

CHARTER COMMISSION
MEETING MINUTES
JUNE 30, 1992
COUNCIL COMMITTEE ROOM

PRESENT

James Cockett
Dolores Fabrao
Annette Mondoy
Robert Nakasone (Chairman)
Victor Reyes
Allan Sparks
Anne Takabuki
Jamie Woodburn
Deborah Wright
Lloyd Yonenaka
Susan Nakano-Ruidas (Staff)

EXCUSED

Sherrilee Dodson (Vice Chair)

GUESTS

Dave DeLeon
Brian Perry (The Maui News)

I. CALL TO ORDER

Chair Nakasone noted a quorum present and called the meeting to order at 5:12 p.m.

II. PUBLIC TESTIMONY

None.

III. APPROVAL OF MINUTES

The following minutes were approved as circulated:

- A. June 10, 1992 - Full Commission Meeting
- B. June 16, 1992 - Kihei Public Meeting
- C. June 18, 1992 - Upcountry Public Meeting
- D. June 23, 1992 - Lahaina Public Meeting
- E. June 25, 1992 - Skybridge Public Meeting with Lanai and Molokai
- F. June 25, 1992 - Hana Public Meeting

IV. COMMUNICATIONS

Communication 92-44 Proposal to amend the listed boards and commissions within the Maui County Charter to include the Cultural Resources Commission and the Commission on Culture and the Arts, submitted by B. Fuhrmann, was received by the Charter Commission.

V. COMMUNICATIONS

- A. Committee C Report - Anne Takabuki, Chairman
Continuation of discussion of recommendations pending approval -- Articles 10 through 15 [See handout titled Recommendations Pending Approval].

Takabuki: I think it [Recommendations Pending Approval] concisely says what the amendment is, but if there are any questions I'll be happy to address them. So, I'll just go through as numbered here.

Article 10 - Code of Ethics [number 1]. This would amend the introductory or the general purpose and intent clause to provide in the code that it applies to board and commission members. In actuality it does apply right now to those boards and commissions that are actually mentioned in the Charter. But if you recall, Jim Smith had come before the Commission and said that it is not clear, and that he wanted to make very clear that

Takabuki: (Continued) board and commission members are also subject to the code of ethics. So, this would only restate what is actually stated in different parts of the Charter, but maybe it's not very clear...it's kind of housekeeping kind of thing.

Wright: Is that to all boards and commissions, or only to the ones mentioned in the Charter?

Takabuki: The Charter only applies to specifically those established by the Charter... on the code of ethics. Now, other things they might mention...I don't know if it would apply to other boards and commissions; but right now, a board or commission is defined under the Charter as those that are actually recognized and established thereunder.

Fabrao: Wasn't that what Mr. Smith's question was though, that it was not an application to all the boards and commissions...and that that was what he was concerned about.

Takabuki: I think he had a general concern; I don't think he really felt it was clear that it applied to boards and commissions at all.

Fabrao: Because some boards and commissions are not covered by the Charter, but are created by the council.

Takabuki: If you're suggesting that we make the language such that it applies to all boards and commissions...even though not established specifically by the Charter -- that's possible.

Yonenaka: Well, you want to make an amendment?

Fabrao: I so move.

Yonenaka: Second.

Chair Nakasone: It's been moved and seconded. Discussion?

Woodburn: Do we need to run that by Paul to see if that's...

Fabrao: I think so; for the language that it...

Woodburn: The language and legality -- can we go ahead and require that if they are not sanctioned under the Charter?

Takabuki: We would have to look at the language in the back of the Charter that defines the boards and commissions presently as just those...and either expand that or somehow say that this is different...other than what is defined in the back of the Charter. So, I think you're right, and that's a good question for Paul. Is Paul coming today?

Chair Nakasone: Thursday.

Mondoy: So, do we table that for now?

Takabuki: Couldn't we go ahead and vote...

Fabrao: We can approve and then have him draft the language.

Woodburn: I mean if the Charter doesn't set them up, can they dictate that they have to

Woodburn: (Continued) follow?

Chair Nakasone: Any objections to the recommendation? No objections; MOTION CARRIED.

Takabuki: Number 2...the first one under number 2 is to allow, in effect, the board of ethics an additional fifteen (15) days to deal with a request for an advisory opinion. And, the concern there...with a thirty day limitation right now, is with all the meetings and the posting, the difficulty in scheduling and then having to arrive at an opinion, and then to sign...have the members get together again -- apparently it's awful difficult to meet that thirty day requirement. So, they're asking for another...actually, not they're...they're not asking for it, but it did come across to my attention that an additional fifteen days would be warranted.

Yonenaka: I thought they did ask for it.

Takabuki: I don't remember them specifically asking for it; I know I was actually given that information by a former board member.

Chair Nakasone: Is there a motion?

Woodburn: So moved.

Fabrao: Second.

Chair Nakasone: The motion is...on Section 10-2...I guess item c...adding fifteen days more on opinions. Discussion? Objections? No objections; MOTION CARRIED.

Takabuki: The second one [2.(2)] would deal with the requirement in the Charter that the board have within its scope of authority the receipt and filing of lobbyist registration statements. Right now, if you recall, it's governed by ordinance but the provisions under the ordinance are right now quite vague. Actually, they're not really enforceable and that's been a problem. The board, thus far, has received just a few lobbyist registrations, and this would be a way in which they would actually make it clear...a mandate to have these lobbyists come and register with them.

Woodburn: How are we defining lobbyist?

Takabuki: That would be something for the ordinance to specify.

Woodburn: Because possibly you would end up with every director of every nonprofit agency as a lobbyist...registered lobbyist. If a lobbyist is defined as someone who seeks support of funds or...

Takabuki: As it's done in Honolulu and some other counties, they have exceptions; and that probably should be an exception. It's usually for profit...

Yonenaka: Well, I think too, in your case...in anybody's case that is nonprofit...that is not your sole job. I think a lobbyist has the tendency to be...this is what you do for a living.

Woodburn: Oh, okay.

Chair Nakasone: Isn't that established by ordinance? Defining that?

Takabuki: There is a definition; it's not a very extensive one.

Chair Nakasone: Yes, but to identify exceptions.

Takabuki: No; right now it's quite broad.

Wright: Also, this says to receive and file lobbyist registration; but it doesn't say anything about it being mandated that they must file with the board of ethics; it just says that the board of ethics can receive and file. But, it doesn't require the lobbyist to register, and I thought what you were saying a second ago, was this was to get the board of ethics the right to get these and to mandate some sort of filing. That doesn't seem to say anything about mandating...

Takabuki: Well actually, it's required right now by ordinance. It really is required, but I would guess there's not the attention given to it...there's no focus on it.

Wright: Does the ordinance presently say that it has to be filed with the board of ethics?

Takabuki: I think that it does.

Fabrao: Except that once they get it, they don't know what to do with it...that's the impression I get. They just file it, but they don't know how to...where does it go after that. [LAUGHTER]

Wright: That's what I'm saying; I'm having a hard time understanding how this helps anything...this particular section...what does it benefit? It may make it in conformance with the ordinance, but how does it help or do anything with regard to the lobbyist...if they are already required to do it?

Takabuki: I don't recall the specific discussion.

Yonenaka: I think the idea was just to bring it in line with the ordinance.

Takabuki: The board specifically had a concern about it.

Yonenaka: Yes.

Wright: Did they think there was some concern about them not having authority to receive it despite the ordinance? That's what I'm trying to understand.

Fabrao: I think the question was that lobbyists were not filing and registering; I got that impression...that they weren't getting enough applications for registration, or whatever way they work it.

Wright: Yes, but this doesn't require them to file. All it says is that the board of ethics can receive and file.

Woodburn: Maybe it just clarifies who they file it with...if the emphasis was on receiving and filing, maybe the ordinance is not clear in terms of who you're supposed to file it with. This isn't going to encumber...I mean, this isn't going to impede anything.

Fabrao: In fact, there was a little bit of discussion as to why that should be in there

Fabrao: (Continued) in the first place; if it wasn't being done and there was no one monitoring that...

