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LINDA CROCKETT LINGLE  
Mayor  
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OFFICE OF THE MAYOR  
COUNTY OF MAUI  
WAILUKU, MAUI, HAWAII 96793

July 12, 1991

Mr. Robert Nakasone  
Chairman  
Charter Commission  
c/o Office of the Mayor  
County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793

Dear Bob:

Congratulations on being selected Chairman of the Charter Commission. I know you will do a good job leading the Commission to carry out its duties.

I write in response to your request to obtain budget information from the prior Commission. Unfortunately, ten years ago, the County was not yet "automated". Therefore, we do not have detailed records. What we do have is the actual money appropriated and the actual money spent.

FY 1982	\$50,000 appropriated	\$36,600 spent
FY 1883	\$20,000 appropriated	\$21,616 spent

I hope this will be of some help to the Commission.

As I stated at the first meeting, please feel free to call on me if I can be of any help.

Sincerely,

A handwritten signature in cursive script, reading "Linda Crockett Lingle".

LINDA CROCKETT LINGLE  
Mayor, County of Maui

:mlg

# 91-3 Model City Charter

## Charter Reform in the 1990s

Recent release of the new Seventh Edition of the Model City Charter has heightened awareness of the need for substantive charter review in many municipalities. The new Model—with its emphasis on simplicity and brevity—is truly a charter for the 1990s. In that it fosters citizen understanding of local government structure and (ultimately) broader participation in local governance. Administrative specifics on which the Charter is silent can readily be provided through legislative ordinance appropriate for unique local conditions.

by JOSEPH F. ZIMMERMAN

Issuance of the Seventh Edition of the *Model City Charter* by the National Civic League in 1989 focuses attention upon the need for a review of the typical local government charter by concerned citizens and public officials. A municipal charter is the fundamental law of the municipal corporation and is the local equivalent of a state or national constitution. The charter establishes the government, structures the legislative and executive branches, allocates power to the two branches, and contains provisions to ensure that the government will remain under the control of the voters.

A carefully drafted charter promotes democratic control of the government by providing citizens with a readily available source of information on the structure, powers, and procedures of the government and the roles that citizens can play in the governance system. In addition, a good charter helps ensure that city resources are employed in the most efficient, economical, and ethical manner.

Unfortunately, many charters are old and highly detailed, and not attuned to the special environments within which many local governments operate today. The older charters were drafted prior to the municipal reform and professional management movements that were active at the turn of the century and influenced the development of the *Model City Charter*.

Citizens in a non-chartered general purpose local government experience great difficulty in obtaining complete and accurate information on the structure, powers, and procedures of their government because such information is buried in various general and special state laws, and many of these laws are archaic and technically confusing. Hence, a strong case can be made for enactment of a state constitutional or statutory requirement that every general purpose local government must operate under a charter.

### *Types of Municipal Charters*

Cities in the United States operate under special, general, optional, and "home rule" charters. In addition, counties, towns, and villages in a number of states also have charters or are authorized to draft and adopt charters. In New York State, for example, nineteen of the fifty-seven counties outside New York City have charters. Units without a charter are governed by state general laws.

**Special charters.** Historically, the city was the only form of municipal corporation in the United States and originally operated under a charter granted by the colonial legislature or a royal charter issued by the Lieutenant Governor-in-Council. Subsequent to the Revolutionary War, all cities were created by the state legislature by issuance of a special charter.

In theory, a special charter is custom-tailored to the city, granting it precisely the type of governmental organization and powers the unit needs. The special charter system in practice suffers from two major disadvantages:

- The state legislature often acts capriciously, forcing upon cities unwieldy or burdensome governmental structures and imposing severe limitations on city action; and
- The excessive time expended by state legislatures on city problems leads to a neglect of state problems. For these reasons, the constitutions of many states have been amended to prohibit the granting of special charters.

**General charters.** Under the general charter system, each type of local government, large or small, is granted an identical charter. In theory, the system provides for equal corporate privileges for all cities and no distinctions are made in the structure of the cities. In practice, a general charter has grossly uneven effects because it burdens small cities with administrative paraphernalia they do not need or want, and deprives large cities of urgently needed powers and facilities.

**Classified charters.** In an effort to avoid the defects associated with special and general charters, a number of states have adopted the classified charter system. Under it, cities are classified according to populations, and a uniform charter is provided for all cities within the same population class.

Unfortunately, classification often has been utilized by the state legislature to evade constitutional prohibitions against the issuance of special charters. By creating a large number of classes of cities, a legislature in effect can impose a special charter upon each or most cities.

Even if the legislature adopts a reasonable classification system, classified charters suffer from two defects:

- The charter fails to take account of different environment characteristics of cities with similar populations; and

- The system requires a change of charter—no matter how satisfactory the existing one is—if a city's population increases or declines beyond the limits of its class.

**Optional charters.** The optional charter system has the advantages of securing a degree of uniformity while permitting a degree of local self-determination. Although considered by many observers to be superior to the special, general, and classified charter systems, a consensus of opinion exists that citizens should be granted greater discretionary authority in determining the structure and powers of their local governments.

**"Home rule" charters.** A "home rule" charter system allows voters in a local government to draft, adopt, and amend a municipal charter. The 1875 Missouri Constitution was the first state constitution to authorize a local government to draft and adopt a charter.<sup>1</sup>

Alabama, Indiana, Illinois, Kentucky, North Carolina, and Virginia do not allow the adoption of a locally drafted charter. In the other states, the power to adopt such a charter is limited to specific types of political subdivisions (counties in Georgia) and in still other states the power is restricted to units with a specified minimum population size (cities with a population of 3,500 or more in Arizona and cities exceeding 5,000 in Texas). The constitutional grant authority to local governments to draft, adopt, and amend charters specifies the matters that are subject to local control. The New York State Constitution, for example, grants general purpose local governments authority relative to their property, structure of government, and local affairs.<sup>2</sup> A major problem that arises involves distinguishing between local and state or general affairs, and the courts are called upon to make the distinction.

The "home rule" charter system has four major advantages:

- The system eliminates or reduces greatly state legislative interference in local affairs.
- Citizens are permitted to determine the form and administrative organization of their local government.
- The state legislature is relieved of the time-consuming burden of special legislation and can devote its full attention to state problems.
- Citizens have a greater voice in the determination of local governmental policies and thus are encouraged to become more interested and active in local affairs.

### *The Model City Charter*

The Model City Charter traces its origin to the first draft of the charter presented at the 1898 National Conference on Government in Indianapolis and the first edition adopted by the National Municipal League (now the National

Civic League) in 1900. The purpose of the *Model* is to provide interested citizens and public officials with guidance relative to the best provisions that should be included in a municipal charter. As a model, it is anticipated that adopting municipalities will make a number of changes in its provisions to accommodate special conditions within cities. Recognizing this fact, the *Model* contains several carefully drafted alternative provisions that have functioned successfully in various municipalities.

***A municipal charter is the fundamental law of the municipal corporation and is the local equivalent of a state or national constitution.***

Based upon the devolution of powers method of allocating political power to municipalities, the *Model* stipulates that "the city shall have all powers possible for a city to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in this charter." By adopting this method of determining powers of the city, the charter is kept short because there is no need to list the specific powers the city may exercise. Special charters, in contrast, are long because they do contain a listing of the powers the city may exercise.

***The electoral system.*** Recognizing the critical importance of the electoral system employed to elect members of the city council, the *Model City Charter* offers five alternative methods. There are two additional electoral systems—limited voting and cumulative voting—not included in the *Model City Charter*.<sup>3</sup> While space limitations preclude a discussion of all the trade-offs involved in choosing one electoral system over another, the principal considerations are summarized in the following paragraphs:

- **Election at-large.** Under this alternative, each voter may cast a ballot for as many candidates as there are seats on the council. All seats may be elected at each election, or staggered terms may be employed. This alternative is the one favored by the early municipal reformers who were convinced that large "invisible" city councils were controlled by corrupt political machines which were the product of a ward electoral system that failed to provide fair representation.<sup>4</sup>

In cities with a sizable minority population, at-large elections may result in the underrepresentation of minority groups because only candidates who command wide support throughout the city generally will be elected.

- **Election at-large with residency requirements.** This system is designed to ensure that members of the city council elected at-large reside in the various

sections of the city. If a minority group is geographically concentrated in a district, the system may facilitate the election of a minority member of the council, but does not guarantee that the group will be represented by someone of their choice.

- **Mixed at-large and single-member district system.** This system recognizes that at-large systems may not provide proper representation for all groups, and that ward or single-member district elections in the past have had undesirable consequences.

By employing a mixed system, it is hoped that a number of members of the council will have a city-wide perspective and concern for what is best for the city as a whole, while other members will have a special concern for the problems of their respective districts.

- **Single-member district system.** Originally known as the ward system, the single-member district system is a form of limited voting, in that each voter may cast a ballot only for one candidate for city council.

Although discredited in the past, the Federal Voting Rights Act of 1965, as amended, has promoted the employment of this system to help racial and ethnic minorities gain direct representation on city councils. Where minority groups 1) are concentrated geographically and 2) vote as blocks, the system helps ensure the election of representative members of the city council. Nevertheless, the system suffers from defects, such as the opportunity for gerrymandering of district lines and failure to provide direct representation of any minority that is so evenly distributed that it cannot elect a candidate in any district, even though its voting strength throughout the city is large enough to warrant direct representation.

- **Proportional representation.** This system of preferential voting is designed to alter the basis of representation by ensuring that sizeable parties and groups are represented approximately in proportion to their voting strength.

With the exception of New York City and Cleveland, where multi-seat districts were used, proportional representation has always been employed on an at-large basis in the United States. The principal advantage of proportional representation is that it ensures majority rule while guaranteeing minority representation. This system is based upon the recognition that in a modern city there are numerous factional and ethnic divisions; proportional representation makes it impossible for any political party or faction with a slight voting majority or plurality to elect all or most members of a legislative body.

- **Limited voting.** This semi-proportional system is traceable in origin to the failure during the nineteenth century of the single-member district system in England and the United States to provide fair representation of minority parties.



Under limited voting, each elector must vote for fewer candidates than there are seats on the city council; the plurality rule determines the winners. Limited voting ensures that a sizeable minority group cannot be excluded from the legislative body. For example, if voters are limited to voting for a maximum of five candidates for a seven-member council, the largest party typically will win five seats and the other party will win two seats.

- **Cumulative voting.** As a semi-proportional system, cumulative voting has the same objective as limited voting: allocating seats approximately in proportion to votes. Each voter has the same number of votes as there are seats on the legislative body and the voter may give all votes to one candidate or apportion them among several candidates according to preference. Provided it is politically cohesive and informed, a minority party or group can concentrate its votes on one candidate or a few candidates with the expectation that the candidate(s) will be elected.

In cities with large councils, limited voting, cumulative voting, and proportional representation may be combined with multi-seat districts.

**The chief executive.** Special city charters issued in the nineteenth century suffer from a number of defects, including lack of a strong executive, as the mayor typically is weak in terms of formal powers. Council domination and decentralization of administration are prominent characteristics of this form of municipal government. In general, cities with this form are not operated in the most efficient and economical manner.

To remedy this problem, the *Model City Charter* directs the city council to appoint a professional city manager for an indefinite term. Subject to removal by a majority vote of the council at any time, the manager is the chief administrative officer of the city. The council is responsible for establishing municipal policies with the advice of the manager who appoints and supervises all subordinate administrators and employees, prepares and submits the budget to the council, implements ordinances, and performs other duties as directed by the council.

The council-manager plan has four major advantages:

- The direction of the city's administration is centered completely in one professionally trained individual.
- The plan is simple and the governmental processes are followed readily by all voters.
- Responsibility may be enforced, by citizens upon the council, and by the council upon the manager.
- The deadlocks and delays encountered in other forms of municipal government are avoided.

**Other provisions.** The *Model City Charter* authorizes the city council to create and reorganize departments and offices, and requires that all appointments and promotions of city officers and employees be made in accordance with the merit principle.

In addition to presenting an annual budget message and balanced current budget to the council, the manager is directed to prepare and submit the five- or six-year capital-improvement program listing all needed capital improvements in priority order, with cost estimates and proposed methods of finance.

If district elections are employed, the *Model City Charter* provides for council appointment of a five-member districting commission responsible for redrawing district lines subsequent to the decennial United States Census of population to comply with the U.S. Supreme Court's "one-person, one-vote" dictum. To prevent or reduce gerrymandering, the *Model* contains districting criteria which must be employed by the commission, to the extent practicable, in establishing district lines. The criteria include equally populated districts, districts composed only of contiguous territory, no division of a city block between districts, and the shortest possible aggregate length of all district boundaries.

The *Model* also reserves to the voters the powers of the initiative and the referendum, subject to the provisions of the state election laws. The former allows voters, by means of a petition containing the signatures of a specified number or percentage of voters, to place a proposed ordinance on the ballot. The petition or protest referendum allows voters, by means of petitions containing the signatures of a required number or percentage of voters, to suspend implementation of an ordinance until a referendum election is held to determine whether the ordinance should be repealed.

Although not included in the *Model City Charter*, local governments may wish to include in their charters a provision for recall. This device allows voters to petition for a special election to determine whether a public official should be removed from office prior to the expiration of his or her term.<sup>5</sup> The recall can be employed for any reason, including inefficiency or disappointment with the official's conduct or program. The purpose of the recall is to enforce a continuing responsibility of public officers to the electorate.

The *Model City Charter* prohibits conflicts of interest on the part of the municipal officers and employees, and also directs the city council to create an independent board of ethics. The latter administrators and enforces the conflict of interest and financial disclosure ordinances, and also issues advisory opinions in response to the requests of officers and employees for guidance on ethical matters.

Amendments to the city charter may be proposed by the city council or by a charter commission created by ordinance. Amendments become effective if

ratified by a majority of the voters casting ballots on the amendments.

