

RECEIVED
CORPORATION COUNSEL

April 2, 2012

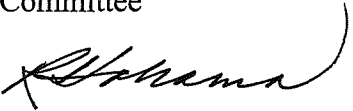
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OFFICE OF THE
COUNTY COUNCIL

12 APR -2 P5:37

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MEMO TO: Members of the Policy Committee

F R O M: G. Riki Hokama, Chair 
Policy Committee

SUBJECT: **PROPOSED CHARTER AMENDMENTS (CHARTER COMMISSION'S PROPOSALS)** (POL-10(12))

At its meeting of March 19, 2012, the Charter Commission adopted its draft report, as revised, containing 11 proposed Charter amendments. The Commission transmitted its final report to the Council on March 30, 2012.

The Council has 30 days from receipt of the final report to return proposed alternatives, if any, to the Charter Commission, pursuant to Section 50-8, Hawaii Revised Statutes. The statute provides as follows:

Within one year of its appointment, the charter commission shall submit a report in writing on its activities, findings, and recommendations to the legislative body of the county together with a draft of the proposed charter. The legislative body of the county may in turn propose one or more sections as alternative, or alternatives to any section of the proposed charter; provided that there shall not be more than a single proposition under any alternative proposal. Within thirty days after the receipt of the proposed charter from the commission, the legislative body shall return the proposed charter with the alternatives to the commission for its study.

I currently intend to schedule meetings of the Policy Committee on April 9, 2012, and April 17, 2012, to consider the Charter Commission's proposals and any comments or proposed alternatives the Committee may wish to recommend to the Council. By correspondence dated April 2, 2012, the Department of the Corporation Counsel provided guidance on the Committee's procedural options in this regard.

pol:ltr:010(12)amc01:cmn

cc: Edward Kushi, Jr., First Deputy Corporation Counsel
Joshua Stone, Chair, Charter Commission

050712 - Item No. II.A.

Charter Commission - Council members recommending most charter proposals get axed

From: Al Rabold <arabold@hawaii.rr.com>
To: The Maui News <letters@mauinews.com>
Date: 4/20/2012 1:31 PM
Subject: Council members recommending most charter proposals get axed
CC: Alan Arakawa <mayors.office@mauicounty.gov>, Gladys Baisa <gladys.baisa@mauicounty.us>, Robert Carroll <robert.carroll@mauicounty.us>, Elle Cochran <elle.cochran@mauicounty.us>, Donald Couch <don.couch@mauicounty.us>, Riki Hokama <riki.hokama@mauicounty.us>, Danny Mateo <danny.mateo@mauicounty.us>, Maui County Charter Commission <charter.commission@co.maui.hi.us>, Joseph Pontanilla <joseph.pontanilla@mauicounty.us>, Michael Victorino <michael.victorino@mauicounty.us>, <mike.white@mauicounty.us>

I read your April 20 article "Council members recommending most charter proposals get axed" with total disgust! Back when the Charter Commission decided to limit the number of proposed amendments because the voters were not capable enough to decide the 20 plus amendments they had, I was mildly insulted just as you should have been. I dare say, we are every bit as smart as they!

Today, the News printed this article "...charter proposals get axed" wherein the Council is concerned "...that voters could become overwhelmed if all 11 proposed amendments were included on the ballot." Needless to say, I was highly insulted, as you should have been too! After all the ballot always includes more than 11 decisions to be made and we're smart enough to not be overwhelmed with them! Truth be told, their stand is once again an attempt to maintain the status quo!

But, after giving it some thought, I realized that they must surely be right. After all, we were dumb enough to elect them! They just insulted you once again! Get mad people! Vote against the incumbents if you want progress.

Al Rabold
Kula, HI
808-878-8525

050712 - Item No. II. B.

JEFFREY T. KUWADA
County Clerk



LANCE TAGUCHI
Deputy County Clerk

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

April 26, 2012

RECEIVED
CORPORATION COUNSEL
2012 APR 27 PM 12: 20

Mr. Patrick Wong
Corporation Counsel
County of Maui
Wailuku, Hawaii 96793

Dear Mr. Wong:

Transmitted herewith are certified copies of Resolution Nos. 12-44 and 12-45, which were adopted by the Council of the County of Maui, State of Hawaii, on April 26, 2012. Also attached is a copy of Committee Report No. 12-51.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Jeffrey T. Kuwada", is written over a large, faint circular watermark or stamp.

JEFFREY T. KUWADA
County Clerk

/jym

Enclosure

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

April 26, 2012

**Committee
Report No.**

12-51

RECEIVED
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2012 APR 27 PM 12: 21

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy Committee, having met on November 2, 2011, April 9, 2012, April 13, 2012 (reconvene), and April 17, 2012, makes reference to the following:

1. County Communication 09-229, from Michael J. Molina, Chair, Committee of the Whole, relating to proposed amendments to the Revised Charter of the County of Maui (1983), as amended ("Charter").
2. County Communication 11-143, from Councilmember Mike White, transmitting a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR". The purpose of the proposed resolution is to propose a Charter amendment to establish an office of the county auditor. An office of the county auditor would strengthen the auditing function in County government.
3. County Communication 12-75, from the Chair of the Maui County Charter Commission, transmitting a copy of a document entitled "2011-2012 Maui County Charter Commission Final Report", dated March 30, 2012 ("Final Report"), containing 11 proposals for revisions to the Charter.

General

Your Committee notes that Section 50-8, Hawaii Revised Statutes ("HRS"), requires the Charter Commission to submit its report to the Council together with a draft of the proposed Charter within one year of its appointment. At its meeting of April 1, 2011, the Council appointed the members of the Charter Commission (Resolution 11-31). Therefore, the deadline for the Charter Commission to submit its report together with a draft of the proposed Charter was April 1, 2012.

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By correspondence dated March 30, 2012, the Chair of the Charter Commission transmitted the Final Report to the Council Chair.

Pursuant to Section 50-8, HRS, the Council has 30 days from its receipt of the Final Report to propose alternatives to the Charter Commission's proposals. Accordingly, the Council's deadline to propose alternatives is April 29, 2012.

Section 14-1(1) of the Charter provides for the initiation of Charter amendments by resolution of the Council adopted after two readings on separate days and passed by a vote of six or more members of the Council. According to an opinion dated April 2, 2012, from the Department of the Corporation Counsel, Section 14-1(1) does not apply to the procedure by which the Council may propose alternatives to the Charter Commission's proposed amendments. Therefore, the two-reading requirement under Section 14-1(1) need not be met for proposed Council alternatives to Charter Commission amendments.

Pursuant to Section 50-9, HRS, the Charter Commission has 30 days after receiving any alternatives from the Council to either: (1) accept the Council's alternatives and incorporate them into the Charter Commission's proposals; or (2) reject the Council's alternatives.

Your Committee appreciates the members and staff of the Charter Commission for their many months of dedicated work on behalf of the residents of the County. Your Committee offers this report with respect and admiration for the Charter Commission's diligence and its efforts to engage the public.

Your Committee noted that the 2012 general-election ballot will include the Presidential, Congressional, and Council member races, as well as State reapportionment issues. Your Committee voiced concerns over the number of proposed Charter amendments being considered. Although your Committee noted its faith in the electorate's capacity to wade through a hefty ballot and make well-informed decisions, your Committee was reluctant to overburden the electorate with proposed changes to the Charter that could be accommodated through revisions to the Maui County Code or in another election cycle. With that in mind, your Committee carefully considered the need and relative merits of the Charter Commission's proposals, as well as its own proposed alternatives.

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Proposal One – Council Term Limits

Proposal One would lengthen the current two-year term for Council members to four years, commencing on January 2, 2015. The proposal would allow Council members to serve for a maximum of three consecutive terms. The proposal would also stagger the Council members' terms by initially electing the five highest vote-getters to four-year terms, and electing the other four members to two-year terms. Thereafter, all terms would be for four years. In each election year following the initial transition, either four or five of the nine seats would be contested.