Wright: See, that's my problem with this; basically, I don't oppose it if it does something, but I don't like adding language that doesn't seem to have any help or focus. Or, does it? The board of ethics, I think, wants it, but I don't understand why; and, I have a hard time saying let's just throw more language into the Charter. It doesn't really seem to require anything.

Takabuki: I think you're right; it's not required, because it is provided for by ordinance, but some other concern that the board had, as I recall, is that the ordinance was not really that clear and they felt that perhaps this might even be a means for them to actually get the procedures clarified...because it requires in accordance or as established by ordinance. I remember we looked at the ordinance at one meeting, and it was very vague.

Yonenaka: It just said you have to file.

Wright: This just says in accordance with the procedures established by ordinance...so it's not going to clear up what's in the ordinance.

Takabuki: Other than that there really aren't procedures right now...

Wright: Yes, but it says the procedures established by ordinance; so, it's not like to me the board of ethics can now establish procedures if we put that in.

Takabuki: No, they can; it has to still be by ordinance. I think they thought this would require that attention be paid to it.

Mondoy: I just don't see...the only thing I have a hard time dealing with that is that it doesn't seem to give them clout. If you're going to do something...put some teeth in it.

Woodburn: What if we defer this to the next meeting and we find out from the board what they're driving at...what they want; would that help?

Wright: It would be better, because I'd vote against it right now just because I don't understand...

Chair Nakasone: Any objection to deferring this question? Okay, if there's no objection, so ordered. [DEFERRED] Okay, item 3, Section 10-3.

Takabuki: Right now, the language in this section specifically names the different commissions and boards that are required to file financial disclosure statements; so, this amendment would propose to just have general language to provide that the members of any board or commission established by the Charter shall file. And, that was to take care of any new boards or whatever they might be that are established.

I guess another issue here is should it extend to other boards and commissions? We didn't really discuss that.

Fabrao: I think so; it would kind of make sense...if we're going to do that with the ethics question. Why shouldn't other boards and commissions come under...oh, they're established by ordinance.

Takabuki: Some people have said, though, that the filing of financial disclosing statements actually impedes getting people on boards and commissions. I don't know if that's really the case, but I know a couple people have brought that up; someone even suggested that we shouldn't have them at all. But, I think it would not promote the trust in government and boards and commissions if we were to do without that.

Chair Nakasone: It seems that I recall that statements were made regarding the question of why certain boards or commissions have to file, when they don't have a financial interest at all...like your street naming committee, or whatever. But, it seems that we do identify commissions that require disclosure...but what it says, it's like covering...a blanket.

Takabuki: It will cover any Charter established commission; and, I guess the idea behind that is anything established by Charter has substantial discretionary authority. But, something like street naming wouldn't, so maybe it's not so necessary.

Fabrao: I'm just wondering...that even though some boards and commissions are established by ordinance...why they could not come under the aegis of the Charter...instead of established by the Charter, just leave established by the Charter out, and extend it to all the boards and commissions.

Woodburn: I think the point may be well taken that it may serve as an encumbrance for some people who...Arbor Day committee, or I don't know, some of the other boards and committees... If you've got to go through...if you're asking for somebody to volunteer on this committee and provide their time, and there is no fiduciary responsibilities...

Sparks: Status of Women, traffic street naming...

Woodburn: And yet you're asking this guy...'I want a full disclosure on you'... The easiest tactic is 'go find somebody else.'

Sparks: So, what's under the Charter...are there any of these commissions named by the Charter that financial disclosures don't make sense for?

Woodburn: And, I don't think it's a point that there's really anything to hide or not; it's just a hassle for a lot of people to do it.

[Staff: Bill Fuhrmann listed all boards and commissions in Communication 92-44.]

Wright: But those aren't all the boards and commissions that are in the Charter, are they?

Takabuki: List A are the ones, right?

Woodburn: Well, I'd recommend that we leave it as suggested.

Takabuki: I would just note that on this list B, you have board of code appeals...it used to be a technical board but as we discussed with Paul and some of the other people, given time, I think they now have a lot of the powers of the board of variances; so, it could be they already have substantial authority. The other one that looks...tax review board, right?

Wright: Yes, that's what I was thinking...tax review board.

Takabuki: And even to some degree the urban design, I mean, they do a review for the planning commission.

Mondoy: So, you're saying to expand to...

Takabuki: Well, I don't know if we should be the ones to decide which ones, but it sure looks like there might be other boards outside of the Charter that would have significant discretion...

Chair Nakasone: Okay, what's the pleasure of the Commission?

Fabrao: I just wonder then if...I suggested that it stops with the Charter, but that wouldn't be right to cover all of those other commissions and boards that do not have discretionary authority...that maybe we could include that kind of language into it, so that these other commissions that we are concerned about could be included.

Takabuki: Well, we could leave it up to the council to determine which ones would have substantial...

Sparks: Right; do they have their ordinance now?

Takabuki: Not boards and commissions...

Sparks: For filing financial disclosures?

Takabuki: I'm sorry; there is a listing, but I don't know...if they spell them all out.

Sparks: Like when the Charter says 'or other employees as shall be designated by the council by ordinance, as having significant discretionary or fiscal powers shall file with the board' et cetera, et cetera. Is there an ordinance that lists any of these...like the redevelopment agency or the tax review board, and so forth? So, if we just said all commissions mentioned by the Charter and leave this language in here by ordinance for the others, would that cover it?

Chair Nakasone: Or others established by ordinance.

Fabrao: Yes, that would be good; that would cover it.

Takabuki: That would still leave it open.

Chair Nakasone: Yes.

Sparks: And some of them that are obvious, like the tax review...since they have to file it, they'll make those kinds of...

Wright: They haven't been; we hope they will. [LAUGHTER]

Sparks: I don't know if they have been, or not.

Chair Nakasone: Well, then you recommend that we just add a provision by established ordinance.

Sparks: Yes; again, it's a matter of information...if I could see an ordinance that said that they were doing this already, I'd feel better about it probably. If they're

Sparks: (Continued) not doing it, maybe we ought to be more specific in what we put in here.

Takabuki: I'm almost sure there is...

Woodburn: Well, when it gets sent to Paul for drafting, he can double check that.

Chair Nakasone: Okay, a motion is in order.

Takabuki: Move to approve.

Fabrao: Second.

Chair Nakasone: Discussion? Now we're adding that there's a provision to be established by ordinance, correct?

Sparks: Yes; it's already in there...it's keeping it in there.

Chair Nakasone: Okay, discussion? None? Objections? No objections; MOTION CARRIED. Section 10-4.

Takabuki: You want me to explain that? [LAUGHTER]

Woodburn: It's pretty self-explanatory.

Chair Nakasone: These are the prohibitions...

Takabuki: Right; relating to prohibitions.

Chair Nakasone: Was that third one...that was recommended by the board of ethics.

Takabuki: By the board; actually all three of them were board recommendations.

Yonenaka: Yes; I think the intent was to just fine tune it a little bit...some of the restrictions.

Chair Nakasone: Recommendation?

Takabuki: I'll move to approve.

Yonenaka: Second.

Chair Nakasone: Do you want to take these three separately, or is there no objections to a motion to accept three? Okay, the motion is to accept the three items there. Discussion?

Wright: The only problem I have is...it probably isn't a problem...it's where it says 'which is related to any official action'...

Takabuki: I think they meant to say directly or indirectly, though.

Wright: Well, that's what concerns me...indirectly; you get into...it's pretty hard to tell sometimes what might be considered indirectly related. Maybe it's not a big problem, I guess.

Takabuki: I think you're right; it could be a big problem...but they would have to determine themselves, I suppose, whether something amounts to...

Wright: Maybe somebody would have to get an ethical opinion in advance as to whether or not they could represent somebody.

Takabuki: Right.

Chair Nakasone: Any further discussion? Discussion; none. Any objections to the motion? If none, the MOTION CARRIED.

Takabuki: Number 5, I know we had considerable discussion about, because what we were talking about is adopting a recommendation of the board which would say that an employee or officer should disclose his or her position when appearing at public meetings. And, there was a lot discussion as to what a public meeting is. The other thing that was brought up is should is just a request, and it's really not a requirement. Those were the issues I know that we were concerned about before.

