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COUNTY CLERK'S OFFICE  
COUNTY OF MAUI

REPORT OF THE CHARTER  
COMMISSION OF THE COUNTY OF MAUI

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On the 18th day of October, 1982, at the County Building of the County of Maui, the Charter Commission of the County of Maui met at a regularly scheduled meeting and those members present voted unanimously to adopt this Report of the Charter Commission of the County of Maui.

DATED at Wailuku, Maui, Hawaii, this 18th day of October, 1982 A.D.

*K. Yvonne Tuell*  
Yvonne "Bonnie" Tuell  
Chairman

*William F. Crockett*  
William F. Crockett  
Vice-Chairman

*Agrifina Cabebe*  
Agrifina Cabebe  
Member

*Clarence Cravalho*  
Clarence Cravalho  
Member

*Adolph H. Desha 11-10-82*  
Adolph H. Desha  
Member

*Milton E. Fricke*  
Milton Fricke  
Member

*Rachael Jio 12-03-82*  
Rachael Jio  
Member

*Cecily H. Kikukawa 12-06-82*  
Cecily H. Kikukawa  
Member

*Roger MacArthur*  
Roger MacArthur  
Member

*Baird Miller*  
Baird Miller  
Member

*Paul Pladera*  
Paul Pladera  
Member

REPORT OF THE CHARTER  
COMMISSION OF THE COUNTY OF MAUI

The Charter Commission of the County of Maui was appointed and impanelled pursuant to Section 14-3 of the Maui County Charter and Ordinance No. 1131 of the County of Maui. The Commission took office on July 17th, 1981, and submitted a final draft of a new charter to the County Clerk on July 19th, 1982. During the one year period of its deliberations on a new charter the Commission held 18 public hearings throughout the different regions of the County of Maui and met 51 times in meetings open to the public to discuss and draft the proposed new charter submitted to the County Clerk.

The purpose of this report is to discuss and clarify several areas of the new charter which differ from the two charters of the past. It is not the purpose of this report to discuss every substantive change from the prior charter. In those areas where changes have been made to the language of the prior charter it should not be presumed that such changes were stylistic only even though the changes have not been discussed herein.

Although the Commission attempted to keep accurate minutes of its proceedings such minutes are not at all times truly reflective of the discussions and intentions of the Commission. It is recognized by the Commission that in the future, provision of the new County Charter will be subject to interpretation by attorneys, government officials, the courts, and the public. In interpreting the County Charter the minutes of this Charter Commission's proceedings will no doubt be consulted. In the event such minutes differ from this report the Commission considers those minutes to be in error and hereby amends such minutes to comply with the language contained herein.

Among those changes proposed by the Commission three changes are deemed of major significance. The first is the power of the Mayor to shift certain duties from one department to another without Council approval. The second major change strips the rule and decision making power from the Board of Water Supply and balances these powers between the Mayor and the Council to increase accountability. The final major area of change involves amendments to the budget process to insure that the County continues to operate without deficit spending and that the level of management of the County's finances is increased.

The Commission has attempted to analyze fourteen years of charter rule in the County and preserve those portions of the prior two charters which have weathered the past one and one-half decades well. Unquestionably, however, as times change so must the basic structure of government. The proposed charter attempts to address the changing needs of the citizens of Maui while at the same time insuring continuity with the present system of local government.



The Commission recognizes that a charter is only a document presenting a structure for good government. A charter does not, and unfortunately cannot, guarantee good government. The Commission unanimously feels that it has provided the People of the County of Maui with the opportunity to select an improved governmental structure for their county. But the real test ahead of us only starts with the selection of this new charter. Thereafter, the electorate will have to be diligent in choosing elected officials who will be accountable to the people and will steer our County towards prosperity in the future.

Maui no ka oi - Maui is the best. Working together we will insure that we stay at the top.

#### COUNTY COUNCIL

The Commission made no major change to §3-1 effecting the composition of the County Council. The Council continues to be composed of nine (9) members elected for two-year terms. Of those nine (9) members one must be a resident of Lanai, one a resident of Molokai, one a resident of East Maui, one a resident of West Maui, three must be residents of Central Maui and the remaining two members have no district residency requirement. The Commission did question whether the present at-large system met minimum constitutional requirements. After conferring with its attorney and studying the issue the Commission concluded that the at-large system was constitutional.

Subsections 1, 2 and 3 of §3-1 have been altered to reflect the new precincts established for the 1982 election by the State of Hawaii. The Commission attempted as closely as possible to retain the same geographical boundaries described in the Charter adopted in 1976. Unfortunately at the time the proposed charter was adopted by the Commission no official map or boundary descriptions had been published by either the State of Hawaii or the County of Maui. It was the Commission's intent that the precinct designations used to describe boundaries would be those precincts actually recognized by the Lieutenant Governor's Office of the State of Hawaii for the 1982 general election.

In §3-3 of the 1976 charter the Commission elected to delete the final sentence of Paragraph 2 which provides for judicial review of any Council action judging the qualifications of one of its members. The Commission found that the language of this sentence was ambiguous as to what form of judicial review it allowed for. The Commission considered three alternative forms of judicial review, to wit, a trial de novo, a less thorough form of judicial review similar to that allowed by the Administrative Procedures Act, and finally a review by a court based solely on constitutional standards. After careful review the Commission determined that any judicial review of a finding by the Council as to the

qualifications of one of its members should be restricted to the inherent power of the court to review any decision of the Council to safeguard the constitutional rights of the party or parties affected thereby. As the Commission found that such a review was inherent in the judiciary, language prescribing such a review was unnecessary. (Powell v. McCormack, 395 U.S. 486 (1969))

Section 3-4 of the 1976 charter provides for the procedure to fill a vacancy in the office of a council member. This section has been amended in two respects. First, the Commission found it appropriate to designate the procedure for choosing a new council member to fill a vacancy, that procedure being the use of a resolution. In addition the Commission felt it necessary to avoid future problems involving numerous vacancies on the County Council by allowing vacancies to be filled by a vote of a majority of the remaining members on the Council rather than a majority of the full council membership. Under the 1976 charter a disaster leaving four vacancies on the Council could be filled by a unanimous vote of the five remaining members. The proposed charter would eliminate this situation by allowing the majority of those five remaining members (i.e. three members) to concur in the appointment of one or more persons to fill the four vacancies.

Provisions of the 1976 charter regarding procedures to be followed by the Council have been relaxed in many cases and left to the Council to set by its own rules. Other procedures have been changed slightly. The following is a list of the changes to the procedural requirements to be followed by the Council:

1. The 1976 charter provides that after its election the Council shall hold its first meeting on January 2nd. In the event, however, that January 2nd falls on a Sunday, the meeting shall be held on the following day. This requirement has been altered by the Commission to provide that the first meeting shall be on January 2nd unless such day falls on a Saturday or Sunday. In that case the first meeting shall be held on the following Monday. This change was made to prevent the necessity of holding a Saturday council meeting which although normally ceremonial in character, would require extensive expenditure of public funds for overtime paid for the council staff.

B. Section 3-6 (3) has been amended by deleting the reference to the journal being a "public record" and describing said journal as a "public journal". This change is one of form only.

C. Section 3-6(4) requires all actions of the County Council to be by a majority vote. It has been amended by inserting the language "unless otherwise provided for herein" which language applies only to instances of vacancies in the office of council members.

D. Section 4-1 of the 1976 charter has been amended by deleting the requirement of specific introductory language

for resolutions and ordinances. The Commission felt that it was unnecessary for the charter to provide for such introductory language and that the Council, by its rules, could prescribe appropriate language.

E. Section 4-2(1) has been considerably shortened both for form as well as substance. The 1976 edition of said section requires that bills be passed by a majority of the council members and that the ayes and noes shall be entered in the journal. This language has been eliminated because of its redundancy. (See §3-6(4)) In addition the language of said section requiring the full reading of bills upon a vote of three of the council members has been deleted and any such requirement is left to the discretion of the Council to deal with in its procedural rule making power.

F. Section 4-2(2) has likewise been amended to provide that resolutions may be passed on one reading. Procedures regarding the number of votes necessary to pass a resolution and the recordation of those votes have been deleted as they are redundant. In addition, procedures regarding any requirements as to the full reading of resolutions prior to a vote have been left to procedural rules of the Council.

G. The provision of §4-2 providing for the effective date of ordinances has been deleted in its entirety. Although the Commission agreed wholeheartedly with the intent of said subsection, the Commission felt that it was unnecessary language and that all ordinances would take effect immediately by operation of law unless otherwise provided for therein. The language of the first sentence of §4-2(5) has been revised in form only. The requirement contained in the second sentence thereof has been deleted for the reason that such bills are by law a matter of public record and, therefore, are open to inspection by the public. The Commission found that such language was unnecessary.

H. Section 4-2(6) has been amended to require publication of bills passed on final readings whether or not such bills are enacted into law.

I. Language has been added restricting the power of the Council to waive procedural rules in emergency situations to only those emergencies "threatening life, health or property". The Commission found the term "emergency" ambiguous and wished to restrict the power of the Council to waive its procedural requirements. In addition, the Commission recognized the problem of physical presence at an emergency Council meeting in a county composed of three populated islands. The Commission has provided that in the event of an emergency necessitating emergency meetings such emergency meetings may be held by conference telephone call or similar communication devices. Although the Commission recognized the necessity for such a procedure, it felt it advisable to leave to the Council's rules the specific procedures to be followed in holding such a meeting. Section 4-2(9) has been amended by

changing the word ordinances to bills<sup>1</sup> and deleting any reference to approval by the mayor as such reference is unnecessary.

J. Language in §4-3(1) requiring that bills passed by the Council shall be authenticated by the County Clerk and the presiding officer of the Council prior to submission to the Mayor has been deleted by the Commission as unnecessary. In the event that the Council feels such authentication is necessary it may, by rule, require such authentication.

The final sentence of §4-3(1) has been deleted by the Commission because it is redundant. Section 4-4 has been amended in its entirety to provide that the Council may by rule provide for the form and content of bills, ordinances and resolution. As stated earlier, it was the Commission's opinion that the form of bills and most procedural requirements regarding their passage was not the proper subject for the charter but was best left to the Council to prescribe by rule.

Section 3-7, Powers of the Council, has been amended in several respects. However, no amendment to that section, or any other section of the proposed charter, should be construed as implying any intent on the part of the Commission to strip the Council of its policy-making function. Throughout its deliberation the Commission continuously voiced the resolve that the County Council should continue to be the policy-making body of the County of Maui and that the role of the executive branch of the County should be to carry out those policies set by the Council. Although the Commission has designated the Council as the "legislative body" of the County in the preamble to §3-7, this is not to imply that the Council shall not continue to be the "policy-determining body" of the County.

<sup>1</sup> Throughout the 1976 charter references are made to legislative actions of the Council as being ordinances. Such references are deceptive as a bill does not become an ordinance until it has been signed by the Mayor or a mayorial veto has been overridden by the Council. Therefore, throughout the proposed charter numerous references to legislative actions which had been formally referred to as passage of ordinances have been amended by utilizing the term "bill" rather than "ordinance". In addition the term "passage" has been utilized throughout the charter to designate the approving vote of the Council on a bill. The term "enactment" has been utilized to designate that act, be it approval by the Mayor or the override of a veto by the Council, which designates the point in time when a bill becomes an ordinance and has the full force and affect of law.



As shall be discussed later in this report the Commission has taken from the County Council the power to establish county departments.

Section 3-7(2) and (3) have been amended to delete the terms "levy" and "make". The Council neither levies taxes nor makes appropriations. It only legislates in these areas. Any action of the Council regarding taxes, rates, fees, assessments or appropriations of monies are subject to the approval or disapproval of the Mayor as provided for in §4-3. The language of the 1976 charter is misleading. One is mistakenly led to believe that the action of the Council regarding taxes and appropriations is final.

Section 3-7(6) has been amended by deleting any reference to appointment of employees. This deletion has been made for the reason that the Council should not be involved in the appointment of employees to the executive branch of the government other than those employees who require Council approval (i.e. the Prosecutor and the Corporation Counsel). Section 3-8 does give the power to the Council to appoint its own staff however.

Section 3-7(7) of the 1976 charter has been amended by deleting any reference to departments "subject to the direction and supervision of the mayor" as all departments of the County of Maui fall under the direction and supervision of the Mayor.

Section 3-7(5) has been deleted in its entirety. The Commission strongly felt that as the Council was the policy-making body of the County it should have no executive functions other than those specifically provided for in the charter. Therefore, the Council should not be authorized to enter into contracts with other governmental agencies. This power has been given to the Mayor (see §7-5(16) of the proposed charter) but is not intended to give the Mayor carte blanche power to enter into such contracts. Such power is restricted by the policy-making authority of the Council.

Section 3-8 dealing with the Office of Council Services has been amended by the Commission. The present §3-8 provides that the Council may establish an Office of Council Services. The Commission felt that such an office was necessary for the proper performance of the council function and establishes such office as a charter office. Section 3-9(2) has been amended to clarify restrictions on council members from contacting county employees. The amendment excludes from such restrictions employees from the Office of Council Services and the County Clerk's Office.

#### COUNTY CLERK

Article 5 has been amended by providing for two additional powers and duties for the County Clerk. The first additional power given to the County Clerk is that of certifying ordinances. Although this has always been a function of the county clerk it was felt by the Commission that



lest the issue ever be raised in a judicial proceeding it was necessary specifically to give this power to the County Clerk. The second change provides that the County Clerk shall adopt rules for the classification, storage and destruction of all of the County's records. It was felt by the Commission that the public's ability to examine the public records of the County was deterred by any lack of systematic record keeping. Further the Commission recognized that not all public records are open to inspection by the public (see §92-50 et seq, H.R.S.) and that some means of classifying those records which shall be open to public inspection (as opposed to those which shall be closed to public inspection) should be formulated. The task of formulating such rules (pursuant to Chapter 91, H.R.S.) is given to the County Clerk. It was not the intent of the Commission to saddle the County Clerk with the responsibility of classifying, storing and destroying such records, but only with the responsibility of providing for rules which would be uniform for all the agencies of the County.

#### THE EXECUTIVE BRANCH

As indicated earlier the executive branch of the County government is responsible for the execution of those policies formulated by the County Council in its legislative capacity. Although the proposed charter gives great authority to the Mayor to execute the policies of the Council, it is the intent of the Commission that the Mayor be limited to the execution of duties, powers and functions prescribed by State law or the County's charter and ordinances. It was not the intent of the Commission to give the Mayor the power to establish powers, duties and functions, but only to execute those duties given to the executive branch of the County government in the most efficient means possible.

Section 6-2 of the 1976 charter has been deleted in its entirety. That section provides for the adoption of an administrative code. The Commission examined the necessity of continuing the requirement of an administrative code. Given the fact that to date the County has operated without such a formal code and such a requirement would decrease the flexibility necessary to the executive branch of the government if it is to continue the efficient operation of the government, the code has been eliminated. In addition, the power of the Mayor and the Council to change the structure of the County's departments has been eliminated in its entirety. The Commission reasoned that if the people, through their charter, established the departments of the County of Maui and assigned certain powers, duties and functions to those departments, then only the people should have the power to alter their structure through a charter amendment. Although the Commission considered the idea of abolishing any charter reference to departmental structure and leaving such organizational decisions to the Council and/or the Mayor, it rejected this alternative.

Section 6-4 of the 1976 charter has been amended in several respects. Section 6-4(1) has been amended in its entirety. Presently that section provides that all personnel

actions shall be taken by the administrative heads of departments subject to the provisions of the charter and regulations adopted pursuant thereto. Most personnel actions are dictated by state law. State laws are superior to any provision of the charter in matters of personnel (see HGEA v. County of Maui, 59 Haw. 65 (1978)). It was therefore inappropriate to have a charter provision in conflict with a Hawaii Supreme Court ruling and the State constitution. The new provision (new Section 6-3(1)) provides only that the administrative heads shall take all personnel action. Such personnel actions shall be pursuant to law, whether those laws be civil service laws, collective bargaining laws, or in some cases charter provisions (i.e. appointment of deputy prosecuting attorneys, etc.).

Section 6-4(2) of the 1976 charter has been amended to allow the administrative head of a department to assign any of the powers, duties and functions assigned specifically to that department head to any of his staff members. This amendment would allow, as an example, the Director of Public Works, who is presently, by ordinance, assigned the duty of approving all subdivision maps, the power to assign this function to one of his subordinates. This will give department heads more flexibility in delegating authority to their staff. In addition, reference in §6-4(2) to the power of administrative heads to supervise the performance of their staff has been deleted for the reason that the Commission felt that such language was unnecessary and that it is inherent in the position of the administrative head of a department to supervise the performance of that department's staff.

Likewise §6-4(3) has been deleted in its entirety for the reason that the Commission felt the power of a department head to prescribe rules for the organization and internal administration of his department is inherent. Language in the charter providing for such power is unnecessary.

A final change to the present §6-4 is a major change worthy of discussion in this report lest the change be misunderstood. Presently §6-4(4) provides that a department head shall perform such duties as shall be assigned him by the Mayor unless such department head is the administrator of a department governed by a board or commission. The present charter is ambiguous as to which departments, if any, are governed by a board or commission. The proposed charter resolves that ambiguity. With the exception of the Department of Personnel Services no department in the County of Maui is governed by a board or commission. With said exception, all departments of the County of Maui are governed and supervised by the mayor. The amendment of the present §6-4(4) is the new 6-3(2) of the proposed charter. This new subsection provides that department heads shall perform such duties and exercise such powers as shall be assigned by the charter or assigned by the Mayor. This subsection should be read in conjunction with §7-5(10) and provisions contained in each chapter of Article 8 under powers, duties and functions of the department head which provide that the department head shall "perform such other duties and functions as shall be assigned by the mayor." It is

the purpose of the Commission to provide for flexibility on the part of the Mayor to run the executive branch of the government as efficiently as possible. However, the power of the Mayor to assign duties and powers to the several departments is subject to several limitations. Those limitations are as follows:

1. Powers, duties and functions assigned to a department by the charter shall not be reassigned by the Mayor for any reason.
2. The Mayor may only assign or reassign such powers, duties and functions as shall be established by ordinance, state law, or the state constitution. The Mayor is not empowered by any provision of the proposed county charter to establish any power, any duty or any function other than those provided for by law.
3. Although the Mayor has the right to assign and reassign powers, duties and functions to and between departments, other than those powers, duties and functions assigned to a department by the proposed charter, such power is limited by the budgetary restrictions of funding. Thus, as an example, although the Mayor would be empowered to transfer the function of juvenile counseling from the Department of Human Concerns to the Department of Police, the Mayor would not be empowered to transfer personnel positions funded in the Department of Human Concerns to the Department of Police without an appropriate budget ordinance amendment.

Many have expressed the concern that the language of the charter bestows upon the Mayor too much power and may be the subject of abuse. It was not the intent of the Commission by its amendments to allow the Mayor any power by these amendments other than the power to have flexibility in choosing which department may most efficiently execute the policies set by legislative bodies.

As has been indicated the Mayor shall be the chief executive officer of the County of Maui. Several changes have been made in the proposed charter regarding the Mayor's powers, duties and functions. Those changes are as follows:

1. Section 7-4(1) has been amended to delete the power of the Mayor to exercise supervision over agencies "as he may deem desirable" and instead has provided that he shall exercise supervision over those agencies in addition to the departments enumerated in Article 8 as shall be provided by law.
2. Section 7-4(3) of the 1976 charter has been amended by providing that the Mayor may create positions for which appropriations have been made and deleting a reference to those positions "authorized by the council" as such language is redundant. Further the reporting requirement on the abolition of positions has been changed from the requirement of a "monthly report" of such action to a report to the Council within fifteen days.

3. Section 7-4(5) has been edited substantially. However, the Commission did not intend any substantive changes in this section with the exception of the requirement that salaries of officers appointed outside the civil service system shall be approved by the Council. This former provision affects the salaries of Deputy Prosecutors and Deputy Corporation Council whose salaries are fixed within a given pay range by the department head. It has never been in the past the procedure to have the Council approve the fixing of such salaries upon appointment of a Deputy Prosecutor or Corporation Counsel and the Commission felt that such a procedure was unnecessary. The Council has sufficient authority over such matters in its budget process.

4. Section 7-4(7) has been amended to require the Mayor's signature on all legal instruments including those requiring a signature of the Director of Finance. This provision has been amended to insure that the Office of the Mayor will be kept informed at all times of financial transactions involving the County. In addition to those powers, duties and functions enumerated in the 1976 charter the Commission has added several new powers, duties and functions for the Office of the Mayor. Several of those have been previously discussed. Not discussed are new subsections 7-5(7)(8)(9). Subsection (9) provides that the Office of the Mayor shall prepare and process application for state, federal or other governmental fund on behalf of the county. Previously this had been a function of the Department of Finance. In the past for many years it has been performed by the Mayor's staff. The Commission felt that it appropriate that the de facto practices be authorized by the new charter.