The First Deputy Corporation Counsel clarified that the terms of sitting Council members would not be counted toward the maximum consecutive terms that could be served.

Your Committee expressed concerns that a three-part question may confuse the voters. If retained, the proposal should combine the length of term, number of terms, and staggering of terms into a single question.

Your Committee discussed the related issue of how best to clarify that a Council member filling a vacancy in office could be assured that the remainder of the unexpired term being filled would not be counted toward the maximum number of terms. The First Deputy Corporation Counsel noted that Section 3-4 of the Charter would be a more appropriate place to address the issue and confirm the Charter's current interpretation. Such a clarification would be independent of the question whether the Council members' terms should be two or four years. The Chair of your Committee advised that he would propose a separate Charter amendment to address this concern, which was most recently confronted by the Council Chair.

Your Committee discussed the alternative proposal presented by the Chair of your Committee, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COUNTY COUNCIL TERM LIMITS". The alternative proposal clarifies that the limit of three consecutive terms applies to full terms. It also deletes the phrase "whether such terms are two-year or four-year terms" because there would only be a two-year term in the initial transition. The alternative proposal does not count the transitional two-year term as a full term, and clarifies this treatment in a new final sentence of the proposed transitional provision designated as Section 15-4.

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Your Committee expressed support for the Chair's clarifying revisions, and for the view that the initial two-year, transitional terms should not be counted as full terms. Your Committee recommended that the proposed resolution be adopted to present the alternative to Proposal One to the Charter Commission.

Proposal Two – Shoreline and Ocean Rescue and Safety

Proposal Two would assign shoreline and ocean rescue and safety to the Department of Fire and Public Safety. Currently, ocean rescue personnel are housed within the Department of Parks and Recreation, although the Charter is silent as to which, if any, County department should bear responsibility for this function.

Your Committee questioned whether the Mayor has the authority to transfer the responsibilities for ocean rescue and safety without a Charter amendment. The First Deputy Corporation Counsel advised that the Charter Commission wanted to make clear that ocean safety functions should be handled by the Department of Fire and Public Safety. He noted that Section 8-7.4(2) of the Charter includes references to "rescue" and "sea" and by implication, could be read to include ocean rescue, although historically, that has not been the case. In addition, Section 7-5(10) of the Charter allows the Mayor to assign powers, duties, and functions not already assigned; however, positions would need to be funded by the Council.

The Chair of your Committee advised that he was exploring with the State the feasibility of having ocean safety functions handled by the State Department of Land and Natural Resources ("DLNR"), rather than by a County department. The State Legislature is now considering the establishment of a task force to review, between sessions, the feasibility of transferring ocean safety functions, as well as the kapu system and small-boat harbor program. The Chair emphasized that such a proposal would not involve any loss of jobs. He questioned whether DLNR would cancel certain contracts with the County if the Charter mandates that a County department absorb those functions.

Your Committee noted that information was lacking on the costs associated with the proposed transfer of responsibility and related positions to the Department of Fire and Public Safety. Your Committee notes the reluctance expressed by Mark Vaught, Chair of the Fire and Public Safety Commission, to support the proposed 20 percent increase in personnel within the Department without a comprehensive plan in place. Your Committee supported pursuing options with DLNR and expressed appreciation for the work being performed by ocean safety officers. Your Committee made clear that its

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inability to support Proposal Two has no bearing on the caliber of the ocean safety personnel or their work. Your Committee recommended that the Charter Commission consider deleting Proposal Two.

Proposal Three – Office of the County Auditor

Proposal Three would establish an independent office of the county auditor. Your Committee notes that the Charter Commission worked from Councilmember White's proposal in developing Proposal Three. Much of the rationale for establishing the office is covered in Councilmember White's proposal. This proposal notes that the office of the county auditor would strengthen the auditing function in County government and ensure that agencies and programs of the County are held to the highest standard of accountability to the public. Through their respective charters, the City and County of Honolulu, and the Counties of Kauai and Hawaii have established similar offices and functions.

One of the primary changes in the Charter Commission's proposal is to attach the Cost of Government Commission as an "advisory board to the County Auditor". In Proposal Three, the powers and duties of the Cost of Government Commission remain unchanged, without express oversight by or direction from the county auditor.

Your Committee discussed two alternative proposals presented by the Chair of your Committee, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR". Both resolutions would suggest to the Charter Commission an alternative to Proposal Three, relating to the county auditor.

Your Committee focused on the alternative proposal which largely parallels Article VII, Section 10, of the Constitution of the State of Hawaii, relating to the State legislative auditor. It also exempts the county auditor and necessary staff from the civil service.

This alternative proposal simplifies Proposal Three by removing details such as qualifications, subpoena powers, restrictions, and definitions, and leaving those specifics to be fixed by ordinance. This alternative would appropriately scale down the county auditor provisions, in line with other functions, departments, and offices authorized by the Charter. Your Committee acknowledges prior comments by the Charter Commission

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concerning balance within the body of the Charter. As with previous proposals, the intent of the proposal is to maintain the independence of the county auditor.

Your Committee recognized that the Cost of Government Commission had done good work for the County in the past, most recently in its study of the County's vehicle fleet and cost-benefit analysis of the County's boards and commissions. Proposal Three highlighted for your Committee the question of whether this volunteer board would still be necessary once the office of the county auditor had been established. Your Committee supported the alternative proposal that would eliminate the Cost of Government Commission, in light of the functions to be served by the county auditor. The alternative proposal leaves intact the necessary revisions to Section 9-13 of the Charter, as well as the proposed transitional provision, designated as Section 15-5.

Your Committee recommended that the revised proposed resolution be adopted to present the alternative to Proposal Three to the Charter Commission.

Proposal Four – Interactive Communications Access

This proposal would require interactive communications access for public testimony at all meetings of the County Council and its committees for the residents of Hana, Lanai, and Molokai, as well as other geographic areas that the Council deems appropriate and reasonable. Your Committee also considered the alternative proposal from the Chair of your Committee, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COMMUNICATIONS ACCESS". The alternative deletes references to "interactive" and "other geographic areas", as well as an example of what "access" means.

Some parts of the Charter Commission's proposal are unclear. The phrase "to the extent capable" could be interpreted to mean that if the County can afford a state-of-the-art videoconferencing system, it is required. It could mean that the service is required only if resources are made available. Or, it could be interpreted to allow for emergencies, where communications have been temporarily suspended. The phrase "appropriate and reasonable" only applies to the Council's authority to extend this mandate to other regions. The consequences of noncompliance are also unclear, including whether a Council or committee action would be invalidated if the connection to a district is lost. Charter amendments are possible only once every two years, so wording must be carefully considered. Ordinances are much easier to correct.

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Your Committee was reluctant to support a Charter mandate regarding fast-changing technology. Your Committee emphasized that the Council has been proactive in providing additional opportunities for the community to participate in its meetings. Your Committee weighed the added benefits of increasing the ease with which the public can provide testimony against uncertainties as to facilities, personnel, and equipment cost; repercussions on an ongoing meeting; vagueness in the proposal; benefits of attending district meetings; levels of redundancy needed to ensure reliability; and the cost and feasibility of providing this service at site inspections or other off-site meetings.

Your Committee noted concerns over the length of time the service has been considered but not implemented. However, it is precisely these types of uncertainties and cost implications that have stalled implementation. A more workable standard is needed to justify a Charter amendment. Your Committee suggested other, more flexible ways to address this issue, such as legislation that could be adjusted as technology, expectations, and budgets change. Your Committee cautioned against placing such a proposal before the electorate without any guidance as to how its implementation might affect taxpayers.

Your Committee did not support Proposal Four. However, if Proposal Four is retained, your Committee urges the Charter Commission to, at minimum, (1) address the concerns raised in this report; (2) delete the requirement of interactive communication access for site inspections and other meetings that are not held in the Council Chamber; (3) clarify that the intent is to limit the requirement to the public testimony component of the meeting, by replacing the phrase "include, but not be limited to," with "allow for" or other wording, as appropriate; (4) define what is meant by "interactive"; (5) clarify the consequences of noncompliance on actions taken at a meeting; and (6) provide cost implications to the electorate to allow for a well-informed decision on the ballot question.