### *Large Cities*

Although the *Model* contains excellent provisions for inclusion in the charter of a typical city or other general purpose local government, the largest cities have special problems; the unitary governmental structure proposed by the *Model* is perceived to impede effective citizen participation in decision making. The discontent, which emerged in large cities in the 1960s, was attributable in part to 1) the development of a ponderous municipal bureaucracy, 2) the "unrepresentativeness" of city councils, and 3) the inability of traditional municipal institutions to solve the multitudinous problems of citizens, especially poor ones. In particular, many minority group members have become convinced that they are being shortchanged by a closed decision-making process.

The fact that we lack government by consent in a number of large city neighborhoods cannot be denied. Charter drafters in these cities should give serious consideration to including in their documents provisions for neighborhood government and administrative decentralization.

### *A good charter is a relatively short document that can be understood readily by citizens.*

A two-tier governmental system for large cities could be based upon the metropolitan Toronto model where the upper-tier unit is responsible for area-wide functions such as water supply, major roads, and sewage treatment, and lower-tier units are responsible for functions closest to the people, such as health and social services.<sup>6</sup> Certain functions—roads are an example—would be the responsibility of both levels. A number of functions could be performed on a wholesale/retail basis. Solid waste, for example, could be collected by the lower-tier units (retail) and disposed of by the upper-tier unit (wholesale).

An alternative or supplement to political decentralization is administrative decentralization: the division of the city into unifunctional or multi-functional service-delivery districts. In contrast to a neighborhood government, the director of each administrative district reports to a superior in city hall.

In New York City, the charter directs the President of each of the five Boroughs to appoint up to 50 members to serve on each community board within the Borough. Each board appoints a district manager, who serves at the board's pleasure, to monitor service delivery by city agencies.<sup>7</sup> To coordinate service delivery within each district, the manager is directed to form and chair a service cabinet composed of a representative of the Department of City Planning and the

head of each service-delivery agency in the district. [For more information on New York City's community board system, see Robert F. Pecorella, "Measured Decentralization," NATIONAL CIVIC REVIEW, 78:3, May-June 1989, pp. 202-08—Ed.]

### *Charter and State Laws Review*

Periodic review of a charter is essential to ensure that it is responsive to changing conditions. Events may necessitate the creation of new offices or departments, granting of additional authority to the council or chief executive, a change in the electoral system or the size of the council, and administrative reorganization of the executive branch.

A charter should provide for a mandatory referendum each decade on the question of creating a charter review commission composed of citizens or a combination of public officials and citizens. The charter also should authorize the voters at any time by petition to call for a referendum on the question of appointing or electing a charter review commission.

Surveys by the author reveal that the municipal laws in several states are in need of recodification and removal of obsolete and conflicting provisions. These statutes allow officials with long experience to take advantage of the divergent provisions in various general laws in deciding which statutes to operate under for a given purpose. One undesirable consequence is citizen lack of understanding of the local governance system.

A careful recodification of the municipal laws of a state, undertaken in conjunction with the enactment of a code of restrictions upon local government powers, would facilitate greatly citizens' and local government officials' understanding of the extent of local discretionary authority.

### *Summary and Conclusions*

Democratic theory is premised upon citizens playing an active and informed role in the governance system. The Seventh Edition of the *Model City Charter*—in contrast to antiquated and long municipal charters diffusing political power and responsibility—promotes citizen understanding and participation, and cooperation among municipal officials.

A good charter is a relatively short document that can be understood readily by citizens. A desirable supplement is an administrative code, enacted by the governing body, containing many details of the administrative organization and procedures of the municipal corporation. Traditionally, municipal charters could be amended only with the approval of the electorate. The need to implement administrative changes in response to new conditions suggests that details of administrative organization and procedure belong in an administrative

code that can be amended by the local legislative body without a referendum.

A final recommendation is the amendment of state constitutions and state laws, where needed, to grant authority to citizens of all general purpose local governments to draft, adopt, and amend charters. Adoption of a charter will permit a reorganization of the local government to improve performance, public officials' responsiveness to the citizenry, and public understanding of the governance system.

## Notes

<sup>1</sup>*Constitution of Missouri*, Art. IX, § 19 (1875). Only St. Louis met the threshold requirement of a population exceeding 100,000. For more information on the general concept of home rule, see also *Guide for Charter Commissions* (Denver: National Civic League, 1989).

<sup>2</sup>*Constitution of New York*, Art. IX, § 2(c).

<sup>3</sup>For details on all alternative electoral systems, see Joseph F. Zimmerman, *The Federated City: Community Control in Large Cities* (New York: St. Martin's Press, 1972). Relative to criteria that can be employed to judge the desirability of various electoral systems, see Joseph F. Zimmerman, "A 'Fair' Voting System for Local Governments," *NATIONAL CIVIC REVIEW*, 68:9, October 1979, pp. 481-87, 507. See also Bernard Gofman and Arend Lijphart, Eds., *Electoral Laws and their Political Consequences* (New York: Agathon Press, Inc., 1986).

<sup>4</sup>See, for example, Richard S. Childs, *The First Fifty Years of the Council-Manager Plan of Municipal Government* (New York: National Municipal League, 1965), p. 37.

<sup>5</sup>For detailed information on the initiative, referendum and recall, see, Joseph F. Zimmerman, *Participatory Democracy: Populism Revisited* (New York: Praeger Publishers, 1986), pp. 35-134.

<sup>6</sup>For details on the two-tier system, see Zimmerman, *The Federated City: Community Control in Large Cities*.

<sup>7</sup>*New York City Charter*, §2800.

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# Progressive Roots of the Model Charter and the Manager Profession: A Positive Heritage

by JAMES H. SVARA

The Model City Charter's vision of a form of government with complementary and cooperative relationships between officials who reflect democratic accountability (council members) and administrative professionalism (the manager) is the contribution of the Progressive reform era to the American political tradition. We still benefit from a governmental arrangement that places experts in a position to serve the public better than any alternative form of government. With periodic modification, the council-manager plan will continue to be the basis and model for responsive and effective local government.

The seventy-fifth anniversaries of the International City Management Association in 1989 and of the approval of the *New Municipal Program* in 1990 direct our attention to the early decades of the reform movement in city government. Furthermore, the National Civic League has recently published the Seventh Edition of the *Model City Charter*, carrying on a practice begun in 1900. It is important at this juncture to better understand the Progressive era which shaped these important developments and to reexamine the city management profession and the *Model City Charter* in light of their historical origins. Without a clear understanding of the origins of the reform movement, decisions about future efforts may be distorted by a desire to correct or preserve features of the past that never existed.

There are two major misconceptions. Some may regard the drafters of the *New Municipal Program* as comparable to the Founding Fathers. Adherents to this point of view would argue that the *Model* of 1915 was an ideal—if not inspired—plan for city government. Accordingly, alterations would be a dilution of "the model" which should not be allowed. It seems unlikely that the drafters



of the second charter themselves saw their work as the last word in municipal reform. They demonstrated flexibility in endorsing the council-manager plan in place of the strong mayor-council form that had been featured in the original *Municipal Program*. Considering the characteristics of the reformers discussed in this paper, it is reasonable to believe that they were hard-headed idealists who devised the best program they could to meet the conditions of that time. Each generation of reformers must do the same.

There is a second group which is larger and highly influential in interpreting the purpose and impact of the reform movement in academic circles. To put it baldly, this group takes the position that the reform movement is seriously flawed and that current choices must seek to undo the mistakes of the past. It is common to view early city managers as narrow technocrats, to characterize the Progressive era as negative, and to view the municipal reformers as promoters of an elitist political philosophy. A recent study is typical of the view widely accepted by political scientists and one school of historians, holding that the advocates of structural change were mainly "businessmen who wished for nothing but lower taxes. Improved services were not considered or desired."<sup>1</sup> If one accepts this characterization of the historical foundation of the municipal reform movement, then it is natural to presume that reform institutions have negative consequences for cities.

*Without a clear understanding of the origins of the reform movement, decisions about future efforts may be distorted by a desire to correct or preserve features of the past that never existed.*

This paper argues a counter position. The reform movement, the *Model City Charter*, and the early city managers reflected the positive features of the Progressive era, as well as some of its contradictions. To view the reformers, the plan, and the early practitioners as either perfect or perverse misreads the history of the period. It is instructive to examine how the complex impulses of the Progressive era influenced the development of the city, the *New Municipal Program*, and the manager profession. Special attention will be given to the commentary accompanying the *New Municipal Program*.<sup>2</sup> (Citations to it will be parenthesized in the text, rather than endnoted, and designated as NMP.) Going to this key source clears up many misconceptions that have emerged in the intervening years.

### *Interpretations of the Progressive Era*

To some historians and many political scientists who specialize in urban

politics, the council-manager plan and the *Model City Charter* revealed the conservative nature of the Progressive era. From this perspective, the reformers were bent on transferring power from parties, working class groups, and neighborhoods to business and other city-wide interests.<sup>3</sup> There was a sharp contrast between the structural reformers (e.g., members of the National Municipal League), and the social reformers.<sup>4</sup> Wade, summarizing this interpretation, concluded that the structural reformers "embraced and encouraged it."<sup>5</sup> The "gentle reformers" who devised the *Model City Charter* acted in league with business groups in promoting a counter revolution. Historians with this orientation insist that the "most distinctive feature of reform was its commitment—even an anti-democratic and elitist commitment—to the rationalized management of society."<sup>6</sup>

This revisionist interpretation is strongly entrenched in the way political scientists think about urban history. Generally, they have characterized the reformers as elitists and nativists who sought to reduce the clout of grass-roots groups and ignored the real problems of cities on the one hand, and contributed to the consolidation of business control on the other.<sup>7</sup> The reformers rationalized an apolitical view of city government and a management-centered ideology for dealing with urban affairs.<sup>8</sup> Reformed cities are efficient but unresponsive in this view.<sup>9</sup>

This approach is only one, however, of various interpretations of the Progressive era by historians. Scholars in the past two decades have come to see complexity and ambiguity where others perceived clearly delineated opposing forces. It appears that political scientists since the sixties have based their interpretation on the work of the revisionists without giving sufficient attention to other historical research.

The elitist interpretation of the reform movement ignores shifts in the thinking of reformers before and after 1900. The earlier dichotomies—social versus structural reformers, bosses versus reformers—broke down after the turn of the century.<sup>10</sup> The tendency in the 1890s to attack immigrants as the cause of city problems abated. Higham concluded that "no part of the progressive movement sloughed off its former xenophobia more thoroughly than did the campaign against municipal corruption."<sup>11</sup> Unlike previous civic reformers, the Progressives blamed the ills of the city on the alliance between urban bosses and business interests rather than immigrant voters.<sup>12</sup> Some Progressives continued to stress moral uplift and attack vice as the root of the problems of the city but they were less likely than the pre-1900 reformers to see these actions as an alternative to improving social and economic conditions.<sup>13</sup>

The Progressive era has come to be seen as a muddle of ideas and impulses,



some progressive by any standard and some conservative, elitist, or moralistic.<sup>14</sup> There was its essentially benign naivism along with clearly discriminatory attitudes toward racial minorities. The activists of the era were imbued with moral righteousness, an obligation to put professionalism and technical expertise to the task of battling the evils of the day. Progressives opposed bosses, trusts, and slums on moral grounds "as symbols of corruption, excess, and sloth."<sup>15</sup> Moral activism was reflected in the settlement house movement.<sup>16</sup> Closely linked was the religious stream in Progressive thought and the social gospel. The frustrations of urban dwellers stimulated the desire for consumer protection and public ownership or regulation of utilities.<sup>17</sup> There were many different coalitions among the variety of groups that supported progressivism.

*It is common to view early city managers as narrow technocrats, to characterize the Progressive era as negative, and to view the municipal reformers as promoters of an elitist political philosophy.*

A belief in progress and great faith in expertise and scientific management also contributed to Progressive thought. Although elitist in their reliance on a cadre of well-trained administrators, Progressives believed that experts would be guided by a "consensus of moral attitudes among citizens and their representatives with respect to the behavior of public officials."<sup>18</sup> Government could be democratic and expand the role of administrative experts at the same time. Provisions for direct democracy provided a check on official action. Arising independently from the reform movement, scientific management reinforced the notion that the best method could be found to achieve desired ends. Efficiency was a goal and a standard of performance.

The emphasis on expertise and efficiency reinforces the association of the reform movement with business interests, but the two should not be equated. Businessmen were major backers of certain progressive reforms, particularly economic regulation,<sup>19</sup> and the business or organizational model was regularly held up as an ideal for government. The connection between adoption of the council-manager plan and business support was clearly recognized at the time.<sup>20</sup> They opposed direct democracy, including the initiative, referendum, and recall. Some may have assisted in improving health and housing codes "as they scrubbed and polished their cities," but their commitment to civic improvement was limited.<sup>22</sup>

The full spectrum of urban Progressives, however, had broader goals. Pease argues that the reformers believed that institutions and practices had to be thoroughly modernized "if urban government were to move effectively into the field of social welfare and . . . ride herd on economic interests."<sup>23</sup> The reform movement as a whole cannot be pigeon-holed as the cause of any particular group or ideology, and the character of the council-manager plan cannot be linked with the attitudes of one major group of supporters. The Progressive era provided a positive heritage on which the reform movement draws, not a negative origin that has to be overcome.

### *The Reform Movement and the New Municipal Program*

It is common to describe the reformers as wedded to particular institutions that strengthened the influence of professional administrators in city government and weakened local democracy. From this perspective, the council-manager plan, civil service appointment of staff, and a small council selected in nonpartisan, at-large elections were intended to promote elite control. Such an assessment misses the mark. Reformers were concerned with changing the performance of city government, not just its institutions, and benefiting all urban residents, not just the upper stratum. Fundamentally, they were committed to democratic local governance and effective provision of municipal services. The two concerns had to go together at a time "when no city possessed a dependable ability to put out fires, fight epidemics and disease, or master the perpetually intractable task of cleaning the streets."<sup>24</sup> Democracy without service delivery would have been a meaningless concept.