Yonenaka: This wasn't brought up by the board.

Takabuki: No, this was. This was the one they even said they kind of grappled with, and they didn't know whether it was their place to make those kinds of recommendations.

Yonenaka: I thought it was Jim Smith who brought it up.

Takabuki: I think he also reiterated it when he came...something that happened with the planning commission with a county officer.

Woodburn: Is it purposefully ambiguous with respect to if it means somebody who comes to a meeting, but isn't going to testify? Or, is appearing also synonymous with testifying?

Takabuki: I feel the intent was once you get up there and speak...

Woodburn: Identify in what capacity you're there.

Sparks: At the very least then, we should say when speaking at public meetings instead of just appearing...

Fabrao: I think so, to clarify it.

Woodburn: Or testifying.

Chair Nakasone: How's that? No problem with testifying?

Sparks: Speaking is more general though. [LAUGHTER] Some of the public meetings, like the ones I run, it's hard to know whether they're testifying or just...

Yonenaka: Well, speaking kind of leaves it...you can show up and you can't say a word.

Woodburn: Give the guy a break. [LAUGHTER]

Fabrao: Instead of appearing -- testifying.

Chair Nakasone: Okay, so the recommendation is to delete appearing and adding testifying. Any objections to that? Is there a motion on the floor?

Yonenaka: So moved.

Fabrao: Second.

Chair Nakasone: Discussion? Objections? None?

Wright: Wait; I have an objection based on public meetings. I'm sorry; I don't know what a public meeting is and it's just going to leave a lot of room for problems. I don't know if it's an officially noticed and called meeting, or is it any time a community association gets together? I mean, which is it? You know, you're supposed to somehow balance between having the right to appear and talk for the individual versus the need for them to disclose what capacity they're in. And, I don't know if there's such a thing as testifying at a community association...maybe that limits it. But, all I'm saying is I don't think every time they go and say we don't like the plans for the new fire station in our area...and they're the ones who work in some other capacity that's really unrelated...just because it's something that associates with their interests, that they have to go through all this rigamarole. I just would like to know what a public meeting is...and, I guess I oppose it if we don't have a definition...or there isn't something that helps define that. I just think that if you're going to tell people that they have a restriction on them, they ought to have some idea of what the restriction is. And, it's just too difficult and it's going to leave room for arguments in that area...and the next Charter Commission will get to define public meetings...once we put this in.

Woodburn: Or, you can relate it to any meeting that is subject to the sunshine law.

Wright: That's what I was thinking...if it's something where it's official and subject to the sunshine law, then you do have official testimony usually; then that would be clear, but there are lots of what I would consider public meetings that are not really governmental meetings at all.

Woodburn: That's kind of where this came from...if somebody goes to the Haiku Community Association and... Maybe Paul can clear that up for us.

Wright: No.

Takabuki: No.

Sparks: No?

Wright: No; we'd better agree, because Paul's also not going to have time to clear all this...some of these things up. I mean, he's got a lot of drafting...and I don't want just whatever Paul defines public meeting -- I wouldn't necessarily agree to that; it might be great, but it might not be...I think we should decide either what public meeting is or vote on it like it is...and go either yea or nay.

Fabrao: Well then, if you wanted that clarification you could say when testifying at public meetings subject to the sunshine law; couldn't we do that?

Takabuki: You could do that, but...

Chair Nakasone: I don't know; I would say if it's subject to the sunshine law would be

Chair Nakasone: (Continued) in government meetings...government run public meetings or public hearings...county, state...

Fabrao: Where else would somebody need to disclose their position? Because I went to a meeting last night and I certainly didn't feel I should disclose that I represented...

Chair Nakasone: That's why it's in here. [LAUGHTER]

Woodburn: It's also giving her the discretionary authority to decide if she wants to or not...under should.

Sparks: Yes, the should we haven't discussed adequately. If we're just going to say should...aren't we just adding verbage...that doesn't really do anything?

Takabuki: Yes, I kind of had a thought when I was looking at this...and I was wondering if the board of ethics could, on their own, come out with a guideline if they feel it's so important.

Fabrao: Because this is a new section, yes?

Chair Nakasone: Yes.

Takabuki: You know, rather than have just like we say now...language which is just...should language is just kind of you can if...you do if you can or if you don't do this...

Sparks: There's a couple of problems...should doesn't really have much teeth; and the other part of that is we're not sure what kind of meetings we're trying to have teeth in, right?

Wright: One thing is really clear -- the people who should disclose are the ones most likely to hide it; if it says should, they will not disclose...they will not do anything. The ones who would probably disclose it anyway, are going to do it whether it's there or not. But, this is not going to have any effect on the people who are trying to hide something...they're just going to say 'hey, I'm not required to; I didn't break anything, I didn't violate anything.' And so, it's one of those things where we all agree that it should be disclosed, at least in certain types of meetings, but this isn't going to make anything like that happen.

Sparks: I think in those cases, isn't there a natural politic that goes on? If somebody's in a discretionary position...say around development of a certain area, and they're at a meeting arguing about it and they don't disclose that, somebody else usually will -- it's a small enough community so it would be pretty hard to sneak your way around those things at a public meeting I would guess. Maybe I'm wrong...

Chair Nakasone: I have some reservations about this one, myself.

Woodburn: Why don't we drop it? [LAUGHTER]

Chair Nakasone: We have a motion on the floor.

Fabrao: We don't have to vote on it.

Takabuki: What if we did just put something in the report? I think it's a worthy purpose, but I kind of think maybe the board should deal with it themselves...come up

Takabuki: (Continued) with a memorandum to everybody that they feel it should be done to promote trust and confidence in government. But, it's not something that has to be in the Charter.

Sparks: I'll buy that.

Chair Nakasone: Okay, there's a motion on the floor; do you want to withdraw the motion?

Yonenaka: I'll withdraw it.

Fabrao: And I withdraw my second.

Chair Nakasone: Okay, the motion has been withdrawn with the second.

Takabuki: Maybe we could just comment on it in the report and advise the board to devise guidelines...

Chair Nakasone: I would support that question of commenting. Okay, we're on item 6.

Takabuki: [Article 11--Initiative] The first one would be the reduction from 20% of the voters registered, to 15% required for a ballot petition. That's just to make it a little easier.

Chair Nakasone: I thought we looked at the other Charters.

Takabuki: City & County had 10; I think Kauai had 15; I don't believe there are any other counties that had 20.

Sparks: A couple of them had 15. Anybody ready to leap for 10?

Woodburn: 15 sounds good to me.

Fabrao: 15 sounds good.

Chair Nakasone: Anne, a motion is in order.

Yonenaka: So moved.

Takabuki: Second.

Chair Nakasone: Okay, the motion is to reduce the signatures from 20% to 15%. Discussion? Objections? None; MOTION CARRIED.

Takabuki: The second one is more of a housekeeping type of amendment. The county clerk advises that they don't look at precincts, and furthermore, most people signing the petition don't know their voting precinct; so, it was information that was not really helpful. He did request though that the signers print their name and address so they can verify.

Woodburn: I so move.

Yonenaka: Second.

Chair Nakasone: Okay, we're on item 2. Discussion on item 2? Objections? None?
MOTION CARRIED.

Takabuki: Number 7; the first one would eliminate the time limitation of thirty (30) days and make it no limitation for the time necessary to gather signatures for it. I guess the one limitation being that you would have to get it to the county clerk in time for them to be able to prepare the ballot.

Fabrao: We were going to get information from the clerk's office in as far as how much time we needed to get the petition to his office before putting it on the ballot. Wasn't that a question the last time?

Takabuki: I think we did talk about that...

Fabrao: Was it forty days...forty-five days?

Chair Nakasone: I think there's a statute requirement, too.

Fabrao: Statutory requirement...we have to get our thing in by the end of July...is that it?

Chair Nakasone: No, August.

Woodburn: August 15.

Fabrao: So, that's how long before election time? Sixty days?

