

# **CHARTER**

## **COUNTY OF MAUI**

**1999 EDITION**

## FOREWORD

This edition sets forth the Charter of the County of Maui, effective as of January 1, 1983, as it was revised by the Charter Commission in 1982 and approved by a majority of the voters at the General Election held on November 2, 1982. This edition also incorporates amendments to the Charter proposed by the County Council and approved by a majority of the voters at the General Elections of 1984, 1986, 1988, 1990, 1994, 1996, and 1998, as well as an amendment proposed by a Special Charter Commission and approved by a majority of the voters at the General Election of 1988. Also incorporated in this edition are amendments proposed by the Charter Commission in 1992 and approved by a majority of the voters at the General Election of 1992, which amendments became effective on November 24, 1992. This 1999 edition of the Charter, therefore, replaces all previous editions and contains all those Charter provisions in effect as January 2, 1999.

This Charter, as revised, establishes the structure and organization of the government of the County of Maui. It is a constitutional document, drafted in accordance with the will of the people, which defines the responsibilities of our local government.

**ELECTED OFFICIALS COUNTY OF MAUI  
STATE OF HAWAII**

**MAYOR**

JAMES H. APANA, JR.

**COUNTY COUNCIL**

PATRICK S. KAWANO, Chair

DAIN P. KANE, Vice-Chair

MICHAEL A. DAVIS

J. KALANI ENGLISH

JOHN WAYNE ENRIQUES

G. RIKI HOKAMA

DENNIS Y. NAKAMURA

WAYNE K. NISHIKI

CHARMAINE M. TAVARES

JANUARY 2, 1999

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## **PREAMBLE**

WE, THE PEOPLE OF THE COUNTY OF MAUI, to secure the benefits of the best possible 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 I INCORPORATION AND GEOGRAPHICAL LIMITS**

**Section 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.

**Section 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.

## **ARTICLE 2 POWERS OF THE COUNTY**

**Section 2-1. Powers of the County.** The county 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 or its agencies, or to counties or county agencies, and all powers necessary and proper to carry into execution other powers of the county. 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.

**Section 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 provisions, as provided by ordinance or resolution of the county council.

**ARTICLE 3**  
**COUNTY COUNCIL**

**Section 3-1. Composition.** There shall be a council composed of nine members who shall be elected-at large. Of the nine members elected to the council, one shall be a resident of the Island of Lanai, one a resident of the Island of Molokai, one a resident of the residency area of East Maui, one a resident of the residency area of West Maui, one a resident of the residency area of Makawao-Haiku-Paia, one a resident of the residency area of "Upcountry" comprising Pukalani-Kula-Ulupalakua, one a resident of the residency area of South Maui, one a resident of the residency area of Kahului, and one a resident of the residency area of Wailuku-Waihee-Waikapu. The county clerk shall prepare the nomination papers in such a manner that candidates desiring to file for the office of council member shall specify the residency area from which they are seeking a seat. The ballots shall, nevertheless, be prepared to give every voter in the county the right to vote for each and every council seat.

1. The East Maui (Hana-Keanae-Kailua) residency area shall consist of the 3rd, 4th, and 5th Precincts in the 12th Representative District.

2. The West Maui residency area shall consist of the 1st, 2nd, and 3rd Precincts of the 7th Representative District and the 1st Precinct of the 8th Representative District.

3. The Wailuku-Waihee-Waikapu residency area shall consist of the 2nd, 3rd, 4th and 5th Precincts, of the 8th Representative District, the 5th, 6th, and 7th Precincts of the 9th Representative District and the portion of the 6th Precinct of the 8th Representative District north of Pohakea Gulch.

4. The Kahului residency district area shall consist of the 1st, 2nd, 3rd, and 4th Precincts of the 9th Representative District and the 3rd Precinct of the 10th Representative District.

5. The South Maui residency area shall consist of the 3rd, 4th, 5th, and 6th Precincts of the 11th Representative District and the portion of the 6th Precinct of the 8th Representative District south of the Pohakea Gulch.

6. The Makawao-Haiku-Paia residency area shall consist of the 4th, 5th, 6th, and 7th Precincts of the 10th Representative District and the 1st and 2nd Precinct of the 12th Representative District.

7. The Upcountry (Pukalani-Kula-Ulupalakua) residency area shall consist of the 1st and 2nd Precinct of the 10th

Representative District and the 1st and 2nd Precinct of the 11th Representative District.

The precincts described are those official precincts and boundaries thereof for the 1992 General Election of the State of Hawaii as described in the Notice of Intent and the election Proclamation of the Honorable Benjamin J. Cayetano, Lieutenant Governor of the State of Hawaii, dated the fifteenth day of June, 1992. (Amended 1998, 1992, 1990)

**Section 3-2. Election of Council and Term of Office.**

1. Council members shall be elected by nonpartisan special elections. Such special elections shall be held in conjunction with the primary and general elections every two years commencing in 2000. The special election held in conjunction with the primary election every two years shall be known as the first special election. The special election held in conjunction with the general election every two years shall be known as the second special election.

2. The names of all candidates for each council seat shall be placed on the ballot for the first special election; provided, that for any council seat with two or fewer candidates, the names of the candidates shall appear only on the ballot for the second special election.

3. For any council seat with three or more candidates, the names of the two candidates receiving the highest number of votes for each council seat in the first special election shall be placed on the ballot for the second special election; provided, that if two or more candidates tie for the highest number of votes received in the first special election, the names of the candidates tied for the highest number of votes shall be placed on the ballot for the second special election; and further provided, that if a single candidate receives the highest number of votes in the first special election and two or more candidates tie for the second-highest number of votes received, the names of the candidate receiving the highest number of votes and the candidates tied for the second-highest number of votes shall be placed on the ballot for the second special election.

4. At the second special election, the candidates receiving the highest number of votes for each council seat shall be deemed elected. If there is no more than one candidate for a council seat, such person shall be deemed elected regardless of the number of votes received.



5. The term of office of council members shall be for two years, beginning at twelve o'clock meridian on the second day of January following their election. No member of the county council shall serve more than five consecutive full terms of office. (Amended 1998, 1992)

**Section 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, a resident of the county for a period of ninety (90) days next preceding the filing of nomination papers and at the time of filing of nomination papers a resident in the area from which the person seeks to be elected. If a council member ceases to be a resident of the county, or ceases to be a resident of the council member's residency area during the council member's term of office, or if a council member is adjudicated guilty of a felony, the council member shall immediately forfeit office and the seat shall thereupon become vacant. (Amended 1992)

**Section 3-4. Vacancy in Office.** A vacancy in the office of any council member shall be filled for the remainder of the unexpired term in the following manner:

1. If the unexpired term is less than fifteen (15) months, the remaining members of the council shall appoint a person by resolution adopted by a majority of its remaining members 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 person to fill the vacancy for the current unexpired term. The person appointed by the council or mayor shall have the same qualifications required of a candidate elected by the voters and, if the person succeeded was elected in a partisan election, shall be a member of the same political party as the person succeeded.

2. If the unexpired term is fifteen (15) months 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. At the special election, the candidate receiving the highest number of votes shall be deemed elected. (Amended 1998)

**Section 3-5. 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 Monday if the second day be a Saturday or 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 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 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 practical, 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 public journal of its proceedings.