Home rule and separation of local from state politics were primary concerns, since these were prerequisites to effective decision making at the city level (NMP, Ch. IV). Out of a concern for increasing the capacity for governance, the reformers stressed the importance of a smaller council whose members had a perspective that was greater than that of a particular neighborhood or small section of city. At the same time, proportional representation from the city at-large or from multi-member districts in "great cities" was included to ensure that the governing body provide "fair representation of all large minorities" and be "truly representative of all elements and groups of opinion (NMP, pp. 100-101)."

Democratic control was stressed not only through home rule but also through reliance on representative rather than executive democracy, investigatory powers for the council, direct democracy, and the appointment of a professional city manager. One of the chief objections to the commission form of government, which was never endorsed by the National Municipal League, was that it necessitated a council that was too small in size to be representative and too exclusive (NMP, pp. 19-20). Since commissioners direct city departments, they

need to be drawn, Richard Childs observed in 1911, from the "employer class." He argued that "such a limitation is, I think, undemocratic, and we might more wisely have the administrative work done by appointees."<sup>25</sup> The council-manager plan accomplished this objective. This form, then, was integral to the democratic aspirations of the reformers in the National Municipal League as well as to the advancement of administrative performance in cities.

Furthermore, the reformers broadened the base of democratic leadership. Perhaps because we underrate the contribution of council members and the impact of form of government on council performance, we have overlooked how important it was that the reformers took the risk to reaffirm representative democracy. According to Stewart, the feature of the original *Municipal Program* which provoked the greatest opposition was the rehabilitation of the city council.<sup>26</sup> "Much experience of a sad sort," an observer noted at the time, "indicates that this effort will be unsuccessful." The drafters of the *New Municipal Program* acknowledged that councils had declined in prestige and ability and "filled up with ward politicians, with the minion of those who sought contracts from the city or who had supplies to sell, and with men of paltry caliber who could make no headway in private vocations (NMP, p. 149)." They believed, however, that the solution was found in increasing the authority of the council in order to make council membership a significant position once again. In the second *Model*, the reformers went even further than they had in the first: the "council is to be the pivot of the municipal system (NMP, p. 153)." The significance of an enlarged role for the council has become more evident in the past decade. In council-manager cities, when the orientation of the council changes due to shifts in political patterns in the community or new electoral institutions, there are shifts in the process, policies, and hiring practices of the government.<sup>27</sup> Furthermore, the council is more involved in determining the mission and policy of city government in council-manager than in strong mayor-council cities.<sup>28</sup>

To improve administrative performance, the reformers stressed professionalism, administrative reorganization, and the insulation of administrators from interference by elected officials. To reinforce the insulation of staff in the performance of administrative tasks, the *Model* distinguished "legislation" from "administration," naturally assigning the former to the council and the latter to the manager (NMP, pp. 153-154). Dividing governmental responsibilities in this way indicates that the theoreticians and practitioners of the council-manager plan did not adhere to a fundamental dichotomy between policy and administra-

tion.<sup>29</sup> The council would exercise "constant and comprehensive" supervision (NMP, p. 41) and consider citizen appeals of administrative "ruling" (NMP, pp. 18-19). Moreover, it was assigned broad investigative powers, suggesting there was no presumption that the manager would handle the administrative affairs of the city in total isolation from the council. "Administration is given a place apart, but it is not an independent place. It is subject to control but not to factious interference (NMP, p. 155)."

*To improve administrative performance, the reformers stressed professionalism, administrative reorganization, and the insulation of administrators from interference by elected officials.*

Conversely, the manager was called upon to offer policy advice and recommendations. The commentary to the *New Municipal Program* is replete with references to the manager's policy role. As in English city government, the manager will exert great influence on "civic policy (NMP, p. 31)." The manager has a "double function, the conduct of current administration, and persuading the representatives of the public so far as he can that his plans are wise (NMP, p. 38)." The manager will be present at council meetings so that he can "exert the influence upon their opinions that he ought to have (NMP, p. 42)." Although the manager has no vote, it is important his opinion "be heard on every important matter that comes up for decision (NMP, p. 129)." The manager must "show himself to be a leader, formulating policies and urging their adoption by the council (NMP, p. 130)." Thus, the manager was expected to provide leadership to the council in its enactment of legislation. The confusion over the manager's policy role, however, has bedeviled the council-manager plan from the beginning.<sup>30</sup> The idea emerged that the policy and administrative spheres of action were "wholly distinct and separate."<sup>31</sup> Perhaps to allay suspicions that council-manager government would lead to administrative dominance, publicists of the plan went even further and reinforced the idea that the manager should be simply an administrative technician. The manager may offer advice, Fassett suggested in 1922, "but if he is wise he will seldom advise except when so requested, and will leave to them [the council members] their specific functions as completely as they must leave administrative work to him."<sup>32</sup> Observers warned that the manager was assuming too much power and violating the plan when active in policy.<sup>33</sup> Even a supporter of an extensive policy role would concede that the "theory" of the manager plan did not allow it, but argued that the "theory must be reformulated."<sup>34</sup> The leadership role implicitly accorded the manager in the

plan and explicitly justified by the authors of the *New Municipal Program* was being defined out of existence (even though it never disappeared in practice).

A reformulation was not forthcoming immediately, indeed the opposite occurred, reinforcing the normative requirement that the manager stay out of policy. The strongest advocacy of strict adherence to the dichotomy model came during the orthodoxy of the 1930s and 1940s, although even then there were dissenters both among scholars and practitioners.<sup>33</sup> This disagreement over the policy role is more than an annoying tangle of terminology and definitions. "Deviations" from the simple dichotomy model came to be viewed as encroachments by the manager, evidence of the violation of democratic norms which revisionist historians and mainline political scientists would claim was occurring. The actions of managers were, however, transgressions only against a simplistic model that the reformers of the Progressive era never intended. The key idea of the council-manager plan was not a dichotomy of spheres which excluded the manager from policy but rather the concept of the "controlled executive."<sup>34</sup> The value of the plan came not from having a glorified clerk but rather a capable executive who would offer policy leadership to the council while accepting the supremacy of the representative body.

***The leadership role implicitly accorded the manager in the plan and explicitly justified by the authors of the New Municipal Program was being defined out of existence . . .***

Thus the council-manager plan and the reform movement reflected the complex and sometimes contradictory ideas of the Progressive era. The council was reinvigorated and given the authority to determine the direction and character of public affairs. The reformers were concerned with the capacity for both governance and representation in city government. Although the council would be a smaller body than common at the time and less clearly mirror the characteristics of the population, it would also be free of obligations to the organizational interests of political parties or the particular perspective of a small constituency. It was intended to include all segments of the community, but the rejection of proportional representation and other electoral reforms negated this representativeness. The manager was a leader who reflected the Progressives' support for the value of "popular elitism."<sup>35</sup> Experts epitomized by the city manager would play a significant role attentive to public opinion and subject to control by elected representatives. The reformers' faith in the council-manager plan was linked to their expectations of the professional city manager.

***Early Managers and Progressive Ideals***

The Progressives sought to enlist the efforts of a "new type of administrator"<sup>36</sup> who would combine expertise and commitment to public services.<sup>37</sup> The drafters of the *New Municipal Program* asserted that the manager must be a person of "broad vision and extensive training in the social sciences if he is to live up in the fullest measure to his possibilities and responsibilities (NMP, p. 130)." Like the "best men" among the reformers of the Gilded Age, the ideal progressive was an "independent man in politics" who would not permit the "base spirit of party to corrupt his individual judgement."<sup>38</sup> The prototype was the well-educated professional "who abandoned a comfortable private life to enter the public arena and do battle with the forces of evil—trusts, municipal bosses, and the like."<sup>39</sup> The manager's motivation for entering government was neither ambition nor a "narrow concern for his own status . . . [but] a broader compulsion to inculcate a troubled public with his cherished moral principles." The progressive was "imbued with a burning ethical strain which at times approached a missionary desire to create a heaven on earth."<sup>40</sup> Morality was identified with honesty, industry, and temperance. Unlike the detached, backward looking reformers from the Gilded Age, however, energy, activism, and leadership were emphasized. For all their idealism, the Progressives were realistic. "Pragmatism with a conscience"—as Griffith labeled the progressive spirit—aptly summarizes the characteristics prized in leaders of the period.<sup>41</sup>

The qualities deemed important for city managers were consistent with the progressive ideal of leadership. Toulmin wrote in 1915 that the manager must be free from obligation to a party organization and have "absolute, unswerving adherence to his own view that efficiency, and hence results for the city, is the paramount thing."<sup>42</sup> In addition, he should have business experience in engineering and the "ability to lead through tact as well as knowledge." This leadership based on expertise gave managers independence, but did not free them from accountability nor commitment to advance the policy goals of political superiors. The Progressive thinker Herbert Croly called for an administrator who is "something more than an expert . . . the custodian . . . of a social purpose . . . [who] must share the faith upon which the program depends for its impulse."<sup>43</sup>

A commitment to efficiency was central to the manager's values. This has been viewed as a fault, as in the judgement that managers were committed to efficiency rather than service,<sup>44</sup> to process rather than substance. "Characteristically," Haber observed, "there was little talk of where efficient government was going and much rolling-up of sleeves and getting on with the business at hand."<sup>45</sup> Such judgments, however, reflect current connotations of efficiency rather than the usage contemporary to the start of the city management profession. Henry



Bruere, at the time director of the New York Bureau of Municipal Research which is credited with applying scientific management to city government, had a broad definition of efficiency.<sup>48</sup> It was a catch concept which encompassed a rational, purposeful, service orientation to government. Effectiveness was central to the concept as was the identification of community problems and the "assumption of increased responsibilities" by city government. The efficiency movement did not reflect "a tax-saving incentive nor desire for economy," but rather "the conviction that only through efficient government could progressive social welfare be achieved." Thus, efficiency was not a narrow concept to the Progressives nor to the city managers who extolled its importance.

*Although we have lost the Progressives' simple faith in expertise, we still benefit from a governmental arrangement that places experts in a position to serve the public better than any alternative.*

One might be tempted to conclude that city managers reflected the "hard side of progressivism" like the businessmen in the movement who, according to Wiebe, "lacked a grand social vision."<sup>49</sup> Weinstein argues that "civil engineering, not social engineering, interested the manager; economy, not service, was his basic principle."<sup>50</sup> Leonard White noted that managers were "almost exclusively devoted to engineering, neglecting other phases of city government and sometimes oblivious of the more human problems involved in good city government."<sup>51</sup>

The characteristics and accomplishments of the early city managers however, suggest a blending of social commitment and an engineer's focus on technical problems. Although the city manager, like Progressives in general, was dedicated to professionalism and expertise, those ideals "were mere appendages to the force of his will to accomplish justice and good."<sup>52</sup> Some early managers, "given virtually a free hand in both the initiation and execution of public policy," not only reorganized their governments but also attacked the social problems of the community.<sup>53</sup> An early practitioner such as Henry Waite, first city manager in Dayton, stressed that his role was confined to management, but in actuality he was a "leader who moved public organizations to new visions and accomplishments."<sup>54</sup> This was not uncommon. City Managers at their 1916 meeting already displayed a tendency toward active involvement in efforts to persuade the council and community of the need for action to meet pressing problems.<sup>55</sup>

A profile of the first group of managers is instructive. As Leonard White describes them,<sup>56</sup> they were action oriented, physically and morally courageous, and plain spoken whether dealing with the council or the press. They neither shifted responsibility nor permitted the council to encroach on their prerogatives. The managers were "practical," inclined to doing things rather than talking about things to be done. Most were uninterested in grandiose views of their profession and generally disdained theory and scholarship. Some, however, articulated a larger and nobler vision of the manager's role. Moral and ethical concerns broadened their horizons. For example, Louis Brownlow took on the manager's job as if it were a secular ministry.<sup>57</sup> Many of this first generation "felt the heavy burden of a personal conscience pushing them to do good."<sup>58</sup>

They managed to do so and to have an impact that extended beyond the municipal organization itself. Change in governmental form and improved administration had great social significance. The reform impetus to rationalize government and provide necessary services economically "led [officials], perhaps unknowingly in some instances, in the direction of municipal ownership, of increased planning, and even of social reform."<sup>59</sup> Administrative reform and expanded competence enabled cities to provide "an ever-widening range of services for the voter—not just for the middle-propriety ranks or the entrepreneur, but for the laboring man, the slum dweller, and the impoverished."<sup>60</sup> Rather than being a "closed" system, the council-manager form (as opposed to the electoral institutions often used with it) improved access to power and expanded services for minorities and the working class and, thus, made city government more pluralistic.

One is left with a mixed picture of the pioneers of the city management profession. This is as it should be since a pitfall of research on this complex period in American history is to characterize participants in exaggerated terms and to draw distinctions too starkly. Managers were neither technicians nor social reformers, but rather they were some of both.

### *Commentary and Conclusion*

The *New Municipal Program* was a distillation of the themes of the Progressive era. The performance of governments patterned after it has met most of the expectations of the original reformers. The council-manager plan has strengthened representative democracy, increased city government responsiveness to community needs, and promoted planning, effective service delivery, and efficient use of resources. There have been shortcomings in representativeness of the council and weakness in the provision of political leadership that is directly



accountable to all the voters of the city. Present day reformers have included district elections and direct election of the mayor in the Seventh Edition of the *Model City Charter*.

Just as the *Model City Charter* and the council-manager plan are living artifacts of the Progressive era, in many respects the city manager survives today as the progressive best man and woman. Managers still—perhaps even increasingly—balance what to many are contradictory impulses. They display independent leadership, they expect and accept control from elected officials, and they seek to promote representative democracy.<sup>61</sup> They stress managerial competence and commitment to productivity just as they seek to serve the public interest and be attentive to the needs of their communities. They set high standards for themselves and are dedicated to civic improvement, while displaying a tolerance for divergent perspectives. They incorporate rational methods in policy making, administration, and management, yet they operate in a nonrational political context.