Subsection (7)(8) of the new §7-5 were considered by the Commission to be necessary for the continued efficiency of the County of Maui. These subsections provide that the complete control, management and execution of the annual operating budget be placed in the Office of the Mayor. The reasons for this are to insure efficient and effective expenditure of public funds and the ongoing management of the operating budget and capital program. It was envisioned by the Commission that there would be a position within the Office of the Mayor, exempt from civil service, and such position would be similar to a comptroller. This individual and his staff would have the sole responsibility of assisting in the preparation of an operating budget and capital program for submission to the Council and then supervising the management and execution of that operating budget and capital program once passed. In addition, this individual would carefully monitor the expenditure of public monies to insure that they are spent in an efficient manner. Although this individual would be directly responsible to the Mayor and would be appointed by the Mayor to serve in the Office of the Mayor, day to day supervision of his activities would be controlled by the Managing Director.

Several changes have been made to the provisions of the 1976 charter regarding vacancies in the office of the Mayor. First the chain of succession to the office of the



Mayor has been altered by the Commission. Under the present charter if there is a vacancy in the office of the Mayor or if the Mayor is unable to serve the Managing Director becomes the acting mayor. In the event that the Managing Director is unable to serve then the Director of Planning becomes the acting mayor. The Commission felt that the Director of Finance of the County of Maui would normally be better acquainted with the overall operation of the County and would be in a better position than the Planning Director to serve as the acting Mayor. Therefore, amendments to the present charter have been made to replace the Director of Planning in this successional ladder with the Director of Finance. In addition, amendments have been made to the election process to fill a vacancy in the office. Those amendments require that in a special election a candidate must receive a majority of the votes cast to fill the vacancy in the Office of Mayor. In the event that no candidate in this special election receives a majority of the vote a runoff election will be held and the candidates in such runoff election shall be the two candidates receiving the most number of votes in the first election. The Commission concluded that such a procedure was necessary to prevent a candidate who is running in a large field from winning election with a small percentage of the votes cast.

#### DEPARTMENT OF THE MANAGING DIRECTOR

The 1976 charter established a Managing Director. the Managing Director was established by Chapter 1 of Article 8, County Departments. However, it is ambiguous as to whether or not the "managing director" is a department similar to the other departments of the county. The Charter Commission has resolved this ambiguity by reclassifying Chapter 1 and establishing a Department of Management the department head of which is the Managing Director. In addition the Commission has established experience prerequisites for the Managing Director of five years in an administrative capacity.<sup>2</sup>

Under the powers, duties and functions of the Managing Director, the Managing Director has been made responsible for the supervision and coordination of the budget function within the Office of the Mayor as previously discussed. In addition the provisions contained in §8-1.2(d) have been deleted for the reason that the Commission felt that as the principal managing aid of the Mayor, the Managing Director would obviously have the responsibility of attending meetings on behalf of the Mayor when so requested by the Mayor.

<sup>2</sup>The present charter provides that many of the department heads have certain prerequisites of "training and experience." The Commission strongly felt it was inappropriate to satisfy minimum years of experience through training and/or educational experience and has deleted from each of these prerequisites the ability of an individual to satisfy the prerequisite through years of training rather than years of experience.



## DEPARTMENT OF THE CORPORATION COUNSEL

The structure of Chapter 2, Department of the Corporation Counsel, has been reorganized in accordance with the form used for other departments. In addition several changes have been made to Chapter 2 as well as Chapter 3, Department of the Prosecuting Attorney, to bring said chapters into compliance with the opinion of the Hawaii Supreme Court stated in HGEA v. County of Maui. The Supreme Court stated that the only staff of the Department of the Corporation Counsel and the Department of the Prosecuting Attorney who could legally be exempt from the classification system of the civil service system are the deputy corporation counsel and prosecuting attorneys.

## THE DEPARTMENT OF PROSECUTING ATTORNEY

The 1976 charter established a "Department of the Public Prosecutor" headed by a "prosecuting attorney". Because the term "public prosecutor" is not one commonly used and is subject to some misinterpretation, the Commission has changed the name of the department to the Department of the Prosecuting Attorney.

The Commission has assigned one additional duty to the Department of the Prosecuting Attorney heretofore never assigned specifically to a department by a Maui County Charter. That duty is the prosecution of administrative violations of the liquor laws before the Board of Liquor Adjudication. The Commission felt that this change was necessary to prevent potential conflicts of interest which have arisen in the past when the Department of Corporation Counsel and the old County Attorney's Office not only prosecuted cases before the Liquor Adjudication Board but also rendered legal advise to said board. Under the proposed charter the Corporation Counsel's office is given the responsibility of providing legal advise to the Liquor Adjudication Board and the Prosecuting Attorney is given the responsibility of presenting cases involving alleged violation to the board. The Commission recognized that many administrative violations of the liquor laws are both criminal and administrative in nature. It is not the intent of the Commission to dictate whether such violations will be pursued criminally, administratively or both. It is only the intention of the Commission that in the event cases are presented to the Liquor Adjudication Board for administrative disposition that a conflict does not arise between the legal prosecutors and legal advisors.

## DEPARTMENT OF FINANCE

Several of the powers, duties and functions of the Department of Finance have been changed. Some have been discussed previously. Added to the powers, duties and functions of the Director of Finance is the administration of the real property taxation function. This change has been necessitated by the 1978 amendments to the state constitution which transferred this function from the State to the counties.

Deleted from the powers, duties and functions of the Director of Finance are the power to establish central services for the County. This power has been reassigned to the Office of the Mayor under new §7-5(8).

#### DEPARTMENT OF PUBLIC WORKS

A major change to the Department of Public Works is the renaming of the Board of Adjustment and Appeals to the Board of Variances and Appeals. The Commissioner's purpose in doing this is to better notify the general public of the duties of the Board of Variances and Appeals. It was not the intent of the Commission by changing the name to in anyway change the functions of the board.<sup>3</sup>

The present Board of Adjustments and Appeals has at times prescribed its own conditions and justifications for the granting of variances. It is intended by the Commission that the Board of Variances and Appeals shall be restricted in its activities by guidelines set forth in ordinances subject to appropriate interpretations and construction as recognized by our courts.

#### PARKS AND RECREATION

Section 8-6.3 of the 1976 charter has been amended by deleting the preamble to the powers, duties, and functions for the reason that such preamble is unnecessarily redundant.

#### DEPARTMENT OF FIRE CONTROL

The 1976 charter provides that the powers, duties and functions of the Department shall be those set by ordinance or "those powers, duties and functions presently exercised by the fire department". The new charter provides for specific powers, duties, and functions including fire protection for the people and property of the County, investigation of fires, adoptions of rules by the Fire Chief relating to protection of persons and property against fires, and the approval of building plans as shall be provided by law. The Commission envisions that the rules of the Fire Chief shall be promulgated pursuant to Chapter 91 of the H.R.S. and shall be similar in character to those rules previously adopted by the State Fire Marshall.

<sup>3</sup>Every board and commission established by the proposed charter consists of nine members appointed for staggered terms of five years. References in Article 8 to the length of terms of each of the boards and commissions has been deleted (see §13-2). The reason for expanding the boards and commissions to nine members is to expand the community input into such boards and commissions.

## DEPARTMENT OF PLANNING

Several changes have been made to the Department of Planning by the Commission. First the Commission felt that the requirement that the present Planning Director prepare proposed revisions to the general plan at least every five years was unduly burdensome and not in keeping with the concept of a general plan as a long range goal for the growth of the County of Maui. Therefore, the Commission has expanded this requirement from five years to ten years. Second, the charter has been amended to provide that the Planning Commission shall review proposed revisions to the general plan submitted to it by not only the Planning Director but also the Council. The Commission felt this change was necessary to enable the Council to initiate changes to the general plan.

Presently the charter requires that the general plan guide the development of the county "by planning areas." In the past this has been interpreted to mean that there must be many mini-plans throughout the county. The Commission recognized that the nine community plans which are presently in the process of being adopted by the County have great merit in the planning function of the County. However, the Commission felt that it was inappropriate for the charter to dictate that the general plan be composed of several community plans. The Commission felt it appropriate to leave the decision as to whether to have one general plan or several integrated community plans to the Planning Commission and the County Council.

The definition of the general plan contained in the present charter has been substantially edited to give the Planning Commission and the County Council greater flexibility in developing an appropriate plan for the social, economic, and environmental future of the County of Maui. However, the Commission is strongly opposed to any "spot" amendments to the general plan which decrease its effectiveness as a "long range" and "comprehensive" plan. (See Dalton v. City and County, 51 Haw. 400 (1969))

Presently the charter provides for the review of general plans and planning and zoning ordinances by the Planning Commission. This review process has been expanded to include all land use ordinances prior to their passage. The Commission felt this necessary to perpetuate a continuity in the land use laws of our county.

After considerable study and deliberation the Commission felt strongly that the present procedure of having the Planning Commission act as the final authority in the issuance of shoreline management area permits and other related duties should continue. Therefore, a new section has been added, §8-8.4(4), which provides that the Planning Commission shall have executory power in all matters relating to coastal zone management under Chapter 205A of the H.R.S.

#### DEPARTMENT OF PERSONNEL SERVICES

As indicated earlier, the Hawaii Supreme Court in 1978 (HGEA v. County of Maui) ruled that the State's statutes regarding civil service and personnel are supreme and that any conflict between county charters or ordinances and State statutes shall be resolved in favor of the state's statutes. Therefore, Chapter 9 of the 1976 charter has been amended in its entirety to comply with the present State's statutes.

#### DEPARTMENT OF HUMAN CONCERNS

Presently the Department of Human Concerns consists of a director, the necessary staff and a Commission on Human Concerns. The Commission on Human Concerns is strictly advisory under the present charter. Although the Commission recognized the need for citizen input in the area of human concerns it did not consider that the public interest necessitated that the charter establish a commission on human concerns. Although the Commission felt that it would be appropriate for the Mayor from time to time to establish an ad hoc committee composed of citizens throughout the County to advise him and the Director of Human Concerns as to how the County may best respond to the needs of the people, the Commission did not feel it necessary to dictate the appointment of such a group. Therefore, the Commission on Human Concerns has been deleted from the charter.

In addition the Commission felt that the "scope of activities" outlined by the present charter for the Department of Human Concerns was overly broad and restricted the flexibility of the Mayor to assign duties involving these activities to other departments. Therefore, the powers, duties and functions of the Director of Human Concerns has been reduced to the development of programs designed to meet the human needs of the County's citizens and the development, supervision, and coordination of such programs and projects as the Mayor shall assign from time to time.

#### DEPARTMENT OF WATER SUPPLY

One of the most difficult decisions for the Commission to make concerned the structure of the Department of Water Supply. The Commission heard from many citizens on this issue and recognized an extreme diversion of opinion within our community concerning the administration of our water resources. The Commission grappled with this problem and itself experienced a diverse cross section of opinions. After due deliberations the Commission decided that the Department of Water Supply should be organized and operated in such a manner that those persons responsible for the decision making process regarding our water resources should be those persons directly responsible to the electorate. Therefore, the Commission has made the Board of Water Supply strictly advisory in nature. The Board has no rule-making power under the proposed charter. The power to promulgate rules has been shifted from the Board of Water Supply to the Director of Water Supply. It was the intent of the Commission to place with the Director great



responsibility through his rule making power to formulate requirements and prohibitions relating to the management, control, operation, preservation and protection of both the water works and the water resources of the County. Such rules may provide for water moratoriums, infrastructure requirements for developers, health standards relating to water, fire protection, and other areas of concern relating to this most valuable resource. The Director may not, however, make rules setting fees, rates, or assessment, such rule-making power being reserved by the charter to the budget ordinance process.

A reading of §8-11.4(3) makes it obvious that the Commission's intent was to place a great deal of power in the office of the Director of Water Supply. However, the Commission strongly felt that such power could not go unchecked. The Commission has provided that as a means of checks and balances to prevent abuses by the Director and to insure accountability on the part of our elected officials, all rules promulgated by the Director shall be approved by the Mayor and, after such approval and prior to said rules taking full force and effect, they shall be submitted to the Council. The Council shall then have forty-five days after receipt of the proposed rules, approved by the mayor, to disapprove or veto the rules by a vote of six or more of its members. In the event of such a disapproval said rules shall not take effect.

#### DEPARTMENT OF LIQUOR CONTROL

The Department of Liquor Control is unique amongst the other departments in that fees for liquor licenses shall be set by the Liquor Commission rather than by budget ordinance.

The powers, duties and functions of the Director of the Department of Liquor Control have been expanded in the new charter to include investigation of applications for liquor licenses. Although this has been one of the primary functions of the Director of Liquor Control for many years it has never been so stated in the charter.

#### COST OF GOVERNMENT COMMISSION

Section 8-14.1 of the 1976 charter has been stylistically changed in its preamble for purposes of brevity. In addition said section has been changed by deleting subsection (5) for the reason that such function was thought to be misleading and redundant of subsection (4).

Chapter 14 has been amended to provide for the appointment of a Cost of Government Commission every other year to serve for an eleven month period. The present term of office of eighteen months was thought by the Commission to exceed that length of time necessary for the Cost of Government Commission to conduct its activities and prepare a report. Further the Commission felt that an eighteen month delay between Cost of Government Commissions was too lengthy.



The Charter Commission gave some thought to the idea of eliminating the Cost of Government Commission from the charter and leaving it to the Mayor and/or the Council to appoint ad hoc committees composed of representatives of the community. However, it was decided by the Commission that efficiency in government could best be served by requiring this biennial audit of the County's procedures by members of the community the government serves.

#### FINANCIAL PROCEDURES

The Commission made numerous changes to Article 9 and other provisions of the County charter affecting Article 9. Much time was spent by the Commission in analyzing Article 9 and the proposed changes thereto in hopes of perpetuating a fiscally responsible government for the people of Maui County.

One important change in the new charter concerns the time element for submission of a budget and capital program by the Mayor to the Council and by the Council to the Mayor. Presently, the Mayor must submit his budget and capital program to the Council on or before March 1st of each year. The Council then has approximately 105 days to review the Mayor's budget and pass an ordinance with such changes as it deems desirable. Thereafter the Mayor has ten days to veto any of the provisions of the budget bill and the Council has 30 days after said veto to override the veto. The proposed charter amends this schedule substantially. The Mayor is required to submit his budget on or before March 15, which must be returned to the Mayor by the Council on or before May 15, approximately 60 days later. This reduces the time in which the council has to review the Mayor's budget by 45 days. Thereafter the Mayor has 20 days to either sign the proposed budget ordinance or veto the same. In the event the Mayor vetoes the budget the Council has 10 days to override said veto.

Although the Commission was concerned about substantially reducing the time that the Council has to review the Mayor's budget, the Commission was cognizant that many time restraints required such action. The time for submission of the Mayor's budget was pushed forward 15 days for the reason that this would give the Mayor a better opportunity to be able to evaluate proposed property assessments and better be able to estimate revenues to be derived from real property taxes. The date for submission of a budget to the Mayor was pushed back to allow the Mayor sufficient time to analyze the Council's budget for purposes of veto and still give the administration an opportunity to be aware of the final budget prior to the beginning of the new fiscal year. The Mayor's veto time has been extended 10 days because of the complications of a budget ordinance. The Commission felt that the extra time was necessary so that the Mayor could adequately review the Council's proposed budget. On the other hand, the time in which the Council has to override the Mayor's veto has been shortened to 10 days as the Commission felt that any longer period was unnecessary. In coming to its conclusion that the time in which the Council has to review the Mayor's budget could be shortened without doing great harm to the budget

review process, the Commission took note of the fact that in the other three counties of this State the County Council have substantially less time to review the Mayor's budget than does the County Council in the County of Maui.

The Commission felt that if the County of Maui was to preserve its financial integrity it is absolutely necessary that the County operate on funds derived from revenues other than monies borrowed. The Commission was acutely aware that other municipalities and governmental entities, including the federal government, have fallen into grave financial straits by borrowing money to operate the government. Therefore, a specific provision has been added to the charter which is contained in the new §9-7(2). This provision mandates that all monies spent by the County of Maui other than those spent for emergencies threatening life, health or property, capital programs, or bond retirement (i.e. payment of prior debts) shall come from revenues other than those revenues from borrowing, issuance of bonds, or interest paid by a financial institution on monies borrowed by the County of Maui. Further limitations are contained in §9-12(3) which prohibit the County from entering into "fly now, pay later" type contracts.

It is not the intent, however, of the Commission to completely restrict borrowing. Monies may be borrowed by the County for capital projects like the construction of the upcountry water treatment facility or to finance County housing projects.<sup>4</sup>

Another important change to Article 9 requires that the annual operating budget include not only anticipated revenues of the County and anticipated expenditures but that it contain a complete picture of the fiscal affairs of the County and that it includes provisions setting the rates of all fees, rates, assessments, and taxes, which will be imposed by the County for the following fiscal year. The purpose of this amendment is to require the Mayor and the County Council to annually review the sources of all revenues of the County, with the exception of liquor license fees, and to make adjustments to the rates provided for as shall be deemed appropriate. In connection with this requirement it should be noted that the power of the Mayor to line-item veto these rates shall be the same as his power to line-item veto provisions of the budget ordinance appropriating money.

<sup>4</sup>After adoption of the proposed charter by the Commission it had been brought to the attention of the Commission that the County borrows money from lending institutions for the construction phase of low and moderate income housing projects. Such homes are subsequently sold to citizens of Maui County after their construction. As the Commission would consider this type of project a capital program, it is not felt by the Commission that any of the prohibitions contained in §9-7(2) would in any way restrict this activity so long as revenues from the sale of said houses are utilized to retire such indebtedness rather than utilized for operations. (See §9-12(2))

Perhaps the most volatile issue discussed by the Commission in its many long hours of deliberations concerned the power of the Council to appropriate money but not to authorize its use. Many members of the Commission felt that the power of the Council to continue its hold on the purse strings of the County throughout the fiscal year was an abuse of its policy making function. Therefore, §9-7(1) has been added to the new charter to provide that once money has been appropriated for a public use any restrictions, conditions or limitations on the use of that money shall be specifically provided for in the budget or capital program. Thus, if monies are appropriated to hire additional police officers but the Council does not wish those additional police officers hired until the third quarter of the fiscal year, such restriction on the use of those monies shall be set out in the budget ordinance.

The present charter provides that a public hearing on the budget and capital program shall be held no later than six weeks after the Mayor's budget and capital program has been submitted to the Council. The Commission has changed this requirement to provide that said public hearing shall be held no sooner than April 20th and no later than April 30th. These time periods were devised by the Commission to insure that prior to the public hearing the people of the County of Maui would have the opportunity to thoroughly review the Mayor's proposed budget and any actions taken thereon by the Council as of that date. The Council would then have at least 15 days after said public hearing to respond to the wishes of the people testifying at the hearing.

Several sections of Article 9 contain the language "appropriations for debt service or for estimated cash deficit." The Commission struggled with this language as to the meaning of a "estimated cash deficit" and the ambiguous nature of that term. The objectionable section wherever found has been changed to read "appropriations to pay any indebtedness" in order to prevent any misunderstanding as to the meaning of the objectionable language.

#### CODE OF ETHICS

Section 10-1, Declaration of Policy, has been shortened for purposes of style as well as brevity. In addition there have stylistic changes to the format of Article 10.

Several substantive changes have also been made by the Commission. Presently the Board of Ethics has the power upon a finding of a violation of the ethics code to suspend or remove from office any person having been found by the Board to have violated the code of ethics. The Commission felt strongly that this power should not be given to the Board of Ethics and, therefore, has amended the charter to provide that in the case of appointed officials the Board of Ethics shall report any infraction to the appropriate appointing authority for his action. In the case of elected officials who have been found

by the Board to have violated the code of ethics the Commission has provided that the board shall initiate impeachment proceedings in the Second Circuit Court against such elected officers and that upon a finding of a violation said officials shall be impeached by the Court. Such proceedings shall be brought in the name of the Board of Ethics which shall retain a non-government attorney to represent the Board during such impeachment proceedings. The purpose of requiring a non-governmental attorney is to prevent any conflict of interest. A provision of the present charter providing for the selection by the Board of a chairman and a secretary has been deleted as the Commission felt that it was not necessary for it to dictate that there be a chairman of the Board.

The present charter dictates that the Board shall proscribe a "form" for use in making financial disclosure statements. That language has been subtly changed to read that the Board shall prescribe "forms" for such use. It is the opinion of the Commission that the Board should develop different forms for different categories of officials and employees who are required to file financial disclosure forms. It is inappropriate that one form be utilized by all officials and employees. Although the Commission did not wish to dictate by the charter that the Board of Ethics should develop different forms for different categories of officials, it strongly suggests that the board examine the purpose of financial disclosure and tailor the forms to meet that purpose.

Pursuant to the constitutional requirement that all elected county officials and candidates for elected county offices file financial disclosures which shall be open to public inspection, the Commission has provided for such disclosures. In addition, the Commission has provided that members of all charter created boards and commissions with the exception of the Cost of Government Commission and the Civil Service Commission shall file financial disclosures which shall not be opened to public inspection. However, the Commission has left to the Council through ordinance the power to provide for the filing of either public financial disclosure statements or non-public financial disclosure statements of all county officers and employees. It is the intention of the Commission that §10-3, subsections 1 and 2 shall be minimum standards. In the event that the County Council wishes to require boards and commissions designated in subsection 2 to file public disclosure forms, the Council by ordinance may do so.