4. Voting and all motions shall be in accordance with the rules of the council and shall be recorded in the journal of the council, provided, however, a roll call vote must be taken if requested by any one council member. Five members of the council shall constitute a quorum, but a smaller number may convene from time to time and compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. Unless otherwise provided for herein, no action of the council shall be valid or binding unless adopted by a vote of five or more members of the council. (Amended 1992)

**Section 3-6. Powers of Council.** The council shall be the legislative 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 legislate taxes, rates, fees, assessments and special assessments and to borrow money, subject to the limitations provided by law and this charter.

2. To legislate appropriations for county purposes subject to the limitations provided by this charter.

3. 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.

4. To fix the salaries of such employees and officers as may be necessary.

5. To require periodic and special reports from all county departments concerning their functions and operations. Such reports shall be requested and submitted by and through the mayor.

6. 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.

**Section 3-7. Office of Council Services.** There shall be an office of council services. The council may create such positions in the office of council services as it deems necessary to assist it in the exercise of its legislative power. The salaries of such positions shall be fixed by ordinance. Persons appointed to such positions by the council shall be exempt from civil service.

**Section 3-8. 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 Subsection 3-6(3), the council or its members, in dealing with county employees or with county officers other than those appointed pursuant to Section 3-7 or Article 5, shall deal solely through the mayor, and neither the council nor its members shall give orders to any such employee or officer either publicly 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**

**Section 4-1. Actions of the Council.** Every legislative act of the council shall be by ordinance, unless otherwise provided for herein. Other acts of the council may be by resolution.

**Section 4-2. Introduction, Consideration and Passage of Ordinances and Resolutions.**

1. Every proposed ordinance shall be initiated as a bill and shall be passed after two readings on separate days.

2. Except as otherwise provided by law, resolutions may be adopted on one reading.

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

4. Digests of all bills which pass first reading and the votes thereon shall be published once in a newspaper of general circulation in the county at least three days before final reading.

5. After passage all bills shall be promptly advertised once by title only in a newspaper of general circulation in the county, with the ayes and noes.

6. Should the council find by a two-thirds vote of its entire membership the existence of an emergency threatening life, health, or property due to a public calamity, the council may waive all of the requirements of this section pertaining to procedure, except all votes shall be recorded. Every emergency ordinance, including any amendments made therein after its adoption, shall automatically stand repealed on the ninety-first day following the date on which it became effective. The council may prescribe by rule procedures for emergency meetings of its membership to be held by conference telephone or similar communication equipment in the event of public calamity.

7. Resolutions authorizing proceedings in eminent domain shall be adopted as provided by law.

8. Bills and resolutions may be passed on first reading by council members and passed on second reading by their successors.

**Section 4-3. Submission of Bills to the Mayor.**

1. Every bill which has passed the council 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 the mayor disapproves it, the mayor 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 legal holidays) after receiving it. If the mayor does not return it with a disapproval within that time, it shall take effect as an ordinance as if the

mayor had signed it. 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 verified, 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.

2. If any bill is presented to the mayor appropriating money, he may veto any items or portions thereof by striking out or reducing the same. Such veto power shall extend to conditions, limitations or restrictions imposed with respect to the disbursement of any appropriation. In the case of such a veto, the mayor shall append to the bill at the time of signing it a statement of the items or portions thereof to which the mayor objects and the reasons therefor, and the items 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.

3. Notwithstanding the provisions of Subsection 4-3(1), if the mayor disapproves of any bill passed by the council pursuant to Section 9-5 and 9-6, or any items or portions thereof, the mayor shall return the bill and the statement to the county clerk within twenty (20) days after receiving it. If the mayor does not return it with a disapproval within that time, it shall take effect as an ordinance as if the mayor had signed it. The council may, within ten (10) days after the bill has been so returned, reconsider the vote upon the bill and override the mayor's veto as provided in Subsection 4-3(1).

**Section 4-4. Form of Bills, Ordinances and Resolutions.**

The council may by its rules provide for the form and content of bills, ordinances and resolutions.

**Section 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 biennially.

2. Prior to passage of a bill providing for the adoption of a uniform code not less than three copies of the uniform 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 passage thereof.

## **ARTICLE 5 COUNTY CLERK**

**Section 5-1. Organization.** There shall be an office of the county clerk consisting of the county clerk and the necessary staff.

**Section 5-2. County Clerk.** The county clerk shall be appointed and may be removed by the council.

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

1. Be the clerk of the council.
2. Take charge of, safely keep and dispose of all books, papers and records which may properly be filed in his office and keep in separate files all bills, ordinances, resolutions and rules and cumulative indices of the same.
3. Have custody of the county seal.
4. Conduct all elections held within the county as provided by law.
5. Certify ordinances.
6. Adopt rules for the classification, storage and destruction of all records of the county.
7. Perform such other functions as may be prescribed by the council or law.

## **ARTICLE 6 EXECUTIVE BRANCH**

**Section 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.

**Section 6-2. 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 the office or position.

3. The term of office of any administrative head of a department who is appointed by the mayor, including the corporation counsel and the prosecuting attorney, shall end with the term of office of the mayor, except that any such administrative head may be earlier removed as provided for in this charter. Such officers shall not hold over more than 60 days after their respective terms of office, and shall immediately vacate their respective offices at the end of the 60-day period or upon the appointment of a successor in accordance with this charter, whichever occurs first. (Amended 1984)

4. The mayor shall have the authority to appoint, on a temporary basis, an administrative head of any department, provided that such department is one where the administrative head is appointed by the mayor. (Amended 1992)

5. Within 60 days of taking office, or within 60 days after a vacancy is created, the mayor shall appoint the corporation counsel and prosecuting attorney with written notice of the appointment to the council. The council shall confirm or deny the confirmation within 60 days after receiving notice of the appointment by the mayor. If the council does not act within the 60-day period, the appointment shall be deemed to be confirmed. The corporation counsel and prosecuting attorney shall take office upon appointment but shall not continue in office if the council denies confirmation. If the appointment is not confirmed by the council, the mayor shall make a new appointment within 60 days of the council's denial, and the council shall confirm or deny within 60 days after receiving notice of the new appointment by the mayor. If council does not act within the 60-day period, the appointment shall be deemed to be confirmed. (Amended 1992)

**Section 6-3. Powers and Duties of Administrative Heads of Departments.** 1. Pursuant to law the administrative heads of departments shall have the power to take all personnel actions.

2. The administrative head of a department shall perform such duties and exercise such powers as provided for herein or as may be assigned by the mayor.

3. The powers, duties and functions of the administrative head of any department may be assigned to any staff member or members of that department by the administrative head.

## **ARTICLE 7 OFFICE OF THE MAYOR**

**Section 7-1. Organization.** The office of the mayor shall consist of a mayor and necessary staff.

**Section 7-2. Election of Mayor and Term of Office.** 1. The mayor shall be elected by nonpartisan special elections. Such special elections shall be held in conjunction with the primary and general elections every four years commencing in 2002. The special election held in conjunction with the primary election every four years shall be known as the first special election. The special election held in conjunction with the general election every four years shall be known as the second special election.

2. The names of all candidates for mayor shall be placed on the ballot for the first special election; provided, that if there are two or fewer candidates, the names of the candidates shall appear only on the ballot for the second special election.