Presumably, the Progressives would have been less concerned about reconciling counter tendencies in the *Model City Charter* and the manager's role than we are.<sup>62</sup> They conceptualized a governmental form based on representative democracy and a public-serving elite that was attentive to the popular opinion and subject to control by the council. It offered a positive combination of lay and expert elements:

They are not two antagonistic elements, each seeking to enlarge its sphere of action at the expense of the other. They are not even independent powers in the government, each working in a distinct field, performing its appropriate acts, and having for these purposes an authority of its own. On the contrary, they are two parts of the same mechanism... On everything that is done the expert should be consulted, and every act, however minute, technical or in the nature of routine, should be done with the approval, express or implied, of the lay controlling body which must assume to the public the responsibility therefor (NMMP, pp. 37-38).

This vision of government with complementary and cooperative relationships between officials who reflect democratic accountability and professionalism is the unique contribution of the Progressive era to the American political tradition. Although we have lost the Progressives' simple faith in expertise, we still benefit from a governmental arrangement that places experts in a position to serve the public better than any alternative. The *New Municipal Program* was not perfect but neither was it flawed. With periodic modification, it will continue to be the basis for model local government.

## Notes

<sup>1</sup>Susan Welch and Timothy Bledsoe, *Urban Reform and Its Consequences* (Chicago: University of Chicago Press, 1988), p. 4.

<sup>2</sup>Clinton Rogers Woodruff, Ed., *A New Municipal Program* (New York: D. Appleton and Company, 1919).

<sup>3</sup>Samuel P. Hays, "The Politics of Reform in Municipal Government in the Progressive Era," *Pacific Northwest Quarterly*, 55 (October, 1964), pp. 157-169, and Hays, "Political Parties and the Community-Society Continuum," in William N. Chambers and Walter D. Burnham, Eds., *The American Party System* (New York: Oxford University Press, 1967), pp. 152-181.

<sup>4</sup>James Weinstein, "Organized Business and the City Commission and Manager Movements," *Journal of Southern History*, 28 (May, 1962), pp. 166-182, and Melvin G. Hollis, *Reform in Detroit* (New York: Oxford University Press, 1969), Ch. 8.

<sup>5</sup>Richard C. Wade, Foreword to Hollis, *Reform in Detroit*, pp. ix-x.

<sup>6</sup>Olis A. Pease, "Urban Reformers in the Progressive Era," *Pacific Northwest Quarterly*, 62 (April, 1971), p. 52. In addition to those already cited, see Robert H. Wiebe, *Businessmen and Reform* (Cambridge: Harvard University Press, 1962) and Samuel Haber, *Efficiency and Uplift: Scientific Management in the Progressive Era, 1890-1920* (Chicago: University of Chicago Press, 1964).

<sup>7</sup>See, for example, Willis D. Hawley, *Nonpartisan Elections* (New York: Wiley, 1973), pp. 8-14; Martin Sheltzer, *Political Crisis/Fiscal Crisis* (New York: Basic Books, 1985), pp. 230-232; Stephen L. Elkin, *City and Regime in the American Republic* (Chicago: University of Chicago Press, 1987), pp. 23-30; Russell D. Murphy, "The Mayorality and the Democratic Creed: The Evolution of an Ideology and an Institution," *Urban Affairs Quarterly*, 22 (September, 1986), pp. 2-23; Welch and Bledsoe, *Urban Reform and Its Consequences*, pp. 1-8.

<sup>8</sup>Edward C. Banfield and James Q. Wilson, *City Politics* (New York: Vintage Books, 1963), pp. 18-22; Peter J. Steinberger, *Ideology and the Urban Crisis* (Albany: SUNY Press, 1985), Ch. 2.

<sup>9</sup>Robert L. Lineberry and Edmund P. Fowler, "Reformism and Public Policies in American Cities," *American Political Science Review*, 61 (September, 1967), pp. 701-

- 716; Thomas R. Dye and John A. Garcia, "Structure, Function, and Policy in American Cities," *Urban Affairs Quarterly*, 14 (September, 1978), pp. 103-122.
- <sup>10</sup>Lyle W. Dorsett, "The City Boss and the Reformer," *Pacific Northwest Quarterly*, 63 (October, 1972), pp. 150-154. The author argues that the referenced "earlier dichotomies" never applied.
- <sup>11</sup>John Higham, *Strangers in the Land: Patterns of American Nativism 1860-1925* (New York: Atheneum, 1966), p. 117.
- <sup>12</sup>Edward White, "The Social Values of the Progressives: Some New Perspectives," *South Atlantic Quarterly*, 70 (Winter, 1971), p. 64.
- <sup>13</sup>See Holli, *Reform in Detroit*, p. 170, on moralists vs. social reformers.
- <sup>14</sup>Martin J. Schiesl, *The Politics of Efficiency* (Berkeley: University of California Press, 1977); Daniel T. Rodgers, "In Search of Progressivism," *Reviews in American History*, 10 (December, 1982), pp. 113-132; David P. Thelen, "Urban Politics: Beyond Bosses and Reformers," *Reviews in American History*, 7 (September, 1979) pp. 406-412; Jon C. Teaford, "Fins for Tweed and Steffens: Rewriting the History of Urban Rule," *Reviews in American History*, 10 (December, 1982), pp. 133-149.
- <sup>15</sup>White, "Social Values of the Progressives," p. 70.
- <sup>16</sup>Ernest S. Griffith, *A History of American City Government: The Progressive Years and Their Aftermath, 1900-1920* (New York: Praeger, 1974), pp. 12-13.
- <sup>17</sup>Thelen, "Beyond Bosses and Reformers," pp. 410-412.
- <sup>18</sup>White, "Social Values of the Progressives," p. 72.
- <sup>19</sup>Wiebe, *Businessmen and Reform*, p. 212.
- <sup>20</sup>Leonard White, *The City Manager*, (Chicago: University of Chicago Press, 1927), pp. ix-x.
- <sup>21</sup>Rodger, "In Search of Progressivism," p. 120.
- <sup>22</sup>Wiebe, *Businessmen and Reform*, p. 212.
- <sup>23</sup>Pease, "Urban Reformers in the Progressive Era," p. 53.
- <sup>24</sup>Kenneth Fox, *Better City Government* (Philadelphia: Temple University Press, 1977), pp. 4-5.
- <sup>25</sup>Quoted in Schiesl, *Politics of Efficiency*, p. 144.
- <sup>26</sup>Frank Mann Stewart, *A Half Century of Municipal Reform* (Berkeley: University of California Press, 1950), p. 45.
- <sup>27</sup>Rufus P. Browning, Dale Rogers Marshall, and David H. Tabb, *Protest Is Not Enough* (Berkeley: University of California Press, 1984), pp. 32-34; LBJ School of Public Affairs, Policy Research Report No. 62, "Local Government Elections Systems," (Austin: University of Texas, 1984), pp. 46-55, 145-146.
- <sup>28</sup>See Svava, *Official Leadership in the City* (New York: Oxford University Press, forthcoming 1990), Chapters 3, 5.
- <sup>29</sup>See Pease, "Urban Reformers in the Progressive Era," pp. 53-54.
- <sup>30</sup>For a review of the historical debate over the manager's policy role and the variance between practice and rhetoric, see Svava, "Policy and Administration: City Managers as Comprehensive Professional Leaders," in George Fredrickson, Ed., *Ideal and Practice in City Management* (Washington: International City Management Association, forthcoming 1989).
- <sup>31</sup>Henry A. Toulmin, Jr., *The City Manager: A New Profession* (New York: Arno Press, 1974 [1915]), p. 53.
- <sup>32</sup>Charles M. Fasset, *Handbook of Municipal Government* (New York: Thomas Y. Crowell Co., 1922), p. 42. The author offers this illustration of separation: The council decides whether a new bridge should be built, "where it shall stand, what materials shall be used in its construction, how much it shall cost and how the money shall be raised. These are purely matters of policy." The council then "instructs its hired man, the city manager, to go ahead with the work." The construction of the bridge is an "expert job."
- <sup>33</sup>James W. Routh, "Thoughts on the Manager Plan," NATIONAL MUNICIPAL REVIEW, 12:4 (April, 1923), pp. 176-180; I.G. Gibbon, "Municipal Government in the United States: Some Impressions," NATIONAL MUNICIPAL REVIEW, 14:2 (February, 1925), pp. 78-81; Lant D. Upson, *Practice of Municipal Administration* (New York: Arno Press, 1974 [1926]), pp. 6-7.
- <sup>34</sup>Ellen Deborah Ellis, "The City Manager as a Leader of Policy," NATIONAL MUNICIPAL REVIEW, 15:4 (April, 1926), p. 204.

<sup>35</sup>Richard I. Stillman II, *The Rise of the City Manager* (Albuquerque: University of New Mexico Press, 1974), pp. 43-53. For an example of a dissenting view, see C.A. Harrell, "The City Manager as a Community Leader," *Public Management*, 30 (October, 1948), pp. 290-294.

<sup>36</sup>See Richard S. Childs, "The Theory of the New Controlled-Executive Plan," *NATIONAL MUNICIPAL REVIEW*, 2:1 (January, 1913), pp. 76-81.

<sup>37</sup>White, "Social Values of the Progressives," pp. 72-74; Haber, *Efficiency and Uplift*, p. 87. The author referred to this as "plebiscitarian administration."

<sup>38</sup>Walter Lippman, *Drift and Mastery* (New York: Henry Holt and Company, 1914), p. 136.

<sup>39</sup>Haber, *Efficiency and Uplift*, p. 116. The author called this "altruistic expertism."

<sup>40</sup>John G. Sproat, "The Best Men:" *Liberal Reformers in the Gilded Age* (New York: Oxford University Press, 1968), p. 9. Sproat concludes (Ch. 10) that the reformers of this period were "nostalgic" and sought to restore a simpler, more traditionally virtuous America.

<sup>41</sup>White, "Social Values of the Progressives," pp. 68-69.

<sup>42</sup>George Morley, *The Era of Theodore Roosevelt* (New York: Harper & Brothers, 1958), p. 104.

<sup>43</sup>Griffith, *The Progressive Years*, p. 10.

<sup>44</sup>Toulmin, *The City Manager*, p. 78.

<sup>45</sup>Quoted in White, "Social Values of the Progressives," p. 74.

<sup>46</sup>Holli, *Reform in Detroit*, p. 179.

<sup>47</sup>Haber, *Efficiency and Uplift*, p. 111.

<sup>48</sup>Henry Bruere, "Efficiency in City Government," *The Annals*, XLI (May, 1912), quotes from pp. 3-5.

<sup>49</sup>Wiebe, *Businessmen and Reform*, p. 217.

<sup>50</sup>Weinstein, "Organized Business," p. 179.

<sup>51</sup>White, *The City Manager*, p. 148.

<sup>52</sup>White, "Social Values of the Progressives," p. 69.

<sup>53</sup>Schiesl, *The Politics of Efficiency*, p. 185.

<sup>54</sup>Lawrence F. Keller, "City Management, Public Administration, and the American Enlightenment," *International Journal of Public Administration*, 12:2 (1989), pp. 229-230.

<sup>55</sup>White, *The City Manager*, p. 188.

<sup>56</sup>*Ibid.*, pp. 144-151.

<sup>57</sup>Stillman, *The Rise of the City Manager*, p. 47.

<sup>58</sup>*Ibid.*, p. 43.

<sup>59</sup>Weinstein, "Organized Business," p. 180.

<sup>60</sup>Pease, "Urban Reformers," pp. 54-55.

<sup>61</sup>See ICMA's "City Management Declaration of Ideals," *Public Management*, 66:8 (August, 1984), p. 2.

<sup>62</sup>White, "Social Values of the Progressives," p. 74. The author discusses how conflicting attitudes were made complementary in Progressive thinking.

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**CHAPTER 92  
PUBLIC AGENCY MEETINGS AND RECORDS****PART I. MEETINGS****SECTION**

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**PART I. MEETINGS**

**§92-1 Declaration of policy and intent.** In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and



conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

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Openness in governmental discussions, deliberations, decisions, and actions. 79 HLR 79-0117; 79 HLR 79-0543.

#### §92-2 Definitions. As used in this part:

- (1) "Board" means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions.
- (2) "Chance meeting" means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.
- (3) "Meeting" means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1]

**§92-3 Open meetings.** Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration or oral testimony by rule. [L 1975, c 166, pt of §1; am L 1985, c 278, §1]

**§92-4 Executive meetings.** A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting. [L 1975, c 166, pt of §1; am L 1985, c 278, §2]

#### Cross References

Authorization for 50 per cent increase or decrease of fees, see §92-28.

Confidential, not open to public inspection:

Automobile licensing boards records, see §437-40.

Public assistance records, see §346-10.

Fees for copies of public records, see §92-21.

#### Attorney General Opinions

Transcript of agency hearing is a public record. Att. Gen. Op. 64-4.

Executive meeting to develop criteria for superintendent of education position may not be closed. Att. Gen. Op. 75-11.

#### Case Notes

Certain police records not public records. 42 H. 14, (decided prior to enactment of section).

**§92-5 Exceptions.** (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
- (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
- (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
- (4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
- (5) To investigate proceedings regarding criminal misconduct; and
- (6) To consider sensitive matters related to public safety or security.

(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). This part shall not apply to any chance meeting at which matters relating to official business are not discussed. No chance meeting or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am imp L 1984, c 90, §1; am L 1985, c 278, §3]

#### Attorney General Opinions

Subsection (a)(1) is applicable only when a specific individual is involved. Att. Gen. Op. 75-11.

**§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability.** (a) This part shall not apply:

- (1) To the judicial branch.
- (2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:
  - (A) Hawaii labor relations board, chapters 89 and 377;

## PUBLIC PROCEEDINGS

- (B) Labor and industrial relations appeals board, chapter 371;
- (C) Hawaii paroling authority, chapter 353;
- (D) Civil service commission, chapter 26;
- (E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;
- (F) Criminal injuries compensation commission, chapter 351; and
- (G) State ethics commission, chapter 84.