Takabuki: But see, that's not the time...the reason we have to get it in is not because the county clerk needs it so much, as we have this 15 month or 16 month limitation.

Chair Nakasone: Yes. No, but I believe that there is a statutory requirement for the clerk to submit to the Lieutenant Governor to put it on the ballot.

Takabuki: Well, that's true, but I don't think it's much more than sixty days.

Wright: They have to get it certified and they they have to get it printed.

Fabrao: It seems to me that I recall sixty days, but I cannot find it.

Chair Nakasone: I guess because deleting the time requirement, the other controlling factor is the time to submit it...so the petition can be put on the ballot, and I think this is going by state statute.

Woodburn: So, that's enough controlling factor.

Yonenaka: So moved.

Woodburn: Second.

Chair Nakasone: To delete the thirty (30) day term limit. Discussion? None? Objections? No objections; MOTION CARRIED.

Takabuki: The next one just allows for someone who signed to be able to withdraw in case they change their mind, or find out different information...

Yonenaka: Fraudulent... [LAUGHTER]

Chair Nakasone: You saw this some place? [LAUGHTER]

Woodburn: It rings a bell about mass transit. [LAUGHTER]

Chair Nakasone: Okay, a motion is in order.

Woodburn: Motion.

Fabrao: Second.

Chair Nakasone: Everybody understands the question, right? Discussion? None? Objections? No objections; MOTION CARRIED.

Takabuki: The first one under number 8 would eliminate the requirement for a special election when there's no general elections scheduled within a year after the petition is filed. I think the reason for that is since we have elections every two years...there's probably not too long a delay in getting the initiative to the people; whereas if you call for a special, it's very costly. Of course, we've never had an initiative petition... Anyway, that was the reasoning behind it.

Woodburn: To adopt both 1 and 2, that's basically what you're covering; I so move.

Fabrao: Second.

Chair Nakasone: Okay, discussion? We're on item 8, 1 and 2. Discussion; none?

Fabrao: The only thing that I have is we have elections every two years at least, and so then what are the chances that anybody would try to start an initiative within the first two months after the election...they'd have to wait about almost two years for that next election. I don't think that would happen, though...maybe they'd change their minds by that time. Or, maybe the government will straighten its own self out...

Yonenaka: By the time it goes through the process, you've probably used up at least half a year. I think the idea was though that theoretically you could have a special election three months before the regular election.

Fabrao: Right; that would be too much.

Yonenaka: And, it's not that long a time frame.

Fabrao: Okay; question.

Chair Nakasone: Objections? None?

Mondoy: We're doing 1 and 2 together?

Chair Nakasone: Yes. If none; MOTION CARRIED.

Takabuki: Okay, number 9...which I think is why we have the handout from A1.[LAUGHTER]
[See attachment -- Charter Amendments -- 1988 General Election, hereby attached and becoming a permanent part of these minutes.] Number 9 would change the current requirement where right now you can get a measure passed by having the majority of the votes of the

Takabuki: (Continued) voters who actually voted on the measure...to require a majority of those who actually draw ballots. So, the standard becomes a lot higher. Everybody understands that, right?

Sparks: This is something the clerk gave me...which I found kind of interesting. Since we've never had initiative or anything like that, all we're really talking about is the amendments to the Charter. And, actually, this should come up later in Anne's section when we talk about amendments to the Charter, I guess, but it's the same issue...initia-tives or amendments to the Charter. The ones that I've checked are things that we've changed to the Charter that would not have been changed under this proposal.

I think one of the arguments that my opponents make for this proposal is that too few voters can pass something because there's so many blank votes. But, if you look at how many voters voted yes on all these that passed, it was almost always 12,000 to 15,000 -- it's not like 2,000 people are going to slide something through; that's one point to consider. The other is why should we penalize blank voting? Blank voting can be very rational voting; why just automatically say it's a no vote? It doesn't make sense to me. I think there's kind of a natural representative function that goes on here ...that those who have...feel they have enough information and wisdom to go ahead and vote on complicated initiative or Charter amendment -- they do; they vote yes or no. The others that leave it blank are probably wise enough to realize they don't know enough or don't want to take enough time to know enough. I think the system the way we've got now is reasonable.

Woodburn: I think we need to empower the people that opt to take a purposeful act, either for or against an amendment...have had a ballot and to leave it...I think it's right now...it's a majority of the votes cast...leave it that way. According to what Al's saying, if people leave ballots blank -- right now they work as a no vote; and, some of that may be purposeful and some of it may not be. But, not to empower those people that chose to cast a ballot -- either for or against a certain amendment -- I think those are the ones that need to...you know, if they've taken the time to read it or try to understand it and cast a vote...either yea or nay...let's give them the power and authority to enact the change. So, I have a hard time going on a majority of the votes drawn...for the reason that it would take away the power from those persons to purposefully cast a vote.

Wright: I'm kind of split on this. I feel like on an initiative that it can be something that's more of a special interest or a limited type of issue...then I would say it needs to be a majority of the ballots drawn...on something like that. If there's not enough interest for this initiative to support more than that 15% who signed the petition to get it on there to start with, then maybe that should die...you know, a natural death.

But, on other things I would not want it limited. I agree that blank votes --there's a reason why they didn't vote -- either they didn't understand it...they didn't know it, and it's preferable to have them leave it blank...than to vote on something they don't have any idea about...or say that they have to. So, as far as the one that's before us right now...which strictly deals with initiative measures...I would say that I would approve the change. But, when you get to the next page...it talks about Charter amendments and other things...then again, I go with what Allan and Jamie are saying -- leave it like it is -- make it the people who are voting make the decision.

Chair Nakasone: If I recall correctly, there's a...somebody sent me an article from Reader's Digest -- they give you a choice -- yes, no or NOTA -- none of the above. If you had a choice like that, I can understand, Al; I would support leave as is. But, when you deal with the Charter amendments, or in this case initiative or recall, no -- I think it's

Chair Nakasone: (Continued) important that you recognize that's a majority, rather than... this would be a minority of the voters; and, I really can't believe it would be a democratic process. I know prior to this, before it was amended, there was a provision on commissions... boards and commissions -- they had a provision there that the majority of the members present -- and in a lot of cases the minority could have taken action...administrative authority also. And, I for one cannot support where a minority decision's made.

Further discussion?

Sparks: Yes. Boards and commissions are a completely different thing than elections. All the public's invited to attend, number one.

Chair Nakasone: Al, I'm citing an example like where your planning commission has administrative authority...and yet a minority can pass and take action that has the force and effect of law.

Sparks: Right. The provision that we have now in the Charter allows what you're calling a minority to pass things...like Charter amendments; and, they have. But, another way of looking at it is that they are not a minority...they're a majority of those who felt intelligent enough to vote on that issue. Personally I think majorities are fine, but we can overdo anything...and in our culture, we tend to overdo majorities sometimes. The real harsh fact is there's an awful lot of people out there in the public...they don't have time or inclination to do the kind of studying, for example, to vote on what we're going to put before them next fall...real intelligently. And, a lot of those folks know they don't have the time or inclination, and therefore the knowledge, and so they opt out and let those others who do, decide the issue...a majority of those others who do, decide the issue. To me, that's pretty rational. I don't see any big problem in that. Until we reach some utopia where everybody's given a week to study everything in great depth with lots of help, before the elections...and then are greatly assisted in getting there and voting...we're stuck with the kind of public we have now...many of them don't even turn out to draw a ballot. But, with a big deal election...say for president...a lot of them will go to vote on that and then discover a bunch of stuff on the ballot that they don't know anything about. I mean, that's just the reality. To bring it right close to home, if we had the provision like this in here now for Charter amendments, for example, all our work over the last year or more could easily go down to nothing...simply because we only got 49% of those who drew a ballot. Would that necessarily be the best outcome for good government in Maui County? I don't think so; I think that's putting too much emphasis on this sort of automatic notion of majorities -- in this case, majorities of everybody that goes to the polls. I don't buy it.