3. If there are three or more candidates, the names of the two candidates receiving the highest number of votes in the first special election shall be placed on the ballot for the second special election; provided, that if two or more candidates tie for the highest number of votes received in the first special election, the names of the candidates tied for the highest number of votes shall be placed on the ballot for the second special election; and further provided, that if a single candidate receives the highest number of votes in the first special election and two or more candidates tie for the second-highest number of votes received, the names of the candidate receiving the highest number of votes and the candidates tied for the second-highest number of votes shall be placed on the ballot for the second special election.

4. At the second special election, the candidate receiving the highest number of votes shall be deemed elected. If there is no more than one candidate for mayor, such person shall be deemed elected regardless of the number of votes received.

5. 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 the mayor's



election. A mayor shall not serve more than two consecutive full terms of office. (Amended 1998)

**Section 7-3. Qualifications.** Any citizen of the United States who is a voter of the county and a resident of the county for a period of at least ninety (90) days next preceding the filing of nomination papers shall be eligible to be mayor. Upon removal of the mayor's residence from the county, the mayor shall by that fact be deemed to have vacated the office of mayor. If the mayor ceases to be a voter of the county or is adjudicated guilty of a crime involving moral turpitude, the mayor shall immediately forfeit the office of mayor.

**Section 7-4. The Salary of the Mayor.** The salary of the mayor shall be determined by the salary commission. (Amended 1986)

**Section 7-5. Powers, Duties and Functions.** The mayor shall be the chief executive officer of the county. The mayor shall:

1. Exercise supervision directly or through the managing director over all departments enumerated in Article 8 of this charter and other agencies as provided by law.

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

3. Create positions for which appropriations have been made, or abolish positions, but a report of such actions shall be made to the council within fifteen days of such actions.

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

5. Recommend to the council a pay plan for all county employees and officers whose pay is not otherwise provided for by law.

6. Prepare and submit an operating budget and a capital program annually to the council for its consideration pursuant to Article 9.

7. Control, manage and execute the annual operating budget and capital program.

8. Conduct a systematic and continual review of the finances, organizations, and methods of each department of the county to assist each department in achieving the most effective expenditure of public funds and to determine that such expenditures are in accordance with the budget laws and controls in force.

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

10. Assign powers, duties, and functions that are not already assigned or enumerated in Article 8, to and between the departments.

11. Sign instruments requiring execution by the county, including deed and other conveyances, except those which the director of finance or other officer is authorized by this charter, ordinance or resolution, to sign. (Amended 1984)

12. Present messages or information to the council which, in the mayors opinion, are necessary or expedient.

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

14. Approve or veto bills passed by the council.

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

16. 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.

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

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

**Section 7-6. Vacancy in Office.** 1. A vacancy in the office of 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 finance 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. In the event no candidate receives at least a majority of the votes cast to fill the vacancy then within fifteen (15) days after said election the council shall call for a run-off election to be held within forty-five (45) days of the first election. The candidates in

said election shall be the two candidates receiving the most number of votes in the first election. 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 the managing director is unable to act, the finance director shall act as mayor. In the event of the temporary absence of the mayor from the county, or temporary leave, the mayor may designate the managing director or, in the managing director's absence or unavailability, the finance director to act as mayor. (Amended 1988)

## **ARTICLE 8 COUNTY DEPARTMENTS**

The county departments hereinafter described are hereby recognized and continued.

### **CHAPTER 1 DEPARTMENT OF MANAGEMENT**

**Section 8-1.1. Organization.** There shall be a department of management consisting of a managing director and the necessary staff.

**Section 8-1.2. Managing Director.** The managing director shall be appointed and may be removed by the mayor. The managing director shall have had five years of experience in an administrative capacity, either in public or private business, or both.

**Section 8-1.3. Powers, Duties and Functions.** The managing director shall:

- a. Act as the principal management aid to the mayor.
- b. Supervise the administrative functions of those agencies, departments, boards and commissions assigned by the mayor.

- c. Evaluate the management and performance of each agency.
- d. Prescribe standards of administrative practice to be followed by all agencies under his or her supervision.
- e. Supervise and coordinate those functions described in Subsections 7-5(6), (7) and (8).
- f. Perform all other duties and functions required of him by this charter or assigned by the mayor.

## **CHAPTER 2**

### **DEPARTMENT OF THE CORPORATION COUNSEL**

**Section 8-2.1. Organization.** There shall be a department of the corporation counsel consisting of the corporation counsel and the necessary staff.

**Section 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 for at least three years. (Amended 1992)

**Section 8-2.3. Powers, Duties and Functions.** The corporation counsel shall:

- a. Appoint such deputy corporation counsel and necessary staff as shall be authorized by the council. Deputy corporation counsel shall be exempt from civil service and shall serve at the pleasure of the corporation counsel.
- b. Be the chief legal advisor and legal representative of the council, the mayor, all departments, all boards and commissions, and of all officers and employees in matters relating to their official duties.
- c. Represent the county in all legal proceedings.
- d. Perform such other duties and functions as shall be assigned by the mayor.

**Section 8-2.4. Service of Legal Process.** Legal process against the county shall be served upon the corporation counsel or any of the deputies.

**CHAPTER 3**  
**DEPARTMENT OF THE PROSECUTING ATTORNEY**

**Section 8-3.1. Organization.** There shall be a department of the prosecuting attorney consisting of a prosecuting attorney and the necessary staff.

**Section 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 for at least three years. (Amended 1992)

**Section 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. Deputy prosecuting attorneys shall be exempt from 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 rules 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 the prosecuting attorney 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 the prosecuting attorney shall designate.

e. Draw all indictments and attend before 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.

f. Prosecute administrative violations of the liquor laws before the board of liquor adjudication.

g. Perform such other duties and functions as shall be assigned by the mayor.

#### **CHAPTER 4**

##### **DEPARTMENT OF FINANCE**

**Section 8-4.1. Organization.** There shall be a department of finance consisting of the director of finance and the necessary staff.

**Section 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 experience in a public or private financial position, at least three years of which shall have been in an administrative capacity.

**Section 8-4.3. Powers, Duties and Functions.** The director of finance 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 the finance director.

3. Keep accurate and complete account of receipts and disbursements.

4. Maintain and manage the treasury and deposit moneys belonging to the county in depositories and instruments authorized by law which fulfill all conditions prescribed for them by law.

5. Contract for services of independent contractors, including contractors for public works and county physicians, and permit disbursements to be made pursuant to policies established by the council.

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

7. Prepare and issue warrants and checks. (Amended 1992)

8. Prepare payrolls and pension rolls.
9. Sell real property upon which improvement assessments or real property taxes 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 ordinance, provided that all deeds and other conveyances shall be executed by the mayor.
10. Rent or lease county property and award concessions pursuant to policies established by the council.
11. Prepare and maintain a perpetual inventory of all lands and equipment or other personally owned, leased, rented or controlled by the county.
12. Review assessment rolls for assessable public improvements prior to approval by the council and issue bills therefor after such approval has been given.
13. Have custody of all official's surety bonds, except the surety bond of the director of finance, which shall be in the custody of the county clerk.
14. 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.
15. Administer the real property taxation function of the county.
16. Perform such other duties and functions as shall be assigned by the mayor.