(b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the land use commission. [L 1975, c 166, pt of §1; am L 1976, c 92, §8; am L 1985, c 251, §11]

## Case Notes

County planning commission's closed deliberations permissible under this section despite open meeting mandate of section 92-3. 64 H. 431, 643 P.2d 55.

Adjudicatory functions include adoption of conclusions of law. 4 H. App. 633, 675 P.2d 784.

**§92-7 Notice.** (a) The board shall give written public notice of any regular, special, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting, and in the case of an executive meeting the purpose shall be stated.

(b) The board shall file the notice in the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office for public inspection, at least six calendar days before the meeting. The notice shall also be posted at the site of the meeting whenever feasible. No board shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

(c) The board shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to such persons at their last recorded address no later than the time the agenda is filed under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, §1; am L 1985, c 278, §4]

**§92-8 Emergency meetings.** If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided:

- (1) The board states in writing the reasons for its findings;
- (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
- (3) An emergency agenda and the findings are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office; and
- (4) Persons requesting notification are contacted by mail or telephone as soon as practicable. [L 1975, c 166, pt of §1]

**§92-9 Minutes.** (a) The board shall keep written minutes of all meet-



# A Special Report on the New MAUI COUNTY CHARTER

## INTRODUCTION

The proposed new charter for Maui County basically resembles the existing charter. Enough changes have been made to consider this a new "county constitution."

Following is a brief digest of the changes the new charter will bring if accepted by voters at the November 2 election. The digest is not written like the charter itself, in legal language, but is presented in everyday English. The information given in parentheses at the end of each change refers, unless otherwise indicated, to the exact place in the new charter where the change occurs. For example, Sec. 8-1.3 means Article 8, Section 14, Subsection 3. If you wish to study further, copies of the new charter are available from the Office of the County Clerk and at all public libraries in Maui County.

Because there are so many similarities between the old and new charters, only the changes are listed here. If a department, position or function is not listed, no significant change has been made. For example, the language of many sections of the new charter has been shortened and simplified, but the meaning remains the same. In such cases, the change does not appear in this digest.

In addition to the digest, this charter supplement includes the reasons behind the changes. Please take the time to read them. Voting on a new county charter is a rare opportunity for improving local government; make sure your vote is well informed.

### 1. ADVISORY STATUS OF WATER BOARD

The Board of Water Supply becomes advisory, with no power to make rules or regulations having the force and effect of law. (Sec. 8-1.1)

### 2. RESTRICTION ON WATER RULES

The rules of the Department of Water Supply may not establish fees and assessments; these are set by the budget ordinance. (Deletion of old charter's Sec. 8-11.3.3)

### 3. PROCEDURE FOR RULES ON WATER

While the Board of Water Supply may recommend the director of the Department of Water Supply initiates all rules, which must be approved by the mayor. The County Council gains veto power over all Water Department Rules. (Sec. 8-11.4.3 & Sec. 8-11.6)

### 4. SPECIAL COMMISSION TO STUDY WATER

A special charter commission is to be appointed to study those sections of the charter having to do with water. The special commission may propose amendments to this section, which the voters will decide on in the 1988 election. (Sec. 14-4.2)

### 5. INCREASED INITIATIVE POWER

The people may use initiative to change or abolish an ordinance no matter how long that ordinance has been in effect. (Deletion of old charter's Sec. 11-3.4)

### 6. INCREASED TIME FOR SUPPLEMENTAL PETITIONS

In an initiative action, if the county clerk finds that a petition has an inadequate number of valid signatures, the petition committee is given 10 days, instead of 10 days, to collect the needed signatures. (Sec. 11-3.1)

### 7. PROTECTION OF INITIATIVE ACTION

If the people enact an ordinance through the initiative process, the County Council may not amend or repeal that ordinance within one year. (Sec. 11-3.2)

### 8. INCREASED RECALL POWER

Now, the people may recall an individual removed from office, and they may include members of all boards and commissions established by charter. (Sec. 12-1)

### 9. COMMISSION VACANCY

When it is known in advance that a vacancy is to occur on a board or commission, the mayor must submit the name of a successor to the County Council at least 60 days before the vacancy is to occur. The County Council must accept or reject the nominee within 10 days; if the council rejects the nominee, the mayor must submit a new name within 10 days. The same procedure will be used for all unexpired vacancies, except that the mayor will have 30 days after the vacancy to submit a nominee. (Sec. 13-2.16)

### 10. TRANSFER OF GRANT APPLICATIONS

The responsibility for preparing and processing applications for state and federal grants is transferred from the Department of Finance to the Office of the Mayor. (Sec. 13-3.1)

### QUORUM REQUIREMENTS

Boards and commissions may meet for county business only if they have a quorum — if a bare majority of all members are present. Official action may be taken by a majority of those present. (Sec. 13-2.14)

### 12. RESPONSIBILITY FOR COASTAL ZONE MANAGEMENT

The new charter emphasizes that the authority for Coastal Zone Management laws and the issuance of Special Management Area permits shall continue with the Planning Commission. (Sec. 8-8.1)

### 13. PROHIBITIONS AGAINST BORROWING

The new charter prohibits borrowing, except for capital improvement projects and emergencies, adding language to Article 9 that requires the county to operate on a balanced budget, not through deficit spending.

### 14. SPECIAL COMMISSION TO STUDY COUNCIL

A special charter commission is to be appointed to study those sections of the charter having to do with the composition of the County Council. If the special charter commission finds that changes should be made in the council's term, structure, or method of being elected, it will submit those findings to voters, who will decide on proposed changes in the 1984 election. (Sec. 14-4.1)

### 15. INCREASE IN SIZE OF COMMISSIONS

County boards and commissions established by the charter are increased in size to nine members. (Article 15, various sections)

### 16. POWER OF THE BOARD OF ETHICS

The Board of Ethics may not fire a county employee, but shall report any findings of misconduct to the official who appointed him, for appropriate action. The Board of Ethics is given the power to start impeachment proceedings against elected officials, if it finds misconduct. (Sec. 10-5)

### 17. DISCLOSURE FORMS

The Board of Ethics is responsible for creating disclosure forms and deciding what type of form an individual will use, depending on the type of position he is to assume. (Sec. 10-2.2d)

### 18. PUBLIC DISCLOSURES

All elected officials, and all candidates for elective office, are now required to file a public disclosure. The County Council is given the power to decide which other officials and employees should also file public disclosures. (Sec. 10-3.1)

### 19. PRIVATE FINANCIAL STATEMENTS

Members of the Planning Commission, Police Commission, Board of Variances and Appeals, Charter Commission, Liquor Control Commission, Liquor Adjudication Board, Board of Water Supply, and Board of Ethics are required to file confidential financial statements. The County Council is given the power to decide which other officials and employees shall also file confidential statements. (Sec. 10-3.2)

### 20. POST-EMPLOYMENT RESTRICTIONS

The different types of restrictions are placed on county employees and officials:

First, former county employees and officials may not receive compensation for working on any matter they were directly involved with while serving the county. This includes members of boards and commissions.

Second, former mayors and council members are forbidden from appearing before any county agency on behalf of private interests, for a period of one year after leaving office.

Third, with the exception of members of boards and commissions, no former employee or official may appear for compensation before the specific department or agency in which he worked, for a period of one year after leaving the county's employ. (Sec. 10-1.4g, Sec. 10-4.2a, & Sec. 10-4.2b)



## 21. COUNCIL CONTROL OF MONIES

Except for fees charged by the Liquor Department, all county fees, rates, assessments and taxes may be made only by County Council ordinance. All such sources of revenue must be included in the budget ordinance before the start of the fiscal year. (Sec. 9-7.3)

## 22. CODIFICATION OF ORDINANCES

Ordinances passed by the County Council must be codified for easy reference at least every two years, instead of every ten years. (Sec. 4-5.1)

## 23. CHANGES IN THE GENERAL PLAN

The director of the Planning Department shall recommend changes in the General Plan at least every ten years, instead of every five years. (Sec. 8-8.3.3)

## 24. PLANNING COMMISSION REVIEW

The Planning Commission shall review not only those changes in the General Plan that are submitted by the director of the Planning Department, but also those the County Council requests be reviewed. The council may also request the Planning Commission to review other land use ordinances. (Sec. 8-8.4.2)

## 25. COMPOSITION OF THE GENERAL PLAN

The new charter returns to the County Council and the Planning Department the decisions as to what will be included in the General Plan. (Sec. 8-8.5)

## 26. LINE OF MAYORAL SUCCESSION

If a vacancy occurs in the position of mayor, the director of the Finance Department is second in line of succession, instead of the director of the Planning Department. (Sec. 7-6.1a)

## 27. FILLING MAYORAL VACANCY

If a vacancy occurs in the position of mayor, and a special election is required, an individual must receive a majority of all votes cast to win. If no one receives a majority vote, a runoff election shall be held. (Sec. 7-6.1b)

## 28. TRANSFER OF BUDGET FUNCTION

The responsibilities for preparation and management of the county's operating budget and capital improvement program are transferred from the director of the Department of Finance to the Office of the Mayor. (Sec. 7-5.7)

## 29. RESPONSIBILITY FOR SIGNATURES

The mayor becomes responsible for signing all legal instruments for the county, instead of having many of them signed by the director of the Department of Finance. (Sec. 7-5.11)

## 30. TRANSFER OF POWER TO MAKE CONTRACTS

The power to enter into contracts with other government agencies, whether federal, state, or other counties, is transferred from the County Council to the mayor. (Sec. 7-5.16)

## 31. MEETING REQUIREMENTS

Meeting requirements for county boards and commissions are revised to allow executive sessions for judicial functions, thus complying with the State of Hawaii's Sunshine Law. (Sec. 13-9.2)

## 32. DEPARTMENT HEAD REQUIREMENTS

Department heads, who in the past needed a certain number of years' training or work experience prior to appointment, now must fulfill that minimum with work experience. (Article 8, various sections)

## 33. DELETION OF THE COMMISSION ON HUMAN CONCERNS

The Commission on Human Concerns is eliminated, and all powers, duties and functions of the Department of Human Concerns are stated in more general language. (Deletion of old charter's Sec. 8-10.3)

## 34. MANAGING DIRECTOR'S STATUS

The new charter clarifies that the managing director is the head of his own department, and that the duties of supervising and coordinating the budget are given to him as chief aide to the mayor. (Sec. 8-1.1 & Sec. 8-1.3e)

## 35. BUDGET SCHEDULE

The mayor submits his annual budget to the council two weeks later, on March 15. The council must return it to the mayor, along with any proposed changes, by May 15. The mayor has 20 days to review the budget and approve or veto it, and the council has 10 days to override a veto. (Sec. 9-2, Sec. 9-5, & Sec. 4-3.3)

## 36. REAL PROPERTY TAX FUNCTION

The director of the Department of Finance is given the duty of administering the real property taxation process, which was handled by the state prior to the new state constitution. (Sec. 8-4.3.15)

## 37. TRANSFER OF SEWER FUNCTION

The responsibility for operating and maintaining sewers is transferred from the Department of Water Supply to the Public Works Department. (Sec. 8-5.3.3)

## 38. MAYOR'S POWER TO ASSIGN DUTIES

The mayor is given the power to assign duties and functions to various departments, so long as those duties are not already assigned by charter. (Sec. 7-5.10)

## 39. PERSONNEL SERVICES REQUIREMENTS

All requirements regarding the Department of Personnel Services have been amended to comply with state law. (Sec. 8-9.2)

## 40. ADDITIONAL DUTY FOR THE PROSECUTING ATTORNEY

The Department of the Public Prosecutor becomes the Department of the Prosecuting Attorney, and is given the added responsibility of prosecuting administrative violations of liquor laws. (Sec. 8-3.3f)

## 41. RECORDKEEPING DUTIES OF COUNTY CLERK

The county clerk is given the responsibility for adopting rules on classifying, storing and destroying county records. (Sec. 5-3.6)

## 42. TERM OF COST OF GOVERNMENT COMMISSION

The Cost of Government Commission is appointed by the mayor every other year, and serves a term of one year. (Sec. 8-14.2 and Sec. 8-14.3)

## 43. COUNCIL VOTING PROCEDURES

With a few restrictions, the County Council establishes its own procedures for voting on resolutions, ordinances, and other council matters. (Sec. 4-2)

## 44. FILLING COUNCIL VACANCIES

When a vacancy occurs on the County Council, a majority of the remaining members must approve a resolution appointing a successor. (Sec. 3-4)

## 45. TELEPHONE MEETINGS FOR COUNCIL

The County Council may adopt procedures for conducting emergency meetings by conference telephone. (Sec. 4-2.6)

## 46. TRANSFER OF FUNDS

While transfer of funds between county departments requires County Council ordinance, transfer of funds within a single department is made by council resolution. (Sec. 9-10.2)

## 47. ORGANIZATIONAL PROVISIONS DELETED

The County Council loses the power to reorganize the executive branch of county government. Also omitted are the requirements that the organizational plan of the county be set out in an administrative code. (Deletion of old charter's Sec. 6-2)

## 48. EQUAL STATUS FOR DEPARTMENT HEADS

The heads of all county departments have equal status in relationship to the mayor's authority, whether they are appointed and governed by the mayor or by a board or commission. (Deletion of old charter's Sec. 6-4.3)

## 49. CREATION OF CHARTER COMMISSIONS

Charter commissions may no longer be established by ordinance. (Deletion of old charter's amended Sec. 14-3)

End of Charter Digest  
Prepared by the Maui County Charter Commission

# What the changes mean

## 1. ADVISORY STATUS OF WATER BOARD

The Board of Water Supply becomes advisory, with no power to make rules or regulations having the force and effect of law. (Sec. 8-11.2)

Water is one of our most precious resources; how it is managed affects every one of us. The old charter gives a lot of the power over water to the Board of Water Supply, an appointed body. The new charter transfers that power to elected officials, the mayor and council, who are directly accountable to the public.

Right now there is another important reason for such a transfer. In 1974, the federal government passed the Safe Drinking Water Act, a standard of water quality all counties must meet. Maui County does not. In fact, it is estimated that more than \$16 million will be needed to bring the county's water systems up to federal standards.

