is covered under Section 8-2.3, paragraph 11. 25. Revise Section 9-16 to read as follows:

" . . . of all properties and all activities of the county . . . "

This is recommended by the Corporation Counsel in order that certain types of activities and private property (employees using their own cars) may be insured.

26. Revise Section 13-5(Expenses) by adding the following sentence:

"Necessary expenses may be paid in advance as per diem allowances as established by the council."

27. Revise paragraph 1 of Section 13-10 (Records and Meetings Open to Public) to read as follows:

"1. All records of every agency of the county shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any State or Federal law, provided that, except where such records are open under any rule of court, the county attorney may determine which records in his office may be withheld for public inspection when such records pertain to the preparation of the prosecution or defense in any action or proceeding, prior to its commencement to which the county is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of the character or reputation of any person. Certified copies of extracts from public records shall be given by the officer having the same in custody to any person demanding the same and paying or tendering twenty cents a folio of one hundred words for such copies or extracts."

28. Delete Section 3-6 (Removal of Councilmen) and Section 7-7 (Removal of Mayor) and combine both sections into Section 13-14 (subsequent sections should be renumbered) to read as follows:

"Section 13-14. Impeachment of Officers--Any officer appointed or elected to an elective office may be impeached for malfeasance, misfeasance or nonfeasance in office. The supreme court shall constitute a board of impeachment in any proceeding for the removal of such officer who may be charged on any of the foregoing grounds. The charge or

charges shall be set forth in writing in a petition for impeachment signed by not less than five percent of the voters registered in the last general election for mayor. If the board sustains the charge or charges, such officer shall be deemed removed from office. The officer sought to be impeached and the petitioners seeking the impeachment shall bear their own attorneys' fees and other costs of such proceedings."

29. Make the following grammatical changes:

(a) Section 7-1--"a mayor" should be "the mayor".

(b) Section 8-2.1--"a director of finance" should be "the director of finance".

(c) Section 8-3.1--"a county engineer" should be "the county engineer".

(d) Section 8-4.1--"a fire chief" should be "the fire chief".

(e) Section 8-5.1--"a planning director" should be "the planning director".

(f) Section 8-6.1--"a personnel director" should be "the personnel director".

(g) Section 8-7.1--"a manager" should be "the manager".

(h) Section 8-8.1--"a police chief" should be "the police chief".