## **CHAPTER 5**

### **DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT**

**Section 8-5.1. Organization.** There shall be a department of public works and waste management consisting of a director and the necessary staff. (Amended 1996, 1992)

**Section 8-5.2. Director of Public Works and Waste Management.** The director of public works and waste management shall be appointed and may be removed by the mayor. The director of public works and waste management shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both. (Amended 1992)

**Section 8-5.3. Powers, Duties and Functions.** The director of public works and waste management shall: (Amended 1992)

1. Administer the building, housing, and subdivision ordinances and rules adopted thereunder. (Amended 1996)

2. Approve proposed subdivision plans which are in conformity with the subdivision ordinance.

3. Supervise and maintain the county's highways, drainage and flood control systems and sewer systems and maintain the county's buildings.

4. Perform such other duties and functions as shall be assigned by the mayor.

## **CHAPTER 6**

### **DEPARTMENT OF PARKS AND RECREATION**

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

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

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

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

2. Develop and implement programs for cultural, recreational other leisure activities for the people of the county.

3. Perform such other duties and functions as shall be assigned by the mayor.

## **CHAPTER 7**



## **DEPARTMENT OF FIRE CONTROL**

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

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

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

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

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

The public safety commission shall:

1. Review the operations of the department of fire control and make recommendations for changes which may be desirable to improve the performance of emergency functions and the provision of public safety services.
2. Receive and investigate any complaints brought forth by the public against the conduct of the department of fire control or any of its members and submit a written report of its findings and recommendations to the fire chief for his disposition.
3. Adopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law.

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

## **CHAPTER 8**

### **DEPARTMENT OF PLANNING**

**Section 8-8.1. Organization.** There shall be a department of planning consisting of a Maui planning commission, a Molokai planning commission and a Lanai planning commission, a planning director, a board of variances and appeals and the necessary staff. (Amended 1996, 1992, 1988)

**Section 8-8.2. Planning Director.** The planning director shall be appointed and may be removed by the mayor. The planning director shall have had five years of experience in the field of planning, three of which shall have been in an administrative capacity.

**Section 8-8.3. Powers, Duties and Functions.** The planning 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 commissions on all planning and related matters.

3. Recommend revisions of the general plan at least every ten years to guide the development of the county.

4. Prepare and administer zoning ordinances, zoning maps and regulations and any amendments or modifications thereto. (Amended 1996)

5. Review the lists of proposed capital improvements projects contemplated by the county and recommend the order of their priority to the mayor.

6. Perform such other duties and functions as shall be required by law or as shall be assigned by the mayor.

**Section 8-8.4. Planning Commissions.** Each Planning commission shall consist of nine members appointed by the mayor with the approval of the council. The members of each planning commission shall be residents of the island of the planning commission on which the member serves. The director of the department of public works and waste management and the director

of the department of water supply shall be non-voting ex-officio members of each commission. (Amended 1992)

Each planning commission shall exercise its powers, duties and functions as follows:

1. The Maui planning commission shall be concerned with the area encompassing the islands of Maui and Kahoolawe and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto. (Amended 1992)

2. The Molokai planning commission shall be concerned with the area encompassing the island of Molokai and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto, except that portion of the island known as Kalaupapa, Kalawao, and Waikolu and commonly known and designated as the Kalaupapa Settlement. (Amended 1988)

3. The Lanai planning commission shall be concerned with the area encompassing the island of Lanai and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto. (Amended 1992)

The appropriate 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 prepared by the planning director or at the request of the council. The commission shall hold public hearings on such plans and revisions thereof and shall transmit them, with its findings and recommendations to the council for consideration and action.

3. Review other proposed land use ordinances and amendments thereto prepared by the director or the council and, after public hearings, transmit such ordinances with its findings and recommendations thereon to the council for consideration and action.

4. Act as the authority in all matters relating to the Coastal Zone Management law.

5. Adopt rules pursuant to land use ordinances or law.

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

**Section 8-8.5. General Plan.** The general plan shall 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 shall set forth the desired sequence, patterns and characteristics of future development.

**Section 8-8.6. Adoption of General Plan and Other Land Use Ordinances.**

1. The County shall adopt revisions to the general plan by ordinances.

2. Any revisions of the general plan, zoning ordinance or other land use ordinance may be proposed by the council and shall be reviewed by the appropriate planning commission as if prepared by the planning director. Any such revision shall be referred to the appropriate planning commission by resolution. If the planning commission disapproves the proposed revision or recommends a modification thereof, not accepted by the council, or fails to make its report within a period of the hundred twenty (120) days after receipt of the referral, the council may nevertheless pass such revision, but only by the affirmative vote of at least two-thirds of the council's entire membership.

**Section 8-8-7. Board of Variances and Appeals.** The board of variances and appeals shall consist of nine members appointed by the mayor with the approval of the council.

In accordance with such principles, conditions and procedures prescribed by the council, the board of variances and appeals shall:

1. Hear and determine applications for variances from the strict application of any zoning, subdivision or building ordinances. The board shall hold a public hearing prior to ruling on a variance application and shall issue findings of fact and conclusions of law on decisions granting or denying variance applications.

2. Hear and determine appeals alleging error from any person aggrieved by a decision or order of any department charged with the enforcement of zoning, subdivision, and building ordinances; provided, that the council may by ordinance confer to another county agency the authority to hear and determine appeals from the decisions of the building official in the administration of the county of Maui building code, plumbing code, electrical code, and housing code, and from any order made by the county fire chief in the administration of applicable state law and the county of Maui fire code, and the director of water supply in the administration of the rules and regulations of the department of water supply relating to matters involving any denial of the use of new or alternate materials, types of construction, equipment, devices or appliances.

3. Hear and determine all other matters which the board may be required to pass on pursuant to ordinances.

4. Adopt rules of procedure for the conduct of the board's business. (Amended 1996)

## **CHAPTER 9**

### **DEPARTMENT OF PERSONNEL SERVICES**

**Section 8-9.1. Organization.** There shall be a department of personnel services consisting of a civil service commission, a director of personnel services, and the necessary staff.

**Section 8-9.2. Director of Personnel Services.** The director of personnel services shall be appointed by the commission. The director of personnel services shall be thoroughly familiar with the principles and methods of personnel administration and shall believe in applying merit principles and scientific administrative methods to public personnel administration.

**Section 8-9.3. Powers, Duties and Functions.** The director 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.

**Section 8-9.4. Civil Service Commission.** The civil service commission shall consist of five members appointed by the mayor with the approval of the council.

The civil service commission shall:

1. Adopt rules 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 an 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.

**CHAPTER 10**  
**DEPARTMENT OF HUMAN CONCERNS**

**Section 8-10.1. Organization.** There shall be a department of housing and human concerns which shall consist of a director and the necessary staff. (Amended 1992)

**Section 8-10.2. Director of the Department of Housing and Human Concerns.** The director of the department of housing and human concerns shall be appointed and may be removed by the mayor. The director of the department of housing and human concerns shall have a minimum of five years of experience in an administrative capacity, either in public service or private business, or both. (Amended 1992)

**Section 8-10.3. Powers, Duties and Functions.** The director of housing and human concerns shall: (Amended 1992)

1. Develop a comprehensive approach to the effective administration and coordination of programs and plans of action designed to meet human needs in the county.

2. Develop, supervise and coordinate such programs and projects as shall be assigned by the mayor.

3. Perform such other duties and functions as may be assigned by the mayor.

**CHAPTER 11**  
**DEPARTMENT OF WATER SUPPLY**  
**(Amended 1988)**

**Section 8-11.1. Organization.** There shall be a department of water supply consisting of a board of water supply, a director, a deputy director and the necessary staff.