Takabuki: Since you brought up the Charter though, and we're talking about it...I think the Charter is such a document, to me at least, that to amend it should be very difficult. And that's why on the particular issue of the Charter, I would tend to support this. But, I can see other arguments in different areas -- for initiative maybe, I really wouldn't feel that strongly. But the Charter being like a constitutional document...look at the federal...our constitution...it's taken how many years to get certain things through even the process...to get the majority of 38 states or the three-quarters that you need. And, it's a process of education -- the voters may not okay it the first time -- but then as you go along, if it comes up later...they eventually understand it, and are able to vote intelligently on it.

Sparks: You're making the opposite argument that Debbie made. You want a stricter standard for the Charter -- she wants the less strict standard for the Charter and a more strict standard for initiative. As far as I'm concerned, they're both very comparable and they could both be equally complex and equally important, and I'd like to see them

Sparks: (Continued) decided by those who feel intelligent enough to vote on them...and not automatically count the blank ballots as a no; it just doesn't make sense to me.

Fabrao: But then I can also see where Bob is coming from when he says the minority can get something through. Let's say that we expect 17,000 people to come out and vote... and only 8,000 come out...and then a majority is what -- half of that...

Sparks: In the county, there's around 40,000 give or take...

Fabrao: Yes, I know, but I'm just...

Sparks: Registered voters, so maybe 35,000 or 30,000 come out. So, a close minority of 48-49% is 15,000 votes.

Fabrao: That's not bad.

Chair Nakasone: Further discussion? Victor.

Reyes: If you look at the arithmetic of this...if a blank vote is not counted, it counts as a no...and so it has a heavy weight. And, I think there has to be some balance between what they think is a blank vote...being an intelligent vote -- you know, if a person decides 'I'll leave it to others to decide for me' -- or, a blank vote could be 'well, I'm in between, so I don't want to say no or yes...I'm in between.' On the other hand, if you look at this method of counting all the ballots drawn, it actually counts as a no rather than something in between. So, I'd like the Commission to think of the weight of a blank vote...not as in between...or someone who's undecided...who wants to leave it to those who can decide -- it's not really in between, it's a no vote.

Sparks: It's opting out.

Reyes: Right. Now, does it reflect what we're thinking...if this blank vote is leaving the decision to those who do vote...it's not half/half. I mean, just think about it.

Fabrao: Yes, Victor. That vote will be counted in as far as the majority number, right? That vote cast will be counted in so far as what's going to determine the majority of ballots drawn to approve the initiative. So, that's going to count.

Reyes: That's right.

Fabrao: So, even if it's a negative vote, it will count in the overall picture.

Woodburn: But it will count against. I mean, if the voter is saying to himself, 'I don't want to vote on this, I'd rather let the people who know what's going on vote on it' -- maybe he or she doesn't understand that by not voting on it, they are voting against it.

Reyes: What I'm saying is that it's not really a neutral vote.

Sparks: That's right.

Reyes: And, therefore I think...following the rationale...that I think those who really decide to cast a vote, should have more weight because they made a decision to cast a vote; because a blank vote is not really a neutral vote.

Sparks: So, I'll move that we do not approve this recommendation for a change here.

Woodburn: I second.

Chair Nakasone: Okay, there's a motion to not approve... [LAUGHTER]

Sparks: Well, whatever...however you want it done.

Chair Nakasone: Okay, discussion?

Fabrao: So then, how would you...then we'd just leave this section as is.

Chair Nakasone: As is, yes.

Sparks: The majority of ballots cast, right?

Chair Nakasone: How about that motion -- as is? [LAUGHTER]

Sparks: Okay.

Chair Nakasone: Okay, discussion?

Yonenaka: Victor, you said the blank votes count...

Fabrao: Negative.

Chair Nakasone: Do not count.

Woodburn: No, they do not count.

Fabrao: They don't count at all.

Yonenaka: Okay, but they do count.

Fabrao: It's like a no vote.

Sparks: Right now they don't.

Chair Nakasone: No, they don't count right now.

Yonenaka: Right now they do count...because they are actually...you eliminate them, and actually in truth, because you don't count them, they determine the...

Reyes: How it affects the result, but it's not counted.

Yonenaka: Right. But as much as you can say it would go the other way and that it counts as a no vote, if we leave it the way it is, it counts as a yes vote. Well, it does in a sense affect the outcome. Well, another thing...maybe just to justify myself... I don't think anybody could bring up an initiative issue and have that many blank votes. I think it's going to be pretty well discussed.

Chair Nakasone: Any other discussion? My position is that I still believe that the voters still should go through an educational process, and I still support the majority's favor rather than a decision being made by minorities. I'm against the no change.

Takabuki: No on the motion. [LAUGHTER]

Chair Nakasone: Further discussion? Roll call.

Takabuki: No.

Mondoy: No.

Fabrao: No.

Sparks: Do we all know what our noes mean?

Reyes: No is no change, right?

Fabrao: Yes.

Yonenaka/Woodburn/Wright/Sparks [simultaneously]: No.

Woodburn: You're voting against the motion if you vote no.

Reyes: Isn't there a motion on the table?

Wright: The motion is no change.

Fabrao: Leave it as is.

Yonenaka: The motion is to make no change in the way it reads now, which is basically the majority of the votes cast.

Sparks: So, if you're in favor of that, you have to vote for this motion.

Yonenaka: Victor, you have to vote yes. [LAUGHTER]

[Staff note: I'm sorry, let's start again.]

Takabuki: No.

Mondoy: Yes.

Fabrao: Yes.

Reyes: Yes.

Sparks: Yes.

Wright: No.

Cockett: Abstaining.

Woodburn: Yes.

Yonenaka: Yes.

Nakasone: No. [MOTION CARRIED/6 Yes; 3 No; 1 Abstain]

Chair Nakasone: So, as is...no change to item 9. Article 12...

Takabuki: Number 10 is the same as we discussed under initiative...deleting the requirement for disclosing voter precinct, and adding the requirement that they print their name and address.

Woodburn: I so move.

Mondoy: Second.

Chair Nakasone: The motion is similar to the item 6 under initiative. Discussion? None? Objections? None; MOTION CARRIED.

Takabuki: Number 11...the first one under that would be to increase the time in which your petition can obtain the required signatures...from thirty (30) to sixty (60) days.

Chair Nakasone: Okay, a motion is in order.

Takabuki: I would move to approve.

Woodburn: Second.

Chair Nakasone: Question?

Sparks: Yes. On initiative we deleted all time limits? On this one we are keeping the time limit but are expanding it? Rationale?

Takabuki: I guess the thought was when you're dealing with a recall petition, you're dealing with a person who has to go through the emotional waiting period, I suppose, of having to go on and on and on...perhaps even during the full term of his or her office. And so the thought was, yes, there needs to be more time to make it a possibility of achieving, but not let it go on indefinitely while the person holds the office...has to deal with that.

Sparks: So, the concern is the mental anguish of a person in office?

Wright: Well, their effectiveness, too.

Takabuki: Yes, it's a lot to bear if you never know when they'll get the final signatures.

Sparks: Why not ninety days? Or seventy-five days?

Fabrao: I don't understand; if within thirty days after the filing...that would make the anguish shorter.

Takabuki: Right, but then it makes it very difficult to actually get a ballot petition. So, you want to give the people at least a chance to do that.

Woodburn: To get the signatures.

Sparks: Do we have precedence in other charters?

Takabuki: I think it was the City & County; I'd have to double check. Do you remember, Bob?

Takabuki: In the Big Island, it looks like thirty days, still. It looks like Kauai is thirty days.

Sparks: Okay, so we're being more generous.

Takabuki: I don't know about City & County.

Sparks: That's okay; I just wondered if there was anything in the others. I have no

Sparks: (Continued) particular problems anymore, I guess.

Chair Nakasone: You have no problems? Ready for the question? Objections? None?
MOTION CARRIED. Number 1 and 2, under item 11. Okay, item 12.

Takabuki: Is there any question about that? Same rationale as special elections being...

Fabrao: There's no motion on the floor yet? So, we don't discuss it...

Chair Nakasone: Motion?

Yonenaka: Moved.

Woodburn: Second.

Chair Nakasone: There's a motion on the floor on item 12.