Your Committee reiterated its commitment to provide public access to its meetings, and to continue to hold meetings in Hana, Lanai, and Molokai as feasible. Your Committee recommended that the Charter Commission consider deleting Proposal Four.

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Proposal Five – Publication of Charter Amendments

Proposal Five would require that the Charter be “revised and published . . . to include all new significant amendments adopted”. Your Committee views this proposal as a call to ensure that Charter amendments be integrated into a single, cohesive document upon adoption. Your Committee notes the frustration of the Charter Commission in working with the Charter with separate page inserts. However, your Committee felt strongly that the proposal lacks merit in the context of an amendment to the County’s constitutional document. The County Clerk noted he would republish the Charter following the 2012 general election. Your Committee committed to work with the County Clerk to adopt an appropriate policy to have Charter amendments integrated in a timely manner, if necessary through the enactment of an ordinance. Your Committee also noted that any amendment to the Charter may be viewed as significant, and that the wording should be clarified if Proposal Five is retained. Your Committee recommended that the Charter Commission consider deleting Proposal Five.

Proposal Six – Defense and Indemnification of Board Members

Proposal Six would require the County to provide or fund “the defense of members of all Maui county boards and commissions” and to “indemnify all members of boards and commissions in the event of a civil action as a result of the bona fide and good faith discharge of their official duties and indemnify said members in the event of the lawful performance of their duties”. Your Committee notes that the proposed Charter amendment language is worded in a confusing manner, redundant, and inconsistent with the proposed ballot question. At a minimum, your Committee urges that, if retained, the Charter Commission reevaluate the language proposed for insertion as a new Section 13-2(18).

The First Deputy Corporation Counsel advised that the Department’s established practice is to review the alleged facts of every civil complaint, and conduct an investigation to see if the county employee or officer (which includes, by definition, a board member) was acting within the scope of his or her duties, warranting defense and indemnification.

Your Committee’s understanding is that the intent of the proposed Charter amendment is to only allow for defense and indemnification to the extent already authorized by law. Your Committee notes concerns as to whether an attempt to reduce legal principles relating to the defense and indemnification of board members to a single

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sentence can adequately cover the situations the County may confront. Your Committee appreciates the work and contributions of community-minded individuals who serve on the County's volunteer boards and commissions. However, your Committee questioned whether Proposal Six adequately protects the interests of the County's taxpayers, and whether it would encourage plaintiffs interested in suing the County to cast a broader net. Your Committee observed that the existing process works and that the proposed amendment is unnecessary. Your Committee noted it preferred to reserve policy considerations over the defense and indemnification of board members for future discussion, if needed. Your Committee recommended that the Charter Commission consider deleting Proposal Six.

Proposal Seven – County Council Residency Requirements

Proposal Seven would increase the durational residency requirements of a candidate for Council. The First Deputy Corporation Counsel advised your Committee that the proposed one-year residency requirement for the elected office would be Constitutional. Your Committee expressed support for the proposal. However, the ballot question is misleading. It suggests that currently, a person seeking to be elected to the Council must be a resident in the area from which the person seeks election for 90 days before filing nomination papers. Section 3-3 of the Charter currently requires a person seeking to be elected to the Council to be a resident of the County for a period of 90 days preceding the filing of nomination papers and a resident of the area from which the person seeks to be elected at the time of filing of nomination papers. Your Committee urges the Charter Commission to revise the ballot question to more accurately reflect the proposed amendment to Section 3-3 of the Charter. Your Committee recommended that the Charter Commission consider placing Proposal Seven on the next general-election ballot.

Proposal Eight – Residency Requirements for the Mayor

Proposal Eight would increase the residency requirement in the County from 90 days to 1 year before a candidate for Mayor files nomination papers. Your Committee acknowledged that this proposed amendment would be consistent with Proposal Seven, but did not see a need for it. Your Committee, therefore, recommended that the Charter Commission consider deleting Proposal Eight.

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Proposal Nine - Sustainability

Proposal Nine would add to the Department of Environmental Management the following function: "Guide efforts to optimize opportunities for environmental, natural resource protection, sustainability, conservation, and restoration." The Director of Environmental Management summarized the current Charter-mandated functions of the Department as dealing with the disposition of solid and liquid waste in the County. He noted that various sustainability-type measures are already handled by the Department, including recycled water, gas-to-energy conversion, and other recycling efforts. The Director advised that in many other jurisdictions, an office of sustainability resides within the Mayor's office. Your Committee questioned whether the Department of Environmental Management should be renamed to the Department of Waste Management since the Department's functions focus on the disposition of solid and liquid waste.

Your Committee received an alternative proposal presented by the Chair of your Committee, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT". The alternative would rename the Department of Environmental Management to the Department of Waste Management. The proposal was presented to address the scope of the Department and to remove the possible conflict in Article 8, Chapter 15, of the Charter, should both Proposal Nine and the proposed alternative to rename the Department be approved.

Your Committee acknowledged that the Department's current name suggests coverage of environmental concerns over and above the handling of waste. Your Committee was concerned, however, that centralizing such responsibilities in the Department of Environmental Management may not be the best approach. Sustainability issues require coordination with other governmental agencies, such as DLNR and the State Department of Health, and an executive office may be better suited for the task. Indeed, your Committee noted that "sustainability" is a huge undertaking that could be defined in many different ways.

Your Committee supports promoting opportunities for environmental protection, sustainability, conservation, and restoration, and believes such efforts can continue despite the absence of a Charter amendment. However, your Committee views those opportunities as best being promoted through the Office of the Mayor or the Department of Management. In that manner, all County departments could be encouraged to treat

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sustainability as a Countywide priority. Your Committee did not agree that Proposal Nine appropriately allocated sustainability efforts by placing them in the proposed Department. Your Committee also could not support the need for a Charter amendment to guide such efforts at this time. Your Committee recommended that the Charter Commission consider deleting Proposal Nine.

Proposal Ten – Consistency in Commission References

Proposal Ten would provide consistency in the process by which the Fire and Public Safety Commission, Civil Service Commission, Police Commission, and Liquor Control Commission handle the evaluation and removal of its directors or chiefs. The proposal would require that each of the commissions annually review and evaluate the performance of the chief or director, as the case may be, and submit a report to the Mayor and the Council. David Jorgensen, the Vice-Chair of the Police Commission, requested clarification on what is meant by a “report” in this context, noting concerns over confidentiality of performance evaluations. The Director of Personnel Services advised your Committee that currently, the Police Commission and the Fire and Public Safety Commission conduct annual performance evaluations of their respective chiefs, but the Liquor Commission and the Civil Service Commission do not conduct annual evaluations of their directors.

Your Committee agreed that there is value in consistency of the referenced Charter provisions, and in bringing parity to the process of performance evaluations, appointment, and removal for each of these key positions. Your Committee also agreed that the requirement of a “report” should be better defined if the proposal is retained. The Charter Commission considered this proposal to be a “housekeeping” amendment. Your Committee noted that the Council could pursue a resolution urging the commissions to implement the proposed process. In light of competing considerations, your Committee concluded that Proposal Ten is not critical and recommended that the Charter Commission consider deleting it.

Proposal Eleven - Preamble

Proposal Eleven would supplement the Charter’s preamble. Your Committee noted that the proposed language reflects the fundamental principles of County government and serves as an appropriate reminder for the people of the County. Your Committee recommended that the Charter Commission consider placing the proposal on the next general-election ballot.

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Recommendations

After due consideration, your Committee pared the 11 proposals submitted by the Charter Commission down to 4 proposals that it could support. Your Committee's recommendation that the Charter Commission consider deleting 7 of the proposals is not intended to diminish the thoughtful consideration, hard work, and long hours invested by the Charter Commission. Your Committee asks that the Charter Commission carefully consider these recommendations and your Committee's willingness to propose legislation, as noted, to address some of the concerns reflected in the Charter Commission's proposals. Your Committee thanks the Charter Commission for bringing these concerns to the forefront.