The needed improvements in our water systems might be possible with an all-powerful Board of Water Supply, but such a board would be less likely to achieve

as much cooperation with other departments, the mayor, and the council.

Also, an independent board has limited ability to apply for general obligation bonds to pay that \$16 million capital improvement bill. As an independent agency, it would probably have to apply for revenue bonds, which carry a higher interest rate — an increased cost that would undoubtedly be passed on to the consumer.

## 2. RESTRICTION ON WATER RULES

The rules of the Department of Water Supply may not establish fees and assessments; these are set by the budget ordinance. (Deletion of old charter's Sec. 8-11.3.3)

The setting of rates, assessments, fees, and other revenue sources is transferred from the Board of Water Supply to the County Council. Because water is a vital and precious resource, the new charter places the responsibility for water revenues in the hands of elected, accountable officials.

### 3. PROCEDURE FOR RULES ON WATER

While the Board of Water Supply may recommend, the director of the Department of Water Supply initiates all rules, which must be approved by the mayor. The County Council gains veto power over all Water Department Rules. (Sec. 8-11.4.3 & Sec. 8-11.6)

Like rules made by other department heads, those of the director of the Department of Water Supply must be approved by the mayor before they can take effect. But unlike rules made by other departments, water rules are also subject to County Council veto — for several reasons:

First, many water rules have a significant economic impact, even when they are not related to revenue. Whether the county or the developer will pay for a new water main, what size pipes are required for a subdivision, whether, in fact, there will be a water moratorium that brings construction to a halt — all these acts have enormous financial consequences.

Second, without water, the county cannot support agriculture, tourism, industry — or our people. So even though the new charter gives the Department of Water Supply the same status as other county departments, the director of that department carries a great deal of power.

The council's veto power over water rules becomes an important check-and-balance protection.

### 4. SPECIAL COMMISSION TO STUDY WATER

A special charter commission is to be appointed to study those sections of the charter having to do with water. The special commission may propose amendments to this section, which the voters will decide on in the 1988 election. (Sec. 14-4.2)

The new charter makes the Board of Water Supply advisory, because in the next couple of years, the county will have to spend enormous sums to bring our water system up to federal standards. A department under the control of the mayor and council is more likely to work in close cooperation to get the job done than is an independent water agency. And the county can apply for lower-interest general obligation bonds to pay for the required capital improvements.

The move was an answer to a crisis situation — the county's need to comply with the federal government's Safe Drinking Water Act. Once the crisis is past, the people of Maui County will want to look at the water department again and see exactly what kind of system best manages this scarce and precious resource. The special charter commission, appointed in 1987, will study the water department and present its recommendations to voters in the 1988 election.

### 5. INCREASED INITIATIVE POWER

The people may use initiative to change or abolish an ordinance no matter how long that ordinance has been in effect. (Deletion of old charter's Sec. 11-3.4)

Initiative is the people's power to create, change, or abolish a law, when the law-making body will not do so. The process begins with a petition; if it is signed by at least 20 percent of the registered voters, the issue is placed on the ballot.

Section 11-3.4 of the old charter limits the time during which initiative may be used to change or get rid of an ordinance, stating that petitions must be filed within 60 days after an ordinance goes into effect.

But the need to change or remove a law may not be evident so quickly. The new charter removes this time limit, so that initiative may be used at any time, no matter how long a law has been on the books.

### 6. INCREASED TIME FOR SUPPLEMENTAL PETITIONS

In an initiative action, if the county clerk finds that a petition has an inadequate number of valid signatures, the petition committee is given 20 days, instead of 10 days, to collect the needed signatures. (Sec. 11-5.1)

Once an initiative petition is filed with the county clerk, it may be found to have too few valid signatures to qualify for placement on the ballot. Under the old charter, the petition committee had 10 days, after being notified of this insufficiency, to collect additional signatures on a supplementary petition.

The new charter gives the petitioners more time, changing the deadline for getting the needed extra signatures from 10 days to 20 days.



Protecting a precious liquid asset — and bringing our troubled water system up to federal standards — are reasons for changes in the Water Department.

### 7. PROTECTION OF INITIATIVE ACTION

If the people enact an ordinance through the initiative process, the County Council may not amend or repeal that ordinance for at least one year. (Sec. 11-8)

It is not easy to get a law passed, changed, or removed through initiative action. It requires the hard work of a petition committee and the consent of a majority of the voters. Yet under the old charter, the County Council has the right to change or remove such a law as soon as it goes into effect, if two-thirds of the council members so vote.

The new charter gives initiative-created ordinances a chance to work by prohibiting the County Council from changing or repealing them for at least one year after they go into effect.

### 8. INCREASED RECALL POWER

Recall, the people's power to have an individual removed from office, is extended to include members of all boards and commissions established by charter. (Sec. 12-1)

When the people believe that a public official is dishonest, unresponsive, or incapable of performing his job, they may try to have him removed before his term in office ends, by using the process known as recall. Like initiative, recall requires at least 20 percent of the registered voters to sign a petition to have the official removed, and a majority of the voters to agree at the polls.

Recall powers are not new. The old charter gives the people the power to use recall against any elected

county official. But the new charter goes further, by giving the people the right to recall members of boards and commissions, thus making board and commission members more accountable for their actions.

### 9. COMMISSION VACANCIES

When it is known in advance that a vacancy is to occur on a board or commission, the mayor must submit the name of a successor to the County Council at least 60 days before vacancy is to occur. The County Council must accept or reject the nominee within 60 days. If the council rejects the nominee, the mayor must submit a new name within 10 days. The same procedure will be used to fill unexpected vacancies, except that the mayor will have 30 days after the vacancy to submit a nominee's name. (Sec. 13-2.16)

There are times when a vacancy on a board or commission happens unexpectedly. But usually the end of a commissioner's term is known from the time he takes office. Yet the old charter did not allow for the appointment process to begin until after the vacancy occurred.

The new charter calls for the appointment process to begin at least 60 days before an expected vacancy occurs. This change can't guarantee that boards and commissions won't ever be left incomplete. But by allowing the task of finding a successor to begin before the vacancy occurs, the new charter helps prevent unnecessary vacancies from happening as often, and for as long.

### 10. TRANSFER OF GRANT APPLICATIONS

The responsibility for preparing and processing applications for state and federal grants is transferred from the Department of Finance to the Office of the Mayor. (Sec. 7-5.9)

The old charter gives this responsibility to the director of Finance, but in practice, grant applications have been handled by the Office of the Mayor for years, smoothly and successfully. Because there are no conflicts in this arrangement, the new charter merely makes official what has been the practice for some time.

### 11. QUORUM REQUIREMENTS

Boards and commissions may meet for county business if they have a quorum — if a bare majority of all members are present. Official action may be taken if a majority of those present vote in its favor. (Sec. 13-2.8)

Both charters require a quorum for meetings: the difference is that to take action, the old charter required a vote in which a majority of the entire commission agreed.

This was important when many boards and commissions had only five members. If only a majority of the members are needed for a meeting, and only a majority of those meeting are needed to pass an action, then a commission with five members could meet with just three, and just two people could make a decision affecting the whole county.

But the new charter increases all commissions to nine. Quorums jump from three (for five-member commissions) and four (for seven-member commissions) to five people. The new charter permits the commission to take action if a quorum is present, and a majority of those present agree.

The reason for this change is to make it easier for commissions to take action. Some matters that come before commissions for review must be handled within a specific amount of time — or they automatically pass. A commission could be against such an issue, but unable to get enough members together to vote it down, and the matter would win by default.



## 12. RESPONSIBILITY FOR COASTAL ZONE MANAGEMENT

The new charter emphasizes that the authority for Coastal Zone Management laws and the issuance of Special Management Area permits shall continue with the Planning Commission. (Sec. 8-8.4.4)

The Planning Commission is already in charge of laws regarding Coastal Zone Management (CZM) and issuing Special Management Area (SMA) permits. The new charter merely confirms this power.

There is an important reason for doing so. The County Council, through zoning ordinances and other means, has a great deal to say about planning and development. Even the Planning Commission may not allow development in an area not zoned for it.

But CZM and SMA cases are "contested cases." In other words, they involve parties seeking a judgment through trial. One of the principles of the American system of government is the separation of powers — the legislative branch may not take on the powers of the judicial branch. That is exactly what would happen if the County Council were in charge of CZM and SMA cases.

By insuring that this function remains with the Planning Commission, the new charter upholds a basic principle of American government.

## 13. PROHIBITIONS AGAINST BORROWING

The new charter prohibits borrowing, except for capital improvement projects and emergencies, adding language to Article 9 that requires the county to operate on a balanced budget, not through deficit spending.

Capital improvements, such as a new community center or a new highway, usually cost more than the county's annual budget can reasonably pay for, with a single year's taxes. Borrowing money, through bonds, is an accepted practice for such major projects.

But borrowing to pay for day-to-day operating expenses is not sound financial policy. Not only does it cost more in the long run, it's one way governments go bankrupt.

## 14. SPECIAL COMMISSION TO STUDY COUNCIL

A special charter commission is to be appointed to study those sections of the charter having to do with the composition of the County Council. If the special charter commission finds that changes should be made in the council's term, structure, or method of being elected, it will submit those findings to voters, who will decide on proposed changes in the 1984 election. (Sec. 14-4.1)

The issue seems simple on the surface: Change to district election of County Council members, and representation improves. If a candidate is elected only by the area he represents, the people get the council member they really want. And because they are the only people who can re-elect him, he will try very hard to serve them well.

Of course, it is not really so easy. What happens if that council member wants to do something for his district, but he can't get the council to vote in his favor? They are under no pressure to support his constituents, because they aren't elected by his district. And what happens if you live in that district, and don't like what your council member stands for?

Those are possible problems. There are very real legal restrictions on district elections, as well. The most important is the federal ruling of "one man, one vote." For example, if council members are elected by district, and Lanai, with a population of about 2,000 people, elects its own representative, then every 2,000 people in the county have the right to elect a council member. Instead of a nine-member council, Maui County could end up with more than 40, all of them paid, all with staffs and expenses.

The problem is obviously complex, and deserves more study than the Charter Commission was able to give it. But the new charter calls for the creation of a commission that will study the problem, research how it has been handled elsewhere, and investigate which solutions the courts have allowed.

This special commission will be empowered only to study Article 3, Sections 1, 2, and 3, which deal with the County Council's term of office, number of members, and method of election. If, after its year of study, the commission finds a workable alternative to the present system, the issue will be placed on the ballot for the voters in the 1984 election to decide.



Bigger boards and commissions let more people in on the work of shaping the county.

## 15. INCREASE IN SIZE OF COMMISSIONS

All county boards and commissions established by the charter are increased in size to nine members. (Article 8, various sections)

Under the old charter, every board and commission has either five or seven members. The new charter increases the number to nine, and continues the requirement that in making appointments, the mayor must try for fair geographical representation.

This increase creates more opportunities for private citizens to become involved in local government. More importantly, it allows for a more representative cross section of people from different areas, ethnic backgrounds, occupations and philosophies.

When more people in a community are involved in commissions, there is likely to be an increase in the flow of communication between the County Building and that community. It is better representation at a relatively low cost, because members of boards and commissions serve without pay.

## 16. POWER OF THE BOARD OF ETHICS

The Board of Ethics may not fire a county employee, but shall report any findings of misconduct to the official who appointed him, for appropriate action. The Board of Ethics gains the power to start impeachment proceedings against elected officials, if it finds misconduct. (Sec. 10-5)

In order to prevent the misuse of power, both the old and new charters prohibit all county employees from unethical conduct. If an employee violates these prohibitions, the old charter gives the Board of Ethics the power to have that individual suspended or removed from office.

But in a sense, the power places the Board of Ethics above the people and their representatives in government. The Board of Ethics may fire any county employee or official, including members of boards and commissions. The board may even fire the mayor or a member of the County Council. In other words, a small appointed body may fire an individual who was "hired" by a majority of the county's voters.

The new charter transfers this power from the Board of Ethics. In the case of an employee or appointed official, including a board or commission member, the board would report the violation to the official who appointed him. In the case of an elected official, the board is given the power to begin impeachment proceedings. The elected official will then be tried by a judge, not by an appointed board.

## 17. DISCLOSURE FORMS

The Board of Ethics is responsible for creating disclosure forms, and deciding what type of form an individual will file, depending on the type of position he is to assume. (Sec. 10-2.2d)

The Board of Ethics was required to create a disclosure form under the old charter, too. But the new charter recognizes that more than one kind of form may be needed. Different government offices have different kinds and degrees of power. Some officers have more access to inside information than others. Some are in positions that are more vulnerable to abuse. And circumstances that may create a conflict of interest in one department or commission may not in another.

So the new charter requires the Board of Ethics to take these differences into account, and design more than one kind of disclosure form.

## 18. PUBLIC DISCLOSURES

All elected officials, and all candidates for elective office, are now required to file a public disclosure. The County Council is given the power to decide which other officials and employees should also file public disclosures. (Sec. 10-3.1)

Under the old charter, all elected and appointed officials and employees were required to file with the Board of Ethics a list of all real property they owned in the county, financial interests in any business does contracting with the county, and all places of employment. The old charter did not require that information to be made public.

The new charter calls for elected officials to file public disclosures, and further extends public disclosure to candidates for elective office — a group the old charter ignores. The principle behind this change is that if an individual is to be elected by the people, the people have the right to know before the election any information that will help them make a wise decision. That includes the potential for conflict of interest.

## 19. PRIVATE FINANCIAL STATEMENTS

Members of the Planning Commission, Police Commission, Board of Variances and Appeals, Charter Commission, Liquor Control Commission, Liquor Adjudication Board, Board of Water Supply, and Board of Ethics are required to file confidential financial statements. The County Council is given the power to decide which other officials and employees shall also file confidential statements. (Sec. 10-3.2)

Board and commission members are private citizens who serve in local government without pay, donating hours of hard work. The contribution they make to county government is significant, but many people will not make this personal sacrifice if, to do so, they must also make a public financial disclosure. The new charter allows for confidential statements to keep the county from losing the services of good people. The Board of Ethics retains the power to report potential conflicts of interest to the mayor, who makes the appointment of board and commission members, and to the County Council, which has the responsibility for approving or rejecting the mayor's nominees.