Fabrao: Okay, the same question that I asked the last time...let's say when you ask for a recall...you want that person to not be serving in that capacity. So, let's say he got voted in two months, and the next election is a year and eight months down the line...you're going to wait until such time to recall him? You'd have a special election...oh, okay...'a special recall election would be scheduled.'

Takabuki: At the present time, it would really only be applied to a four year term.

Sparks: We're discussing item 12 now? I'm curious about this, too. "Unless such delay would defeat the purpose of the recall by allowing a full term of office for the person sought to be recalled..." In other words, unless you do it before they go into office?

Wright: No; unless the next general election is so far off that they would serve a full term before they could be voted on...

Woodburn: But that means you've got to recall them day one.

Sparks: Yeah; I mean they're in a term when you get the recall petitions filed, and so forth.

Fabrao: You may be in the beginning month of a two year period.

Sparks: Two or four; this language says "unless you would defeat the purpose by allowing a full term."

Wright: You have a general election every two years; a four year term, the next general election would be in the middle of a four year term.

Woodburn: So, it doesn't apply to two year terms.

Takabuki/Yonenaka: You would still have a special election.

Yonenaka: You see, otherwise you'd wait until the end of that two years, and...

Fabrao: What for have a recall, if that's the case?

Yonenaka: Because he's got to run again.

Sparks: Oh, okay; I guess I follow.

Chair Nakasone: Further discussion? Ready for the question? Objections? None?
MOTION CARRIED.

Takabuki: Number 13 is the same issue as we've discussed.

Yonenaka: I move we leave it as is.

Wright: Second.

Chair Nakasone: Discussion? Is there any discussion? I just want to make my same comments. [LAUGHTER]

Sparks: This is a little different issue, than an issue for initiative because you are talking about recalling somebody from office. So, maybe somebody has something to add there...

Wright: I probably feel stronger; if they don't care enough on recalling their own representative from office to vote one way -- yes or no -- then I figure... If they don't know enough or care enough on the person individually, fine; let the ones... I mean, that's pretty bad -- I think it is different from initiative.

Sparks: More likely you wouldn't have a minority or a lot of blank ballots.

Wright: No, I think on that you're not going to have a lot of blank...people are going to say 'I want him still in' or 'get him out'...that kind of thing.

Sparks: So no harm leaving it as is, yeah? [LAUGHTER]

Chair Nakasone: All in favor, raise your right hand. [LAUGHTER] Opposed? MOTION CARRIED...as is. Okay, item 14.

Takabuki: This change would just add the community plan districts as the areas for consideration when the mayor does her selection by geographical areas. Right now it just says that she needs to give...or the mayor needs to give due consideration to geographical representation.

Woodburn: How does this change that?

Takabuki: It just works in the nine different community plan districts as defining different areas.

Woodburn: As opposed to...

Fabrao: As opposed to balanced geographic...it says balanced geographic representation here.

Sparks: I guess we don't want to be so specific as requiring one from each...

Fabrao: That would be nice.

Takabuki: No.

Yonenaka: No. [LAUGHTER]

Chair Nakasone: That's not a bad idea. [LAUGHTER]

Dave DeLeon: It jams you up sometimes.

Sparks: Yes, it gets to be an impractical, I suppose.

DeLeon: There's thirty-six boards and commissions.

Sparks: So you'd have to get thirty-six people from Lanai to serve on boards and commissions. [LAUGHTER]

Fabrao: That's good.

Sparks: Thirty-six from Hana...

Chair Nakasone: I think this is good to be recognized in the Charter as far as due consideration, being that we do have community plan districts.

DeLeon: We do it now.

Chair Nakasone: By the way, this Charter Commission is heavy on the east side of Maui.

Fabrao: Upcountry.

Woodburn: Maybe that's why we ended up with some new districts. [LAUGHTER]

Sparks: You remember, I was the last minute desperation substitute; you had to get started, and they had to find somebody.

Chair Nakasone: Okay, a motion is in order.

Woodburn: I so move.

Yonenaka: Second.

Chair Nakasone: We're on Article 13, item 14, amending 13-2. Discussion?

Reyes: My only concern is will this give a problem later on...I mean, what does... the lawyers help me...what does to give due consideration mean? It's not mandatory, but they...

Takabuki: It's not mandatory.

Reyes: But it has to have a weight...

Woodburn: Think about it.

Reyes: But how can someone say there's a violation of the Charter, if this is in the Charter?

Wright: No, they won't be able to say...if it's in there now, I wouldn't have used that to start with. It says 'shall give due consideration to balanced geographic representation.'

Reyes: Okay, so you cannot violate it then.

Wright: No; there's no violation of it...if you considered them.

DeLeon: I deal with this all the time...it's a guideline that we try to follow, and it's a guideline the council can follow. If they feel like there isn't a balance, they can use that as a reason for rejecting somebody; and, they did that recently on a water board case. We picked somebody from upcountry who was a farmer...the farmers wanted somebody on the board...there was already somebody from upcountry; and, the council pointed out to us that there was nobody here from Kihei. So, we said okay; they rejected our guy and we went out and found somebody from Kihei, and then they got upset with us because the farmers wanted somebody from upcountry. But, the reality is they can reject on that basis; that's a guideline they can use, too.

Reyes: Yes, that's my concern; will it promote it, or will it...can it present a problem later on? Can someone use it and create a problem or jam-up...combinations or something like that?

Wright: I don't know if they can...I have some other objection. Right now it says 'balanced geographic representation.' I would like that language better the way it is because right now this says to the 'nine community plan districts;' I think of the Charter like I think of the Constitution -- of course, you amend it and you can change it, and things like that -- but to the extent that you can have it so it's workable at all times, I thought that was what you were shooting for. And, there may not always be nine community plan districts; they may not be called community plan districts; there may even be more than nine of them; there may be something different. So, I don't understand the need to change the terminology -- because they are already doing it, they already can reject it -- and it's called a balanced geographic representation. I don't know why tie it to the community plan districts, is all I'm saying. I don't see any particular benefit from doing that, and I see where it would limit things...where it just requires another amendment when the County of Maui shifts in some manner and there's not nine any more, or it's not called a community plan anymore. So to me, I don't understand a reason for the change; maybe Anne can tell us that...but I don't understand the reason for the change to this specific definition. I agree with you though, Victor, that 'due consideration,' nobody knows what that means anyway, but it's already in there.

Chair Nakasone: I believe this came from one of our public hearings, that they were not represented as far as if you're looking at a certain area like...I believe that was from Hana.

Fabrao: Yes, Hana mentioned that.

DeLeon: Bill Fuhrmann; he was complaining that they weren't represented on the...

Chair Nakasone: Planning commission.

DeLeon: Planning commission; but they are.

Fabrao: Now they are.

Sparks: But Debbie's point is that's something that could slip through under the new wording as well as the old wording, and the basic idea of geographic distribution is in the old wording. I kind of agree with you; maybe it's more better to leave it general.

Wright: Because it just says 'due consideration,' and again, it's not a requirement. So, just because you change it to nine community plan districts, it doesn't really change the obligation in any way. Due consideration has to be given -- whatever that is -- and beyond that, there's nothing else that's done.

Chair Nakasone: By the same token, I think the denial of the council of appointed commission members were based on their current Charter provisions, too...that due consideration of geographic areas, you know. So, either way it can be done.

We do have a motion on the floor. Further discussion?

Sparks: What is the motion? To okay this?

Yonenaka: Yes, to accept this.

Sparks: It sounds like it's in the category of not broken. [LAUGHTER]

Chair Nakasone: Jamie made the motion.

Takabuki: I'm sorry; are you're still leaving the motion on the table?

Woodburn: Yes, let's vote it in or out.

Chair Nakasone: All those in favor of the motion, raise your right hand. Opposed? MOTION DIES. Okay, Article 14.

Takabuki: Mr. Chairman, I don't know if this is the place to bring it up, but at one of the public hearings relating to boards and commissions, it was again brought up that the five year terms kind of discourages people from serving. I guess we're going to discuss the public hearings later, but we did discuss in committee and the committee decided that maybe we should just leave it the same. Again, it wasn't a matter that seemed to be that big a problem, but it did come up again. So, I just wanted to make that note and I think it deserves some discussion.