The Commission reviewed the question of whether or not the code of ethics should require registration of lobbyist. The Commission found that lobbyist registration for the County of Maui was not a matter of such import that it was necessary to address the issue in the charter. In addition the Commission examined the question of post employment activities by county officials and employees. The Commission did find that to insure continued public faith in the operation of government restrictions should be placed on former officers and employees of the County. The restrictions proposed by the Commission are as follows:



1. No former officer or employee of the County, including commissioners and board members, shall, after having left the service of the County, receive any compensation as consideration for services rendered to a private interest entity for assistance in relation to any matter in respect to which that officer or employee was directly concerned or had received some knowledge or information not generally available to the public during that officer's service to the County. This provision, §10-4(1)(g), is the classic conflicts of interest case.

2. No former elected official shall receive compensation in exchange for his appearance before any County agency for a period of one year after leaving elected office. This restriction is an absolute one. The Commission's intent is to prohibit contact by an ex-elected official in a representative capacity for another interest with any officer or employee of the County or any board or commission.

3. No former salaried employee or officer shall for a period of one year appear before the agency or department by which he was last employed. Thus an employee of the Water Department who leaves the service of the County could be retained to represent a private interest group in discussing matters with the Department of Public Works but not with the Department of Water.

#### INITIATIVE

The present charter defines initiative as the power of the people to initiate ordinances. The present charter defines referendum as the power of the people to repeal ordinances. The new charter defines both of these activities as initiative. The Commission found the term "referendum" as used in the present charter was very misleading. The term "referendum" should refer to the power of a legislative body to refer to the electorate any issue before it, and should not refer to the meaning ascribed to "referendum" as used in the present county charter.

The style of Article 11, Initiative, has been changed and several substantive changes have also been made. First, the Commission has deleted the requirement that for the people to propose a reconsideration of an adopted ordinance such proposal must be made within sixty days after the effective date of the ordinance. No time restriction is placed on the power of the people to propose reconsideration of an adopted ordinance in the new charter. Second, the present charter provides that when a referendum (initiative) petition has been certified the ordinance in question shall be suspended until after the election. This provision has been deleted by the Commission in its entirety. Finally, the present charter has been amended to prohibit the Council from amending a new ordinance passed through initiative or reenacting an old ordinance repealed by initiative for at least one year. Thereafter action can be taken only by a two-thirds vote of the Council membership.



## RECALL

Much was heard throughout the public hearings held by the Commission that certain boards and commissions were not responsive to the wishes to the people. As a result of these concerns the Commission proposes the extension of the power of recall to members of boards and commissions. This would allow the electorate to remove board members or commissioners from their office should the majority of the electorate feel that such individuals were not performing their duties in a representative capacity.

## GENERAL PROVISIONS

The definition of "department" has been deleted by the Commission for the reason that said definition is not required given the text of the charter. The definition of "board and commission" has been redefined to include only boards or commissions established by the charter. Other boards and commissions established by ordinance are not controlled by the provisions of the charter other than those provisions in the ethics code.

Provisions regarding the appointment of board members and commissioners to fill vacancies have been substantially changed by the Commission in an effort to solve the problem of boards and commissions not being able to function as a result of too few members. The new charter provides that at least two months prior to an anticipated vacancy the Mayor shall submit a nominee to the Council for its approval. The Council shall have sixty days to either approve or disapprove the nominee and any failure on the part of the Council to act within the sixty day period shall act as an automatic approval of the nominee. In the event of disapproval the Mayor shall have an additional ten days to submit a second name and thereafter the Council shall have sixty additional days to act upon that nominee.

An unanticipated vacancy shall be filled by the Mayor submitting a nominee's name to the Council within thirty days after the vacancy occurs. Thereafter the Council shall have sixty days to consider the nominee and if the nominee is disapproved the Mayor shall submit a new name within ten days.

The present charter provides that the affirmative vote of a majority of the entire membership of a board or commission is necessary for that commission to take any action. The new charter provides that only the affirmative vote of a majority of those members present shall be necessary to take any action. However, the new charter does continue the prior requirement that a majority of the entire membership must be present to constitute a quorum to do business. In each case of a charter created board or commission the entire membership is equal to nine members and a quorum would require five members.

The Administrative Procedures Act provides that boards and commissions which are performing a quasi-judicial function may hold their deliberations in a meeting closed to the

public. Section 13-9(2) of the 1976 charter provides, however, that no board or commission "shall take any official action except at a meeting open to the public." The Hawaii Supreme Court has interpreted this language to mean that notwithstanding the Administrative Procedures Act, deliberations of a quasi-judicial nature must be held in a meeting open to the public. The Commission after due consideration of this issue and having balanced the right of the public to be aware of the functioning of its government against the free and open exchange of ideas necessary for a conscientious evaluation of issues before a quasi-judicial body, resolved the conflict between the Administrative Procedures Act and the present Maui County Charter in favor of the A.P.A. Therefore the language of §13-9 has been deleted by removing therefrom the reference that all official actions shall be taken in a meeting open to the public.

#### CHARTER AMENDMENTS

Three substantive changes are proposed by the Charter Commission regarding future charter amendments.

First, that provision of the present charter which allows the Council, by ordinance, to authorize the Mayor to appoint a Charter Commission at any time has been deleted in its entirety. The Commission, even though it was appointed pursuant to this provision, felt strongly that the charter of the County of Maui should be an enduring document subject to modest modifications from time to time but not subject to constant review by a new charter commission.

Second, if adopted the new charter provides that a new charter commission shall be appointed in 1991, without the necessity of the question being presented to the electorate for a thorough review.

Third, two special charter commissions have been provided for in the charter as follows:

1. A special charter commission is required to be appointed in March, 1983, to review the Council composition. Its areas of review and amendment are restricted to §3-1, 2 and 3 of the present charter. The purpose of providing such a charter commission is to examine the question of whether or not the County of Maui should adopt a district representation form of Council membership, should retain the present at-large system, should have an integrated at-large and district representation system, or should adopt some other form of Council representation. The present charter commission heard testimony from numerous citizens indicating that such a review is advisable but was unable, given the time constraints, to itself address this extremely complicated problem. One of the primary problems in addressing this issue was the complex legal questions and the inherent problems caused thereby stemming from the "one man, one vote" ruling of the federal court. This problem was amplified by the federal litigation in the United States District Court for the District of Hawaii which continued through the great part of the Commission's

deliberations. The inadequacy of the Commission's understanding of these technical legal problems made it impossible for the Commission to adequately deal with the question and, therefore, the Commission has provided for a special charter commission to spend a full year dealing specifically with this question. It is recommended that even prior to the new commission taking office, that the Corporation Counsel set about preparing a detailed report on the present status of the law and its effect on the variable options opened to this special charter commission. By providing for such a special commission, the Charter Commission does not intend to suggest that any change is necessary. The Commission only feels that the matter is worthy of further investigation and study.

In addition to a specific charter commission to review the composition of the Council the proposed charter also provides for a special charter commission to take office in 1987 to review the operation and financing of the Department of Water Supply. As indicated earlier the Charter Commission spent a great deal of time on this extremely important issue and concluded that a radical change to the present structure of the Department of Water Supply would best serve the interests of the people of the County of Maui. At the same time, however, the Commission was forced to accept the proposition that it might indeed be an error in proposing a shift from a strong water board to a weak one. Therefore, it has proposed that a special charter commission be appointed to review the finances, operations and rule making power of the Water Department and determine whether or not further changes are necessary.

#### TRANSITIONAL PROVISIONS

Although no major amendments have been made to Article 15 of the present charter, it is worthy of note that it is the intention of the Commission that rules and regulations of the Board of Water Supply promulgated under the 1976 charter shall continue in full force and effect pursuant to §15-2 of the new charter until repealed or modified by rules of the director or by the 1983-84 fiscal year budget.

#### POTPOURRI

Saving the best for last, the Commission after its many, many hours of public hearings and numerous hours of deliberations, has undertaken the painstaking task of taking sex out of government by neutering the county charter. The membership of the Commission has reached very deep into its intellectual being and has, using the wisdom of Solomon, attempted to remove from the county charter all of the sexist pronouns which have inexplicably been placed there by charter commissions of yesteryear.

# 91-7

See: C. C. #33  
(Charter Commission)

Presented to the Board of  
Supervisors - meeting of: 2/9/67

A STATEMENT OF THE ACTIVITIES, FINDINGS AND  
RECOMMENDATIONS OF THE CHARTER COMMISSION TO  
THE BOARD OF SUPERVISORS OF THE COUNTY OF MAUI

To: The Honorable Chairman  
and Members of the Maui  
County Board of Supervisors

The Second Maui County Charter Commission was appointed by the Maui County Board of Supervisors on February 10, 1966, under the provisions of Chapter 143A, Revised Laws of Hawaii 1955, as amended by Act 65, Session Laws of Hawaii 1965. On June 16, 1966, after a thorough examination of the existing structure of county government, and several public hearings, the Commission agreed to proceed to prepare a charter for proposal to the Board of Supervisors and the people of the County of Maui. You were informed of the action taken by the Charter Commission by letter dated June 29, 1966. This is an analysis of the final draft of the charter proposed by the Commission.

There will be no radical change in county government under the proposed charter. The proposed charter incorporates several new concepts and procedures that should make county government more efficient and responsive. This statement sets forth the reasons for these proposed changes. The proposed charter and this statement should be read together.

THE EXISTING FORM  
OF COUNTY GOVERNMENT

County government has two principal branches: The Board of Supervisors, and several important administrative commissions. The Chairman and Executive Officer, an elected official, has relatively little independent executive authority. The



Board of Supervisors and the Chairman are directly responsible for the administration of the Public Works Department, the Department of Parks and Playgrounds and the Fire Department.

The Board and Chairman also exercise certain legislative authority. They adopt the county budget, set the real property tax rate and enact ordinances and resolutions. The Chairman sits and votes with the Board upon these essentially legislative matters.

The Police Commission and the Board of Water Supply are responsible for the management of the police and water supply for the county. These commissions are responsible for the administration of two of the largest and most important departments of the county. The members of the Police Commission and the Board of Water Supply are appointed by the Chairman and Board.

The Liquor Commission, Planning Commission and Civil Service Commission are not administrative commissions. These commissions do not operate departments. These commissions perform staff, rule-making and adjudicatory functions. The members of these commissions are appointed by the Chairman and Board.

There are several other executive officers of the county who are responsible for administration, but these officers are not responsible to the Board or the Chairman, nor are they members of any commission. These are the Auditor, Treasurer, County Attorney and Clerk. These officers are elected. Since each is elected in his own right, they are independent of the Board and Chairman.

PROPOSED CHANGES IN THE BASIC  
FORM OF COUNTY GOVERNMENT

The Commission recognizes several defects in the existing administrative structure of county government. The proposed charter attempts to correct these defects.

The Board and Chairman jointly exercise administrative and legislative authority. The administrative and legislative functions are not differentiated. These functions should be separated.

The American political doctrine that there must be "checks and balances" between the various branches of government rests on the basic premise that government is, in fact, composed of several separate branches. There are no "checks and balances," and government can become inefficient, arbitrary or even corrupt, if the executive and legislative functions are lumped together and performed by one monolithic body.

The proposed charter establishes a separate executive branch of government responsible to an elected Mayor. The proposed charter continues the Board of Supervisors (called the Council) as the legislative branch of county government.

There is widespread popular support for this proposal. This separation of the powers and functions of the present Chairman and Board will strengthen county government.

The proposed charter eliminates the elected executive offices of Auditor, Treasurer, County Attorney and Clerk. The functions of the Treasurer and Auditor have been combined into the office of the Director of Finance, who is appointed by and responsible to the Mayor. The County Attorney is a member of the executive branch. However, since he must also advise the Council, the County Attorney will be appointed and removed by

the Mayor with the approval of the Council. The Clerk will be appointed by the Council. The people favor the elimination of these elected administrative offices.

The people wish to retain the principal administrative commissions: the Police Commission and the Board of Water Supply. The proposed charter makes little change in the structure and authority of these commissions.

The existing Planning and Liquor Commissions perform important rule-making (legislative) and adjudicatory (judicial) functions. The proposed charter separates these functions.

#### RELATION BETWEEN THE COMMISSIONS AND THE ELECTED OFFICIALS

The various commissions are responsible for a large and important portion of the business of the county. These commissions affect all of us. Yet the commissioners who serve are not selected by the people.

These commissioners cannot be entirely independent of the popularly elected Mayor and Council. The proposed charter establishes certain definite relations between these commissions and the Mayor and Council.

First, the rules and regulations adopted by these commissions that have the effect of law must be ratified by the Council and Mayor.\* (Section 13-10). Each commission can adopt its own rules of procedure for the conduct of its

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\*This section does not mean that the rates or fees fixed by a board or commission must be ratified by the Mayor and Council.

business. (Section 13-2(14)). Such rules of procedure need not be ratified by the Council and Mayor.\*

Second, the members of any commission may be removed from office upon the recommendation of the Mayor and the approval of six members (2/3rds) of the Council. (Section 13-2(4)). Such removal must be "for cause."\*\*

Third, the Mayor has the power to require a department administered by a separate commission, such as the Department of Water Supply, to cooperate and coordinate its work, personnel and equipment with that of a department directly responsible to the Mayor, such as the Department of Public Works, to achieve a more efficient use of county resources. (Section 13-15). This may create friction between an independent commission and the Mayor. On the other hand, the limited resources of the county must be employed efficiently. The departments administered by independent commissions are a part of county government. These departments must cooperate with the departments directly responsible to the Mayor.\*\*\*

The Commission recognizes the fact that the people wish to preserve these commissions because, it is believed,

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\*Department heads responsible to the Mayor can promulgate rules for the organization and internal operation of their respective departments. Such rules must be ratified by the Mayor. (Section 6-4(3)).

\*\*The phrase "for cause" is not defined. The specific meaning and application of this phrase must be left to the good judgment of the Mayor, Council, public opinion, and, as a last resort, the courts.

\*\*\*The Mayor cannot, however, prescribe the specific duties to be personally performed by the department heads responsible to boards and commissions. (Section 6-4(4)).



these commissions are one step removed from the "hurly burly" that surrounds the public life of elected officials. Thus, the proposed charter contains provisions that will make it more difficult for the Mayor and Council to directly influence the activities of these commissions.

First, each commission, not the Mayor or Council, appoints its own department head, i.e. the chief of police, planning director, director of personnel services, director of department of water supply, director of department of liquor control. These department heads are responsible for the operation of their departments. They are each responsible to an independent commission.

Second, no member of a board or commission is eligible for an immediate second appointment to the same board or commission.\* This will enhance a commissioner's independence. Since a commissioner cannot be reappointed, it is hoped that commissioners will not respond to improper suggestions from the Mayor or members of the Council. (Section 13-2).

Third, not more than a bare majority of the members of any commission can belong to the same political party.\*\* (Section 13-2(2)). This does not mean that the two major political parties must be equally represented on a commission.

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\*Upon the expiration of his term of office, a member of commission A can be immediately appointed to commission B.

\*\*The phrase "members of a political party" must be defined by ordinance. A person does not become a member of a political party by selecting a party ballot in a primary election. "Party membership" involves something more, i.e. enrollment, payment of dues, approval by the party's county committee, etc. How much more must be determined by ordinance. See also, Section 3-4.

On a five member commission, three commissioners can be members of party A, and two commissioners may have no party affiliation.

The Board of Water Supply must adopt an annual operating and capital budget for the Department of Water Supply. (Section 8-8.2(3)). The revenues received by the Department of Water Supply must be kept separate from the other funds of the county. (Section 8-8.4). The Department of Water Supply has the power to issue bonds. Such bonds may be secured by its revenues. (Section 8-8.2(5)). The Department of Water Supply will continue as a separately financed semi-autonomous body.\*

None of the other commissions are separately financed. All of the revenues received by the other commissions must be transferred to the general funds of the county. The commissions responsible for the administration of these departments do not have the power to adopt a separate budget. Each of these commissions must request an annual appropriation for its department. Each appropriation allocated to a department administered by a commission must be a part of the county's operating budget or capital program.

Commissions are also important and desirable because they make it possible for private citizens to participate directly in government. This is healthy. Several commissions have been increased in size. More people can serve. Residents of Molokai, Lanai, Hana, and women, should be appointed to

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\*The powers of the existing Maui County Board of Water Supply are defined by R.L.H., 1955, Chapter 145A, as amended. The proposed charter vests these same powers in the Department of Water Supply, except as there may be some express inconsistency, in which case the terms of the proposed charter shall control.

these enlarged commissions. Since these commissions make it possible for private citizens to participate in the business of government, the proposed charter prohibits the appointment of a salaried government employee to a commission.\* (Section 13-2(6)).

#### CREATION OF ADDITIONAL DEPARTMENTS

The proposed charter establishes a basic organizational structure for the government of the county. The proposed charter describes the structure and functions of the more important existing executive agencies.\*\*

The people may hereafter demand that the county furnish additional services. The State of Hawaii may subsequently grant the county additional powers and functions. The United States may establish programs that must be administered by the county.

The proposed charter does not create an inflexible organization. The Mayor and the Council can create additional departments.\*\*\* (Section 6-2). The Mayor and the Council can

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\*Under Section 13-1(6)(b) a member of a commission is an "officer." Section 13-2(6) prohibits the appointment of an "officer" to a commission. There is no conflict between these provisions, for a person is not an "officer" prior to his appointment. These provisions, taken together, do mean, however, that a person cannot serve on two commissions at the same time.

\*\*The proposed charter does not refer to many relatively unimportant existing agencies, offices and commissions. This does not mean that the Commission desires to abolish these existing agencies, offices or commissions. (Section 15-5(1)). These miscellaneous agencies, offices and commissions should be described by the administrative code to be enacted after the adoption of the charter. (Section 6-2).

\*\*\*If the Mayor and Council establish the office of Prosecuting Attorney or the office of Public Defender, these offices must be selected by election. (Sections 13-17 and 13-18).

also change, abolish, continue and rearrange the departments created by the proposed charter. For example, if the State of Hawaii should return the hospitals to county control, the Mayor and Council can create a Hospital Department.\*

#### POPULAR CONTROL OF GOVERNMENT

All of the provisions mentioned above, relative to the organization of the administrative agencies of the county, were designed to develop popular control of county government. In addition, the proposed charter creates several agencies, and provides procedures, for more direct control of county government by the people. The proposed charter puts government in the hands of the people. If government under the charter is inefficient or arbitrary, the people will be to blame.

The proposed charter provides Initiative and Referendum, and Recall. The proposed charter also provides for the impeachment of elected officers for malfeasance, misfeasance or nonfeasance in office. (Section 13-14).

The proposed charter creates a Board of Appeals to hear disputes between any member of the public and any officer

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\*The Commission has asked the Attorney-General of the State of Hawaii whether, in the light of Act 97, S.L.H. 1965, the proposed charter should provide for the administration of the county hospitals. The Attorney-General has not answered the question directly. However, the Commission has received a copy of a memorandum, dated May 31, 1966, from Clinton K. L. Ching, Deputy Attorney-General, to Bert T. Kobayashi, Attorney-General, titled "The Role of County Hospital Managing Committees under Act 97, S.L.H. 1965." The Commission understands this memorandum to mean that the Attorney-General is of the opinion that the proposed charter should not provide for the administration of the county hospitals, for these hospitals are now agencies of the State of Hawaii.



or employee of the county. The Board of Appeals will hear such disputes, arrive at a decision, then, if the decision indicates that the employee or officer involved has erred, the Board of Appeals will recommend to the Mayor or independent commission that the employee or officer be ordered to comply with the decision. The Board of Appeals can also recommend that disciplinary action be imposed against an errant employee or officer of the county.

The Board of Appeals, a three man commission, will act as the county Ombudsman.\* The Board of Appeals may find it necessary to employ an Executive Secretary and a small staff. For the near future, it is hoped that the Board of Appeals will be able to function without a salaried staff.

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\*The "Ombudsman" originated in Sweden. The Ombudsman concept has been widely discussed and copied by New Zealand and other Scandinavian countries. The Ombudsman concept is new in the United States.

The charter proposed by the First Maui County Charter Commission created a Board of Appeals. The First and Second Charter Commissions have thoroughly discussed these provisions. The Board of Appeals is the product of a need recognized by both commissions to provide the public with a forum to hear disputes over administrative matters.

The commissions did not propose the creation of an Ombudsman-type Board of Appeals in an attempt to take advantage of the favorable publicity surrounding the Ombudsman concept. In fact, most of the popular and scholarly articles and books on the Ombudsman were written after the First Charter Commission proposed a Board of Appeals.

Thus, the provision that describe the structure, powers, duties and functions of the Board of Appeals are original, not a slavish copy of an accepted model, for there is no model. Interestingly enough, however, these provisions, first proposed by the First Charter Commission, are surprisingly similar to Ombudsman legislation proposed for other jurisdictions. Nevertheless, with time and experience, the need for changes in the structure, powers, duties and functions of the Board of Appeals may become apparent.

In Scandinavia and New Zealand the Ombudsman is a single person, appointed for a long term. The Board of Appeals is composed of three persons, each appointed for a term of five years. The Commission believes that the decision of three persons will be more persuasive than the opinion of a single person. The Mayor will find it relatively difficult to refuse to comply with the recommendations of a three member board.

The Ombudsman concept will not work unless the Mayor and Council appoint persons of absolute integrity, competence and intelligence to the Board of Appeals. The Board of Appeals should not be a spring-board for a political career.