Your Committee voted 8-0 to recommend adoption of the proposed resolution entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COUNTY COUNCIL TERM LIMITS" and the revised proposed resolution entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR". Your Committee also voted 8-0 to recommend that the Charter Commission consider placing Proposals Seven and Eleven on the next general-election ballot; and that the Charter Commission consider deleting Proposals Two, Four, Five, Six, Eight, Nine, and Ten. Committee Chair Hokama, Vice-Chair Carroll, and members Baisa, Cochran, Couch, Mateo, Victorino, and White voted "aye". Committee member Pontanilla was excused.

Your Committee is in receipt of a revised proposed resolution entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR", approved as to form and legality by the Department of the Corporation Counsel.

Your Policy Committee RECOMMENDS the following:

1. That Resolution 12-44, attached hereto, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COUNTY COUNCIL TERM LIMITS", be ADOPTED;

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2. That Resolution 12-45, attached hereto, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR", be ADOPTED;

3. That, with reference to the 11 proposals in the Charter Commission's Final Report dated March 30, 2012, the Charter Commission is encouraged to CONSIDER the following:
 - A. Place Proposal Seven, relating to County Council residency requirements, on the next general-election ballot;
 - B. Place Proposal Eleven, relating to the preamble, on the next general-election ballot;
 - C. Delete Proposal Two, relating to shoreline and ocean rescue and safety;
 - D. Delete Proposal Four, relating to interactive communications access;
 - E. Delete Proposal Five, relating to publication of Charter amendments;
 - F. Delete Proposal Six, relating to defense and indemnification of board members;
 - G. Delete Proposal Eight, relating to residency requirements of the Mayor;
 - H. Delete Proposal Nine, relating to the addition of sustainability to the Director of Environmental Management's functions; and
 - I. Delete Proposal Ten, relating to consistency in the process for the four specified commissions;

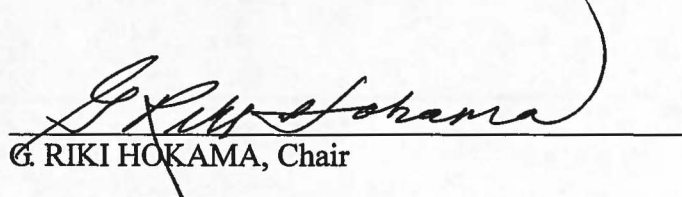
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4. That a copy of this committee report be TRANSMITTED to the Charter Commission as the recommendations of the Council; and
5. That the Council Chair be AUTHORIZED to transmit any further comments and recommendations of the Council to the Charter Commission.

This report is submitted in accordance with Rule 8 of the Rules of the Council.


G. RIKI HOKAMA, Chair

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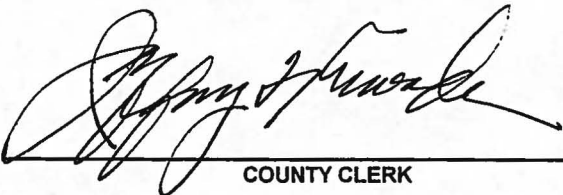
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 12-51 were adopted by the Council of the County of Maui, State of Hawaii, on the 26th day of April, 2012, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

Resolution

No. 12-44

RECEIVED
CORPORATION COUNSEL
2012 APR 27 PM 12: 21

PROPOSING AN ALTERNATIVE AMENDMENT TO
THE REVISED CHARTER OF THE COUNTY OF MAUI
(1983), AS AMENDED, RELATING TO
COUNTY COUNCIL TERM LIMITS

BE IT RESOLVED by the Council of the County of Maui:

1. That, pursuant to Chapter 50, Hawaii Revised Statutes, and in response to the "2011-2012 Maui County Charter Commission Final Report" dated and received March 30, 2012, it hereby does propose, as an alternative amendment to Proposal One, that Section 3-2, Subsection 5, of the Revised Charter of the County of Maui (1983), as amended ("Charter"), be amended to read as follows:

"Section 3-2(5). The term of office of council members shall be for [two (2) years,] four (4) years, beginning at twelve o'clock meridian on the second day of January following their election. [No] Effective January 2, 2015, no member of the county council, from any residency area, shall serve more than [five consecutive full terms] three (3) consecutive full terms of office."

2. That it does hereby propose that Article 15 of the Charter, relating to Transitional Provisions, be amended to add a new section to be appropriately designated and to read as follows:

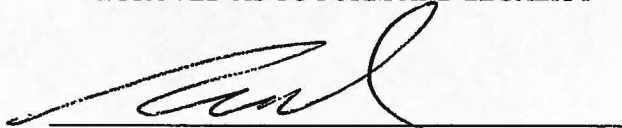
"Section 15-4. Transitional Provisions Relating to Staggering of Council Members' Terms. The terms of council members shall be staggered commencing on January 2, 2015, and shall be implemented in accordance with this section as follows: in the 2014 election, the five (5) council members who receive the highest number of votes shall be elected to serve four (4) year terms; the remaining four (4) council members shall be elected to serve a two (2) year term commencing on January 2, 2015, provided that in the 2016 election, these council positions serving such two (2) year terms shall be elected to serve four (4) year terms

Resolution No. 12-44

commencing on January 2, 2017. For purposes of this transition, each of the two (2) year terms served from January 2, 2015 to January 2, 2017 shall not be counted as a full term."

3. That certified copies of this resolution be transmitted to the Charter Commission and the Corporation Counsel of the County of Maui.

APPROVED AS TO FORM AND LEGALITY

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Department of the Corporation Counsel
County of Maui

pol:misc:010(12)areso_Proposal_One:cmn

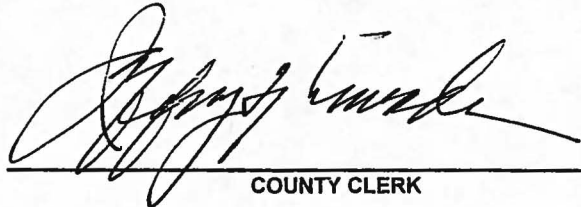
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 12-44 was adopted by the Council of the County of Maui, State of Hawaii, on the 26th day of April, 2012, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

Resolution

RECEIVED
CORPORATION COUNSEL
2012 APR 27 PM 12: 21

No. 12-45

PROPOSING AN ALTERNATIVE AMENDMENT TO
THE REVISED CHARTER OF THE COUNTY OF MAUI
(1983), AS AMENDED, TO ESTABLISH AN OFFICE
OF THE COUNTY AUDITOR

BE IT RESOLVED by the Council of the County of Maui:

1. That, pursuant to Chapter 50, Hawaii Revised Statutes, and in response to the “2011-2012 Maui County Charter Commission Final Report” dated and received March 30, 2012, it hereby does propose, as an alternative amendment to Proposal Three, that Article 3 of the Revised Charter of the County of Maui (1983), as amended (“Charter”), pertaining to the County Council, be amended to add new sections to read as follows:

“Section 3-9. County Auditor. The council, by a majority vote of its members, shall appoint a county auditor who shall serve for a period of six years and thereafter until a successor has been appointed. The council, by a two-thirds vote of its members, may remove the county auditor from office at any time for cause. It shall be the duty of the county auditor to conduct post-audits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the county; to certify to the accuracy of all financial statements issued by the respective accounting officers; and to report the county auditor’s findings and recommendations to the mayor and to the council at such times as shall be provided by law. The county auditor shall also make such additional reports and conduct such other investigations as may be directed by the council. The county auditor shall be exempt from the civil service and may appoint the necessary staff, who shall also be exempt from the civil service and shall serve at the pleasure of the county auditor.”; and

2. That it does hereby propose that Article 9, Section 9-13 of the Charter, relating to Audit of Accounts, be amended to read as follows:

Resolution No. 12-45

“Section 9-13. Audit of Accounts. Within six (6) months after the beginning of each fiscal year, [the county council shall provide for] the county auditor shall conduct or cause to be conducted an independent financial audit of the funds, accounts, and other evidences of financial transactions of the county and of all operations for which the county is responsible[.] for the audited fiscal year. The audit shall be [made] conducted by a certified public accountant or firm of certified public accountants[, designated by the council,] who have no personal interest, direct or indirect, in the fiscal affairs of the county or any of its operations. The audit shall include both financial accountability and adequacy of the financial and accounting system. If the State makes such an audit, the [council] county auditor may accept it as satisfying the requirements of this section. The scope of the audit shall be in accordance with the terms of a written contract [to be] recommended by the county auditor and signed by the council chair[,] as the contracting officer for the legislative branch, which contract shall encourage recommendations for better financial controls and procedures and shall provide for the completion of the audit within a reasonable time after the close of the previous fiscal year. A copy of the audit reports shall be filed with the county clerk and shall be a public record[.], unless otherwise provided by law.