**Section 8-11.2. Functions of the Department.**

1. All water systems owned and operated by the county, including all county water rights and water sources, together with all materials, supplies and equipment and all real and

personal property used in connection with such water systems shall be under the control of the department.

2. The department shall have full and complete authority to manage, control and operate water systems and properties used in connection with such water systems.

3. The department shall implement the county's general plan and community plans in the administration of its affairs. There shall be a long-range plan of the department which shall be subject to the approval of the county council, as provided by law.

4. The county council shall have the authority to issue general obligation bonds for the benefit of the department and may provide capital appropriations for the department.

**Section 8-11.3. Board of Water Supply.** The board of water supply shall consist of nine members who shall be appointed by the mayor with the approval of the council. The planning director and the director of the department of public works shall be non-voting ex-officio members of the board.

**Section 8-11.4. Powers, Duties and Functions.** The board of water supply shall:

1. Appoint, evaluate and remove the director of the department of water supply. (Amended 1992)

2. Have the authority to create and abolish positions.

3. Adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the water works of the county, as well as the establishment and adjustment of rates and charges for furnishing water; such rules and regulations shall be adopted as provided under Section 8-11.8 below.

4. Adopt an annual operating and capital budget.

5. Have the authority to issue revenue bonds under the name of the board of water supply.

6. Have the authority to acquire by eminent domain, purchase, lease or otherwise, and to sell, lease, or otherwise convey real property in the name of the board of water supply.

7. Perform such other duties and functions as shall be prescribed by law.

**Section 8-11.5. Director of Water Supply.** The director of the department of water supply shall be appointed and evaluated by the board of water supply, and may be removed by the board of water supply. The director shall have a minimum of three years

of experience in an administrative capacity, either in public service or private business, or both. The director or his deputy shall be a registered engineer.

**Section 8-11.6. Powers, Duties and Functions.** The director shall:

1. Recommend rules and regulations for the adoption of the board.
2. Administer the affairs of the department, including the rules and regulations adopted by the board and be responsible for the day-to-day management and control of all water systems of the county.
3. Prepare and implement long range capital improvement plans which have been adopted by the board.
4. Appoint a deputy director.
5. Prepare an annual operating and capital budget for the board's review and adoption.
6. Coordinate the affairs of the department with the mayor and the county council and submit an annual report concerning the department to the mayor and the council.
7. Perform such other duties and functions as shall be prescribed by law.

**Section 8-11.7. Revenues.** The revenues of the department shall be kept in a separate fund and shall be such as to make the department self-supporting.

**Section 8-11.8. Approval of Rules.** The adoption, amendment and repeal of all rules adopted pursuant to Subsection 8-11.4(3) shall require action by both the mayor and council. The mayor shall either approve or disapprove and transmit the request to the council within fifteen (15) days of receipt. The request shall be deemed approved and transmitted to the council on the sixteenth day if the mayor takes no action.

Within forty-five (45) days of receipt from the mayor, the council may confirm the mayor's action by majority vote or may override any action by the mayor by a two-thirds (2/3) vote of its entire membership. If the council takes no action within forty-five (45) days, the proposal shall be deemed approved. (Amended 1994)

## **CHAPTER 12**

### **DEPARTMENT OF POLICE**



**Section 8-12.1. Organization.** There shall be a department of police consisting of a police commission, a chief of police, and the necessary staff.

**Section 8-12.2. Police Commission.** The police commission shall consist of nine members appointed by the mayor with the approval of the council.

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. Review and submit to the mayor the department's request for an annual appropriation for the operation of the department. (Amended 1992)

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 and recommendations to the chief of police for his disposition.

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

**Section 8-12.3. Chief of Police.** The chief of police shall be appointed and may be removed by the police commission. The chief may be removed by the police commission only after being informed in writing of the charges which are resulting in his dismissal, and after being given a hearing before the commission. The chief of police shall have had a minimum of five years of experience in law enforcement, at least three of which shall have been in an administrative capacity.

**Section 8-12.4. Duties and Functions of the Chief of Police.** 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 rights of persons and property, and enforcement and prevention of violations of all laws of the State and ordinances of the county and all rules 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 assigned by the mayor or as may be provided by law.

### **CHAPTER 13**

#### **DEPARTMENT OF LIQUOR CONTROL**

**Section 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 liquor control, and the necessary staff.

**Section 8-13.2. Liquor Control Commission.** The liquor control commission shall consist of nine members appointed by the mayor with the approval of the council.

The liquor control commission shall:

1. Prepare and submit a request for an annual appropriation for the operation of the department.

2. Adopt rules 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, including, but not limited to, the fixing of liquor license fees.

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.

**Section 8-13.3. Liquor Control Adjudication Board.** The liquor control adjudication board shall consist of nine members appointed by the mayor with the approval of the council. The liquor control adjudication board shall hear and determine administrative complaints of the director regarding violations of the liquor control laws of the State or of rules of the liquor control commission, and impose penalties for violations thereof as may be provided by law.

**Section 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 experience in law enforcement, at least three of which shall have been in an administrative capacity.

**Section 8.13.5. Powers, Duties and Functions.** The director of liquor control shall:

1. Be the administrative head of the department of liquor control.
2. Investigate violations of the liquor control laws of the State and of rules established by the liquor control commission.
3. Investigate applications for liquor licenses.
4. Have such other powers and duties as may be assigned by the mayor or as may be provided by law.

## **CHAPTER 14**

### **COST OF GOVERNMENT COMMISSION**

**Section 8-14.1. Declaration of Policy.** It is declared to be the policy of the county to promote economy, efficiency and improved service in the transaction of the public business in the legislative and executive branches of county 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.

**Section 8-14.2. Cost of Government Commission.** For the purpose of carrying out the policy set forth herein the mayor with the approval of the council shall biennially appoint a cost of government commission consisting of nine members. Each such commission shall:

1. Prepare and submit to the mayor a request for an appropriation for the operation of the commission.
2. Study and investigate the organizations and methods of operations of all departments, commissions, boards, offices and other instrumentality 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 instrumentalities 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. Submit a report of its findings and recommendations to the mayor and council not later than eleven months after its appointment. (Amended 1988)

**Section 8-14.3. Term of Commission.** Members of the Cost of Government Commission shall serve for staggered terms of two years, with an initial appointment of four members to serve two year terms and five members to serve one year terms. A member may be reappointed, but shall not serve on the Commission for more than a total of four years. (Amended 1994)

## **CHAPTER 15**

### **CIVIL DEFENSE AGENCY**

**Section 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. The public safety commission, as established in Section 8-7.4 herein, shall review the operations of the agency and make recommendations for changes which may be desirable to improve the performance of emergency functions and the provision of public safety services. The commission shall receive and investigate any complaints brought forth by the public against the conduct of the agency or any of its members and submit a written report of its findings and recommendations to the civil defense administrator for his disposition. (Amended 1986)

## **CHAPTER 16**

### **SALARY COMMISSION**

**Section 8-16.1. Organization and Functions.** There shall be a salary commission which shall consist of nine members appointed by the mayor with the approval of the council. The term of office of the salary commission members shall end with the term of office of the mayor. The commission shall determine the compensation of elected officials and appointed directors and deputy directors of all departments of the county provided, however, in establishing the compensation of appointed department heads and their deputies, the salary commission shall consult

with those boards and commissions which have appointing authority for department heads. (Amended 1992, 1984)

## **ARTICLE 9 FINANCIAL PROCEDURES**

**Section 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. All fiscal affairs of the county during any fiscal year shall be controlled by a budget ordinance and a capital program ordinance for that fiscal year.