The proceedings of the Board of Appeals should be informal. In many cases the Board of Appeals will be able to resolve the grievance within a department by discussing the problem with a senior employee or the department head. In such a case the Board of Appeals need not send the Mayor or independent commission formal recommendations.

There are several restrictions upon the powers of the Board of Appeals. (Section 8-16.3). For example, the Board of Appeals cannot "restrict or supersede the discretionary authority of any employee or officer of the county." This provision will probably be the subject of controversy. The officer or employee whose acts are the subject of a complaint will probably argue that he acted within the scope of his discretionary authority. His department head may agree. The Board of Appeals should not dismiss the complaint simply because the employee and his department head say that the acts were within the employee's discretionary authority. The Board of Appeals should determine for itself the scope of the employee's

discretionary authority. The Board of Appeals should bear in mind that employees at the lower civil service levels exercise little or no discretionary authority. Moreover, even though an employee has discretionary authority, it is wrong to exercise such authority arbitrarily. The Board of Appeals must protect the public against an arbitrary exercise of discretionary authority.

The Board of Appeals is also responsible for the enforcement of the Code of Ethics (Article X) and the implementing rules and regulations to be promulgated by the Civil Service Commission. The Board of Appeals can also exercise any additional power granted by law. (Section 8-12.2(7)). The Board of Appeals should not be charged with the enactment of rules and regulations or the active administration of the business of the executive branch. The Board of Appeals must stand apart from the executive branch.

The proposed charter also creates an ad hoc Commission on Organization of the Executive Branch. This Commission will function periodically, at ten year intervals. The provisions that establish the functions of this Commission are based upon the enabling act that created the federal Hoover Commission.

This Commission must study the agencies of the executive branch, then recommend such changes as may be necessary to promote economy, efficiency and improved service in the transaction of county business. The recommendations of this Commission should carry great weight.

The Council must enact an administrative code one year after the adoption of the proposed charter. (Section 6-2). The first Commission on Organization of the Executive Branch should be appointed soon after the effective date of

the proposed charter so that it can assist with the development of the necessary administrative code.

The proposed charter provides for the codification of the continuing ordinances of the county. (Section 4-5). The county has been enacting ordinances for more than sixty years. There is no compilation of these ordinances that a person can examine. No one really knows what the law is in the county. Some of the early ordinances may still be in effect. A complete code of the ordinances of the county must be prepared and enacted within two years after the effective date of the charter.\* (Section 4-5).

#### THE ADJUDICATORY COMMISSIONS

The Civil Service Commission, the Planning Commission and the Liquor Commission enact rules and hear disputes. These commissions thus exercise quasi-legislative and quasi-judicial powers.

The proposed charter does not change the existing civil service structure. The Civil Service Commission is required to issue regulations implementing the standards of conduct

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\*The Commission strongly recommends the codification of the administrative regulations promulgated by the departments of the county. Although these regulations have the effect of law, these regulations are not generally known by the public. The Commission suggests the adoption and maintenance of a Code of County Regulations comparable to the Code of Federal Regulations.



stated in the Code of Ethics.\* The Civil Service Commission will continue to enact civil service rules and hear employee grievances.

The proposed charter establishes a Department of Liquor Control composed of a Liquor Control Commission, Liquor Control Adjudication Board and a Director of the Department of Liquor Control. The Liquor Control Commission shall appoint the director (the department head), enact rules regulating the sale of liquor and grant liquor licenses. The director is responsible for the administration of the department and the investigation of alleged violations of any rule or law regulating the sale of liquor. The Liquor Control Adjudication Board shall hear complaints charging a violation of a rule or law regulating the sale of liquor.

The proposed charter sharply separates the rule-making power (quasi-legislative) from the adjudicatory (quasi-judicial) power of the present Liquor Commission. The Liquor Control Adjudication Board is independent of the rule-making authority (Liquor Control Commission) and the administrator/prosecutor (Director). The Liquor Control Adjudication Board will

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\*The proposed charter requires full disclosure by councilmen, other officers, and senior employees of the county of their financial interests. Every employee of the county should not be required to disclose his financial interests. Disclosure should be required of senior officers and employees who hold sensitive positions. These disclosure statements should not be completely open to public inspection. The office of the County Attorney may be a good depository. These disclosure statements should be open to inspection by the Mayor, County Attorney, Department Heads, the Civil Service Commission and the Board of Appeals. If the Board of Appeals determines that a violation of the Code of Ethics has occurred, the Board of Appeals must be free to publicize the violation, for the pressure of public opinion is perhaps the most effective sanction that can be imposed. The Civil Service Commission must enact rules to cover these problems.

determine whether a violation of the liquor control rules and laws has occurred, and, if so, what the penalty should be. The people favor such a separation of the powers of the present Liquor Commission.

The proposed charter establishes a Department of Planning composed of a Planning Commission, Planning Director and Board of Adjustment and Appeals. The structure of the existing Planning Commission has been modified.

The Planning Director, who is appointed by the Planning Commission, is the administrative head of the department, and responsible for the initial preparation of the general plan, subdivision and zoning ordinances. The planning director is also responsible for the administration of the subdivision and zoning ordinances.

The Planning Commission must review the proposed plans and ordinances prepared by the Planning Director. The Planning Commission also has the power to adopt rules and regulations implementing the subdivision and zoning ordinances. This rule-making authority is an important function of the Planning Commission. The Council can enact relatively brief subdivision and zoning ordinances, then direct the Planning Commission to adopt detailed rules implementing the general statements of policy set forth in the subdivision and zoning ordinances. (Such rules must be ratified by the Mayor and Council). This approach should provide flexibility, eliminate the need for frequent amendments to the zoning ordinance, yet preserve the necessary control by the Council of the planning process.

The Board of Adjustment and Appeals is independent of the Planning Commission and the Planning Director. The Board of Adjustment and Appeals exercises only quasi-judicial powers.

For example, the board will consider petitions for variances from the zoning and subdivision ordinances, appeals from any order made by any officer responsible for the administration of the zoning, subdivision and building ordinances, and applications for special permits.

The Board of Adjustment and Appeals exercises quasi-judicial functions. Only persons of unquestioned integrity should be appointed to this board. The members of this board, like judges, must avoid any act which suggests bias or improper influence. The members of this board must refuse to hear any ex parte communication.

The Board of Adjustment and Appeals has the power to adopt rules regulating its procedure. Since the petitions the board will hear affect not only the petitioner, but also the owners of adjoining land, these rules should provide that the owners of adjoining land receive notice of the petition and be afforded an opportunity to be heard if they wish to oppose the petition.

#### COUNCIL

The County Council is elected at large. However, of the nine seats, one must be filled by a resident of Molokai, and another must be filled by a resident of Lanai.

This means that two or more residents of Molokai, and two or more residents of Lanai, may be members of the Council at the same time. For example, if A and B, both of whom are residents of Molokai and candidates of Party X, should tally the highest number of votes at a primary election, then both A and B would run as candidates of Party X at the following general election. If A and B should tally the highest

number of votes at the general election, then both of them would be elected to the Council, even though both of them are residents of Molokai. This result follows because the provision that one member of the Council must be a resident of Molokai, and another must be a resident of Lanai, establishes a minimum requirement. Moreover, this requirement does not alter the basic principle that the Council is elected at large.

The Mayor and Council serve for two year terms. Each term of office begins on the second day of January following the election. The business of the county will not be interrupted at the close of a completed term of office. Any bill or resolution introduced during one term of office continues and may be considered by the succeeding Council and Mayor.\* (Section 4-2(9)). Since the county's fiscal year will begin on the first day of July, a newly elected Mayor and Council will have almost six months to prepare a budget and capital program for the next fiscal year.\*\* (Section 9-1).

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\*This precludes any "pocket veto" by the Mayor.

\*\*The Mayor must present his proposed budget and capital program for the next fiscal year to the Council on or before the first day of March. The Council must adopt the budget and capital program on or before the twenty-second day of June. This schedule will make it possible for the Council to fix the real property tax rate at about the same time it adopts the budget. The Council can thus relate the expected revenues of the county to the expenditures proposed by the budget and capital program.



Department heads appointed by a Mayor\* whose term of office has expired will continue in office until their successors have been appointed by the newly elected Mayor. This is because the term of each of these department heads continues until "removed by the Mayor." Consequently, a newly elected Mayor need not appoint all of his department heads immediately upon taking office.

The Council is the county's legislative body. The Council exercises general legislative powers.

The Mayor, not the Council, is responsible for the execution of the laws and policies established by ordinance and resolution. The Council cannot interfere with the administration of county business by the executive branch. (Section 3-10). The Council can investigate the operations of a department and call for reports from the executive departments. (Section 3-7).

The Council is a powerful body. The Council exercises a great deal of authority in fiscal matters. The Council controls the county "purse strings." The Council has the power to add, increase, decrease or delete items from the budget proposed by the Mayor. (Section 9-5). Although the Mayor has the power to item veto portions of the budget, the Council can separately reconsider each item vetoed. (Section 4-3(2)).

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\*These department heads are the County Attorney, Director of Finance, Director of Public Works, Director of Parks and Recreation, and Fire Chief. The removal of the County Attorney and the appointment of his successor must be approved by the Council.

The administrative code should specify the form of the operating budget.\* (Section 9-3(1)). The operating budget should be set up in terms of "programs" to be accomplished. For example, dollars should be appropriated for the maintenance of Park A and Road B, as well as to the departments responsible for the expenditure of the funds. In this way the Council and the public will know what services are to be provided for the money appropriated.

After the Council adopts the budget, the Mayor cannot transfer an unencumbered appropriation balance within a department, that is, from Program A to Program B (even though both programs are administered by the same department), without the consent of the Council. Nor can the Mayor transfer an unencumbered appropriation balance from one department to another. (Section 9-9(2)). This is an important restriction upon the power of the Mayor. The Council establishes the county's fiscal objectives. The Council takes this action by adopting the budget. If the Mayor desires to reallocate funds from one program to another (even though both programs are administered by the same department), the Mayor must obtain the consent of the Council. For example, if the budget calls for the expenditure of X dollars for the repair of Road A, if the Mayor desires to use half of this money for the repair of Road B, he must obtain the consent of the Council.

The proposed charter establishes the Office of Council Auditor. The Council Auditor should act as the Council's

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\*Pending the enactment of the administrative code, the Council shall determine the form of the operating budget.

fiscal watchdog. The Council Auditor is not responsible to the Mayor. He is the agent of the Council. The Council Auditor should assist the Council as the Comptroller General of the General Accounting Office of the United States acts for the Congress (31 U.S.C. Sec. 41), and as the Auditor of the State of Hawaii assists the Legislature (Constitution of the State of Hawaii, Art. VI, Sec. 8). There is virtually no restriction on the scope of the tasks the Council can assign to its Auditor.

To be effective, the Council Auditor must be removed from politics. For this reason he has a term of eight years.\* The Council can remove its Auditor for cause by a vote of seven or more members (Section 3-8). The Council Auditor must be a certified public accountant. He should also be a dedicated, aggressive and intelligent public servant. The effectiveness of the Council will be largely determined by its Auditor.

The Council may, in its discretion, require an audit of county funds and accounts by an outside certified public accountant. (Section 3-9). The holders of the county's bonds may require such an audit. There may be other occasions for such an audit.

The Council appoints the Clerk. The Clerk is an agent of the Council.

Although the Council appoints the Auditor and Clerk, the Auditor and Clerk, like other department heads (Section 6-4(1)), each have the power to appoint their respective

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\*The Auditor for the Legislature has a term of eight years. The Comptroller General holds office for fifteen years.

staff assistants. Of course, the Council has the power to determine the size of the staff of each of these offices.

The Council has the power to determine the number of personnel positions each department is authorized.\* (Sections 6-4(1) and 7-4(2) and 7-4(3)). This includes the power to provide a general job description for each position.\*\*

The Council can hold its meetings at such times and places as it shall prescribe by rule. (Section 3-6(2)). The Council should hold several meetings each year in the outlying districts of the county.

#### AMENDMENTS TO CHARTER

Amendments to the proposed charter can be initiated by the Council, by Charter Commissions to be appointed at intervals of ten years, and by petitions presented to the Council. The proposed charter also provides for a special referendum, six years after the adoption of the charter, upon the question "shall a charter commission be appointed to propose amendments to the charter." (Section 14-3). The Commission is not infallible. Such a referendum will permit a complete review of the charter within a reasonably short time after its adoption,

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\*The power of the Council to create and eliminate personnel positions is based upon the Council's power to appropriate money. Since the Department of Water Supply is a semi-autonomous agency, which does not rely upon appropriations made by the Council, the Council does not have the power to determine the number of personnel positions authorized for the Department of Water Supply.

\*\*The Mayor has the power to make temporary personnel transfers between departments and between divisions within a department without the consent of the Council. A "temporary" transfer should not continue for more than 30 days. A transfer for more than 30 days is not temporary. Such a transfer should be submitted to the Council for its approval.



for time and experience may reveal the need for a general revision of the charter.

#### FINDINGS AND RECOMMENDATIONS

The members of the Commission have thoroughly enjoyed working together for the good of the people of the County of Maui. The charter we have prepared, and do hereby propose, represents our common effort and collective good judgment.

The members of the Commission are not from a common mold. We differ in age, background, temperament and experience; we come from different parts of the county. None of us are alike. Yet we agree that the proposed charter should be adopted as the organic law for the government of the people of the County of Maui. We speak to you with one voice.

Moreover, we have found, and do report to you, that the public favors the proposed charter. The public understands the defects that exist in our present form of county government.

Under R.L.H., 1955, Section 143A-8, as amended, you have the right to propose alternatives to the proposed charter. We respectfully request that you propose no such alternatives. The charters proposed by the Second Charter Commissions of Hawaii and Kauai were defeated by the electorate of each county largely because the proposed charters were submitted with alternatives. The submission of alternatives may make it impossible to obtain a majority vote upon the proposed charter or any alternative. In this event, though it might appear that a majority of the electorate favor a charter, the proposed charter and all of the proposed alternatives would be defeated, and the existing form of county government would continue. This would be an unfortunate result.

We therefore recommend for your approval the draft of the proposed charter for the County of Maui submitted herewith.

Dated this 6th day of February, 1967.

Respectfully submitted,

Nadao Honda

Nadao Honda

Douglas Sodehani

Douglas Sodehani  
Chairman

Harry Kobayashi

Harry Kobayashi

William F. Crockett

William F. Crockett  
Vice-Chairman

George Kondo

George Kondo

Emil Balthazar

Emil Balthazar

Paul Pladera

Paul Pladera

Edward L. Cluney

Edward L. Cluney

Keith Tester

Keith Tester

Shiro Hokama

Shiro Hokama

James S. Ushijima

James S. Ushijima

DOUGLAS SODETANI, Chairman

EMIL BALTHAZAR

WILLIAM F. CROCKETT

~~KORNWICK~~

SHIRO HOKAMA

NADA O HONDA

Edward L. Cluney



HARRY KOBAYASHI

GEORGE KONDO

PAUL PLADERA

KEITH TESTER

JAMES USHIJIMA

MAUI COUNTY CHARTER COMMISSION

WAILUKU, MAUI, HAWAII 96793

July 14, 1967

Honorable Goro Hokama  
Acting Chairman and Executive Officer  
and Members of the Board of Supervisors  
of the County of Maui  
Wailuku, Maui, Hawaii

Gentlemen:

Enclosed please find a Supplementary Statement of the Activities, Findings and Recommendation of the Charter Commission to the Board of Supervisors for your perusal and review. This will bring you up-to-date on the proposed Charter for the County of Maui. I trust that it is in order.

We thank you very much for the tremendous cooperation your august body has given the Maui County Charter Commission throughout its tenure.

Respectfully yours,

DOUGLAS SODETANI  
Chairman

Encl.

*Handwritten notes:*  
1/12/67  
182

COUNTY COMMUNICATION NO. 182

JUL 21 1967

A SUPPLEMENTARY STATEMENT OF THE ACTIVITIES, FINDINGS AND RECOMMENDATION OF THE CHARTER COMMISSION TO THE BOARD OF SUPERVISORS OF THE COUNTY OF MAUI

Since the submission of our Statement dated February 6, 1967, the Maui County Charter Commission has been asked to further clarify certain provisions of the proposed Charter. This Statement supplements the Statement of February 6, 1967.

DISCIPLINARY POWER OF  
THE DEPARTMENT OF POLICE

Section 8-9.4 of the proposed Charter provides:

"The dismissal, suspension, or demotion of any police officer or employee in the police department shall be under procedures set forth by civil service laws and regulations."

The Commission carefully considered the problem this section resolves.

At the present time a police officer, or an employee of the police department, who has been disciplined by the Police Commission cannot appeal to the Civil Service Commission. Section 8-9.4 gives a disciplined police officer or employee the same right of appeal to the Civil Service Commission now enjoyed by the other civil service employees of the county.

The members of the Police Department are members of a quasi-military organization. The Police Commission, the Chief of Police, his deputy and the senior officers of the Police Department must therefore establish and maintain a high level of discipline within this organization.\*

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\*Under the Uniform Code of Military Justice a member of the armed services has certain rights of appeal to the civilian Court of Military Appeals. By enacting the Uniform Code of Military Justice, Congress recognized that a person who puts on a uniform does not, by that act, lose all of his civil rights. 50 USC Sec. 867.



For example, insubordination on the part of a police officer in a critical, hazardous situation may result in the loss of life. Accordingly, under Section 8-9.2(1) the Police Commission has the power to enact rules regulating the conduct of police officers and employees of the Police Department.

Section 8-9.4 does not restrict the power of the Police Commission to enact such rules regulating conduct. Section 8-9.4 simply gives a police officer or employee who has been disciplined a right to appeal to the Civil Service Commission.

Section 8-9.4 does not mean that the Police Commission cannot act upon disciplinary matters within the Police Department. The Police Commission should determine whether the Police Chief or the Police Commission will take final disciplinary action within the Police Department. Section 8-9.4 simply provides that, after final disciplinary action has been taken within the Police Department, a police officer or employee can appeal to the Civil Service Commission.

#### SUBDIVISIONS

Under Section 8-6.3 of the proposed Charter the Planning Director will approve plans for the subdivision of tracts of land. At the present time, under the current Subdivision Ordinance, the Board of Supervisors must approve such subdivision plans. The Subdivision Ordinance states the technical requirements for a subdivision. The Planning Director can best determine whether the plans proposed by a subdivider satisfy the requirements of the ordinance. The Council, the County's legislative body, should not be burdened with such technical detail.

#### APPORTIONMENT OF THE COUNCIL

Under the proposed Charter the Council will be elected at large. However, of the nine seats, one must be filled by a

resident of Molokai, and another must be filled by a resident of Lanai.

Upon taking office the Commission asked the County Attorney to submit a memorandum as to the effect of the reapportionment cases decided by the United States Supreme Court upon the various alternate proposals for electing the Council. The County Attorney submitted such a memorandum on July 7, 1966.

The Commission carefully considered the memorandum of the County Attorney before it adopted the mentioned method for electing the Council. The Commission and the County Attorney were of the opinion that the proposed method of representation was constitutional.

Several persons who appeared at the public hearings held by the Commission argued that the proposed method for electing the Council was unconstitutional.

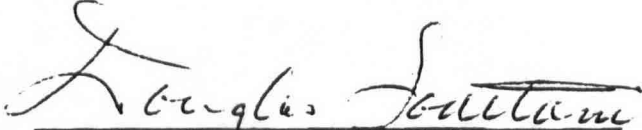
Dusch v. Davis, \_\_\_\_ U.S. \_\_\_\_ (May 22, 1967), indicates that the proposed method for electing the Council is constitutional. In the Dusch case the United States Supreme Court said with respect to the method of electing the Council of the City of Virginia Beach:

"Each of the 11 councilmen is elected by a vote of all the electors in the city. The fact that each of the seven councilmen must be a resident of the borough from which he is elected is not fatal."


The apportionment scheme considered in Dusch is very similar to the method now employed in the County of Maui, which the proposed Charter continues. The Dusch case should allay the fears of those who believed that the method of representation proposed by the Commission was unconstitutional.

Dated at Wailuku, Maui, Hawaii, this 29th day of June,

1967.

  
Douglas Sogdetani, Chairman

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Nadao Honda

  
William F. Crockett  
Vice Chairman

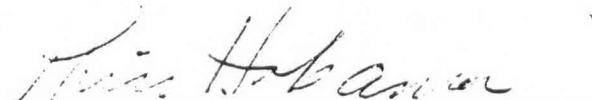
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George Y. Kondo

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Edward L. Cluney

  
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Paul Pladera

  
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Shiro Hokama

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Keith B. Tester

\_\_\_\_\_  
James S. Ushijima

CHARTER COMMISSION

COUNTY OF MAUI

2180 MAIN STREET (ROOM 24)

WAILUKU, MAUI, HAWAII 96793

February 27, 1976

91-8

Mr. James Ushijima, Clerk  
County of Maui  
Kalana O Maui  
Wailuku, Hawaii 96793

Dear Mr. Ushijima:

RE: TRANSMITTAL - CHARTER  
COUNTY OF MAUI

Pursuant to law, I am pleased to transmit herewith in behalf of the Maui County Charter Commission, the Proposed Revisions to the Maui County Charter together with a Final Report of the work of the Charter Commission.

These proposed amendments represent the culmination of a great amount of work contributed by the dedicated members of the Charter Commission over a course of a one-year period.