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

3. That it does hereby propose that Article 15 of the Charter, relating to Transitional Provisions, be amended to add a new section to be appropriately designated and to read as follows:

“Section 15-5. Transfer of Audit Functions to the Office of the County Auditor. 1. All lawful obligations and liabilities owed by or to the office of council services relating to financial and performance audits on June 30, 2013 shall remain in effect on July 1, 2013. The obligations and liabilities shall be assumed by the office of the county auditor.

All contracts held by the office of council services relating to financial and performance audits which are to remain effective after June 30, 2013 shall be assumed by the office of the county auditor. The contracts shall continue in effect until fulfilled or lawfully terminated. All financial and performance audit activities administered by the office of council services on June 30, 2013 shall be assumed by the office of the county auditor on July 1, 2013.

Resolution No. 12-45

2. On July 1, 2013, all records, data, and information held by the office of council services relating to financial and performance audits which have not been completed as of June 30, 2013 shall be transferred to the office of the county auditor.”; and

4. That it does hereby propose that Article 8, Chapter 16 of the Charter, relating to the Cost of Government Commission, be deleted in its entirety as follows:

“[Section 8-16.1. Declaration of Policy. It is declared to be the policy of the county to promote economy, efficiency and improved service in the transaction of the public business in the legislative and executive branches of county by:

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

Section 8-16.2. Cost of Government Commission. For the purpose of carrying out the policy set forth herein the mayor with the approval of the council shall biennially appoint a cost of government commission consisting of nine members. Each such commission shall:

1. Prepare and submit to the mayor a request for an appropriation for the operation of the commission.
2. Study and investigate the organizations and methods of operations of all departments, commissions, boards, offices and other instrumentality of all branches of the county government and determine what changes, if any, may be desirable to accomplish the policy set forth herein.
3. Be authorized to secure directly from any department, commission, board, office, or any other instrumentalities of all branches of the county government or from any individual officer or employee of the county, information, suggestions, estimates, and statistics necessary to carry out its duties.
4. Submit a report of its findings and recommendations to the mayor and council not later than eleven months after its appointment.

Section 8-16.3. Term of Commission. Members of the Cost of Government Commission shall serve for staggered terms of two years, with an initial appointment of four members to serve two year terms and five members to serve one year terms. A member may be reappointed, but shall not serve on the commission for more than a total of four years.]"; and

5. That material to be repealed is bracketed and new material is underscored;

and

6. That certified copies of this resolution be transmitted to the Charter Commission and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, appearing to be a stylized name, is written over a horizontal line.

Department of the Corporation Counsel
County of Maui

pol:misc:010(12)breso_Proposal_Three

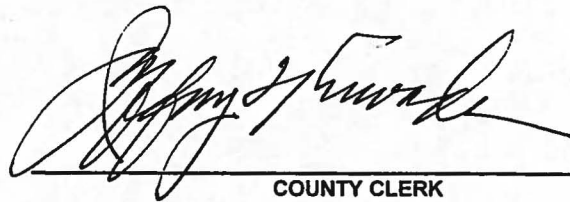
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 12-45 was adopted by the Council of the County of Maui, State of Hawaii, on the 26th day of April, 2012, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

orig.

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
Michael P. Victorino
Mike White



RECEIVED
CORPORATION COUNSEL

Director of Council Services
Ken Fukuoka

2012 APR 27 AM 10: 59

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

April 26, 2012

Mr. Joshua A. Stone, Chairman
Maui County Charter Commission
c/o Department of the Corporation Counsel
200 South High Street
Wailuku, Hawaii 96793

Dear Chairman Stone:

Transmitted herewith are certified copies of Resolution Nos. 12-44 and 12-45, and Committee Report No. 12-51, which were adopted by the Council of the County of Maui, State of Hawaii, on April 26, 2012.

Very truly yours,

DANNY A. MATEO
Council Chair

Enclosure

cc: Policy Committee
Director of Council Services
County Clerk

5/7/12

-Additional Agenda material rec'd 4/27/12

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

April 26, 2012

Committee
Report No. 12-51

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy Committee, having met on November 2, 2011, April 9, 2012, April 13, 2012 (reconvene), and April 17, 2012, makes reference to the following:

1. County Communication 09-229, from Michael J. Molina, Chair, Committee of the Whole, relating to proposed amendments to the Revised Charter of the County of Maui (1983), as amended (“Charter”).
2. County Communication 11-143, from Councilmember Mike White, transmitting a proposed resolution entitled “PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR”. The purpose of the proposed resolution is to propose a Charter amendment to establish an office of the county auditor. An office of the county auditor would strengthen the auditing function in County government.
3. County Communication 12-75, from the Chair of the Maui County Charter Commission, transmitting a copy of a document entitled “2011-2012 Maui County Charter Commission Final Report”, dated March 30, 2012 (“Final Report”), containing 11 proposals for revisions to the Charter.

General

Your Committee notes that Section 50-8, Hawaii Revised Statutes (“HRS”), requires the Charter Commission to submit its report to the Council together with a draft of the proposed Charter within one year of its appointment. At its meeting of April 1, 2011, the Council appointed the members of the Charter Commission (Resolution 11-31). Therefore, the deadline for the Charter Commission to submit its report together with a draft of the proposed Charter was April 1, 2012.

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

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By correspondence dated March 30, 2012, the Chair of the Charter Commission transmitted the Final Report to the Council Chair.

Pursuant to Section 50-8, HRS, the Council has 30 days from its receipt of the Final Report to propose alternatives to the Charter Commission's proposals. Accordingly, the Council's deadline to propose alternatives is April 29, 2012.

Section 14-1(1) of the Charter provides for the initiation of Charter amendments by resolution of the Council adopted after two readings on separate days and passed by a vote of six or more members of the Council. According to an opinion dated April 2, 2012, from the Department of the Corporation Counsel, Section 14-1(1) does not apply to the procedure by which the Council may propose alternatives to the Charter Commission's proposed amendments. Therefore, the two-reading requirement under Section 14-1(1) need not be met for proposed Council alternatives to Charter Commission amendments.

Pursuant to Section 50-9, HRS, the Charter Commission has 30 days after receiving any alternatives from the Council to either: (1) accept the Council's alternatives and incorporate them into the Charter Commission's proposals; or (2) reject the Council's alternatives.

Your Committee appreciates the members and staff of the Charter Commission for their many months of dedicated work on behalf of the residents of the County. Your Committee offers this report with respect and admiration for the Charter Commission's diligence and its efforts to engage the public.

Your Committee noted that the 2012 general-election ballot will include the Presidential, Congressional, and Council member races, as well as State reapportionment issues. Your Committee voiced concerns over the number of proposed Charter amendments being considered. Although your Committee noted its faith in the electorate's capacity to wade through a hefty ballot and make well-informed decisions, your Committee was reluctant to overburden the electorate with proposed changes to the Charter that could be accommodated through revisions to the Maui County Code or in another election cycle. With that in mind, your Committee carefully considered the need and relative merits of the Charter Commission's proposals, as well as its own proposed alternatives.