**Section 9-2. Preparation and Submission of Budget and Capital Program.**

1. On or before the fifteenth day of March before the ensuing fiscal year begins, the mayor shall submit to the council (a) an operating budget for the ensuing fiscal year, including an executive operating budget and a legislative operating budget, (b) a capital program, and (c) an accompanying message. (Amended 1992)

2. Upon submission, the budget, the capital program and the message shall be a public record in the office of the county clerk 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.

**Section 9-3. Scope of Budget and Message.** 1. The budget shall present a complete financial plan for the operations of the county and its departments for the ensuing fiscal year, showing all county funds on hand whether encumbered or unencumbered and estimated reserves and revenues. It shall be set up as provided by the 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. 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.

**Section 9-4. Budget and Capital Program: Notice and Hearing.** A public hearing shall be held by the council on the proposed budget and capital program no sooner than the first day of April and no later than the thirtieth day of April of the year of submission. At this hearing all persons interested shall have opportunity to be heard. At least two weeks before the hearing, the council shall publish in a newspaper of general circulation in the county general summaries of the budget and capital program and a notice setting out the time and place for public hearing. (Amended 1986)

**Section 9-5. Budget: Council Action.** 1. After the public hearing, the council may pass 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 and appropriations to pay any indebtedness. 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 pass the budget on or before the thirty-first day of May of the fiscal year currently ending. If it fails to do so, the budget submitted by the mayor shall be deemed enacted as the budget for the ensuing fiscal year. (Amended 1986)

3. The enacted 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.

**Section 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 council may pass the program with or without amendment.

4. The council shall pass the capital program on or before the thirty-first day of May of the fiscal year currently ending. If it fails to do so, the program submitted by the mayor shall be deemed enacted as the program for the ensuing fiscal year. The enacted program shall be in effect on and after the first day of that fiscal year. (Amended 1986)

5. At any time during a fiscal year the capital program may be amended by ordinance.

**Sections 9-7. Restrictions on Budget and Capital Program; Revenue Rates.**

1. Any condition, limitation or restriction to be controlled by the council with respect to the disbursement of any appropriation shall be set forth in the budget or in the capital program, as the case may be.

2. With the exception of bond retirement, capital programs and provisions of subsection 9-9(2), all appropriations and expenditures of the county shall be made from revenues derived from sources other than borrowing, the issuance of bonds or interest paid on bond revenues.

3. Unless otherwise specifically provided for in this charter, all fees, rates, assessments and taxes imposed by the county shall be set in the annual budget.

**Section 9-8. Budget and Capital Program: Public Record.** Three copies of the budget and capital program as enacted 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 enactment and copies thereof shall be made available to the county departments and to interested persons.

**Section 9-9. 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, or (c) estimated revenues to be reimbursed by federal or state agencies to the county, the county may by ordinance make supplemental appropriations for that year up to the amount of the additional revenues so certified. (Amended 1988)

2. To meet a public emergency threatening life, health, or property, the council, upon written request by the mayor, may pass emergency appropriations. Such appropriations shall be made by ordinance which shall take immediate effect and must be approved by not less than seven members of the council. To the extent that there are no available unappropriated revenues to meet such appropriations, the county may, by ordinance, authorize the issuance of emergency notes. These notes 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.

**Section 9-10. 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, the mayor shall report to the council without delay, indicating the estimated amount of the deficit, any remedial action taken by the mayor, and 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 pass a bill reducing one or more appropriations; but no appropriation to pay any indebtedness 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. Upon written request of the mayor part or all of any unencumbered appropriation balance may be transferred within a department by resolution or from one department to another by ordinance. No transfer, however, shall be made from an appropriation to pay any indebtedness, and no appropriation may be reduced below any amount required by law to be appropriated.



3. The mayor or the council may initiate changes to their respective operating budgets. (Amended 1992)

**Section 9-11. Lapse of Appropriations.** Every appropriation, except an appropriation for a capital improvement, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered by a written contract. An appropriation for a capital improvement 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 improvement shall be deemed abandoned six months after the close of the fiscal year to the extent that it has not been expended or encumbered by a written contract. (Amended 1984)

**Section 9-12. 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 removal from office.

2. Nothing contained in any section 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.

3. Nothing contained in any section of this charter shall prevent the county from entering into service contracts, equipment purchase contracts or leases which extend beyond the fiscal year in which they are signed; provided, however, such service contracts or leases shall provide for the payment for services during the fiscal year in which such services are provided to the county and any equipment purchase contract shall provide for equal payments not to extend beyond the anticipated service life of the equipment. Any such contract or lease

requiring the payment of funds from the appropriations of more than one fiscal year shall be approved by ordinance.

**Section 9-13. Audit of Accounts.** Within six (6) months 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 council chairman, 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 reports shall be filed with the county clerk and shall be a public record. (Amended 1988)

In case of the death, resignation or removal of the director of finance, the council shall cause an independent audit to be made of the finance director's accounts.

**Section 9-14. 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. All or a portion of the surplus may be transferred to any emergency fund or to a capital improvement reserve fund by ordinance. 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 purposes for which such capital improvement reserve fund may be expended may be amended 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.

**Section 9-15. Centralized Purchasing.** The mayor may, at the mayor's 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 other department as the mayor may designate.

**Section 9-16. Insurance.** The director of finance may procure insurance from companies licensed to do business in the State for the protection of all properties and all activities of the county in such amounts and under such conditions as the county shall, by ordinance, prescribe.

**Section 9-17. 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.

**Section 9-18. 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. (Amended 1984)

2. Before execution, contracts involving financial obligations of the county shall also be certified by the director of finance as to the availability of funds in the amounts and for the purposes set forth herein. (Amended 1984)

3. Notwithstanding any other provision in this charter, all contracts involving the council, the office of council services, and the office of the county clerk shall be signed on behalf of the county by the chairman of the council only, subject to approval by the corporation counsel as to form and legality, and certification by the director of finance as provided herein. (Amended 1984)

## **ARTICLE 10**

## CODE OF ETHICS

**Section 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.

**Section 10-2. Board of Ethics.** There shall be a board of ethics.

1. The board shall consist of nine members appointed by the mayor with the approval of the council.

2. The board shall:

a. Initiate, receive, hear and investigate complaints of violations of this Article.

b. Initiate impeachment proceedings against elected officers and officers appointed to elective office who are found by the board after investigation to have violated this Article. Such proceeding shall be brought in the name of the board which shall be represented by special counsel of the board's choosing.

c. Render advisory opinions with respect to application of this Article on request. All requests for advisory opinions shall be answered within forty-five (45) days of its filing; failure to submit an advisory opinion within the forty-five (45) days shall be deemed a finding of no breach of this Article. (Amended 1992)

d. Prescribe forms for the disclosures provided in this section and to implement the requirements of the disclosure provisions.

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

f. Adopt such rules, having the force and effect of law, as will be necessary to provide for the enforcement of the provisions of this Article.

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

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

5. 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 liable for violating any of the provisions of this Article.