I know I speak in behalf of the entire Commission in expressing our distinct privilege to have been chosen to perform these meaningful duties.

Sincerely,

/s/ CHARLES A. KEKUMANO  
MONSIGNOR CHARLES A. KEKUMANO  
Chairman



REPORT  
of the  
MAUI COUNTY CHARTER COMMISSION

I. GENERAL

A. BACKGROUND

The Maui County Charter Commission was appointed in February, 1975, according to the provisions of Sec. 14-3 of the Charter of the County of Maui. It proceeded with its work on the assumption that the present Charter is basically a sound document, and therefore, no wholesale changes would be proposed.

A thorough study and review of the operation of the County government under the present Charter was made. The operations of local government under existing charters in other counties were studied. Informative talks were had with public officials, including the County Council members in Maui and other Counties of the State. Studies of various forms of local government were also made and some of the best printed materials available were gone over in the process.

After this preliminary study and review, the Charter Commission singled out those areas of the Charter that it believed needed revisions, or where it felt that alternative choices should be presented to the voters.

These proposals were presented at public hearings both early in its deliberations and later after it had refined its work, alternatives were discussed, advantages and disadvantages were laid out.

Although the Commission was somewhat disappointed in the small numbers of Maui County residents that turned out for these public meetings, nonetheless a feeling of general concern amongst the people was determined. Accordingly, those concerns were taken into account by the Commission in its final draft of proposed revisions.

B. ACCOUNTABILITY, RESPONSIVENESS, EFFICIENCY

The discussions within the Commission centered mainly on

## B. TERM OF OFFICE

Corollary to the question of Council Composition was the issue of term of office.

The Commission voted to place two alternatives (options) before the people of the County to allow the voters to determine whether they prefer a two-year or four-year term for Council members. Because community discussions seemed divided on the issue of Council terms, the Commission preferred not to decide the issue arbitrarily, but to leave it to the voters of the County to decide.

## C. OFFICE OF COUNCIL SERVICES

In order to strengthen the County Council in its policy making role, the Commission has proposed a new Office of Council Services to be filled as the need may arise. It will allow the legislative body to carry on its own study and research independent of the executive branch and thereby generate some ideas and proposals independent of what may be presented to it by the administration.

## III. EXECUTIVE BRANCH

### A. OFFICE OF THE MAYOR

In its efforts to assure more accountability in our County government, the Commission also realized that the responsibility for this goal would rest finally with the Mayor as the chief administrator.

The Commission felt therefore, that the Mayor should be given time to fully plan, develop and effectively carry out programs beneficial to the County. Long-range planning and the time needed to successfully implement these, prompted the Commission to increase the Mayor's term of office from two to four years with a limitation of two consecutive terms.

### B. OTHER EXECUTIVE PROPOSALS

Two new departments, a new chief administrative officer, a new commission, and new board are proposed.

#### 1. DEPARTMENT OF CORPORATION COUNSEL AND PUBLIC PROSECUTOR

In keeping with one of the golden threads that weaves its way through the Commission's deliberations, it was proposed to

separate the civil law functions from the criminal law functions presently handled by a single department, viz., the County Attorney's Office. It was the belief of the Commission that greater expertise could and would be developed in each of these fundamental areas of the law, if each was entrusted to a separate department. Thus, there would be greater efficiency, and perhaps more accountability as well, in the operations of these areas of County government. The Commission therefore, proposed a new Department of the Prosecuting Attorney, and a Department of Corporate Counsel.

## 2. DEPARTMENT OF HUMAN CONCERNS

Under the existing Charter, with the passage of time, there appeared to be a variety of functions carried on by different departments and agencies that had to do with what the Commission characterized as "human concerns." It was felt that for greater efficiency, the elimination of overlap, and for the purpose of giving greater attention to these human concerns, the time had come for the centering of these responsibilities in a single department. A new Department of Human Concerns has therefore been proposed.

## 3. MANAGING DIRECTOR

The Commission felt that the size of operations of the executive branch of County government, together with the ever increasing demands being made upon the time available to the Mayor, that greater efficiencies in the executive branch would be effected in providing the Mayor with a chief administrative officer. Thus, the Commission has provided for a Managing Director who will act as the Chief Administrative Assistant to the Mayor who will be responsible for the coordination and efficiency in the various departments and agencies of the executive branch of County government. This office has proven successful in the County of Hawaii and the City and County of Honolulu.

## 4. COST OF GOVERNMENT COMMISSION

Something entirely new has been proposed by way of a Cost of Government Commission. The Charter Commission is of the be-

lief that the problem of ever increasing costs of operating local government on the one hand, with limited financial resources to meet those costs on the other hand, has given rise to the need to keep the cost of government minimized, and to maximize its efficiency.

The Cost of Government Commission would provide a cyclical review of cost and efficiency of both the legislative and executive branches of County government. The Commission believes that this Commission, if adopted, will be one of the first of its kind in local government.

#### 5. BOARD OF ETHICS

A complete revision of the Code of Ethics is proposed. One of its chief characteristics is to provide for a Board of Ethics.

In general, the Code of Ethics requires public disclosure by public servants, so that, should conflicts of interest arise they would be made generally known to the public.

The Board of Ethics is empowered to initiate on its own, or receive complaints from the public and to hear and investigate alleged violations of the Code of Ethics and to make its findings known to the prosecuting attorney for appropriate action.

#### IV. FINANCIAL ACCOUNTABILITY

The Commission has proposed a newly drafted section calling for the annual auditing of all accounts and financial transactions of the County by independent certified public accountants.

The audit shall include both financial accountability and adequacy of the County's financial and accounting system. In short, this function together with the services of the Cost of Government Commission and a newly drafted provision for statements to be provided by the Director of Finance to the County Council should provide a sound "watch dog" service over the public purse.

#### V. PLANNING

##### A. PRESENT CHARTER PROVISIONS

The existing Maui Charter gives the County Planning Director little guidance other than to direct him to "Prepare a general plan to guide the development of the County by district or districts."

## B. COMMISSION PROPOSAL

The Commission is aware that the present planning process has concerned itself with more than mere physical planning. Indeed, after a review of what in fact our Planning Department is doing, the Commission has proposed a definition of the General Plan, and the General Plan process, that is both in keeping with current practices by the Planning Department and with current advanced thinking by professional planners elsewhere. In essence, the Commission's proposal is a codification, if you will, of the best thinking in this dynamic area of local government functions. It speaks in terms of a broad long-range statement of development policies and the effects that such policies might have on the social, economic, and environmental aspects of our community.

The Commission believes that this recognition of the impact that general planning will have on the social, economic and environmental character of the County is indeed being responsive to the needs and desires of the people of Maui. This responsiveness is further preserved by the continuation of a lay Planning Commission which is obliged to hold public hearings on any proposed General Plan or revisions thereto.

The Commission also believes that accountability to the people is further strengthened by providing for the appointment of the Planning Director directly by the Mayor rather than by a multimember Planning Commission appointed under staggered terms.

If the Planning Director is not performing in keeping with the desires of the voters of Maui, the latter can direct its displeasure to the elected appointing authority.

This same reasoning caused the Commission to propose the direct appointment by the Mayor of the head of the Board of Water Supply and the head of the Department of Personnel Services.

## VI. CONCLUSION

Therefore, this Commission presents the proposed new Charter as the culmination of a year's study and discussion. The Commission made every effort to structure a County government based on the elected officials who would always be accountable to the



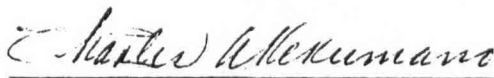
people for the actions of government.


In view of this accountability theme therefore, the highest administrator (the Mayor) would be held responsible for all departments of the County administration. In the same way, the legislative branch of the County government as the policy making body, would be responsible for all matters pertaining to legal enactments and legal appropriations made by them.

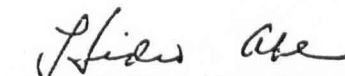
The Commission believes that the proposed Charter will give the citizens of Maui County the kind of responsive and sensitive government that the public has made clear it desired.

Dated this 27th day of  
February, 1976; County of  
Maui, State of Hawaii.


Respectfully submitted,

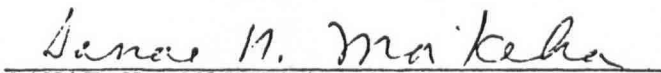
  
MONSIGNOR CHARLES A. KEKUMANO,  
CHAIRMAN

  
EDWINA U. BRIGHT,  
VICE CHAIRMAN


  
HIDEO ABE

  
CATALINO AGLIAM

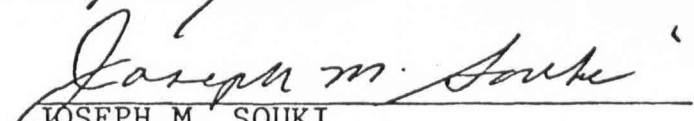
  
MARGARET CAMERON


  
SANAE N. MOIKEHA

  
RALPH M. MURAKAMI

  
STEPHEN PETRO

  
LLOYD K. SODETANI

  
JOSEPH M. SOUKI

  
ALLAN R. SPARKS

## PREAMBLE

WE THE PEOPLE OF THE COUNTY OF MAUI, to secure the benefits of an improved form of county government and to exercise the powers and assume the responsibilities of county government to the fullest extent possible, do hereby adopt this charter of the County of Maui, State of Hawaii.

## ARTICLE 1. INCORPORATION AND GEOGRAPHICAL LIMITS

### Sec. 1-1. INCORPORATION.

The people of the County of Maui shall be and continue as a body politic and corporate by the name of "County of Maui," hereinafter in this charter called "county." By that name it shall have perpetual succession.

### Sec. 1-2. GEOGRAPHICAL LIMITS.

The islands of Maui, Molokai, Lanai and Kahoolawe and all other islands lying within three nautical miles off the shores thereof and the waters adjacent thereto, except that portion of the island of Molokai known as Kalaupapa, Kalawao and Waikolu, and commonly known and designated as the Kalaupapa settlement, shall constitute the County of Maui.

## ARTICLE 2. POWERS OF THE COUNTY

### Sec. 2-1. POWERS OF THE COUNTY.

The County of Maui shall have all powers possible for a county to have under the constitution and laws of the State of Hawaii. These powers shall include, but shall not be restricted to, or by, the following: all powers now or hereafter given by the constitution or other laws, and all other powers not prohibited by such constitution or by this charter, to the County of Maui or its departments, or to counties or county departments; and all powers necessary and proper to carry into execution other powers of the County of Maui. The county shall have

all such powers as fully and completely as though they were specifically enumerated in this charter; and no enumeration of powers in this charter shall be deemed exclusive or restrictive.

Sec. 2-2. EXERCISE OF POWERS.

All powers of the county shall be carried into execution as provided by this charter, or, if the charter makes no provision, as provided by ordinance or resolution of the county council.

ARTICLE 3. COUNTY COUNCIL

Sec. 3-1. COMPOSITION.

There shall be a county council composed of nine members who shall be elected at-large. Of the nine members elected to the county council, one shall be a resident of the Island of Lanai, one a resident of the Island of Molokai, one a resident of the district of East Maui, one a resident of the district of West Maui, three as residents of Central Maui, and in the case of the two remaining members, no particular district residency shall be required. The person charged with the duty of conducting elections in the county shall prepare the nomination papers in such a manner that candidates desiring to file for the office of councilman shall be able to specify whether they are seeking a seat with a district residence requirement or a seat with no district requirements as the case may be. The ballots for the primary and general elections shall, nevertheless, be prepared to give every voter in the county the right to vote for each and every council seat.

1. The district of East Maui shall consist of: The 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 12th, 13th and 14th Precincts, in the Fifth Representative District.\*

2. The district of West Maui shall consist of: The 10th, 11th, 12th, and 13th Precincts in the Sixth Representative District.\*

3. Central Maui shall consist of the remaining area between the districts of East Maui and West Maui.\*

\*The district and precinct boundaries are described in the DISTRICT AND PRECINCT BOUNDARIES MANUAL prepared and published by the Lieutenant Governor's Office and located in the County Clerk's Office. 1976.

Sec. 3-2. TERMS. (OPTION 1)

The terms of office of councilmen shall be for two years, beginning at twelve o'clock meridian on the second day of January following their election.

Sec. 3-2. TERMS. (OPTION 2)

The terms of office of councilmen shall be for four years, beginning at twelve o'clock meridian on the second day of January following their election.

Sec. 3-3. QUALIFICATIONS.

To be eligible for election or appointment to the council, a person must be a citizen of the United States, a voter in the county, and where residency in a district is a requirement, a voter in the district from which he seeks to be elected. If a councilman ceases to be a resident of the county, or in the case of a councilman who is elected to a seat requiring residency in a district ceases to be a resident of the district during his term of office, or in either case a councilman is convicted of a felony, he shall immediately forfeit his office and his seat shall thereupon become vacant.

The council shall be judge of the qualifications of its members and for that purpose shall have power to subpoena witnesses, take testimony and require the production of records. Decisions made by the council in the exercise of powers granted by this subsection shall be subject to review by a court of competent jurisdiction.

Sec. 3-4. VACANCY IN OFFICE.

In the event a vacancy in the office of any councilman shall occur, the remaining members of the council shall elect a person with the same qualifications required of a candidate elected by

the voters and of the same political party as the person he succeeds to fill the vacancy for the current unexpired term. Should the council fail to fill any vacancy within thirty (30) days after its occurrence, the mayor shall appoint a like qualified successor of the same political party as the person he succeeds to fill the vacancy for the current unexpired term.

Sec. 3-5. SALARIES OF COUNCILMEN.

The salaries of the councilmen shall be established by ordinance. The council may change the salaries of councilmen by ordinance, but no increase of salaries shall be effective during the term in which an increase is enacted. No ordinance changing the salaries of councilmen shall be adopted during the last sixty (60) days of a term.

Sec. 3-6. PROCEDURE; MEETINGS; RULES AND JOURNAL; VOTING.

1. The council shall meet in the council room at the county building for its organization at two o'clock p.m. on the second day of January following its election, or on the following day if the second day be a Sunday, at which time it shall elect one of its members as chairman and presiding officer of the council. Until such time as the chairman and presiding officer shall be elected, the mayor shall preside at such meeting, provided that the mayor shall not have a vote. The council shall also elect a vice-chairman who shall act as the presiding officer in the event of the chairman's absence or disability. The council shall appoint a presiding officer pro tempore from its own members in the event of the absence or disability of both the chairman and vice-chairman.

2. The county council shall meet regularly at least twice in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor, chairman or of five or more members and, whenever practicable, upon no less than seventy-two hours effective notice to each member.

3. The council shall determine its own rules and order



of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record.

4. Voting, except on procedural motions, shall be by roll call and the ayes and noes shall be recorded in the journal. Five members of the council shall constitute a quorum, but a smaller number may convene from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. No action of the council shall be valid or binding unless adopted by a vote of five or more members of the council.

Sec. 3-7. POWERS OF COUNTY COUNCIL.

The county council shall be the policy-determining body of the county. Without limitation of the foregoing grant or of other powers given it by this charter, the council shall have the power:

1. To establish county departments in the manner provided by this charter.

2. To levy taxes and special assessments and to borrow money, subject to the limitations provided by law.

3. To make appropriations for county purposes.

4. To conduct investigations of (a) the operation of any department or function of the county and (b) any subject upon which the council may legislate.

5. To enter into bilateral and multilateral contracts with other counties, the State, or the United States for the performance of any function or activity which the county is authorized to perform.

6. To appoint and fix the salaries of such employees as may be necessary.

7. To require periodic and special reports concerning their functions and operations from all county departments; and such reports, in the case of departments subject to the direction and supervision of the mayor, shall be submitted by and through the mayor.

8. To retain or employ, by a vote of two-thirds of its entire membership, special counsel for any special matter presenting a real necessity for such employment. Any such employment shall specify the compensation, if any, to be paid for said services.

Sec. 3-8. OFFICE OF COUNCIL SERVICES.

The council may establish an Office of Council Services and create such positions therein as it deems necessary to assist it in the exercise of its legislative power. The council shall fix the salaries of such positions by ordinance. Persons hereafter appointed to such positions by the council shall be exempt from civil service.

Sec. 3-9. RESTRICTIONS ON COUNCIL AND COUNCIL MEMBERS.

1. Neither the council nor any of its members shall, in any manner, dictate the appointment or removal of any officer or employee appointed by the mayor or by his subordinates.

2. Except for the purpose of inquiries under section 3-7 (4), the council or its members, in dealing with county employees or with county officers, shall deal solely through the mayor, and neither the council nor its members shall give orders to any such employee or officer either publically or privately. Any willful violation of the provisions of this subsection by a member of the council shall be sufficient grounds for his removal from office by impeachment.

ARTICLE 4. ORDINANCES AND RESOLUTIONS

Sec. 4-1. ACTIONS OF THE COUNCIL.

Every legislative act of the council shall be by ordinance, provided that for the purposes of this section the transfer of funds within the same department, whether in the operating budget or capital budget, shall not be considered a legislative act and such transfer may be effected by resolution. The enacting clause of every ordinance shall be "Be it ordained by the people of the County of Maui." Non-legislative acts of the council may be by

resolution, and except as otherwise provided, no resolution shall have the force or effect of law. The enacting clause of every resolution shall be "Be it resolved by the council of the County of Maui."

Sec. 4-2. INTRODUCTION, CONSIDERATION AND PASSAGE OF ORDINANCES AND RESOLUTIONS.

1. Every proposed ordinance shall be initiated as a bill and shall be passed by a vote of a majority of the entire council after two readings on separate days. The vote on final passage shall be taken by ayes and noes and entered in the journal. Full readings of bills may be required by a vote of three or more members of the council.

2. Ordinances shall take effect on the date specified therein or, in the absence of such specification, upon approval thereof by the mayor.

3. Except as otherwise provided in this charter, resolutions may be adopted on one reading by a vote of a majority of the entire council taken by ayes and noes and entered in the journal. The reading shall be in full except by unanimous consent of all councilmen present, in which case the reading may be by title only.

4. Upon the request of three members of the council, a public hearing shall be held on any proposed ordinance or resolution.

5. All bills shall pass first reading by a vote taken by ayes and noes, and digests of such bills shall be advertised once in a newspaper of general circulation in the county, with the ayes and noes, at least three days before final reading by the council. Not less than three copies of such bills shall be filed for use and examination by the public in the office of the county clerk at least three days prior to the final reading thereof.

6. All ordinances shall be promptly advertised once by title only in a newspaper of general circulation in the county, with the ayes and noes after enactment.

7. Should the council find by a two-thirds vote of its

entire membership the existence of an emergency due to a public calamity, the council may waive all of the requirements of this section pertaining to procedure, except those relating to the number of votes required for passage and recording of the vote in the journal. Every emergency ordinance, including any amendments made therein after its adoption, shall automatically stand repealed as of the ninety-first day following the date on which it became effective.

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

9. Ordinances and resolutions may be passed on first reading by one administration and passed on second reading and approved by the mayor of a succeeding administration.

Sec. 4-3. SUBMISSION OF BILLS TO THE MAYOR.

1. Every bill which has passed the council and has been duly authenticated by the county clerk and the presiding officer shall be presented to the mayor for his approval. If he approves it, he shall sign it and the bill shall then become effective as an ordinance as provided herein. If he disapproves it, he shall specify his objections thereto in writing and return the bill to the county clerk with his objections within ten (10) days (excluding Saturdays, Sundays and holidays) after receiving it. If he does not return it with his disapproval within that time, it shall take effect as an ordinance as if he had signed it. The objections of the mayor shall be entered at large in the journal of the council and the council may, after five (5), and within thirty (30) days after the bill has been so returned, reconsider the vote upon the bill. If the bill, upon reconsideration, is again passed by a two-thirds vote of the entire membership of the council, the presiding officer shall verify that fact on the bill and, when so certified, the bill shall take effect as an ordinance as if it had been signed by the mayor. If the bill fails to receive the two-thirds vote of the entire membership of the council, it shall be deemed lost. The vote upon reconsideration shall be taken by ayes and noes and entered in the journal.

2. If any bill is presented to the mayor appropriating money, he may veto any item or items or portion or portions thereof by striking out or reducing the same. In the case of such a veto, the mayor shall append to the bill at the time of signing it a statement of the item or items or portion or portions thereof to which he objects and the reasons therefor, and the item or items or portion or portions thereof so vetoed shall not take effect unless passed notwithstanding the mayor's veto. Each item so vetoed may be reconsidered by the council in the same manner as bills which have been disapproved by the mayor.

Sec. 4-4. AMENDMENT, REVISION OR REPEAL; ADOPTION OF CODES BY REFERENCE.

1. Any ordinance or resolution may be repealed by reference to its number or section number.

2. Any code or portions thereof may be adopted by reference thereto by the enactment of an ordinance for the purpose. Not less than three copies of such code or portions thereof shall be filed for use and examination by the public in the office of the county clerk not less than fifteen (15) days prior to the final reading thereof, and notice of the availability of said copies shall be published by the clerk in a newspaper of general circulation in the county.

Sec. 4-5. CODIFICATION OF ORDINANCES.

1. The council shall cause any codification of all of the ordinances of the county heretofore prepared and published to be revised and updated at least every ten years. Such revision and updating may be prepared by the corporation counsel, or the county council may contract for such revision and updating by professional persons or organizations experienced in the revision and codification of ordinances or statutes.