## 20. POST-EMPLOYMENT RESTRICTIONS

Three different types of restrictions are placed on former county employees and officials:

First, former county employees and officials may not receive compensation for working on any matter they were directly involved with while serving the county. This includes members of boards and commissions.

Second, former mayors and council members are forbidden from appearing before any county agency on behalf of private interests, for a period of one year after leaving office.

Third, with the exception of members of boards and commissions, no former employee or official may appear for compensation before the specific department or agency in which he worked, for a period of one year after leaving the county's employ. (Sec. 10-1.4g, Sec. 10-4.2a, & Sec. 10-4.2b)

Whether elected or appointed, county employees hold their offices by public trust; behavior that erodes the public's confidence in government is damaging to the very principles of democracy. For that reason, standards of conduct have been established for county employees, violation of which can mean removal from office.

But abuse can also occur after an individual leaves government service. He is likely to have influence and inside knowledge the average citizen does not.

The restrictions set up by the new charter are designed to prevent such abuse, without being too damaging to the individual's right to seek employment. For example, former mayors and council members, who had influence in almost every agency of county government, are prohibited from appearing before any county agency for a year. By comparison, the former head of a department probably has influence in and knowledge of only his own department, and so is prohibited only from appearing before that specific agency.

Members of boards and commissions are placed on some restrictions, but not on all, because they are private citizens who serve without pay. With too many restrictions following county service, few individuals would be willing to volunteer for a board or commission.

## 21. COUNCIL CONTROL OF MONIES

Except for fees charged by the Liquor Department, all county fees, rates, assessments and taxes may be made only by County Council ordinance. All such sources of revenue must be included in the budget ordinance before the start of the fiscal year. (Sec. 9-7.3)

As the county's legislative branch, the council is charged with establishing a realistic, balanced budget for county programs and services each year. Placing control of revenue sources with the council makes it easier for that body to accomplish its job.

The Liquor Department is excluded from this change because its rates are determined by the Liquor Control Commission, which receives its powers from the state.

## 22. CODIFICATION OF ORDINANCES

Ordinances passed by the County Council must be codified for easy reference at least every two years, instead of every ten years. (Sec. 4-5.1)

During the year, the County Council passes a great many ordinances, covering a wide variety of subjects. If these ordinances were not codified — that is, put into some kind of logical order — they would add up to a bewildering mountain of paper, a maze through which you could wander without much hope of finding exactly the ordinance you were looking for.

Fortunately, ordinances are codified. They are placed in order by subject: all housing ordinances together, all zoning ordinances, and so on. But under the old charter, they must be codified only every ten years.

The new charter calls for codification at least every

two years, to make it easier for everyone to find information on the laws of Maui County. The present County Council codifies ordinances every year; the new charter insures that frequent codification will continue, even if a new council is less conscientious.

## 23. CHANGES IN THE GENERAL PLAN

The director of the Planning Department shall recommend changes in the General Plan at least every ten years, instead of every five years. (Sec. 8-8.3.3)

To be effective, a general plan must have a long-range focus. That, in fact, is its purpose. But when changes are to be made every few years, the focus easily blurs, becomes shortsighted.

The old charter requires the director of Planning to recommend changes in the Maui County General Plan every five years. The new charter increases that time to every ten years.

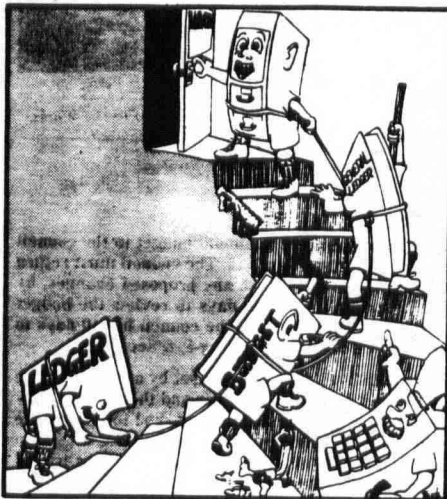
## 24. PLANNING COMMISSION REVIEW

The Planning Commission shall review not only those changes in the General Plan that are submitted by the director of the Planning Department, but also those the County Council requests be reviewed. The council may also request the Planning Commission to review other land use ordinances. (Sec. 8-8.4.2)

The County Council plays an important role in the planning process. Through zoning ordinances and other land-use laws, the council has a great deal to say about where development will occur, and what kind.

In addition, council members serve as representatives of the people, to whom planning has an overwhelming importance, both immediate and long-range.

Since it is so involved, the council needs access to the Planning Commission, its advice, its knowledge, its research potential. Thus, the new charter gives the Planning Commission the added responsibility for reviewing planning-related matters at the County Council's request.



Higher finance: The new charter places the budget responsibility in the office where the buck stops.

## 25. COMPOSITION OF THE GENERAL PLAN

The new charter returns to the County Council and the Planning Department the decisions as to what will be included in the General Plan. (Sec. 8-8.5)

A county's charter is supposed to set up the framework of government. It is not intended to dictate day-to-day operations. Too many specifics in a charter can leave government officials no flexibility for meeting changing needs, and specifics may become out-of-date.

One such instance is the old charter's specification

of requirements for the General Plan. The new charter eliminates some of the requirements, returning the decision-making responsibility to the agencies whose job it is to do the planning: the Planning Department and the County Council.

## 26. LINE OF MAYORAL SUCCESSION

If a vacancy occurs in the position of mayor, the director of the Finance Department is second in line of succession, instead of the director of the Planning Department. (Sec. 7-6.1a)

If the mayor has less than one year left in his term, and for any reason cannot continue in office, his chief aide, the managing director, steps in as acting mayor until the end of that term. Under the old charter, the next in line if the managing director cannot serve is the director of the Planning Department.

But in many ways, the director of the Department of Finance is more in touch with the day-to-day operations of the county. His duties are more like the mayor's than are those of the planning director.

## 27. FILLING MAYORAL VACANCY

If a vacancy occurs in the position of mayor, and a special election is required, an individual must receive a majority of all votes cast to win. If no one receives a majority vote, a runoff election shall be held. (Sec. 7-6.1b)

If the mayor has more than one year left in his term, and for any reason he cannot continue in office, an election must be held to find a successor who will serve as mayor for the remainder of the term.

The last time this happened in Maui County, there were so many candidates for the office that it would have been very possible for none of them to receive a majority of votes. In such a case, simply choosing the candidate with the most votes would still mean the mayor would be elected by less than a majority of the county's voters.

The new charter establishes procedures to prevent this from happening. If an election is held in which more than two candidates run, and no one candidate receives at least a majority of the votes cast, a runoff election will be held to choose between the two candidates with the highest number of votes in the first election. The winner, the new mayor, will be the individual who receives a majority of votes cast.

## 28. TRANSFER OF BUDGET FUNCTION

The responsibilities for preparation and management of the county's operating budget and capital improvement program are transferred from the director of the Department of Finance to the Office of the Mayor. (Sec. 7-5.7)

Managing the budget means much more than keeping track of dollars. It means supervising expenditures to insure that when money is spent, it is spent wisely. It can involve centralization or coordination of services, timing of purchases, and other decisions that are managerial as well as financial.

Particularly in these times of inflation and shrinking federal assistance, the county must operate as efficiently as possible. So the new charter places the budget function under the direct supervision of the mayor, the county's top manager.

## 29. RESPONSIBILITY FOR SIGNATURES

The mayor becomes responsible for signing all legal instruments for the county, instead of having many of them signed by the director of the Department of Finance. (Sec. 7-5.11)

Like the transfer of the budget function to the Mayor's Office, this change is intended to improve financial accountability and awareness at the top. By being responsible for signing all legal documents, the mayor, as chief administrator, cannot help but be better informed of the county's operations.

### 30. TRANSFER OF POWER TO MAKE CONTRACTS

The power to enter into contracts with other government agencies, whether federal, state, or other counties, is transferred from the County Council to the mayor. (Sec. 7-5.16)

The council establishes policy for the county by passing laws, and by allotting money to the various departments, services and programs. Once those policies are set, it becomes the mayor's job, as chief administrator, to carry them out.

This sometimes involves entering into contracts with agencies of the state or federal government, or with another county. Because it is an administrative function, the new charter transfers the power to make contracts from the legislative branch — the County Council — to the mayor.

### 31. MEETING REQUIREMENTS

Meeting requirements for county boards and commissions are revised to allow executive sessions for judicial functions, thus complying with the State of Hawaii's Sunshine Law. (Sec. 13-9.2)

State statute requires that all meetings of boards and commissions be public, so the people may know what their government is doing. That's why the statute is known as the Sunshine Law. But it makes one exception. When a discussion is to be held on a judicial matter, the board or commission may meet privately, in an executive session.

The reason this exception is made is that people who are deliberating on a contested matter need to be able to think and speak freely. At times they need to be able to change their minds and reverse previous decisions. The presence of non-members, whether private citizens or the media, creates a pressure that may stifle the free exchange of ideas and information so vital to a wise decision. And so, when a contested case is being judged, the commission or board may hold a private session, though the results must be made public. It's the same principle as a jury being secluded to reach its verdict, or a judge retiring to his chambers to make a decision.

### 32. DEPARTMENT HEAD REQUIREMENTS

Department heads, who in the past needed a certain number of years' training or work experience prior to appointment, now must fulfill that minimum with work experience. (Article 8, various sections)

To be appointed head of any county department, an individual must have a certain amount of experience, which varies depending on the nature of the department's services and duties.

Under the old charter, an individual could count his years of training as part of that requirement. But while training is valuable, it is not likely to be as realistic or comprehensive as the actual experience of doing the job.

### 33. DELETION OF THE COMMISSION ON HUMAN CONCERNS

The Commission on Human Concerns is eliminated, and all powers, duties and functions of the Department of Human Concerns are stated in more general language. (Deletion of old charter's Sec. 8-10.3)

Under the old charter, the Commission on Human Concerns existed as advisor to the Department of Human Concerns. But over the years, the department has not demonstrated the need for a formal board. The new charter therefore eliminates the Board of Human Concerns, but the mayor retains the right to create an ad hoc committee if he decides, in the future, that an advisory body would again be helpful.

Also, in the new charter the duties, powers and functions of the Department of Human Concerns are stated more broadly, to allow that department and other county departments more flexibility in their services and programs.

### 34. MANAGING DIRECTOR'S STATUS

The new charter clarifies that the managing director is the head of his own department, and that the duties of supervising and coordinating the budget are given to him as chief aide to the mayor. (Sec. 8-1.1 & Sec. 8-1.3e)

Many of the day-to-day management functions of the executive branch are actually carried out by the managing director. Yet the old charter never states whether the position is a single individual or the head of an entire department.

The new charter recognizes the managing director's significant responsibilities as chief aide to the mayor, and establishes this as a department.

In addition, the new charter assigns the actual management of the budget function to the managing director, although the ultimate responsibility is placed with the mayor. As the title implies, the managing director is an individual with management skills, which qualify him for budget supervision.



The new charter transfers sewer maintenance to Public Works, and helps the Water Department stay afloat financially.

### 35. BUDGET SCHEDULE

The mayor submits his annual budget to the council two weeks later, on March 15. The council must return it to the mayor, along with any proposed changes, by May 15. The mayor has 20 days to review the budget and approve or veto it, and the council has 10 days to override a veto. (Sec. 9-2, Sec. 9-5, & Sec. 4-3.3)

The county's annual budget is set by ordinance, with time allowed for both the mayor and the County Council to study and make changes in it, and for the people to express their opinions at a public hearing.

The reason for this time-consuming process is that the budget ordinance determines a great deal more than finances. It sets county policy for the coming year. It takes time to decide whether the people of Maui County will be better served for example, if those limited funds go into supporting more Police Department programs or programs in the Department of Human Concerns.

The time frame creates a dilemma. In order for the budget to take effect by the first day of the county's fiscal year (July 1), the mayor must begin the ordinance process by submitting his proposed budget to the council early in the spring. Thus he is forced to estimate how much revenue the county may collect in property taxes, before the county has a realistic picture of what to expect.

Short of changing the county's fiscal year — which would present its own considerable problems — the

new charter adjusts the budget schedule to give the mayor and council the best time frames possible. The mayor is given an extra two weeks before he must submit his proposed budget — March 15 instead of March 1. This gives him at least a slightly better picture of anticipated revenues.

The council has a full two months to study the budget and make any changes it feels necessary. It must return the revised budget to the mayor for his signature by May 15. Because the council may make many changes, the mayor is given more time to study the revised budget — 20 working days instead of 10 — before signing or vetoing it. The council then has 10 working days to override his veto, which brings the ordinance process to the end of June, just prior to the start of the new fiscal year.

### 36. REAL PROPERTY TAX FUNCTION

The director of the Department of Finance is given the duty of administering the real property taxation process, which was handled by the state prior to the new state constitution. (Sec. 8-4.3.15)

While the county has always benefitted from real property taxes — a major source of revenue — it has never before been given the entire responsibility for administration of the tax. Duties were shared by the county and the state: the county set the tax rate, and the state determined property values and actually collected the money.

The new state constitution turned the entire responsibility over to the counties, without specifying who should be in charge. The new charter assigns those duties previously performed by the state to the director of Finance.

### 37. TRANSFER OF SEWER FUNCTION

The responsibility for operating and maintaining sewers is transferred from the Department of Water Supply to the Public Works Department. (Sec. 8-5.3.3)

Under the old charter, the Department of Water Supply was assigned the responsibility for operation and maintenance of sewers. But that charter also stated that the department was to be self-supporting.

In order to pay for sewers, the department would have been forced to raise its rates, assessments, fees beyond an acceptable amount. The County Council stepped in and by ordinance transferred the responsibility for sewers to the Department of Public Works, which does not have the same restrictions of being self-supporting.