COUNCIL OF THE COUNTY OF MAUI
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Proposal One – Council Term Limits

Proposal One would lengthen the current two-year term for Council members to four years, commencing on January 2, 2015. The proposal would allow Council members to serve for a maximum of three consecutive terms. The proposal would also stagger the Council members' terms by initially electing the five highest vote-getters to four-year terms, and electing the other four members to two-year terms. Thereafter, all terms would be for four years. In each election year following the initial transition, either four or five of the nine seats would be contested.

The First Deputy Corporation Counsel clarified that the terms of sitting Council members would not be counted toward the maximum consecutive terms that could be served.

Your Committee expressed concerns that a three-part question may confuse the voters. If retained, the proposal should combine the length of term, number of terms, and staggering of terms into a single question.

Your Committee discussed the related issue of how best to clarify that a Council member filling a vacancy in office could be assured that the remainder of the unexpired term being filled would not be counted toward the maximum number of terms. The First Deputy Corporation Counsel noted that Section 3-4 of the Charter would be a more appropriate place to address the issue and confirm the Charter's current interpretation. Such a clarification would be independent of the question whether the Council members' terms should be two or four years. The Chair of your Committee advised that he would propose a separate Charter amendment to address this concern, which was most recently confronted by the Council Chair.

Your Committee discussed the alternative proposal presented by the Chair of your Committee, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COUNTY COUNCIL TERM LIMITS". The alternative proposal clarifies that the limit of three consecutive terms applies to full terms. It also deletes the phrase "whether such terms are two-year or four-year terms" because there would only be a two-year term in the initial transition. The alternative proposal does not count the transitional two-year term as a full term, and clarifies this treatment in a new final sentence of the proposed transitional provision designated as Section 15-4.

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

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Your Committee expressed support for the Chair's clarifying revisions, and for the view that the initial two-year, transitional terms should not be counted as full terms. Your Committee recommended that the proposed resolution be adopted to present the alternative to Proposal One to the Charter Commission.

Proposal Two – Shoreline and Ocean Rescue and Safety

Proposal Two would assign shoreline and ocean rescue and safety to the Department of Fire and Public Safety. Currently, ocean rescue personnel are housed within the Department of Parks and Recreation, although the Charter is silent as to which, if any, County department should bear responsibility for this function.

Your Committee questioned whether the Mayor has the authority to transfer the responsibilities for ocean rescue and safety without a Charter amendment. The First Deputy Corporation Counsel advised that the Charter Commission wanted to make clear that ocean safety functions should be handled by the Department of Fire and Public Safety. He noted that Section 8-7.4(2) of the Charter includes references to "rescue" and "sea" and by implication, could be read to include ocean rescue, although historically, that has not been the case. In addition, Section 7-5(10) of the Charter allows the Mayor to assign powers, duties, and functions not already assigned; however, positions would need to be funded by the Council.

The Chair of your Committee advised that he was exploring with the State the feasibility of having ocean safety functions handled by the State Department of Land and Natural Resources ("DLNR"), rather than by a County department. The State Legislature is now considering the establishment of a task force to review, between sessions, the feasibility of transferring ocean safety functions, as well as the kapu system and small-boat harbor program. The Chair emphasized that such a proposal would not involve any loss of jobs. He questioned whether DLNR would cancel certain contracts with the County if the Charter mandates that a County department absorb those functions.

Your Committee noted that information was lacking on the costs associated with the proposed transfer of responsibility and related positions to the Department of Fire and Public Safety. Your Committee notes the reluctance expressed by Mark Vaught, Chair of the Fire and Public Safety Commission, to support the proposed 20 percent increase in personnel within the Department without a comprehensive plan in place. Your Committee supported pursuing options with DLNR and expressed appreciation for the work being performed by ocean safety officers. Your Committee made clear that its

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

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Report No. 12-51

inability to support Proposal Two has no bearing on the caliber of the ocean safety personnel or their work. Your Committee recommended that the Charter Commission consider deleting Proposal Two.

Proposal Three – Office of the County Auditor

Proposal Three would establish an independent office of the county auditor. Your Committee notes that the Charter Commission worked from Councilmember White's proposal in developing Proposal Three. Much of the rationale for establishing the office is covered in Councilmember White's proposal. This proposal notes that the office of the county auditor would strengthen the auditing function in County government and ensure that agencies and programs of the County are held to the highest standard of accountability to the public. Through their respective charters, the City and County of Honolulu, and the Counties of Kauai and Hawaii have established similar offices and functions.

One of the primary changes in the Charter Commission's proposal is to attach the Cost of Government Commission as an "advisory board to the County Auditor". In Proposal Three, the powers and duties of the Cost of Government Commission remain unchanged, without express oversight by or direction from the county auditor.

Your Committee discussed two alternative proposals presented by the Chair of your Committee, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR". Both resolutions would suggest to the Charter Commission an alternative to Proposal Three, relating to the county auditor.

Your Committee focused on the alternative proposal which largely parallels Article VII, Section 10, of the Constitution of the State of Hawaii, relating to the State legislative auditor. It also exempts the county auditor and necessary staff from the civil service.

This alternative proposal simplifies Proposal Three by removing details such as qualifications, subpoena powers, restrictions, and definitions, and leaving those specifics to be fixed by ordinance. This alternative would appropriately scale down the county auditor provisions, in line with other functions, departments, and offices authorized by the Charter. Your Committee acknowledges prior comments by the Charter Commission

COUNCIL OF THE COUNTY OF MAUI
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concerning balance within the body of the Charter. As with previous proposals, the intent of the proposal is to maintain the independence of the county auditor.

Your Committee recognized that the Cost of Government Commission had done good work for the County in the past, most recently in its study of the County's vehicle fleet and cost-benefit analysis of the County's boards and commissions. Proposal Three highlighted for your Committee the question of whether this volunteer board would still be necessary once the office of the county auditor had been established. Your Committee supported the alternative proposal that would eliminate the Cost of Government Commission, in light of the functions to be served by the county auditor. The alternative proposal leaves intact the necessary revisions to Section 9-13 of the Charter, as well as the proposed transitional provision, designated as Section 15-5.

Your Committee recommended that the revised proposed resolution be adopted to present the alternative to Proposal Three to the Charter Commission.

Proposal Four – Interactive Communications Access

This proposal would require interactive communications access for public testimony at all meetings of the County Council and its committees for the residents of Hana, Lanai, and Molokai, as well as other geographic areas that the Council deems appropriate and reasonable. Your Committee also considered the alternative proposal from the Chair of your Committee, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COMMUNICATIONS ACCESS". The alternative deletes references to "interactive" and "other geographic areas", as well as an example of what "access" means.

Some parts of the Charter Commission's proposal are unclear. The phrase "to the extent capable" could be interpreted to mean that if the County can afford a state-of-the-art videoconferencing system, it is required. It could mean that the service is required only if resources are made available. Or, it could be interpreted to allow for emergencies, where communications have been temporarily suspended. The phrase "appropriate and reasonable" only applies to the Council's authority to extend this mandate to other regions. The consequences of noncompliance are also unclear, including whether a Council or committee action would be invalidated if the connection to a district is lost. Charter amendments are possible only once every two years, so wording must be carefully considered. Ordinances are much easier to correct.

COUNCIL OF THE COUNTY OF MAUI
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Your Committee was reluctant to support a Charter mandate regarding fast-changing technology. Your Committee emphasized that the Council has been proactive in providing additional opportunities for the community to participate in its meetings. Your Committee weighed the added benefits of increasing the ease with which the public can provide testimony against uncertainties as to facilities, personnel, and equipment cost; repercussions on an ongoing meeting; vagueness in the proposal; benefits of attending district meetings; levels of redundancy needed to ensure reliability; and the cost and feasibility of providing this service at site inspections or other off-site meetings.

Your Committee noted concerns over the length of time the service has been considered but not implemented. However, it is precisely these types of uncertainties and cost implications that have stalled implementation. A more workable standard is needed to justify a Charter amendment. Your Committee suggested other, more flexible ways to address this issue, such as legislation that could be adjusted as technology, expectations, and budgets change. Your Committee cautioned against placing such a proposal before the electorate without any guidance as to how its implementation might affect taxpayers.