2. The code may be adopted by reference by the passage of an ordinance for that purpose. Copies of the code shall be made available to the public at a reasonable price. Not less than three copies of the code shall be filed for use and examination



by the public in the office of the county clerk at least sixty (60) days prior to the adoption thereof.

3. All proposed ordinances of general application introduced after the approval of the code shall be adopted as amendments of or additions to the code and by reference thereto.

#### ARTICLE 5. COUNTY CLERK

##### Sec. 5-1. ORGANIZATION.

There shall be an office of the county clerk consisting of the county clerk and the necessary staff.

##### Sec. 5-2. COUNTY CLERK.

The county clerk shall be appointed and may be removed by the council.

##### Sec. 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.
4. Conduct all elections held within the county.
5. Perform such other functions as the council may prescribe.

#### ARTICLE 6. EXECUTIVE BRANCH

##### Sec. 6-1. EXECUTIVE POWER.

The executive power of the county shall be vested in and exercised by the executive branch, which shall be headed by the mayor, except as otherwise provided by this charter.

##### Sec. 6-2. ORGANIZATION.

Except as otherwise provided, within one year after the effective date of this charter, the mayor shall recommend and

the council shall, by ordinance, adopt an administrative code providing for a complete plan of administrative organization of the departments of the county government not inconsistent with the provisions of this charter. Upon recommendation of the mayor, the council may, by a two-thirds vote of its entire membership, create, change, abolish, combine or rearrange the departments of the county.

Sec. 6-3. APPOINTMENT AND REMOVAL OF OFFICERS AND EMPLOYEES.

1. The administrative head of a department may not appoint more than the staff for which appropriations have been made by the council.

2. No appointing authority shall appoint any person to any office or position exempted from civil service until satisfied by proper investigation that the person to be appointed is fully qualified by experience and ability to perform the duties of his office or position.

Sec. 6-4. POWER AND DUTIES OF ADMINISTRATIVE HEADS OF DEPARTMENTS.

1. Subject to the provisions of this charter and applicable regulations adopted thereunder, the administrative heads of departments shall have the power to take all personnel actions.

2. The administrative head of a department may assign and reassign duties to employees and supervise the performance thereof.

3. The administrative head of a department which is not governed by a board or commission may, subject to the approval of the mayor, prescribe such rules as are necessary for the organization and internal administration of the department.

4. The administrative head of a department shall perform such duties not inconsistent with the duties of his office, as may be assigned by the mayor, provided that this shall not apply to the administrative head of a department which is governed by a board or a commission.

ARTICLE 7. MAYOR

Sec. 7-1. ELECTION AND TERM OF OFFICE.

The voters of the county shall elect a mayor whose term of office shall be four years beginning at twelve o'clock meridian on the second day of January following his election. A mayor, duly elected, may not serve more than two consecutive full terms of office.

Sec. 7-2. QUALIFICATIONS.

Any citizen of the United States who is a voter of the county shall be eligible to fill the office of mayor. Upon removal of his residence from the county, the mayor shall by that fact be deemed to have vacated his office. If the mayor ceases to be a voter of the county or is convicted of a crime involving moral turpitude, he shall immediately forfeit his office.

Sec. 7-3. THE SALARY OF THE MAYOR.

The salary of the mayor shall be established by ordinance.

Sec. 7-4. POWERS, DUTIES AND FUNCTIONS.

The mayor shall be the chief executive officer of the county. He shall have the power to:

1. Except as otherwise provided, exercise supervision directly or through the managing director over all agencies enumerated in Article 8 of this charter and other agencies as he may deem desirable.

2. Appoint the necessary staff for which appropriations have been made by the council.

3. Create positions authorized by the council and for which appropriations have been made, or abolish positions, but a monthly report of such actions shall be made to the council.

4. Make temporary transfers of positions between departments or between subdivisions of departments.

5. Recommend to the council a pay plan for all department heads and all persons employed by the county or any of its

departments, whether as officers or otherwise, except those whose pay is otherwise provided for, provided that the salary of any officer or employee not within civil service established by any department, including any board or commission, shall be subject to approval by the council and the mayor.

6. Submit an operating budget and a capital program annually to the council for its consideration and adoption.

7. Sign instruments requiring execution by the county, including deeds and other conveyances, except those which the director of finance or other officer is authorized by this charter, ordinance or resolution, to sign.

8. Present messages or information to the council which, in his opinion, are necessary or expedient.

9. In addition to the annual report, make periodic reports informing the public as to county policies, programs and operations.

10. Approve or veto ordinances and resolutions.

11. Have a voice but no vote in the proceedings of all boards and commissions.

12. Enforce the provisions of this charter, the ordinances of the county and all applicable laws.

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

#### Sec. 7-5. VACANCY IN OFFICE.

1. A vacancy in the office of the mayor shall be filled for the remainder of the unexpired term in the following manner:

a. If the unexpired term is less than one year, the managing director shall act as mayor. If the office of managing director is vacant or during such periods that the managing director is unable to so act, the director of planning shall then act as mayor.

b. If the unexpired term is one year or more, the vacancy shall be filled by a special election to be called by the council within thirty (30) days and to be held within ninety (90) days after the occurrence of the vacancy.

The electors of the county shall then elect a successor with requisite qualifications to fill the vacancy for the remainder of the term. If any special or general election is to be held in the county after thirty (30) days and within one hundred eighty (180) days after the occurrence of the vacancy, then the election shall be held in conjunction with such other election.

2. Pending the election of a mayor in the case of a vacancy or in the temporary absence of the mayor from the State, or a temporary disability of the mayor, the managing director shall act as mayor. If there is no managing director or if he is unable to act, the planning director shall act as mayor.

## ARTICLE 8. COUNTY DEPARTMENTS

For the purpose of carrying out the policies of the county and administering its affairs, the county departments hereinafter described are hereby recognized, continued and established and shall have the functions hereinafter described.

### CHAPTER 1.

#### MANAGING DIRECTOR

##### Sec. 8-1.1. MANAGING DIRECTOR.

a. There shall be a managing director who shall be appointed and may be removed by the mayor, and who shall be exempt from civil service. He shall be the principal management aide of the mayor.

b. The salary of the managing director shall be established by ordinance.

##### Sec. 8-1.2. POWERS, DUTIES AND FUNCTIONS.

The managing director shall:

a. Supervise the administrative functions of all agencies, departments, boards and commission assigned by the mayor.

b. Evaluate the management and performance of each agency.

c. Prescribe standards of administrative practice to be followed by all agencies under his supervision.



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

e. Perform all other duties required of him by this charter or assigned to him by the mayor.

## CHAPTER 2.

### DEPARTMENT OF THE CORPORATION COUNSEL

#### Sec. 8-2.1. ORGANIZATION.

There shall be a department of the corporation counsel consisting of the corporation counsel and the necessary staff.

#### Sec. 8-2.2. CORPORATION COUNSEL.

The corporation counsel shall be appointed by the mayor with the approval of the council and may be removed by the mayor with the approval of the council. The corporation counsel shall be an attorney licensed to practice and in good standing before the Supreme Court of the State and shall have engaged in the practice of law in the State for at least three years.

#### Sec. 8-2.3. POWERS, DUTIES AND FUNCTIONS.

The corporation counsel shall be the chief legal adviser and legal representative of all departments, including the council, and of all officers and employees in matters relating to their official powers and duties, and he shall represent the county in all legal proceedings.

#### Sec. 8-2.4. DEPUTY CORPORATION COUNSELS.

The corporation counsel shall have the power to appoint such deputy corporation counsels and necessary staff as shall be authorized by the council. Such appointees shall be in the exempt class of civil service and shall serve at the pleasure of the corporation counsel.

#### Sec. 8-2.5. SERVICE OF LEGAL PROCESS.

Legal process against the county shall be served upon the corporation counsel or any of his deputies.

CHAPTER 3.

DEPARTMENT OF THE PUBLIC PROSECUTOR

Sec. 8-3.1. ORGANIZATION.

There shall be a department of the public prosecutor headed by a prosecuting attorney and the necessary staff.

Sec. 8-3.2. PROSECUTING ATTORNEY.

The prosecuting attorney shall be appointed by the mayor with the approval of the council and may be removed by the mayor with the approval of the council. The prosecuting attorney shall be an attorney licensed to practice and in good standing before the Supreme Court of the State and shall have engaged in the practice of law in the State for at least three years.

Sec. 8-3.3. POWERS, DUTIES AND FUNCTIONS.

The prosecuting attorney shall:

a. Appoint such deputy prosecuting attorneys and necessary staff as shall be authorized by the council. Such appointees shall be in the exempt class of civil service and shall serve at the pleasure of the prosecuting attorney.

b. Attend all courts in the county and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the State and the ordinances and regulations of the county.

c. Appear in every criminal case where there is a change of venue from the courts in the county and prosecute the same in any jurisdiction to which the same is changed or removed.

d. Institute proceedings, or direct the chief of police to do so, before a judge of a court of competent jurisdiction for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that any such offenses have been committed, and for that purpose take charge of criminal cases before a judge of a court of competent jurisdiction.

either in person or by a deputy or by such other prosecuting officer as he shall designate.

e. Draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration. Nothing herein contained shall prevent the conduct of proceedings by private counsel before a judge or courts of record under the direction of the prosecuting attorney.

#### CHAPTER 4.

#### DEPARTMENT OF FINANCE

##### Sec. 8-4.1. ORGANIZATION.

There shall be a department of finance consisting of the director of finance and the necessary staff.

##### Sec. 8-4.2. DIRECTOR OF FINANCE.

The director of finance shall be appointed and may be removed by the mayor. The director of finance shall have had a minimum of five years of training and experience in a public or private financial position, at least three years of which shall have been in a responsible administrative capacity.

##### Sec. 8-4.3. POWERS, DUTIES AND FUNCTIONS.

The director of finance shall be the chief fiscal officer of the county and shall:

1. Prepare bills for the collection of money due the county, or authorize the preparation thereof by other departments of the county government under his general supervision.
2. Collect and receive moneys due to or receivable by the county and issue receipts therefor, or authorize other departments to do so under conditions prescribed by him.
3. Keep accurate and complete account of receipts and disbursements.
4. Maintain the treasury and deposit moneys belonging to the county in depositories authorized by law which fulfill all conditions prescribed for them by law.

5. Assist the mayor in the preparation and execution of the budget.

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.

7. Be responsible for issuing and selling, paying interest on and redeeming bonds of the county.

8. Prepare and issue warrants.

9. Prepare payrolls and pension rolls.

10. Be responsible for the management of county funds.

11. Sell real property upon which improvement assessments are not paid within the period prescribed and dispose of real property or personal property not needed by any department of the county pursuant to policies established by the council, provided that all deeds and other conveyances shall be executed by the mayor.

12. Rent or lease county property and award concessions pursuant to policies established by the council.

13. Prepare and maintain a perpetual inventory of all lands and equipment or other personally owned, leased, rented or controlled by the county.

14. Review assessment rolls for assessable public improvements prior to approval by the council and issue bills therefor after such approval has been given.

15. Have custody of all official bonds, except the bond of the director of finance, which shall be in the custody of the county clerk.

16. Each quarter submit through the mayor to the council a statement of the revenues and expenditures for the preceding quarter and for the fiscal year up to and including the preceding quarter. Such statement shall be sufficiently detailed as to appropriations, allotments and funds to show the exact financial condition of the county and of each of its agencies and executive departments. A copy of the statement shall be filed with the county clerk and shall be a public record.

17. Establish central services, such as computing center, motor pool, duplicating service, mail and messenger service, and others, whenever efficiency studies have been conducted and determination made that economies can be made by providing such services centrally.

18. Prepare and process applications for state, federal or other funds on behalf of the county.

#### CHAPTER 5.

#### DEPARTMENT OF PUBLIC WORKS

##### Sec. 8-5.1. ORGANIZATION.

There shall be a department of public works consisting of a director of public works, board of adjustment and appeals, and the necessary staff.

##### Sec. 8-5.2. DIRECTOR OF PUBLIC WORKS.

The director of public works shall be appointed and may be removed by the mayor. The director of public works shall have had a minimum of five years of training and experience in a responsible administrative capacity, either in public service or private business, or both.

##### Sec. 8-5.3. POWERS, DUTIES AND FUNCTIONS.

The department shall have the following powers, duties and functions and such other powers, duties and functions as shall be prescribed by ordinance, provided that the powers, duties and functions of the department existing at the effective date of this charter shall continue to be exercised and performed by the department until changed or modified by ordinance:

1. Prepare a proposed ordinance governing the subdivision of lands within the county.
2. Be charged with the administration of the subdivision and zoning ordinances and rules or regulations adopted thereunder.
3. Be charged with the approval of proposed subdivision plans which are in conformity with the subdivision ordinance and rules or regulations adopted thereunder.



Sec. 8-5.4. BOARD OF ADJUSTMENT AND APPEALS.

The board of adjustment and appeals shall consist of five members appointed by the mayor with the approval of the council for terms of five years.

The board of adjustment and appeals shall:

1. Hear and determine appeals from any decision or order of any department charged with the enforcement of the zoning and subdivision ordinances, wherever error in such decision or order has been alleged.

2. Hear and determine petitions for variances and, subject to such principles, conditions or procedures as the council may by ordinance provide, to vary the strict application of any provision of the zoning and subdivision ordinances to any specific parcel of land when, by reason of peculiar and unusual circumstances pertaining to such parcel, such strict application would deprive the owner of the reasonable use thereof or cause undue hardship.

3. Hear and determine, on application therefor, all other matters which the board may be required to pass on pursuant to the terms of the zoning and subdivision ordinances and subject to the standards and requirements prescribed therein.

4. Hear and determine applications for a permit for a building or structure to be erected on any land shown as a highway, street, or drainage right of way on the general plan. Upon such application and after a hearing, the board shall grant a permit, subject to such conditions as it may impose, for such a building or structure, if upon balancing the owner's interest against the interest of the county in preserving the integrity of the general plan, it finds that otherwise the owner of such land would suffer unnecessary hardship.

5. Hear and determine appeals by persons whose applications for building permits have been denied under the subdivision ordinances or regulations, zoning ordinances or regulations, or under any other ordinances or regulations.

6. Prior to the granting of any variance, the board of adjustment and appeals shall hold a public hearing thereon, at which time the board will afford interested persons a reasonable opportunity to be heard and which hearing may be held in the area directly affected.

7. Whenever the board grants a variance pursuant to a petition therefor, it shall specify the particular evidence which supports the granting of the variance.

8. Adopt such rules and regulations as may be necessary to the performance of its duties as authorized and in accordance with this charter or by law. Such rules and regulations, after public notice and public hearing and upon approval by the mayor, shall have the force and effect of law.

#### CHAPTER 6.

#### DEPARTMENT OF PARKS AND RECREATION

##### Sec. 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.

##### Sec. 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 training and experience in a responsible administrative capacity, either in public service or private business, or both.

##### Sec. 8-6.3. POWERS, DUTIES AND FUNCTIONS.

The department shall have the following powers, duties and functions and such other powers, duties and functions as shall be prescribed by ordinance, provided that the powers, duties and functions of the department existing on the effective date of this charter shall continue to be exercised and performed by the department until changed or modified by ordinance:

1. Plan, design, construct, maintain and operate all parks and recreational facilities of the county.

2. Develop and implement programs for cultural, recreational and other leisure-time activities for the people of the county, except as otherwise provided by law.

#### CHAPTER 7.

##### DEPARTMENT OF FIRE CONTROL

###### Sec. 8-7.1. ORGANIZATION.

There shall be a department of fire control consisting of a fire chief and the necessary staff.

###### Sec. 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 training and experience in a fire department, at least three years of which shall have been in a responsible administrative capacity.

###### Sec. 8-7.3. POWERS, DUTIES AND FUNCTIONS.

The powers, duties and functions of the department of fire control shall be prescribed by ordinance, provided that the powers, duties and functions of the department existing on the effective date of this charter shall continue to be exercised and performed by the department until changed or modified by ordinance.

#### CHAPTER 8.

##### DEPARTMENT OF PLANNING

###### Sec. 8-8.1. ORGANIZATION.

There shall be a department of planning consisting of a planning commission, a planning director and the necessary staff.

###### Sec. 8-8.2. PLANNING DIRECTOR.

The planning director shall be appointed and may be removed by the mayor. He shall have had five years of training and experience in the field of planning, three of which shall have been in a responsible administrative capacity.

The director shall:

1. Be the administrative head of the department of planning.
2. Serve as the chief planning officer of the county and as the technical advisor to the mayor, council and planning commission on all planning and related matters.
3. Prepare a general plan and revisions thereof at least every five years to guide the development of the county by planning areas.
4. Prepare proposed zoning ordinances, zoning maps and regulations and any amendments or modifications thereto.
5. Review the lists of proposed capital improvements contemplated by the departments of the county and recommend the order of their priority to the mayor.
6. Exercise all the powers and perform all the duties of the planning director as authorized by law or ordinance and exercise such other powers and perform such other duties as shall be required or delegated by the mayor.

Sec. 8-8.3. PLANNING COMMISSION.

The planning commission shall consist of seven members appointed by the mayor with the approval of the council for terms of five years. The director of the department of public works and the director of the department of water supply shall be non-voting ex-officio members of the commission.

The planning commission shall:

1. Advise the mayor, council and the planning director in matters concerning planning programs.
2. Review the general plan and revisions thereof developed by the planning director. The commission shall hold public hearings on such plans and revisions thereof and shall transmit them, with its findings and recommendations thereon, through the mayor to the council for its consideration and action. The commission shall recommend approval in whole or in part and with or without modifications, or recommend rejection of such plans or revisions.

3. Review proposed zoning ordinances and amendments there-  
to developed by the director and, after public hearings, transmit  
such ordinances with recommendations thereon through the mayor  
to the council for consideration and action. The commission  
may recommend approval in whole or in part and with or without  
modification or recommend rejection of such proposed ordinances.

4. Recommend rules and regulations pursuant to zoning  
ordinances to the mayor for adoption under this charter or law.

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

#### Sec. 8-8.4. GENERAL PLAN.

The purpose of preparing a general plan is to recognize  
and state the major problems and opportunities concerning the  
needs and the development of the county and the social, economic  
and environmental effects of such development and to set forth  
the desired sequence, patterns and characteristics of future  
development.

The general plan shall set forth the county's broad  
policies for long-range development of the county. It shall con-  
tain statements of the general, social, economic, environmental  
and design objectives to be achieved for the general welfare and  
prosperity of the people of the county through government action,  
county, state or federal. The statements shall include, but not  
be limited to, policy and development objectives to be achieved  
with respect to distribution of social benefits, the more desir-  
able uses of land within the county and the most desirable popu-  
lation densities within the county.

#### Sec. 8-8.5. ADOPTION OF GENERAL PLAN.

1. The council shall adopt the general plan or revisions  
thereof by ordinance.

2. The general plan shall be kept on file in the depart-  
ment of planning.

3. Any revision of, or amendment to the general plan may  
be proposed by the council and shall be processed in the same



manner as if proposed by the planning director. Any such revision or amendment shall be referred to the planning commission by resolution. If the planning commission disapproves the proposed revision or amendment or recommends a modification thereof, not accepted by the council, or fails to make its report within the period of forty-five (45) days, the council may nevertheless adopt such revision or amendment, but only by the affirmative vote of at least two-thirds of its entire membership.

## CHAPTER 9.

### DEPARTMENT OF PERSONNEL SERVICES

#### Sec. 8-9.1. ORGANIZATION.

There shall be a department of personnel services consisting of a civil service commission, a director, and the necessary staff.

#### Sec. 8-9.2. CIVIL SERVICE COMMISSION.

The civil service commission shall consist of five members appointed by the mayor with the approval of the council for terms of five years.

The civil service commission shall:

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

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

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

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

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

#### Sec. 8-9.3. DIRECTOR OF THE DEPARTMENT OF PERSONNEL SERVICES.

The director of the department of personnel services shall

be appointed and may be removed by the mayor. The director of personnel services shall have had a minimum of five years of training and experience in personnel administration, either in public service or private business, or both, at least three of which shall have been in a responsible administrative capacity.

The director of the department of personnel services shall:

1. Be the administrative head of the department of personnel services.
2. Be responsible for the personnel management program of the county.
3. Perform such duties as are established under the civil service laws of the State or as may be assigned by the mayor.

#### Sec. 8-9.4. POSITIONS UNDER CIVIL SERVICE.

1. The provisions of this chapter shall apply to all positions in the county, except as may be exempted by this charter or state law, and except for the administrative heads of a department and the first deputy of each department.

2. In the event an employee under civil service shall be appointed as the first deputy to the administrative head of any department, such employee may reserve the right to reclaim his former position as a civil service employee upon the termination of his services as such deputy, provided that such right must be exercised within a period of two years after his appointment as such deputy.

### CHAPTER 10.

#### DEPARTMENT OF HUMAN CONCERNS

#### Sec. 8-10.1. ORGANIZATION.

There shall be a department of human concerns which shall consist of a director of human concerns, a commission on human concerns and the necessary staff. The director of human concerns shall be the administrative head of the department of human concerns.

Sec. 8-10.2. DIRECTOR OF HUMAN CONCERNS.

The director of human concerns shall be appointed and may be removed by the mayor. The director of human concerns shall have had a minimum of five years of training and experience in a responsible administrative capacity, either in public service or private business, or both.