Sparks: I agree with you.

Fabrao: I do too.

Takabuki: So, are we deferring that to the next meeting? Okay.

Chair Nakasone: No objections? Deferred.

Sparks: As long as we don't let it slip through the cracks.

Fabrao: So we don't forget it.

Reyes: Excuse me; what are we deferring to the next meeting?

Woodburn: Length of terms of commissions.

Reyes: Why can't we, since we've heard all about it...I mean, we're running out of time. Could we please...

[RECESS/RECONVENE]

Chair Nakasone: Okay, we're on the question...

Fabrao: Only one more, right? Oh, two more.

Chair Nakasone: No, we're going to discuss the question of the...

Reyes: Five year terms for commissions.

Takabuki: Reducing the term from five years.

Sparks: I just got some information from Dave; maybe he ought to give his insight into this one, since he works trying to get people on commissions all the time.

Chair Nakasone: Yes, that's a good idea.

Fabrao: But are we at that point already, or what?

Sparks: It's not on your sheet.

Chair Nakasone: About reducing the terms of members on boards and commissions.

Cockett: It's a carryover from Anne's...

DeLeon: Basically it hasn't been a problem for getting people to sign up; we get about 150 people sign up per year. We ask for applications...we ask people if they want to -- this commission was not the usual because it's a specialty commission, and we wanted to make sure it really functioned fast, and you guys had to start from scratch as a group; most commissions are added on to. So, we ask for people to apply and we get about 150, and they are coming in under the requirement of the five year term. Of course, if their lives change and they can't serve, people drop off boards and commissions all the time. So, you know, we don't send them to prison if they don't make their five year term.

Al had a suggestion...go three with the...currently they are not allowed to be reappointed. If they've served over two years on a board or commission, then they have to go off for one term, or one year. Al's suggestion was maybe do three years, and give us a choice of maybe looking at people who function or don't function, and allow for one reappointment. That gives it a six year turn around, and then people who really like it and are really serving will have a chance to stay on; the guys who don't show up ever... Sometimes we have to remove people because they never begin to show up or show any interest -- and those guys we wouldn't wait for three years anyway. But, that's pretty rare; most people are... Most of the boards and commissions are supported by some kind of administrative agency, and they have an oversight to see whether people are showing up -- there's an attendance kept, and stuff like that. So, either way -- to me, if the five years seems to work...I real concerned about dropping just down to three years flat, and don't do reappointment, because you have some boards and commissions that require specialty knowledge. And, the only place those people are going to get that specialty knowledge is by serving...like the water board...that's a very complicated process, and if you were to go in there for just three years, I don't think you'd hardly have the

DeLeon: (Continued) expertise by the end of the three years.

Chair Nakasone: I believe that was one of the concerns...of the time it takes to learn the process and understanding whatever field it is; you know, the three years was a little too short.

DeLeon: Yeah, that was Paul's point, I think a meeting or two before, you know, about the water board having had to be totally replaced in '88; and then, they didn't have the expertise to carry through, and there was a learning process for nine individuals starting from scratch.

Cockett: Question...has any consideration be given to a four year term on a staggered basis?

DeLeon: I don't know the originality of the five...or why wasn't four... I think it was a concern for carryover...the continuity...it goes past the term.

Cockett: Looking at it on say a staggered basis...

DeLeon: Well, it's staggered now.

Chair Nakasone: Yes...it's staggered.

DeLeon: It's almost like...a nine member board or commission will usually have two people coming off a year.

Cockett: Is that the track record?

DeLeon: Yeah, that's generally...so annually, we have about seventy people we have to replace.

Cockett: The expertise and the know-how is very important, I agree.

Sparks: One thought about the implications of doing this is that it gives the mayor a little more immediate influence over these more independent boards and commissions -- like the water board...if every three years a person's term is up, she can make a choice, right...do they continue or not. Possibly it's not a big deal if so many are dropping out anyway. So, it enhances the administration's flexibility to control appointments to boards and commissions. One theory is that it would improve accountability to the public, by giving the executive branch that much more ability to follow through what they promised the public...and not be frustrated, say, by independent boards appointed by a predecessor that's still got a majority of people not in the same philosophy or approach. I suppose there's another philosophy that says that's too strong a mayor...

Chair Nakasone: Well, I thought these boards work independent of the administration.

Sparks: But, the administration appoints them.

Chair Nakasone: Right, but it's confirmed by the council, too.

Sparks: So, it's sort of like the president appointing the supreme court; hopefully, from the president's point of view, they can appoint like-minded individuals...to the supreme court. And, if they get to make more appointments, they get more influence on it.

Chair Nakasone: Well, my question is...is it broke? [LAUGHTER]

Sparks: That's a good question.

Chair Nakasone: Any more comments, Dave?

DeLeon: No, I was just here for answering questions.

Chair Nakasone: Do you see any problem with the existing provisions?

DeLeon: No; I've only heard one individual who was actually complaining about it.

Takabuki: Just another point...when that person from the public did talk about this, I think there was also a comment that five years is so long a term...that sometimes that member can't really approach things with a fresh perspective. I mean, they build certain alliances...it's too long for someone to keep a certain...particularly in certain kinds of positions...the planning commission, I think, was mentioned...that they were concerned about that kind of thing happening...that it should be recycled to insure a fresh perspective...that was just a second point that I recall.

Reyes: Along that line that Dave mentioned... Yes, you have a pool of volunteers or applicants here to appoint to various boards and commissions; on the other hand, that doesn't necessarily mean that if the mayor wants to appoint someone...and if that long term is a factor, that person might not consider it because it's too long a term. In other words, you don't have...you are diminishing the pool of potentially good people, who are not volunteers, but would be good for certain boards and commissions, but because of the length of time they have to serve, they might have to decline the approach. So, it can work the other way, too.

DeLeon: Possibly.

Reyes: So, think about it.

Sparks: Another angle...if we shorten it up, it would involve more people...from the public...in their own government, as a positive value in most people's minds.

DeLeon: Except when you get into small communities, and you have a board like you're talking about creating on Lanai... I think you're going to have a real difficulty after a while finding people who aren't the same people circulating through the process.

Sparks: Well, Lanai's just going to have to grow or... [LAUGHTER]

Fabrao: They're anticipating growth... [LAUGHTER]

Reyes: How about that idea...three years is okay, but if you have reappointment... it's longer than five years. How about that?

Fabrao: May I ask a question? Has anyone really served the full five years? Have many of them served the full five years?

DeLeon: Almost everyone does...I'd say roughly 90%.

Fabrao: So, if they really want to get out of it because it's too long, they would

Fabrao: (Continued) have gotten out voluntarily?

DeLeon: We have people drop out all the time...10%.

Fabrao: So that wouldn't be any criteria for...

DeLeon: Yeah, I would say around 10%.

Fabrao: So really, it's not so bad then afterall.

Sparks: No, not from the individual finding people sort of thing.

Fabrao: But, I like the fresh ideas coming in, too; but then...

Sparks: Fresh ideas and more flexibility for the administration to...

Chair Nakasone: You have new members coming in just about every year.

Sparks: Because it rotates.

DeLeon: You get two new persons per board, per year.

Sparks: It's a close call whether it's broken or not. [LAUGHTER]

Fabrao: I would tend to just leave it alone.

Sparks: There's a tiny crack there somewhere... [LAUGHTER]

Fabrao: Are you asking for a motion there, Mr. Chairman?

Takabuki: It's not really on here, so I don't think we need a motion, do we?

Chair Nakasone: It wasn't a recommendation, but in event anyone recommended amendment...

Sparks: It was only one member from the public.

[Staff: It was two.]

Sparks: Was it two?

[Staff: There was one in the earlier round.]

Chair Nakasone: At Kihei, yes.

DeLeon: Same guy. It was Buck Joiner.

Takabuki: I knew I heard it twice... [LAUGHTER]

Sparks: Just because it's one guy, doesn't necessarily mean that it isn't a good idea.

Woodburn: That's why we discussed it, right?