By transferring sewers from the Department of Water Supply to Public Works, the new charter officially makes the change on paper that has already taken place in fact.

### 38. MAYOR'S POWER TO ASSIGN DUTIES

The mayor is given the power to assign duties and functions to various departments, so long as those duties are not already assigned by charter. (Sec. 7-5.10)

As chief administrative officer, the mayor must have the flexibility to meet the county's changing needs, to alter systems in search of greater efficiency and better service to the people. The new charter gives him this power by allowing him to assign duties to and between the departments.

### 39. PERSONNEL SERVICES REQUIREMENTS

All requirements regarding the Department of Personnel Services have been amended to comply with state law. (Sec. 8-9.2)

State laws governing civil service employees have absolute authority, and all provisions in the section on Personnel Services which conflict with those laws have been changed in the new charter, so that they comply.



#### 40. ADDITIONAL DUTY FOR THE PROSECUTING ATTORNEY

The Department of the Public Prosecutor becomes the Department of the Prosecuting Attorney, and is given the added responsibility of prosecuting administrative violations of liquor laws. (Sec. 8-3.3f)

The change in title helps clarify exactly what this department does. The department does not prosecute the public; its prosecuting attorney serves the public by prosecuting those who break the law.

The new charter gives the prosecuting attorney the added duty of prosecuting liquor law violations. These are not automatically his responsibility, otherwise, because they are not tried in court. Liquor violations are instead heard by the Liquor Adjudication Board, a group of private citizens.

In fact, the prosecuting attorney already does this task. Because the practice does not create any conflicts, the new charter has been changed to comply with established procedure.

#### 41. RECORDKEEPING DUTIES OF COUNTY CLERK

The county clerk is given the responsibility for adopting rules on classifying, storing and destroying county records. (Sec. 5-3.6)

Surprisingly enough, in spite of the volume of documents the county produces, the old charter does not put a single individual in charge of supervising them.

But without someone who can serve as "head reference librarian," recordkeeping practices throughout the county are not likely to be uniform, and that makes it harder for both county employees and private citizens to find information quickly and easily.

The new charter assigns this task to the county clerk, who already has many recordkeeping duties and is familiar with workable systems — and with pitfalls.

#### 42. TERM OF COST OF GOVERNMENT COMMISSION

The Cost of Government Commission is appointed by the mayor every other year, and serves a term of one year. (Sec. 8-14.2 and Sec. 8-14.3)

The old charter leaves entirely ambiguous the length of term for the Cost of Government Commission, whether it will serve for a few months, or for years.

Past commissions have indicated that one year is adequate time to inspect county operations and procedure and prepare a report. The new charter clarifies the time frame.

#### 43. COUNCIL VOTING PROCEDURES

With a few restrictions, the County Council may establish its own procedures for voting on resolutions, ordinances, and other council matters. (Sec. 4-2)

The old charter goes into great detail on the procedures by which the County Council shall pass ordinances and resolutions. It covers not only legal requirements — such as two separate readings for ordinances — but also the manner in which the council will register votes and record them in its journal.

The new charter, while retaining the legal requirements which must be followed, allows the council to determine its own internal procedures for meeting those requirements.

#### 44. FILLING COUNCIL VACANCIES

When a vacancy occurs on the County Council, a majority of the remaining members must approve a resolution appointing a successor. (Sec. 3-4)

The key words here are "remaining members." Under the old charter, a whole-council majority is required to approve a successor when a vacancy occurs. Since there are nine council seats, that means at least five council members must agree on the same individual.

But what would happen if more than one vacancy oc-

curred at a time? What if two or three council seats were left vacant? The chances of having enough remaining members agree on all candidates decreases with the number of remaining members. In fact, if an accident eliminated five council members, the remaining four could not approve replacements at all.

Of course, such a circumstance is not very likely to happen. But the new charter adds a safeguard by requiring approval of only a majority of the remaining members.

#### 45. TELEPHONE MEETINGS FOR COUNCIL

The County Council may adopt procedures for conducting emergency meetings by conference telephone. (Sec. 4-2.6)

Under ordinary circumstances, council members must gather in the County Building in order legally to hold meetings and conduct business. During an emergency, important business must be conducted to meet the threat to life and property. Yet this is just the time when it may be physically impossible for a quorum of council members to meet.



Tackling the transfer of funds: Resolutions offer fewer obstacles than ordinances do. The goal is faster, more efficient county services.

#### 46. TRANSFER OF FUNDS

While transfer of funds between county departments requires County Council ordinance, transfer of funds within a single department is made by council resolution. (Sec. 9-10.2)

The annual budget is established by a County Council ordinance, which dictates how much money each department will have available for its programs and services. Each department's budget is also divided into three separate accounts: personnel, supplies and equipment.

In order to transfer money from one department to another, or even from one account to another within a department, the old charter requires a council ordinance. This involves a reading by the council on two separate occasions, and public notice. The process may take several weeks.

The reason for this legislation is that policy is determined by where the money is spent. Whether the county buys new police vehicles or a bus for senior citizens says a lot about its priorities.

Transfer of funds within a department is not likely to involve so radical a change in policy. It may, in fact, have a moderate effect. It may be a choice, for example, between hiring an extra policeman or buying three new squad cars. Since the overall goal is the same — better law enforcement — transferring funds from one account to another, from personnel to equipment,

probably doesn't need the lengthy scrutiny of an ordinance. The new charter calls for such transfers, within a single department, to be made by resolution, a faster process involving a single council reading.

By speeding up the process for internal transfers, the new charter lets the county react more quickly to day-to-day situations, and reduces the time legitimate needs have to wait.

#### 47. ORGANIZATIONAL PROVISIONS DELETED

The County Council loses the power to reorganize the executive branch of county government. Also omitted are the requirements that the organizational plan of the county be set out in an administrative code. (Deletion of old charter's Sec. 6-2)

Under the old charter, the County Council may, at the mayor's request, reorganize the executive branch of county government, creating new departments, eliminating existing ones, combining more than one department or separating one into several.

The new charter takes that power away from the council, instead permitting the mayor to make administrative changes through the assigning of powers and responsibilities, so long as those duties are not already assigned by charter. The reason is that the mayor is the executive branch's chief administrator, and should have the power to manage the departments under him, with revisions that make the administration more effective, so long as the charter is not violated.

The new charter also omits the requirements for an administrative code. This requirement was in effect for years, and was never accomplished. By now, it has been shown not to be necessary.

#### 48. EQUAL STATUS FOR DEPARTMENT HEADS

The heads of all county departments have equal status in relationship to the mayor's authority, whether they are appointed and governed by the mayor or by a board or commission. (Deletion of old charter's Sec. 6-4.3)

Under the old charter, there was some confusion as to whether department heads appointed by boards or commissions — such as the police chief and the director of Liquor Control — were responsible directly to the mayor. The new charter eliminates that confusion by establishing that the mayor does have control over all county departments.

#### 49. CREATION OF CHARTER COMMISSIONS

Charter commissions may no longer be established by ordinance. (Deletion of old charter's amended Sec. 14-3)

A county's charter is a constitution, a carefully thought-out framework for government, defining powers and responsibilities. If it can be changed easily and often, the charter loses credibility and power; the government loses stability.

Of course, needs do change, and what worked in the past doesn't always work later on. So the charter not only permits an amendment procedure, it calls for total charter review and possible revision or rewrite every few years — under the old charter, every six years.

This time the County Council didn't wait, but created a charter commission by ordinance more than a year before such a review was scheduled to take place. Under the old charter, there is nothing to prevent them from passing such an ordinance every single year.

Whether a charter becomes official or not ultimately depends on the people. If the voters accept it, it goes into effect. If they reject it, the previous charter remains active. Whichever decision the people make, it should last, and not be subject to the whims of politics.

For that reason, the new charter abolishes the council's power to create charter review through ordinance, though such other avenues of revision as amendment remain intact.



# Who's who on the Maui County Charter Commission



Agrifina Cabebe



Clarence Cravalho



William Crockett



Adolph Desha



Rev. Milton Fricke



Rachael Jio



Cecily Kikukawa



Roger MacArthur



Baird Miller



Paul Pladera



Bonnie Tuell

*Although it is a political document, the new Maui County Charter was created by 11 private citizens, who donated more than a year of their time and service without pay. Those commissioners who have supplied phone numbers may be contacted for further information regarding the new charter.*

**Paul Pladera**, of Wailuku, is the acting executive director of Maui Economic Opportunity (MEO). Born and raised on Maui, he is a member of the Hawaii Association for the Education of Young Children, the National Association of Head Start Directors, and the Executive Directors Association of the National Community Action Agency. His business phone is 871-9591.

**Adolph (Swede) Desha** is a resident of Lanai City. Now retired, he is a former employee of Castle & Cooke, Inc., Lanai Company, Dole Company, and Hawaii Pineapple Company.

**Clarence Cravalho**, of Wailuku, is a truck driver for Ameron HC&D. A lifelong Maui resident, he is a member of the ILWU and the ILWU Local Executive Board. His work phone is 877-5065.

**Agrifina (Aggie) Cabebe**, of Wailuku, is a personnel clerk and stenographer for Maui Pineapple Company, Ltd. A lifelong resident of Maui, she is a member of the United Filipino Council of Hawaii and secretary-elect for 1982/83. She is a member of the Maui Filipino Community Council, and a former member of the Maui County Status of Women. Her residence phone is 244-0662.

**K. Yvonne (Bonnie) Tuell**, of Makawao, is manager of the Administrative Department of Maui Electric Company, Ltd. A Maui resident for 22 years, she is a member of the Maui Chamber of Commerce, the Maui Woman's Club, and St. John's Episcopal Church in Kula. Tuell served as chairman of the Maui County Charter Commission. Her work phone is 871-8461; her home phone is 572-7543.

**The Rev. Milton Fricke**, of Kahului, has been pastor of Emmanuel Lutheran Church for 14 years. He is a member of the Maui Christian Ministers Association and its immediate past president; he is also past president of the Kahului Kiwanis Club and Big Brothers/Big Sisters. His work phone is 877-3037.

**Cecily H. Kikukawa** has been a Molokai resident for the past 36 years. She is a retired elementary school teacher, and her community service has included membership in the Hawaii State Teachers Association, the Girl Scouts, the PTA, Hui Hawaii o Molokai, and the Maui County Human Concerns Committee. Her residence phone is 553-5813.

**Roger MacArthur**, of Sprecklesville, has been a Maui resident for nine years. He is vice president and branch manager of First Hawaiian Bank, vice president and board member of Maui Rehabilitation Center, a board member of the Maui Chamber of Commerce, and trustee and chairman of the Finance Committee of St. Anthony High School. He is a member of the Mayor's Advisory Committee on Maui's Economic Future and the Real Property Tax Advisory Committee. His work phone is 877-2311.

**Baird Miller**, of Lahaina, is vice president and general manager of the Pioneer Inn and Lahaina Broiler. A Maui resident for 11 years, he is a member of the Rotary Club; Lahaina Restoration Foundation, for which he serves as vice president; and the Maui Chamber of Commerce, West Maui Executive Committee. He is senior warden at Holy Innocents Episcopal Church and a member of the Maui Chapter of the Hawaii Hotel Association. His work phone is 661-3636.

**Rachael M. Jio**, of Pukalani, was born on Lanai and has lived on Maui for 36 years. She is a library technician at Maui Community College, and her community service has included membership on the Maui Mental Health Association, the Hawaii Freedoms Foundation, and the Asoka Club of Makawao Hongwanji Mission. A Maui News community reporter, Jio has served on the Liquor Adjudication Board and the Library Commission. Her home phone is 572-8201.

**William F. Crockett**, of Kihei, is senior partner in the law firm of Crockett and Nakamura in Wailuku. Born and raised on Maui, he served on the Charter Commission as vice chairman. His business phone is 244-3796; his residence phone is 879-1344.

## Why vote on a total charter? It's no puzzle

On November 2, the voters of Maui, Molokai and Lanai will decide whether or not to accept the proposed new Maui County Charter. Voters will be asked to decide on a complete package, a unified document, and not on individual changes.

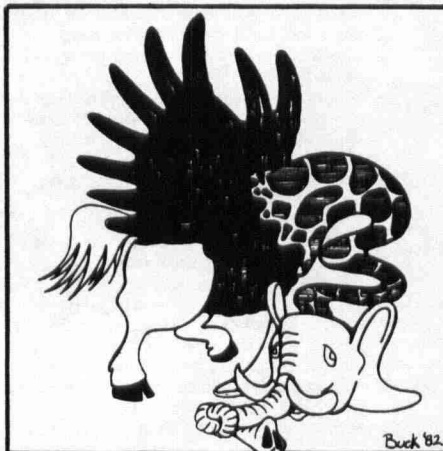
The reason is that a county's charter is its constitution. It determines the powers and responsibilities of those in government. Because it provides this framework, it must be a document in which all the pieces fit.

Many of the changes explained in these pages are related. They may seem to occur only in one department, but they often affect other departments as well. Sometimes the relationship is easy to see. For example, the new charter gives the mayor, as chief administrator, the power to enter into contracts with other government agencies. To prevent potential conflict, the new charter at the same time — but in another section — removes this power from the County Council.

Not all such related changes are so obvious. The commission spent months examining the charter to make sure that changes in one area did not create a duplication of powers elsewhere, or omit an important government service, or in other ways make the charter contradict itself.

It is one thing to spend months studying the entire charter, listening to legal advice, and creating a unified document. It is quite another thing to ask the voter to create a charter at the ballot box, by presenting him with a long and confusing list of changes.

On the surface, such alternatives seem to give the voter more choice. But they increase the chances that the resulting document, a patchwork of old and new, would be a charter that cannot work effectively. Instead, the new charter is being presented as a single document. It is still up to the voters to decide whether Maui County operates under this new charter.



*A do-it-yourself charter would be a strange animal indeed — and probably not one that could easily survive.*