The director of human concerns shall develop a comprehensive approach to the effective administration and coordination of programs and plans of action designed to meet human needs in Maui County.

Sec. 8-10.3. COMMISSION ON HUMAN CONCERNS.

There shall be an advisory commission on human concerns which shall consist of seven members. The commission shall be appointed by the mayor and shall advise the mayor, council and the director on matters pertaining to human concerns and shall promote community understanding and interest in such matters.

Sec. 8-10.4. SCOPE OF ACTIVITIES.

The department of human concerns shall plan, initiate, supervise, coordinate and evaluate programs and projects, with or without federal or state assistance, which provide expanded human opportunity, assistance, training, counseling, employment or other related guidance and development services for residents. Special emphasis shall be placed upon the needs, aspirations and welfare of the youth, the family and the elderly. The programs and projects of the department shall relate in general to youth welfare, manpower, family welfare, services for senior citizens and community relations.

The scope of activity in which the department of human concerns may be involved shall include, but not be limited to: housing; youth training, development and consultation services; youth employment; youth delinquency and rehabilitation programs; day care services; orientation and tutoring for new residents; career advice and job orientation; retirement planning and program development for senior citizens.

CHAPTER 11.

DEPARTMENT OF WATER SUPPLY

Sec. 8-11.1. ORGANIZATION.

There shall be a department of water supply consisting of a board of water supply, a director of the department of water supply, and the necessary staff.

Sec. 8-11.2. FUNCTION OF THE DEPARTMENT.

All water and sanitary sewerage systems of the county, including water rights and water sources, together with all materials, supplies and equipment and all real and personal property used or useful in connection with such water and sanitary sewerage systems, shall be under the control of the department.

Sec. 8-11.3. BOARD OF WATER SUPPLY.

The board of water supply shall consist of seven members appointed by the mayor with the approval of the council for terms of five years. The planning director and the director of public works shall be non-voting ex-officio members of the board of water supply.

The board of water supply shall:

1. Adopt rules and regulations relating to the management, control, operation, preservation and protection of the water-works and sanitary sewerage systems of the county to be approved by the mayor.
2. Prepare and submit to the mayor a request for an annual operating and capital improvement budget. The water board's capital improvement projects shall be consistent with the county's general plan and shall be processed through the county's planning department.
3. Recommend to the county council water and sanitary sewerage rates.

Sec. 8-11.4. DIRECTOR OF THE DEPARTMENT OF WATER SUPPLY.

The director of the department of water supply shall be

appointed and may be removed by the mayor. The director shall have had a minimum of five years of training and experience in a responsible administrative capacity, either in public service or private business, or both.

The director of the department of water supply shall:

1. Be the administrative head of the department of water supply.
2. Recommend regulations to the board.
3. Have such other powers and duties as may be provided by law or as may be assigned by the mayor.

#### Sec. 8-11.5. REVENUES.

The revenues derived by the department of water supply shall be kept in a separate fund and shall be such as to make the department self-supporting.

### CHAPTER 12.

#### DEPARTMENT OF POLICE

##### Sec. 8-12.1. ORGANIZATION.

There shall be a department of police consisting of a police commission, a chief of police, and the necessary staff.

##### Sec. 8-12.2. POLICE COMMISSION.

The police commission shall consist of seven members appointed by the mayor with the approval of the council for terms of five years.

The police commission shall:

1. Adopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law.
2. Prepare and submit to the mayor a request for an annual appropriation for the operation of the department.
3. Receive, review and investigate any charges brought forth by the public against the conduct of the department or any of its members and submit a written report of its findings to the chief of police for his disposition.



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

Sec. 8-12.3. CHIEF OF POLICE.

The chief of police shall be appointed and may be removed by the police commission. He may be removed by the police commission only after being informed in writing of the charges which resulted in his dismissal, and after being given a hearing before the commission. The chief of police shall have had a minimum of five years of training and experience in law enforcement, at least three of which shall have been in a responsible administrative capacity.

The chief of police shall:

1. Be the administrative head of the department of police.
2. Be responsible for the preservation of the public peace, prevention of crime, detection and arrest of offenders against the law, protection of the rights of persons and property, and enforcement and prevention of violations of all laws of the State and ordinances of the county and all regulations made in accordance therewith.
3. Be responsible for traffic safety and traffic safety education.
4. Train, equip, maintain and supervise the force of police officers and employees of the department.
5. Have such other powers and duties as may be required by law.

Sec. 8-12.4. DISMISSAL, SUSPENSION OR DEMOTION.

The dismissal, suspension or demotion of any police officer or employee in the police department shall be under procedures set forth by law or under any lawful labor agreements entered into thereunder.

DEPARTMENT OF LIQUOR CONTROL

Sec. 8-13.1. ORGANIZATION.

There shall be a department of liquor control consisting of a liquor control commission, a liquor control adjudication board, a director of the department of liquor control, and the necessary staff.

Sec. 8-13.2. LIQUOR CONTROL COMMISSION.

The liquor control commission shall consist of five members appointed by the mayor with the approval of the council for terms of five years.

The liquor control commission shall:

1. Prepare and submit a request for an annual appropriation for the operation of the department.
2. Adopt rules and regulations having the force and effect of law for the administration of liquor control in the county and to carry out provisions of the liquor control laws of the State.
3. Grant, renew or refuse applications for licenses for the manufacture, importation and sale of liquor in the county under applicable laws and regulations.
4. Have such other powers and duties as may be provided by law, not in conflict with the provisions of this section.

Sec. 8-13.3. LIQUOR CONTROL ADJUDICATION BOARD.

The liquor control adjudication board shall consist of five members appointed by the mayor with the approval of the council for terms of five years.

The liquor control adjudication board shall hear and determine all complaints regarding violations of the liquor control laws of the State, or complaints regarding violations of rules and regulations established by the liquor control commission, and impose such fines or punishment as may be provided by law upon the conviction thereof.

Sec. 8-13.4. DIRECTOR OF THE DEPARTMENT OF LIQUOR CONTROL.

The director of the department of liquor control shall be appointed and may be removed by the liquor control commission. The director of the department of liquor control shall have had a minimum of five years of training and experience in law enforcement, at least three of which shall have been in a responsible administrative capacity.

The director of the department of liquor control shall:

1. Be the administrative head of the department of liquor control.
2. Investigate complaints regarding violations of the liquor control laws of the State or complaints regarding violations of rules and regulations established by the liquor control commission and report such violations to the prosecuting officer of the county.

CHAPTER 14.

COST OF GOVERNMENT COMMISSION

Sec. 8-14.1. DECLARATION OF POLICY.

It is declared to be the policy of the county of Maui, while giving full recognition to the separation of powers between the legislative and executive branches of government provided in this charter and not to interfere therewith, to promote economy, efficiency and improved service in the transaction of the public business in the legislative and executive branches of the county of Maui by:

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

5. Defining and limiting executive functions, services and activities.

Sec. 8-14.2. COST OF GOVERNMENT COMMISSION.

For the purpose of carrying out the policy set forth herein, there shall be a cost of government commission. The commission shall consist of seven members appointed by the mayor with the approval of the council. The mayor shall appoint the members of the commission within forty-five (45) days after the effective date of this charter.

The commission shall:

1. Prepare and submit to the mayor a request for an annual appropriation for the operation of the commission.

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

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

4. Shall review the salaries of the mayor and the county council and shall submit their recommendations thereon to the mayor and the council.

5. Submit a report of its findings and recommendations to the mayor and council not later than eighteen months after its appointment.

Sec. 8-14.3. TERM OF OFFICE.

Each commission shall cease to exist sixty (60) days after the submission to the mayor and council of its report. Eighteen months thereafter, the mayor shall appoint a new commission, no members of which shall have been members of the preceding commission, and in like manner shall appoint a new com-

mission at like intervals of eighteen months after the previous commission shall cease to exist.

CHAPTER 15.

CIVIL DEFENSE AGENCY

Sec. 8-15.1. ORGANIZATION AND FUNCTIONS.

There shall be a civil defense agency whose powers, duties, functions and organization shall be as provided by law.

ARTICLE 9. FINANCIAL PROCEDURES.

Sec. 9-1. FISCAL YEAR.

The fiscal year shall begin on the first day of July and end on the thirtieth day of June of the succeeding year.

Sec. 9-2. PREPARATION AND SUBMISSION OF BUDGET AND CAPITAL PROGRAM.

1. On or before the first day of March before the ensuing fiscal year begins, the mayor shall submit to the county council (a) an operating budget for the ensuing fiscal year, (b) a capital program, and (c) an accompanying message.

2. Upon submission, the budget, the capital program and the message shall be a public record in the office of the clerk of the county council and shall be open to public inspection. The mayor shall at the same time make available copies of the budget, the capital program and the message for distribution to interested persons.

Sec. 9-3. SCOPE OF BUDGET AND MESSAGE.

1. The budget shall present a complete financial plan for the current operations of the county and its departments in the ensuing fiscal year, showing all funds and reserves. It shall be set up as provided by the administrative code, insofar as there is no provision, as provided by the county council after consultation with the mayor.

2. The estimated revenues, proposed expenditures and total appropriations for the ensuing fiscal year shall be equal in amount.



3. The mayor's message shall explain the budget both in fiscal terms and in terms of work to be done. It shall outline the proposed financial policies of the county for the ensuing fiscal year and describe the most important features of the budget plan. It shall indicate any major changes in financial policies and in expenditures, appropriations and revenues as compared with the fiscal year currently ending, and shall set forth the reasons for the changes. As to the capital program, the message shall include a list of pending and proposed capital improvements together with the mayor's comments on such list. The message shall also include such other supporting or explanatory material as the mayor deems desirable.

Sec. 9-4. BUDGET AND CAPITAL PROGRAM: NOTICE AND HEARING.

A public hearing shall be held on the budget and capital program no later than six weeks after their submission. At this hearing all persons interested shall have an opportunity to be heard. At least two weeks before the hearing, the county council shall publish in a newspaper of general circulation in the county the general summaries of the budget and capital program and a notice setting out the time and place for public hearing thereon and for their consideration by the council.

Sec. 9-5. BUDGET: COUNCIL ACTION.

1. After the public hearing, the county council may adopt the budget with or without amendment. In amending, it may add new items or increase items in the budget. It may decrease or delete items, except appropriations required by law, appropriations for debt service or for estimated cash deficit. But in all cases the estimated revenues, proposed expenditures and total appropriations for the ensuing fiscal year shall be equal in amount.

2. The council shall adopt the budget on or before the fifteenth<sup>(1)</sup> day of the last month of the fiscal year currently ending. If it fails to do so, the budget submitted by the mayor shall be deemed adopted by the council as the budget for the ensuing fiscal year.

3. The adopted budget shall be in effect on and after the first day of the fiscal year to which it applies. By virtue of the adoption of the budget, the several amounts listed in the budget column entitled "Appropriations" shall be appropriated to the specified departments and programs.

Sec. 9-6. CAPITAL PROGRAM: SCOPE; COUNCIL ACTION.

1. The capital program shall contain at least the following:

a. A simple, clear general summary of the detailed contents of the program.

b. The capital improvements pending or proposed to be undertaken within the ensuing fiscal year, together with the estimated cost of each improvement and the pending or proposed method of financing it.

c. The capital improvements proposed for the five years next succeeding the ensuing fiscal year, together with the estimated cost of each improvement and the proposed method of financing it.

2. Capital expenditures to be financed from current revenues in the ensuing fiscal year shall be included in the budget as well as in the capital program. Appropriations for such expenditures shall be included in the budget.

3. After the public hearing on the capital program, the county council may adopt the program with or without amendment. In amending, the council shall request and consider, but need not follow, the recommendations of the mayor as to the proposed amendment.

4. The council shall adopt the capital program on or before the fifteenth day of the last month of the fiscal year currently ending. If it fails to do so, the program submitted by the mayor shall be deemed adopted by the council as the program for the ensuing fiscal year. The adopted program shall be in effect on and after the first day of that year.

5. At any time during a fiscal year, the council by ordinance, may amend the capital program. In amending, the council

shall request and consider, but need not follow, the recommendations of the mayor as to the proposed amendment.

Sec. 9-7. BUDGET AND CAPITAL PROGRAM: PUBLIC RECORDS.

Three copies of the budget and capital program as adopted shall be certified by the mayor and the county clerk. One of these copies shall be filed in the office of the mayor, and one each in the offices of the director of finance and the director of planning. A summary of the budget and capital program as so certified shall be published once in a newspaper of general circulation in the county within three weeks after adoption and copies thereof shall be made available to the county departments and to interested persons.

Sec. 9-8. APPROPRIATIONS AND CHANGES.

1. If during any fiscal year the mayor certifies that there are available for appropriation (a) revenues received from sources not anticipated in the budget for that year or (b) revenues received from anticipated sources but in excess of the budget estimates therefor, the council may make supplemental appropriations for that year up to the amount of the additional revenues so certified. Such appropriations shall be made by ordinance effective immediately upon adoption.

2. To meet a public emergency affecting life, health, or property, the council, upon written request by the mayor, may make emergency appropriations. Such appropriations shall be made by ordinance effective immediately upon adoption and must be approved by all council members present or by seven members of the council. To the extent that there are no available unappropriated revenues to meet such appropriations, the council may, by ordinance, authorize the issuance of emergency notes. These notes may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made. The total of emergency appropriations in any fiscal year shall not exceed one percent (1%) of the total operating appropriations (excluding those for debt

service) made in the operating budget for that year.

Sec. 9-9. APPROPRIATIONS: REDUCTION AND TRANSFER.

1. If at any time during the fiscal year it appears probable to the mayor that the revenues available will be insufficient to meet the amount appropriated, he shall report to the county council without delay, indicating the estimated amount of the deficit, any remedial action taken by him, and his recommendations as to any further action to be taken. The council shall then take such further action as it deems necessary to prevent or minimize any deficit. For that purpose it may, by ordinance, reduce one or more appropriations: but no appropriation for debt service or for estimated cash deficit may be reduced, and no appropriation may be reduced by more than the amount of the unencumbered balance thereof or below any amount required by law to be appropriated.

2. If at any time the mayor so requests in writing, the council, by ordinance, may transfer part or all of any unencumbered appropriation balance within a department or from one department to another. No transfer, however, shall be made from appropriations for debt service or for estimated cash deficit, and no appropriation may be reduced below any amount required by law to be appropriated.

Sec. 9-10. LAPSE OF APPROPRIATIONS.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned. The purpose of any such appropriation for a capital expenditure shall be deemed abandoned if three years pass without any expenditure from, or encumbrance of, the appropriation concerned.

Sec. 9-11. PAYMENTS AND OBLIGATIONS.

1. With the exception of debt service charges, 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 ordinance. Every obligation incurred and every authorization of payment in violation of the provisions of this charter shall be void. Every payment made in violation of the provisions of this charter shall be illegal, and all county officers who knowingly authorize or make such payment or any part thereof shall be jointly and severally liable to the county for the full amount so paid or received. 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 ordinance, or takes part therein, that action shall be cause for his removal.

2. Nothing contained in this section or other sections of this charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds, nor shall it prevent the making, when permitted by law, of any contract or any lease providing for the payments of funds at a time beyond the end of the fiscal year in which the contract or lease is made. But any contract, lease or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one fiscal year shall be made or approved by ordinance.

#### Sec. 9-12. AUDIT OF ACCOUNTS.

Within thirty (30) days after the beginning of each fiscal year, the county council shall provide for an independent audit of the accounts and other evidences of financial transactions of the county and of all operations for which the county is responsible. The audit shall be made by a certified public accountant or firm of certified public accountants, designated by the council, who have no personal interest, direct or indirect, in the fiscal affairs of the county or any of its operations.



The audit shall include both financial accountability and adequacy of the financial and accounting system. If the State makes such an audit, the council may accept it as satisfying the requirements of this section. The scope of the audit shall be in accordance with the terms of a written contract to be signed by the presiding officer of the council, which contract shall encourage recommendations for better financial controls and procedures and shall provide for the completion of the audit within a reasonable time after the close of the previous fiscal year. A copy of the audit report shall be filed with the county clerk and shall be a public record.

Upon the death, resignation, removal or expiration of the term of any county administrative officer, including the administrative head of the office of council services, the director of finance shall cause an audit and investigation of the accounts maintained by the officer and by his department or agency to be made, and shall report the results thereof to the mayor and the council. In case of the death, resignation or removal of the director of finance, the council shall cause an independent audit to be made of his accounts. If, as a result of any such audit, an officer be found indebted to the county, the mayor shall proceed forthwith to collect the indebtedness.

#### Sec. 9-13. SURPLUS AND RESERVES.

Any unappropriated surplus and any unencumbered balances of any appropriations in any fund at the end of any fiscal year shall be available for appropriation for the succeeding fiscal year or years. The director of finance, when authorized by the council, shall transfer all or a portion of the surplus to an emergency fund or to a capital improvement reserve fund.

The funds in an emergency reserve fund may be used to meet any emergency. Funds transferred to a capital improvement reserve fund shall be expended only for the specific improvements designated, provided that the council may change the purposes for which such capital improvement reserve fund may be expended by ordinance passed upon a vote of not less than seven members of the council. No amounts transferred into an emergency

reserve fund or a capital improvement reserve fund shall be deducted from amounts to be raised by taxes for ensuing years.

Sec. 9-14. CENTRALIZED PURCHASING.

The mayor may, at his discretion, establish procedures for the purchase of all materials, supplies, equipment and services required by any department of the county through the department of finance or such centralized purchasing department as he may establish.

Sec. 9-15. INSURANCE.

The director of finance may procure insurance for the protection of all properties and all activities of the county in such amounts and under such conditions as the council shall, by ordinance, prescribe from companies licensed to do business in the State.

Sec. 9-16. SURETY BONDS.

Except as otherwise provided, the council shall determine which officers and employees shall be required to furnish surety bonds and shall determine the kind and amount of each individual or blanket bond. All officers concerned with the receipt, collection, custody or disbursement of public funds shall be bonded. The director of finance shall procure all such surety bonds from companies licensed to do business in the State. All such bonds shall be in favor of and the premiums thereon shall be borne by the county.

Sec. 9-17. CONTRACTS.

1. Before execution, all written contracts to which the county is a party shall be approved by the corporation counsel as to form and legality. All such contracts shall be signed by the mayor, except that contracts for purchase of materials, supplies, equipment, personal services, and public works contracts shall be signed by the director of finance.

2. Before execution, contracts involving financial obligations of the county shall also be approved by the director of finance as to the availability of funds in the amounts and for

the purposes set forth therein.

## ARTICLE 10. CODE OF ETHICS

### Sec. 10-1. DECLARATION OF POLICY.

Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government. They, as agents of public purpose, shall hold their offices or positions for the benefit of the public, shall recognize that the public interest is their primary concern, and shall faithfully discharge the duties of their offices regardless of personal considerations.

### Sec. 10-2. STANDARDS OF CONDUCT.

1. All elected and appointed officials, officers and employees shall, within thirty (30) days of assuming office or employment, file with the board a list, sworn to under oath, (a) of all real property within the county other than their principal place of residence in which they have any right, title or interest; (b) of all business firms which contract for county business in which they have any financial interest, or with whom there exists a contractual relationship; and (c) of all their places of employment, including part-time employment. Amendments to the list, including additions, deletions or changes in title, interest or employment, shall be made within thirty (30) days of the occurrence of the amendments.

2. Whenever an officer or employee has a controlling interest in any matter or a financial interest which may be affected by an action of a county agency, the nature and extent of the interest shall be disclosed by the officer or employee as promptly as possible. Such officer or employee shall not vote on any matters affected by such interest.

### Sec. 10-3. PROHIBITIONS.

1. No officer or employee of the county shall:
  - a. Solicit, accept or receive any gift; directly or

indirectly, 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 him in the performance of his official duties or is intended as a reward for any official action on his part.

b. Disclose information which, by law or practice, is not available to the public and which he acquires in the course of his official duties or use such information for his personal gain or for the benefit of anyone.

c. 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.

d. Represent private interests in any action or proceeding against the interests of the county or appear in behalf of private interests before any agency, except as otherwise provided by law.

e. Use county property or personnel for other than public activity or purpose.

2. The county shall not enter into any contract with an officer or employee or with a firm in which an officer or employee has a substantial interest involving services or property of a value in excess of \$500.00 unless the contract is made after competitive bidding where susceptible to competitive bidding.

#### Sec. 10-4. PENALTIES.

1. Any person who violates the provisions of this code of ethics shall be subject to a fine to be provided for by ordinance adopted by the county council, and in addition to any such fine that may be imposed, may be suspended or removed from office or employment by the board of ethics.

2. The prosecuting attorney shall be responsible for the enforcement of the provisions of this article.

Sec. 10-5. BOARD OF ETHICS.

There shall be a board of ethics.

1. The board shall consist of five members appointed by the mayor with the approval of the council for a term of five years.

2. The board shall annually select a chairman and a secretary from among its members and shall adopt rules necessary for the conduct of its meetings.

3. The board shall meet at least quarterly at the call of the chairman and a majority of its members. A majority of the membership shall constitute a quorum for the conduct of business, and the affirmative vote of at least a majority shall be necessary to take any action.