Your Committee did not support Proposal Four. However, if Proposal Four is retained, your Committee urges the Charter Commission to, at minimum, (1) address the concerns raised in this report; (2) delete the requirement of interactive communication access for site inspections and other meetings that are not held in the Council Chamber; (3) clarify that the intent is to limit the requirement to the public testimony component of the meeting, by replacing the phrase "include, but not be limited to," with "allow for" or other wording, as appropriate; (4) define what is meant by "interactive"; (5) clarify the consequences of noncompliance on actions taken at a meeting; and (6) provide cost implications to the electorate to allow for a well-informed decision on the ballot question.

Your Committee reiterated its commitment to provide public access to its meetings, and to continue to hold meetings in Hana, Lanai, and Molokai as feasible. Your Committee recommended that the Charter Commission consider deleting Proposal Four.

COUNCIL OF THE COUNTY OF MAUI
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Proposal Five – Publication of Charter Amendments

Proposal Five would require that the Charter be “revised and published . . . to include all new significant amendments adopted”. Your Committee views this proposal as a call to ensure that Charter amendments be integrated into a single, cohesive document upon adoption. Your Committee notes the frustration of the Charter Commission in working with the Charter with separate page inserts. However, your Committee felt strongly that the proposal lacks merit in the context of an amendment to the County’s constitutional document. The County Clerk noted he would republish the Charter following the 2012 general election. Your Committee committed to work with the County Clerk to adopt an appropriate policy to have Charter amendments integrated in a timely manner, if necessary through the enactment of an ordinance. Your Committee also noted that any amendment to the Charter may be viewed as significant, and that the wording should be clarified if Proposal Five is retained. Your Committee recommended that the Charter Commission consider deleting Proposal Five.

Proposal Six – Defense and Indemnification of Board Members

Proposal Six would require the County to provide or fund “the defense of members of all Maui county boards and commissions” and to “indemnify all members of boards and commissions in the event of a civil action as a result of the bona fide and good faith discharge of their official duties and indemnify said members in the event of the lawful performance of their duties”. Your Committee notes that the proposed Charter amendment language is worded in a confusing manner, redundant, and inconsistent with the proposed ballot question. At a minimum, your Committee urges that, if retained, the Charter Commission reevaluate the language proposed for insertion as a new Section 13-2(18).

The First Deputy Corporation Counsel advised that the Department’s established practice is to review the alleged facts of every civil complaint, and conduct an investigation to see if the county employee or officer (which includes, by definition, a board member) was acting within the scope of his or her duties, warranting defense and indemnification.

Your Committee’s understanding is that the intent of the proposed Charter amendment is to only allow for defense and indemnification to the extent already authorized by law. Your Committee notes concerns as to whether an attempt to reduce legal principles relating to the defense and indemnification of board members to a single

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

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sentence can adequately cover the situations the County may confront. Your Committee appreciates the work and contributions of community-minded individuals who serve on the County's volunteer boards and commissions. However, your Committee questioned whether Proposal Six adequately protects the interests of the County's taxpayers, and whether it would encourage plaintiffs interested in suing the County to cast a broader net. Your Committee observed that the existing process works and that the proposed amendment is unnecessary. Your Committee noted it preferred to reserve policy considerations over the defense and indemnification of board members for future discussion, if needed. Your Committee recommended that the Charter Commission consider deleting Proposal Six.

Proposal Seven – County Council Residency Requirements

Proposal Seven would increase the durational residency requirements of a candidate for Council. The First Deputy Corporation Counsel advised your Committee that the proposed one-year residency requirement for the elected office would be Constitutional. Your Committee expressed support for the proposal. However, the ballot question is misleading. It suggests that currently, a person seeking to be elected to the Council must be a resident in the area from which the person seeks election for 90 days before filing nomination papers. Section 3-3 of the Charter currently requires a person seeking to be elected to the Council to be a resident of the County for a period of 90 days preceding the filing of nomination papers and a resident of the area from which the person seeks to be elected at the time of filing of nomination papers. Your Committee urges the Charter Commission to revise the ballot question to more accurately reflect the proposed amendment to Section 3-3 of the Charter. Your Committee recommended that the Charter Commission consider placing Proposal Seven on the next general-election ballot.

Proposal Eight – Residency Requirements for the Mayor

Proposal Eight would increase the residency requirement in the County from 90 days to 1 year before a candidate for Mayor files nomination papers. Your Committee acknowledged that this proposed amendment would be consistent with Proposal Seven, but did not see a need for it. Your Committee, therefore, recommended that the Charter Commission consider deleting Proposal Eight.

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

April 26, 2012
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Report No. 12-51

Proposal Nine - Sustainability

Proposal Nine would add to the Department of Environmental Management the following function: "Guide efforts to optimize opportunities for environmental, natural resource protection, sustainability, conservation, and restoration." The Director of Environmental Management summarized the current Charter-mandated functions of the Department as dealing with the disposition of solid and liquid waste in the County. He noted that various sustainability-type measures are already handled by the Department, including recycled water, gas-to-energy conversion, and other recycling efforts. The Director advised that in many other jurisdictions, an office of sustainability resides within the Mayor's office. Your Committee questioned whether the Department of Environmental Management should be renamed to the Department of Waste Management since the Department's functions focus on the disposition of solid and liquid waste.

Your Committee received an alternative proposal presented by the Chair of your Committee, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT". The alternative would rename the Department of Environmental Management to the Department of Waste Management. The proposal was presented to address the scope of the Department and to remove the possible conflict in Article 8, Chapter 15, of the Charter, should both Proposal Nine and the proposed alternative to rename the Department be approved.

Your Committee acknowledged that the Department's current name suggests coverage of environmental concerns over and above the handling of waste. Your Committee was concerned, however, that centralizing such responsibilities in the Department of Environmental Management may not be the best approach. Sustainability issues require coordination with other governmental agencies, such as DLNR and the State Department of Health, and an executive office may be better suited for the task. Indeed, your Committee noted that "sustainability" is a huge undertaking that could be defined in many different ways.

Your Committee supports promoting opportunities for environmental protection, sustainability, conservation, and restoration, and believes such efforts can continue despite the absence of a Charter amendment. However, your Committee views those opportunities as best being promoted through the Office of the Mayor or the Department of Management. In that manner, all County departments could be encouraged to treat

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

April 26, 2012
Page 11

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sustainability as a Countywide priority. Your Committee did not agree that Proposal Nine appropriately allocated sustainability efforts by placing them in the proposed Department. Your Committee also could not support the need for a Charter amendment to guide such efforts at this time. Your Committee recommended that the Charter Commission consider deleting Proposal Nine.

Proposal Ten – Consistency in Commission References

Proposal Ten would provide consistency in the process by which the Fire and Public Safety Commission, Civil Service Commission, Police Commission, and Liquor Control Commission handle the evaluation and removal of its directors or chiefs. The proposal would require that each of the commissions annually review and evaluate the performance of the chief or director, as the case may be, and submit a report to the Mayor and the Council. David Jorgensen, the Vice-Chair of the Police Commission, requested clarification on what is meant by a “report” in this context, noting concerns over confidentiality of performance evaluations. The Director of Personnel Services advised your Committee that currently, the Police Commission and the Fire and Public Safety Commission conduct annual performance evaluations of their respective chiefs, but the Liquor Commission and the Civil Service Commission do not conduct annual evaluations of their directors.

Your Committee agreed that there is value in consistency of the referenced Charter provisions, and in bringing parity to the process of performance evaluations, appointment, and removal for each of these key positions. Your Committee also agreed that the requirement of a “report” should be better defined if the proposal is retained. The Charter Commission considered this proposal to be a “housekeeping” amendment. Your Committee noted that the Council could pursue a resolution urging the commissions to implement the proposed process. In light of competing considerations, your Committee concluded that Proposal Ten is not critical and recommended that the Charter Commission consider deleting it.