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

**Section 10-3. Financial Disclosure.** 1. All elected county officers, all candidates for elective county office and such appointed officers or other employees as the council shall designate by ordinance shall file with the board of ethics and the county clerk financial disclosures in a form or forms to be prescribed by the board of ethics. Such financial disclosures shall be open to public inspection.

2. All members of boards and commissions established under this charter, and such appointed officers or other employees as shall be designated by the council by ordinance as having significant discretionary or fiscal powers shall file with the board of ethics confidential financial disclosures in a form or forms to be prescribed by the board of ethics which disclosures shall not be open to public inspection provided that the names of all persons required to file confidential financial disclosures, the dates by which the disclosures are required to be filed, and the dates on which the disclosures are actually filed, shall be open to public inspection. (Amended 1994, 1992)

3. All persons required herein to make financial disclosures shall file such disclosures within fifteen days of taking office or within fifteen days of filing nomination papers as a candidate for an elected county office. The disclosure shall be sworn to under oath and shall include, but not be limited to, sources and amount of income, business ownership, officer and director positions, ownership of or interest in real property, debts, creditor interests in insolvent businesses, the names of persons represented before government agencies, and such other information as shall be prescribed by the board of ethics.

**Section 10-4. 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 proceedings against the interests of the county or appear in behalf of private interests before any agency.

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

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

g. Receive compensation for any service rendered in behalf of any private interest after termination of service to or employment with the county in relation to any case, proceeding or application with respect to which the officer or employee was directly concerned, or which was under his or her active consideration, or with respect to which knowledge or information not generally available to the public was made available to him or her during the period of service to or employment with the county.

2.a. No former mayor or council member shall appear for compensation before any agency of the county within a period of one year after leaving the county elective office.

b. No former non-elected salaried employee or officer of the county shall appear for compensation before any department or other agency of the county by which such employee or officer was last employed within a period of one year after termination of service to or employment with the county.

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

4. Officers and full time employees of the county shall not appear on behalf of or represent private interests before any

county agency, provided that no officer or employee shall be denied the right to appear before any agency to petition for redress or grievances caused by any official county action affecting such person's personal rights, privileges or property, including real property, provided that members of boards and commissions may appear on behalf of private interests before county agencies other than the one on which such person serves and other than those agencies that have the power to review the actions of the agency on which such person serves, or to act on the same subject matter as the agency on which such person serves; provided, further, that without changing the prohibitions and rights stated above, the council by ordinance may prescribe further standards, conditions, and guidelines concerning the representation of private interests before county agencies. (Amended 1992)

**Section 10-5. Penalties.** Any person who violates the provisions of this Article 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, non-elected officers or employees may be suspended or removed from office or employment by the appropriate appointing authority and elected officers may be removed through impeachment proceedings pursuant to Section 13-13.

## **ARTICLE 11 INITIATIVE**

**Section 11-1. Powers.** 1. The voters of the county shall have power to propose ordinances to the council. If the county fails to adopt an ordinance so proposed without any change in substance, the voters may adopt the same at the polls, such power being known as the initiative power.

2. The voters shall have power to propose the reconsideration by the county of an adopted ordinance or any portion thereof. If the county fails to repeal an ordinance so reconsidered the voters shall have the power to reject the same at the polls, such power also being known as the initiative power.

3. The initiative power shall not extend:

- a. To any part or all of the capital program or annual budget;
- b. To any property tax levied;

- c. To any ordinance making or repealing any appropriation of money;
- d. To any ordinance authorizing the issuance of bonds;
- e. To any ordinance authorizing the appointment of employees; or,
- f. To any emergency ordinance.

**Section 11-2. Affidavit.** Any five qualified voters may commence initiative proceedings by filing with the county clerk an affidavit 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 ordinance, or citing the ordinance or portion thereof sought to be reconsidered. In addition the affidavit shall state that they:

- a. Will constitute the petitioners' committee;
- b. Will be responsible for circulating the petition;
- c. Will file it in proper form.

Promptly after such affidavit is filed, the clerk shall issue the appropriate petition blanks to the petitioners' committee.

**Section 11-3. Petitions.** 1. Petitions shall be filed as one instrument and shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

2. Such petitions must be signed by not less than twenty percent (20%) of the voters registered in the last general election.

3. Each signature shall be followed by the place of residence and voting precinct of the person signing.

4. To each such petition paper there shall be attached an affidavit of the circulator stating:

- a. That he or she personally circulated the paper;
- b. The number of signatures thereon;
- c. That all the signatures were affixed in his or her presence and that he or she believes them to be the genuine signature of the person whose name it purports to be; and,
- d. That each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

**Section 11-4. Filing and Certification.** 1. Within thirty (30) days after the filing with the clerk of the affidavit described in Section 11-2, all papers forming an initiative



petition shall be assembled and filed with the county clerk as one instrument.

2. Within twenty (20) days after the petition is filed, the county clerk shall determine the sufficiency thereof and attach thereto a certificate showing the result of his examination. If the county clerk certifies that the petition is insufficient, the county clerk shall set forth in the certificate the particulars in which the petition is defective, and shall promptly send it to the petitioners' committee.

**Section 11-5. Supplementary Petitions.** 1. In the event the initial petition contains insufficient valid signatures, it may be supported by supplemental signatures of voters signed in the manner required in Section 11-3 of this Article. Such supplementary signatures shall be appended to the initial petition at any time within twenty (20) days after receipt by the petitioners' committee of notification that the county clerk has certified the initial petition insufficient.

2. The clerk shall within ten (10) days after such supplementary signatures are filed make a like examination of them and shall promptly issue a certificate as to their sufficiency. Such certificate shall be sent to the petitioners' committee.

3. If a petition or supplemented petition is certified insufficient, or if a petition or supplemented 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. The certificate shall then be a final determination as to sufficiency. Such determination, however, 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.

**Section 11-6. Action on Petitions.** 1. When an initiative petition has been finally determined sufficient, the council shall promptly consider the proposed ordinance or reconsider the ordinance or portion thereof sought to be reconsidered. If the county fails to enact proposed ordinance without change in substance or fails to repeal the referred ordinance or portion thereof within sixty (60) days after the date the petition was finally determined sufficient, the county clerk shall submit the proposed or referred ordinance to the voters of the county.

2. The vote of the electorate 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 county action thereon. The council shall if no regular election is to be held within such period, provide for a special election. Copies of the proposed ordinance or referred ordinance shall be published in a newspaper of general circulation in the county at least forty-five (45) days prior to submission to the voters and shall be made available at the polls.

3. An initiative 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 eighty percent (80%) 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.

**Section 11-7. Results of Election.** If a majority of the qualified electors voting on a proposed ordinance vote in its favor, it shall be considered enacted 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.

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.

**Section 11-8. Publication: Repeal and Amendment.** Initiative ordinances enacted by the voters shall be published and shall take effect as prescribed for ordinances generally. Such ordinances may be amended or repealed by ordinance enacted after one year from the date of certification, but only by the affirmative vote of at least two-thirds of the council membership.

## **ARTICLE 12**

### **RECALL**

**Section 12-1. Recall Procedure.** Any elective officer or member of a board or commission 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.

**Section 12-2. Affidavit.** An affidavit shall be made by one or more voters and filed with the county clerk, stating the name and office of the officer sought to be removed.