4. It shall be the function of the board:

a. To initiate, receive, hear and investigate complaints of violations of the code of ethics and to transmit its findings to the prosecuting attorney.

b. To render advisory opinions with respect to application of the code on request. All requests for advisory opinions shall be answered within thirty (30) days of its filing; failure to submit an advisory opinion within the thirty (30) days shall be deemed a finding of no breach of the code.

c. To prescribe a form for the disclosure provided in this section and to implement the requirements of the disclosure provisions.

d. To examine all disclosure statements filed and to comment on or advise corrective action as to any matters that may indicate a conflict of interest.

e. To propose revisions of the code to assure its effectiveness.

f. To adopt such rules and regulations, having the force and effect of law, as will be necessary to provide for the enforcement of the provisions of the code of ethics.



5. In the course of its investigations, the board shall have the power to administer oaths and subpoena witnesses and to compel the production of books and papers pertinent thereto.

6. The board, after due deliberation on issues before it, shall make findings of facts and conclusions regarding such issues and shall transmit to the prosecuting attorney such findings of facts and conclusions for appropriate disposition.

7. If any officer or employee, or former officer or employee, obtains an advisory opinion from the board and governs himself accordingly, or acts in accordance with the opinions of the board, he shall not be held guilty of violating any of the provisions of the code.

8. The council and mayor shall cooperate and provide financing and personnel reasonably required by the board in the performance of its duties.

#### ARTICLE 11. INITIATIVE AND REFERENDUM

##### Sec. 11-1. POWERS.

The voters of the county shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt and reject the same at the polls, such power being known as the initiative power, and shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject the same at the polls, such power being known as the referendum power provided that the initiative and referendum power shall not extend to any part or all of the capital program or annual budget; or to any property tax levied; or to any ordinance making or repealing any appropriation of money; or to any ordinance authorizing the issuance of bonds; or to any ordinance authorizing the appointment of employees; or to any emergency ordinance; provided that such powers shall be applicable to any ordinance concerning the salaries of officers and employees whose salaries are not otherwise established by law.

Sec. 11-2. PETITIONERS' COMMITTEE.

Any five qualified voters may commence initiative or referendum proceedings by filing with the county clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered. Promptly after such affidavit is filed, the clerk shall issue the appropriate petition blanks to the petitioners' committee.

Sec. 11-3. PETITIONS.

1. NUMBER OF SIGNATURES. Initiative and referendum petitions must be signed by not less than twenty percent (20%) of the voters registered in the last general election.

2. FORM AND CONTENT. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be followed by the place of residence and voting precinct of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

3. AFFIDAVIT OF CIRCULATOR. Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

4. TIME FOR FILING REFERENDUM PETITIONS. Referendum petitions must be filed within sixty (60) days after the effective date of the ordinance sought to be reconsidered.

Sec. 11-4. PROCEDURE AFTER FILING.

1. CERTIFICATE OF CLERK; AMENDMENT. Within twenty (20) days after the petition is filed, the county clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Within five (5) days after a supplementary petition is filed, the clerk shall complete a certificate as to the sufficiency of the petition, as amended, and promptly send a copy of such certificate to the petitioners' committee as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient, and the petitioners' committee does not elect to amend or request council review as provided hereinafter, the clerk shall promptly present his certificate to the council and the certificate shall then be a final determination as to the sufficiency of the petition.

2. COUNCIL REVIEW. If a petition has been certified insufficient, and the petitioners' committee does not file notice of intention to amend it, or if an amended petition has been certified insufficient, the committee may, within two (2) days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition.

3. COURT REVIEW; NEW PETITION. A final determination as to the sufficiency of a petition shall be subject to judicial review by a court of competent jurisdiction. A final judicial determination of insufficiency shall not prejudice the filing of a new petition for the same purpose.

Sec. 11-5. SUSPENSION OF ORDINANCE.

When a referendum petition or amended petition has been certified as sufficient by the county clerk, the ordinance specified in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until and unless approved by the voters, as hereinafter provided.

Sec. 11-6. ACTION ON PETITIONS.

1. ACTION BY COUNCIL. When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiative ordinance without change in substance or fails to repeal the referred ordinance within sixty (60) days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the county.

2., SUBMISSION TO VOTERS. The vote of the county on a proposed or referred ordinance shall be held not less than ninety (90) days and not more than one year from the date of the final council vote thereon. The council may in its discretion, and it shall if no regular election is to be held within such period, provide for a special election. Copies of the proposed or referred ordinance shall be made available at the polls.

3. WITHDRAWALS OF PETITIONS. An initiative or referendum petition may be withdrawn at any time prior to the thirtieth day preceding the day scheduled for a vote of the county by filing with the county clerk a request for withdrawal signed by at least four members of the petitioners' committee. Upon the filing of such request, the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Sec. 11-7. RESULTS OF ELECTION.

1. INITIATIVE. If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it

shall be considered adopted upon certification of the election results. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

2. REFERENDUM. If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

Sec. 11-8. PUBLICATION: REPEAL AND AMENDMENT.

Initiative and referendum ordinances adopted or approved by the voters shall be published and shall take effect as prescribed for ordinances generally. Such ordinances may be amended or repealed by the council, but only by the affirmative vote of at least two-thirds of its entire membership.

ARTICLE 12. RECALL

Sec. 12-1. RECALL PROCEDURE.

Any elective officer provided for in this charter may be removed from office by the voters of the county. The procedure to effect such removal shall be in accordance with this article.

A petition demanding that the question of removing such official be submitted to the voters shall be addressed to the council and filed with the county clerk. Such petitions shall be signed by not less than twenty percent (20%) of the voters registered in the last general election.

Sec. 12-2. PETITIONS.

Petition papers shall be procured only from the county clerk; who shall keep a sufficient number of such blank petition papers on file for distribution as herein provided. Prior to the issuance of such petition papers, an affidavit shall be made by one or more voters and filed with the clerk, stating the name and office of the officer sought to be removed.

Sec. 12-3. SIGNATURES.

Each signer of a recall petition shall sign his name and shall place thereon after his name, his place of residence and



voting precinct. To each such petition paper there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition and that each signature appended to the paper was made in his presence and is believed to be the genuine signature of the person whose name it purports to be, and that each signer understood the nature of the recall petition.

Sec. 12-4. FILING AND CERTIFICATION.

All papers comprising a recall petition shall be assembled and filed with the county clerk as one instrument within thirty (30) days after the filing, with the clerk, of the affidavit stating the name and office of the officer sought to be removed. Within ten (10) days from the date of the filing of such petition, the clerk shall determine the sufficiency thereof and attach thereto a certificate showing the result of his examination. If the clerk shall certify that the petition is insufficient, he shall set forth in the certificate the particulars in which the petition is defective, and shall return a copy of the certificate to the person designated in such petition to receive it.

Sec. 12-5. SUPPLEMENTAL PETITIONS.

In the event the initial petition contained insufficient signatures, such recall petition may be supported by supplemental signatures of voters signed in the manner required in section 12-3 of this article appended to petitions issued, signed and filed as required for the original petition at any time within twenty (20) days after the date of the certificate of insufficiency by the clerk. The clerk shall within ten (10) days after such supplemental petitions are filed make a like examination of them, and if his certificate shall show the same to be still insufficient, he shall return it in the manner described in section 12-4 of this article to the person designated in such petition to receive the same, and no new petition for the recall of the officer sought to be removed shall be filed within one year thereafter.

Sec. 12-6. RECALL ELECTION.

If a recall petition or supplemental petition shall be

certified by the clerk to be sufficient, he shall at once submit the same with his certificate to the council and shall notify the officer sought to be recalled of such action. If the official whose removal is sought does not resign within five (5) days after such notice, the council shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than sixty (60) nor more than ninety (90) days after the petition has been presented to the council, at the same time as any other special election held within such period; but if no such election is to be held within such period, the council shall call a special recall election to be held within the time aforesaid. If less than fifty percent (50%) of the voters registered in the last general election shall vote at such recall election, the officer sought to be recalled shall not be deemed recalled regardless of the outcome of the election.

Sec. 12-7. BALLOTS.

The ballots at such recall election shall, with respect to each person whose removal is sought, submit the question: "Shall (name of person) be removed from the office of (name of office) by recall?" Immediately following each such question, there shall be printed on the ballots the two propositions in the order set forth: "For the recall of (name of person)." "Against the recall of (name of person)." Immediately to the left of the proposition shall be placed a square in which the voters, by marking an X mark, may vote for either of such propositions. A majority vote shall be sufficient to recall such officer, subject to the provisions of section 12-6 of this article.

Sec. 12-8. SUCCEEDING OFFICER.

The incumbent, if not recalled in such election, shall continue in office for the remainder of his unexpired term subject to the recall as before, except as provided in this charter. If recalled in the recall election, he shall be deemed removed from office upon the announcement of the official canvass of that election, and the office shall be filled as provided by this charter for the filling of vacancies of elected officials.

The successor of any person so removed shall hold office during the unexpired term of his predecessor.

Sec. 12-9. IMMUNITY TO RECALL.

The question of the removal of any officer shall not be submitted to the voters until such person has served six (6) months of the term during which he is sought to be recalled, nor, in case of an officer retained in a recall election, until one year after that election.

ARTICLE 13. GENERAL PROVISIONS

Sec. 13-1. DEFINITIONS.

1. The term "department" shall mean any office, department, board, commission or other governmental unit of the county, but shall not include the county council.

2. The terms "board" and "commission" shall mean a board or commission which establishes policies for a department or which performs adjudicative functions.

3. The term "employee" shall mean any person, except an officer, employed by the county, but the term shall not include an independent contractor.

4. The term "law" shall mean any law of the State of Hawaii or any ordinance of the County of Maui or any rule or regulation of any department having the force and effect of law.

5. The term "officer" shall include the following:

a. Mayor, managing director and members of the council.

b. Any person appointed as administrative head of any department or as a member of any board or commission.

c. The first deputy appointed by the administrative head of any department.

d. Deputies of the corporation counsel and prosecuting attorney.

6. The term "State" shall mean the State of Hawaii.

Sec. 13-2. BOARDS AND COMMISSION.

1. The members of all boards or commissions shall serve

for staggered terms. Upon the initial appointment of the members of a commission consisting of three members appointed for a term of five years, one shall be appointed for a term of three years, one for a term of four years and one for a term of five years. Upon the initial appointment of the members of a commission consisting of five members appointed for a term of five years, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years and one for a term of five years. Upon the initial appointment of the members of a commission consisting of seven members appointed for a term of five years, one shall be appointed for a term of one year, one for a term of two years, two for a term of three years, two for a term of four years and one for a term of five years.

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 appointing authority shall give due consideration to balanced geographic representation.

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

5. The members of boards and commissions appointed by the mayor, with the 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 of one year and 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 term expires unless he is specifically reappointed. A vacancy shall be automatically created upon the expiration of a member's term and this vacancy shall be filled within sixty (60) days by an appointment made by the mayor with the confirmation

of the council.

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 shall be necessary to take any action.

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 scope 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.

Sec. 13-3. TITLE TO PROPERTY.

Except as otherwise provided by law, title to all property acquired by any department of the county shall be vested in the



county. Upon the retirement of all bonded indebtedness of the department of water supply, all right, title and interest in and to any real property held in the name of the board of water supply shall be promptly transferred and conveyed to the county.

Sec. 13-4. FACSIMILE SIGNATURES.

Whenever any person is required to sign negotiable instruments, multiple bonds, or certification of payrolls, the signatures may be a facsimile.

Sec. 13-5. EXPENSES.

All officers and employees of the county shall be entitled to their traveling or other necessary expenses incurred in the performance of their public duties as provided by ordinance.

Sec. 13-6. CLAIMS.

No action shall be maintained for the recovery of damages for any injury to person or property by reason of negligence of any officer or employee of the county unless a written statement stating fully when, where and how the injuries occurred, the extent thereof and the amount claimed therefor has been filed with the county clerk within two years after the date the injury was sustained.

Sec. 13-7. ANNUAL REPORTS.

Not later than ninety (90) days after the close of the fiscal year, each department shall make an annual written report of its activities to the mayor in such form and under such rules as the mayor may prescribe. Copies of such reports shall be filed in the office of the county clerk.

Sec. 13-8. ACCEPTANCE OF GIFTS OR DONATIONS.

The council, on behalf of the county, may accept gifts or donations of money, securities or other personal property or of real estate or any interest in real estate.

Sec. 13-9. RECORDS AND MEETINGS OPEN TO PUBLIC.

1. All books and records of every department shall be open to the inspection of any person at any time during business hours, except as otherwise provided by law. Certified copies or extracts from such books and records shall be given by the officer having custody of the same to any person demanding the same and paying or tendering a reasonable fee to be fixed by ordinance for such copies or extracts.

2. All meetings of boards and commissions shall be held in the county building or other public places and no such body shall take any official action except at a meeting open to the public in accordance with law.

Sec. 13-10. RULES AND REGULATIONS.

All rules and regulations having the force and effect of law adopted by any board, commission or administrative head of a department must be approved by the mayor prior to going into effect, provided that service rates or fees, license fees and other charges established by boards and commissions need not be so approved.

Sec. 13-11. PENALTIES.

The council shall, by ordinance, provide for the punishment of violations of any provisions of this charter and may provide for punishment of violations of ordinances and rules and regulations having the effect of law, but no penalty shall exceed the amount of \$1,000.00 or one year's imprisonment, or both.

Sec. 13-12. COUNTY ELECTIONS.

County elections shall be conducted in accordance with the election laws of the State insofar as applicable, but the county primary and general elections shall be held in every two years following the initial election.

Sec. 13-13. OATHS OF OFFICE.

Before entering upon the duties of his office, each officer elected or appointed shall take and subscribe to such oath

or affirmation as shall be provided by law.

Sec. 13-14. IMPEACHMENT OF OFFICERS.

Any officer appointed or elected to an elective office may be impeached for malfeasance, misfeasance or nonfeasance in office. Such impeachment proceedings shall be commenced in the second circuit court, State of Hawaii. The charge or charges shall be set forth in writing in a verified petition for impeachment signed by not less than five percent (5%) of the voters registered in the last general election. If the court 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 attorney's fees and other costs of such proceedings.

Sec. 13-15. COOPERATION WITH OTHER ORGANIZATIONS.

In the performance of its functions, each department shall cooperate with private organizations and with organizations of the governments of the United States, the State, and any other state, and with any of their political subdivisions having similar functions.

Sec. 13-16. PROVISIONS OF CHARTER INOPERATIVE: WHEN.

If any provision of this charter jeopardizes the receipt by the county of any federal grant-in-aid or other federal allotment of money, such provision may, insofar as such fund is jeopardized, be waived by the council upon recommendation of the mayor.

Sec. 13-17. TITLES, SUBTITLES, PERSONAL PRONOUNS; CONSTRUCTION.

Titles and subtitles shall not be used for purposes of construing this charter.

When any personal pronoun appears in this charter, it shall be construed to mean either sex.

Sec. 13-18. SEPARABILITY.

If any provision of this charter is held invalid, the other provisions of this charter shall not be affected thereby.

If the application of the charter, or any of its provisions, to any person or circumstance is held invalid, the application of the charter and its provisions to other persons or circumstances shall not be affected thereby.

#### ARTICLE 14. CHARTER AMENDMENT

##### Sec. 14-1. INITIATION OF AMENDMENTS.

Amendments to this charter may be initiated only in the following manner:

1. By resolution of the council adopted after two readings on separate days and passed by a vote of six or more members of the council.

2. By petition presented to the council, signed by not less than ten percent (10%) of the voters registered in the last general election, setting forth the proposed amendments. Such petitions shall designate and authorize not less than three nor more than five of the signers thereto to approve any alteration or change in the form or language or any restatement of the text of the proposed amendments which may be made by the county attorney.

Upon filing of such petition with the council, the county clerk shall examine it to see whether it contains a sufficient number of apparently genuine signatures of voters. The clerk shall complete his examination of the petition within fifteen (15) days.

The council shall then hold a public hearing and shall determine whether the amendments proposed shall be submitted to the voters for approval. The determination by the council to submit such proposed amendments to the voters shall be by resolution adopted by a vote of five or more members of the council within forty-five (45) days after the receipt of the petition.

##### Sec. 14-2. ELECTIONS TO BE CALLED.

1. Any resolution of the council proposing amendments to the charter, whether initiated by the council or by petition, shall provide that the proposed amendments shall be submitted

to the voters of the county at the next general election.

2. The county clerk shall have the proposed amendments published in a newspaper of general circulation in the county at least forty-five (45) days prior to submission of the proposed amendments to the voters of the county at the next general election.

3. Should the majority of the voters voting thereon approve the proposed amendments to this charter, the amendments shall become effective at the time fixed in the amendment, or if no time is fixed therein, thirty (30) days after its adoption by the voters of the county. Any charter amendment shall be published in a newspaper of general circulation in the county within forty-five (45) days of the effective date of such amendment.

Sec. 14-3. MANDATORY REVIEW.

Six years after adoption of the charter, the council shall submit to the voters at any general or special election the question, "Shall a charter commission be appointed to propose amendments to the charter?" Should the majority of the voters voting thereon approve the appointment of a charter commission, the mayor, with the approval of the council, shall appoint a charter commission composed of eleven members to study and review the operation of the government of the county under this charter.

The commission may propose amendments to this charter or draft a new charter which shall be submitted to the county clerk within twelve (12) months after such commission has been appointed. Upon receipt of the amendments or new charter, the county clerk shall provide for the submission of such amendments or new charter to the voters of the county at any general or special election as may be determined by the commission. Any special election shall be held not less than forty-five (45) nor more than seventy-five (75) days after receipt of the amendments or new charter by the county clerk.



The commission shall publish not less than forty-five (45) days before any election, at least once in a newspaper of general circulation within the county, a brief digest of the amendments or new charter and notice to the voters that copies of the amendments or new charter are available at the office of the county clerk.

Following any special or general election on any proposed charter or revision or amendment thereof, at intervals of ten (10) years, the mayor, with the approval of the council, shall appoint a charter commission composed of eleven (11) members to study and review the operation of the government of the county under such amended or new charter and to propose amendments or to draft a new charter in the manner hereinabove set forth.

#### ARTICLE 15. TRANSITIONAL PROVISIONS

##### Sec. 15-1. SCHEDULE.

After the approval of this charter by the voters, this charter shall take full effect on January 1, 1977, except that the election of the mayor and the members of the county council in 1976 shall be in accordance with the then existing provisions of the charter of the County of Maui. Thereafter, the mayor and the members of the county council shall be elected in accordance with the provisions of this revised charter, and will assume their duties according to this revised charter both as to their terms of office and powers thereunder.

##### Sec. 15-2. EXISTING LAWS AND CONFLICTING LAWS.

All laws, ordinances, resolutions, rules and regulations in force at the time this charter takes full effect, and not in conflict or inconsistent with this charter, are hereby continued in force until repealed, amended or superseded by proper authority. All laws which are inconsistent with this charter shall be superseded by the provisions of this charter at its effective date. All laws relating to or affecting this county or its departments, officials or employees, and all county ordinances, resolutions, orders and regulations which are in force when this

charter takes full effect, are repealed to the extent that they are inconsistent with or interfere with the effective operation of this charter or of ordinances or resolutions adopted by the county council under the provisions of this charter.

Sec. 15-3. STATUS OF DEPARTMENTS AND TRANSFER OF FUNCTIONS.

When this charter takes full effect, all departments, the status of which are not specifically changed or abolished by this charter, are hereby recognized, continued and established and shall have such powers, duties and functions as provided by law. Members of the various boards, commissions and committees holding office at the effective date of this charter shall continue in office unless they resign or until their terms of office shall expire.

Sec. 15-4. TRANSFER OF RECORDS AND PROPERTY.

All records, property and equipment whatsoever of any department which are assigned to another department by this charter shall be transferred and delivered to the department to which said functions are so assigned.

Sec. 15-5. ADMINISTRATIVE HEADS OF DEPARTMENTS CONTINUED IN OFFICE.

Notwithstanding any provision to the contrary, all administrative heads of departments holding office when this charter takes full effect shall continue in office without reappointment until they are removed by their respective appointing authorities.

Sec. 15-6. LAWFUL OBLIGATIONS OF THE COUNTY.

All lawful obligations of the county and its departments existing on the effective date of this charter, and all fines, taxes, penalties, forfeitures, obligations and rights due, owing or accruing to the county and its departments, and all writs, prosecutions, actions and proceedings by or against the county and its departments shall remain unaffected by the adoption of this charter.

ADOPTED by the MAUI COUNTY CHARTER COMMISSION

THIS 19th DAY OF FEBRUARY, 1976.

Respectfully submitted,

Charles A. Kekumano  
MONSIGNOR CHARLES A. KEKUMANO,  
CHAIRMAN

Edwina U. Bright  
EDWINA U. BRIGHT,  
VICE CHAIRMAN

Hideo Abe  
HIDEO ABE

Catalino Agliam  
CATALINO AGLIAM

Margaret Cameron  
MARGARET CAMERON

Sanae N. Moikeha  
SANAE N. MOIKEHA

Ralph M. Murakami  
RALPH M. MURAKAMI

Stephen Petro  
STEPHEN PETRO

Lloyd K. Sodetani  
LLOYD K. SODETANI

Joseph M. Souki  
JOSEPH M. SOUKI

Allan R. Sparks  
ALLAN R. SPARKS