Chair Nakasone: Okay, if no objections... Thank you, Dave. And, we'll leave it as is. So, back to Article...

Yonenaka: See? We saved time.

Takabuki: Item number 15 would be to increase the number of...or the percentage of the voters' signatures required, but also to allow their amendment to go directly to the electorate. Right now the requirement is for 10% of the voters in the last election, however that amendment has to go through the council process, so it's not a direct route. So, what the committee thought was maybe we should increase the signature amount, but allow a better access to the voting public.

Sparks: Why 20%?

Yonenaka: Council's worth 10%. [LAUGHTER]

Takabuki: Again, I think you need a pretty fair demonstration of support; I think twenty is reasonable, myself.

Fabrao: What is the rationale for changing it from ten to twenty?

Takabuki: Again, the process right now requires less signatures...it doesn't go directly to the electorate, it goes through the council process.

Fabrao: Oh, okay, okay.

Chair Nakasone: Yes, it's referred to the council.

Takabuki: So, the thought is to maybe increase the signature requirement, so you could show there's some basis for support, and then it goes directly to the council.

Sparks: I'm trying to remember...I think I checked...some other charter does this, right? Does it this way?

Takabuki: It goes to the council first?

Sparks: Yes, direct with 20%.

Takabuki: Right, but I don't remember which county it was.

Sparks: Let's see...20% of 40,000 is 8,000...

Mondoy: Is it necessary to increase?

Fabrao: It's a minority passing an amendment.

Takabuki: I forget the exact reasoning, but there should be a fair basis of support if you're going to put it on the ballot. It just depends whether...

Fabrao: Oh, it's to be placed on the ballot; okay.

Reyes: Is there a motion on the table, Mr. Chairman?

Takabuki: I'll so move.

Fabrao: Second.

Reyes: Again, did we answer why 20%?

Sparks: Because it goes directly on the ballot...not to through the council.

Reyes: Yes, I understand that. Why not leave it at 10% and go directly to the ballot.

Mondoy: Well, that was my question.

Yonenaka: Ten or twenty...I have a problem with ten, and I don't know why. I think it's because I put a lot into this Charter, and I sat on this committee, and it's a long process and it does take a lot of thought. I mean, we've talked about many issues that all of you have said things on that I never thought about. And, I think if we're going to change this document, it should go through that process; I think all of you agree that it is a long process at times, but ten percent is what? 4,000 people approximately voting on the Charter...8,000 sounds better. I'd like the process to be a little bit more...I don't want to say difficult, but at least time consuming... I would like to see the changes come from a body such as this, where we know we're going to meet and talk about things on a regular basis.

Sparks: Let's see...if we compared it to the U.S. Constitution, we'd need about two-thirds of the legislative branch...that's the council; plus three-fourths of all the districts...let's say three-fourths of all the community plan areas... So, 20% may be reasonable in this case.

Reyes: I'm asking why, okay?

Chair Nakasone: One of the provisions here is...with that ten percent, all it is is submitting that petition to the council for consideration; the council does not have to put it on the ballot. But in this case, it goes directly on the ballot.

Reyes: Yeah, okay.

Chair Nakasone: I think that twenty percent provision gives you some measure of the public's concern. Discussion? Further discussion?

Yonenaka: I was just wondering if that ten percent in here would be eliminated.

Cockett: Yes.

Chair Nakasone: Well, it would have to be drafted...

Sparks: What he's asking is would we keep that option, too; in other words, it goes "initiated by the council, initiated by 10% of the public to the council, initiated by the public by 20% directly to the ballot. There's three different possibilities, and I think the intention was to eliminate that second option.

Takabuki: Right; it was to replace it.

Yonenaka: The council still can put things on the ballot.

Chair Nakasone: Right. There's three ways right now. Further discussion? Okay, objections? No objections? MOTION CARRIED.
Okay, item 2.

Sparks: I move we leave as is. [LAUGHTER]

Takabuki: Well, I guess maybe the arguments and the discussion has been had...but, I would move to approve.

Chair Nakasone: Likewise...second. [LAUGHTER]

Takabuki: Without discussions?

Chair Nakasone: Discussion?

Sparks: Now this time, folks, notice the motion...notice which way they're going here. If you vote for it, you're voting to...

Chair Nakasone: The motion as recommended on item 15, subsection 2...okay?

Sparks: That's the majority of ballots drawn, instead of the majority of ballots cast.

Chair Nakasone: Ready for the question?

Reyes: Just for clarification before we vote...I just want to make sure... Again, as is means as votes cast?

Sparks: That's not the motion.

Wright: We're not voting on it as is.

Fabrao: We're voting to get the...

Wright: The change.

Takabuki: The majority of the votes drawn.

Reyes: Right; I just want to make sure everybody understands it that way.

Fabrao: If we vote against it, it would be...

Chair Nakasone: As is.

Reyes: To leave it as is, which is drawn, right?

Sparks: Which is cast.

Reyes: I'm sorry; cast, yeah.

Chair Nakasone: Ready for the question? All in favor of the motion, raise your right hand. Opposed? MOTION DIES. NOB [LAUGHTER].
Okay, there's no further item on the agenda...

Takabuki: Okay.

Cockett: What about item 16?

Takabuki: Oh, excuse me.

Fabrao: You can't forget the most important one...that's us guys.

Chair Nakasone: Well, we're looking again at the ten year mandatory review.

Fabrao: But this changes the date of the...

Cockett: Yes, that's for the next commission to meet.

Takabuki: It also extends the time by one month, which is the most you can really squeeze into that time period.

Fabrao: Wonderful.

Cockett: I recommend approval.

Takabuki: Second.

Sparks: Is it necessary to do it every ten years?

Chair Nakasone: Well, you have provisions that you can amend before...

Sparks: I was wondering if fifteen or twenty years...

Fabrao: No, Al! Things change in ten years.

Sparks: We've been doing it about every ten years or more frequent since the sixties, so this thing has been massaged, worked and fine tuned, adjusted how many times now...

Fabrao: But look how much more easier it is to work with now, than maybe it was during your time...eight years ago. [LAUGHTER]

Sparks: I don't know if easier is the right adjective. [LAUGHTER]

Chair Nakasone: We did have some good proposals though that died. [LAUGHTER]

Sparks: Are you talking about fifteen years ago or what? [LAUGHTER]

Chair Nakasone: Further discussion?

Yonenaka: I was just wondering...it says here 'to provide that a charter commission be appointed prior to March 1st'...so, they can appoint one anytime before March 1st?

Takabuki: No, there will have to be a window in there, actually; maybe we didn't specify it, but it cannot be prior to December 1st if the new term of the mayor will be December 1st.

Yonenaka: Okay, I was just wondering.

Sparks: So you'll get a draft of that one.

Takabuki: Yes, right.

Sparks: Is there a new mayor in the year 2000?

Takabuki: I don't know...we'll figure that out.

Sparks: 2002...this go around, the mayor could appoint them in November. This will be the same mayor.

Takabuki: I'm sorry, did we vote yet?

Fabrao: No.

Reyes: Mr. Chairman, is this in line with what's being adopted...not adopted...with what's being practiced with the current Charter and the Charter before that? Every ten years? I just want to know what the track is...it is along the same lines as every ten years, right?

Chair Nakasone: Yes. Okay, further discussion? Objections? None? MOTION CARRIED.

Takabuki: One thing we really didn't discuss between the committee members, is whether or not we want to consider a special commissions in between. So, if anyone wants to bring that up...you might want to think about it. For instance, in the last Charter they had a special commission on water because the Charter Commission identified that as an area that needed to be dealt with. So, just to leave that on the table...

Fabrao: Anne, you mentioned water and that brought a point to me... Is this an appropriate time to talk about it a little bit...about the water board?

Chair Nakasone: How about Thursday?

VI. NEXT MEETING DATE
Thursday, July 2, 1992 at 3:00 p.m., 7th floor, Council Committee Room.

VII. ADJOURNMENT
There being no further business, the meeting was adjourned at 7:00 p.m.

ACCEPTED:

Robert Nakasone, Chairman Date