COUNTY CLERK'S OFFICE
COUNTY OF MAUI

REPORT OF THE CHARTER COMMISSION OF THE COUNTY OF MAUI

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
Vice-Chairman

Agrifina Cabebe
Agrifina Cabebe
Member

Clarence Cravalho
Clarence Cravalho
Member

Adolph H. Desha
Member

Milton E. Fricke
Milton Fricke
Member

Rachael Jio
Member

Cecily H. Kikukawa
Member

Roger MacArthur
Member

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 truely 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 chosing 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 devises. 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[1] 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.

[1] 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 overriden 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 mistakingly 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 Commmission 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 entirely. 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 adminstration 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 chosing 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.[2]

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.

[2]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 Corpoation 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 adminstrative 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).

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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.[3]

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.

[3]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 then 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.[4]

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.

[4]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.

doesn't address problem

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 subsecton 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.

Corp. Counsel loophole.

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 reanacting 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 of 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 Adminstrative 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 modificatons 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 commssion 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.