**Section 12-3. Petitions.** 1. A petition demanding that the question of removing such officer be submitted to the voters shall be addressed to the council and filed with the county clerk. Such petition papers shall be obtained from the county clerk, who shall keep a sufficient number of blank petition papers on file for distribution.

2. Such petitions shall be signed by not less than twenty percent (20%) of the voters registered in the last general election.

3. Each signature shall be followed by the place of residence and voting precinct of the person signing.

4. To each such petition paper there shall be attached an affidavit of the circulator thereof stating:

- a. The number of signers to such part of the petition;
- b. That each signature appended to the paper was made in his presence and is believed to be the genuine signature of persons whose name it purports to be;
- c. That each signer is believed to have understood the nature of the recall petition.

**Section 12-4. Filing and Certification.** 1. 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, all papers comprising a recall petition shall be assembled and filed with the county clerk as one instrument.

2. Within twenty (20) days from the date of the filing of such petition, the county clerk shall determine the sufficiency thereof and attach thereto a certificate showing the result of his examination. If the county clerk certifies that the petition is insufficient, the clerk 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.

**Section 12-5. Supplemental Petitions.** 1. 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. Such supplementary signatures shall be 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 issued by the county clerk.

2. The county clerk shall within ten (10) days after such supplemental petitions are filed make a like examination of them. If his examination shall show the same to be still insufficient, he shall return it in the manner described in Section 12-4 of this Article, and no new petition for the recall of the officer sought to be removed shall be filed within one year thereafter.

**Section 12-6. Recall Election.** If a recall petition or supplemental petition shall be certified by the county clerk to be sufficient, the county clerk shall at once submit the petition with the certificate to the council and shall notify the officer sought to be recalled of such action. If the officer 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 election held within such period; but if no 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.

**Section 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 (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: "I favor the removal of (name of person)," "I am against the removal of (name of person)." Next to 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.

**Section 12-8. Succeeding Officer.** The incumbent, if not recalled in such election, shall continue in office for the remainder of the unexpired term subject to the recall as before,

except as provided in this charter. If recalled in the recall election, the officer 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 or members of boards and commissions as the case may be. The successor of any person so removed shall hold office during the unexpired term of his predecessor.

**Section 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**

**Section 13-1. Definitions.** 1. The terms "board" or "commission" shall mean a board or commission established by this charter.

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

3. The term "law" shall mean any Federal law, any law of the State or any ordinance of the county of Maui or any rule having the force and effect of law.

4. 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.

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

**Section 13-2. Boards and Commissions.** 1. Unless otherwise provided, the members of all boards or commissions shall serve for staggered terms of five years beginning on April 1st and ending on March 31st five years thereafter. All members of boards and commissions recognized by this charter who hold office upon the effective date of this amendment shall continue in

office for the balance of the term for which they were originally appointed and ninety (90) days thereafter to the following March 31st.

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

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

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

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

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

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

7. Employees and officers of the State or county shall be eligible to serve on boards and commissions, provided that such service does not result in a conflict of interest.

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

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

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

11. All boards and commissions shall hold public hearings whenever required or deemed necessary and shall provide due

notice to the public by publication in a newspaper of general circulation in the county.

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

13. The members of boards and commissions shall receive no compensation but shall be entitled to be paid for necessary expenses incurred by them in the performance of their duties. Necessary expenses may be paid in advance as per diem allowances as may be established by ordinance.

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

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

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

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

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

for herein, that nominee shall be deemed appointed to fill the vacancy upon its occurrence.

**Section 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.

**Section 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.

**Section 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 the public duties as provided by ordinance.

**Section 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.

**Section 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 as the mayor may prescribe. Copies of such reports shall be filed in the office of the county clerk.

**Section 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.

**Section 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 publicly owned place.

**Section 13-10. 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 having the force and effect of law, but no penalty shall exceed the amount of \$1,000.00, or one year's imprisonment, or both.

**Section 13-11. County Elections.** County elections shall be conducted in accordance with the election laws of the State.

**Section 13-12. Oaths of Office.** Before entering upon the duties of office, each officer elected or appointed shall take and subscribe to such oath or affirmation as shall be provided by law.

**Section 13-13. Impeachment of officers.** Appointed or elected officers may be impeached for malfeasance, misfeasance or nonfeasance in office or violation of the provisions of Article 10. Such impeachment proceedings shall be commenced in the Circuit Court of the Second Circuit, 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. A charge or charges alleging violation of Article 10 may be set forth in writing in a verified petition for impeachment signed by a majority of the members of the board of ethics. 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 other than the board of ethics shall bear their own attorney's fees and other costs of such proceedings.

**Section 13-14. 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.

**Section 13-15. 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.

**Section 13-16. Severability.** 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**

**Section 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 corporation counsel.

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 signature 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.

3. By petition presented to the county clerk, signed by not less than twenty percent (20%) of the voters registered in the last general election, setting forth the proposed amendments. Such a petition 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 corporation counsel.

Upon filing such petition, 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.

When the petition has been determined sufficient by the county clerk, the county clerk shall submit the proposed amendments to the voters of the county at the next general election. (Amended 1992)

**Section 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.

**Section 14-3. Mandatory Review.** Not later than the first day of March, 2001, 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 proposed amendments to the charter or draft a new charter which shall be submitted to the county clerk within sixteen (16) 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 deemed by the commission. Any special election shall be held not less than forty-five (45) days and no more than seventy-five (75) days after the receipt of the amendments or the new charter by the county clerk.

The commission shall publish not less than forty-five (45) days before any election, at least once in the 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 thereto, at intervals of ten (10) years, 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 such amendments or new charter and to propose amendments or to draft a new charter in the manner hereinabove set forth. (Amended 1992)

#### **Section 14-4. Special Charter Commissions.**

1. Not later than the first day of March, 1983, the mayor, with the approval of the council, shall appoint a special charter commission composed of eleven members to study and review Sections 3-1, 3-2 and 3-3 of this charter. The special charter commission may propose amendments to Sections 3-1, 3-2 and 3-3 of this charter which shall be submitted to the county clerk within twelve months after such special charter commission is appointed. Upon receipt of the amendments, the county clerk shall provide for the submission of such amendments to the voters of the county at the general election to be held in 1984. 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 the general election of 1984.

2. Not later than the first day of March, 1987, the mayor, with the approval of the council, shall appoint a special charter commission composed of eleven members to study and review Article 8, Chapter 11 of this charter. The special charter commission may propose amendments to Article 8, Chapter 11 and such other sections of this charter as it deems necessary to effectuate the changes to Article 8, Chapter 11; provided, however, no amendments to any portion of this charter may be proposed which

does not specifically relate to the operation or financing of the Department of Water Supply. Any amendment proposed by the special charter commission shall be submitted to the county clerk within twelve months after such special charter commission is appointed. Upon receipt of the amendments, the county clerk shall provide for the submission of such amendments to the voters of the county at the general election to be held in 1988. 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 the general election of 1988.

## **ARTICLE 15**

### **TRANSITIONAL PROVISIONS**

**Section 15-1. Schedule.** After the approval of this charter by the voters, this charter shall take full effect on January 1, 1983, except that the election of the council in 1982 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.

**Section 15-2. Existing Laws and Conflicting Laws.** All laws, ordinances, resolutions, and rules 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.

**Section 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 this charter.

**Section 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.

**Section 15-5. 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.