Proposal Eleven - Preamble

Proposal Eleven would supplement the Charter’s preamble. Your Committee noted that the proposed language reflects the fundamental principles of County government and serves as an appropriate reminder for the people of the County. Your Committee recommended that the Charter Commission consider placing the proposal on the next general-election ballot.

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

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Recommendations

After due consideration, your Committee pared the 11 proposals submitted by the Charter Commission down to 4 proposals that it could support. Your Committee's recommendation that the Charter Commission consider deleting 7 of the proposals is not intended to diminish the thoughtful consideration, hard work, and long hours invested by the Charter Commission. Your Committee asks that the Charter Commission carefully consider these recommendations and your Committee's willingness to propose legislation, as noted, to address some of the concerns reflected in the Charter Commission's proposals. Your Committee thanks the Charter Commission for bringing these concerns to the forefront.

Your Committee voted 8-0 to recommend adoption of the proposed resolution entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COUNTY COUNCIL TERM LIMITS" and the revised proposed resolution entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR". Your Committee also voted 8-0 to recommend that the Charter Commission consider placing Proposals Seven and Eleven on the next general-election ballot; and that the Charter Commission consider deleting Proposals Two, Four, Five, Six, Eight, Nine, and Ten. Committee Chair Hokama, Vice-Chair Carroll, and members Baisa, Cochran, Couch, Mateo, Victorino, and White voted "aye". Committee member Pontanilla was excused.

Your Committee is in receipt of a revised proposed resolution entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR", approved as to form and legality by the Department of the Corporation Counsel.

Your Policy Committee RECOMMENDS the following:

1. That Resolution 12-44, attached hereto, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO COUNTY COUNCIL TERM LIMITS", be ADOPTED;

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

April 26, 2012
Page 13

Committee
Report No. 12-51

2. That Resolution 12-45, attached hereto, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR", be ADOPTED;

3. That, with reference to the 11 proposals in the Charter Commission's Final Report dated March 30, 2012, the Charter Commission is encouraged to CONSIDER the following:
 - A. Place Proposal Seven, relating to County Council residency requirements, on the next general-election ballot;
 - B. Place Proposal Eleven, relating to the preamble, on the next general-election ballot;
 - C. Delete Proposal Two, relating to shoreline and ocean rescue and safety;
 - D. Delete Proposal Four, relating to interactive communications access;
 - E. Delete Proposal Five, relating to publication of Charter amendments;
 - F. Delete Proposal Six, relating to defense and indemnification of board members;
 - G. Delete Proposal Eight, relating to residency requirements of the Mayor;
 - H. Delete Proposal Nine, relating to the addition of sustainability to the Director of Environmental Management's functions; and
 - I. Delete Proposal Ten, relating to consistency in the process for the four specified commissions;

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

April 26, 2012
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Committee
Report No. 12-51

4. That a copy of this committee report be TRANSMITTED to the Charter Commission as the recommendations of the Council; and
5. That the Council Chair be AUTHORIZED to transmit any further comments and recommendations of the Council to the Charter Commission.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



G. RIKI HOKAMA, Chair

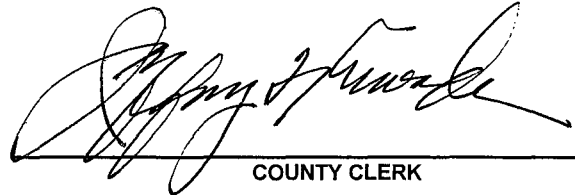
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 12-51 were adopted by the Council of the County of Maui, State of Hawaii, on the 26th day of April, 2012, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

Resolution

No. 12-44

PROPOSING AN ALTERNATIVE AMENDMENT TO
THE REVISED CHARTER OF THE COUNTY OF MAUI
(1983), AS AMENDED, RELATING TO
COUNTY COUNCIL TERM LIMITS

BE IT RESOLVED by the Council of the County of Maui:

1. That, pursuant to Chapter 50, Hawaii Revised Statutes, and in response to the “2011-2012 Maui County Charter Commission Final Report” dated and received March 30, 2012, it hereby does propose, as an alternative amendment to Proposal One, that Section 3-2, Subsection 5, of the Revised Charter of the County of Maui (1983), as amended (“Charter”), be amended to read as follows:

“Section 3-2(5). The term of office of council members shall be for [two (2) years,] four (4) years, beginning at twelve o'clock meridian on the second day of January following their election. [No] Effective January 2, 2015, no member of the county council, from any residency area, shall serve more than [five consecutive full terms] three (3) consecutive full terms of office.”

2. That it does hereby propose that Article 15 of the Charter, relating to Transitional Provisions, be amended to add a new section to be appropriately designated and to read as follows:

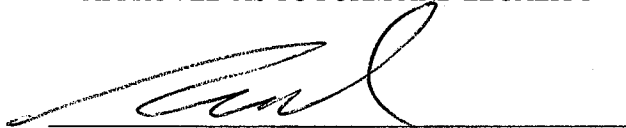
“Section 15-4. Transitional Provisions Relating to Staggering of Council Members’ Terms. The terms of council members shall be staggered commencing on January 2, 2015, and shall be implemented in accordance with this section as follows: in the 2014 election, the five (5) council members who receive the highest number of votes shall be elected to serve four (4) year terms; the remaining four (4) council members shall be elected to serve a two (2) year term commencing on January 2, 2015, provided that in the 2016 election, these council positions serving such two (2) year terms shall be elected to serve four (4) year terms

Resolution No. 12-44

commencing on January 2, 2017. For purposes of this transition, each of the two (2) year terms served from January 2, 2015 to January 2, 2017 shall not be counted as a full term.”

3. That certified copies of this resolution be transmitted to the Charter Commission and the Corporation Counsel of the County of Maui.

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, appearing to be 'C. M. ...', is written over a horizontal line.

Department of the Corporation Counsel
County of Maui

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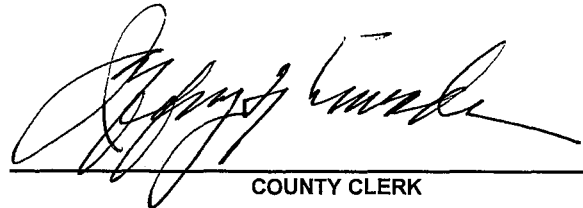
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is **HEREBY CERTIFIED** that **RESOLUTION NO. 12-44** was adopted by the Council of the County of Maui, State of Hawaii, on the 26th day of April, 2012, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

Resolution

No. 12-45

PROPOSING AN ALTERNATIVE AMENDMENT TO
THE REVISED CHARTER OF THE COUNTY OF MAUI
(1983), AS AMENDED, TO ESTABLISH AN OFFICE
OF THE COUNTY AUDITOR

BE IT RESOLVED by the Council of the County of Maui:

1. That, pursuant to Chapter 50, Hawaii Revised Statutes, and in response to the “2011-2012 Maui County Charter Commission Final Report” dated and received March 30, 2012, it hereby does propose, as an alternative amendment to Proposal Three, that Article 3 of the Revised Charter of the County of Maui (1983), as amended (“Charter”), pertaining to the County Council, be amended to add new sections to read as follows:

“Section 3-9. County Auditor. The council, by a majority vote of its members, shall appoint a county auditor who shall serve for a period of six years and thereafter until a successor has been appointed. The council, by a two-thirds vote of its members, may remove the county auditor from office at any time for cause. It shall be the duty of the county auditor to conduct post-audits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the county; to certify to the accuracy of all financial statements issued by the respective accounting officers; and to report the county auditor’s findings and recommendations to the mayor and to the council at such times as shall be provided by law. The county auditor shall also make such additional reports and conduct such other investigations as may be directed by the council. The county auditor shall be exempt from the civil service and may appoint the necessary staff, who shall also be exempt from the civil service and shall serve at the pleasure of the county auditor.”; and

2. That it does hereby propose that Article 9, Section 9-13 of the Charter, relating to Audit of Accounts, be amended to read as follows:

Resolution No. 12-45

“Section 9-13. Audit of Accounts. Within six (6) months after the beginning of each fiscal year, [the county council shall provide for] the county auditor shall conduct or cause to be conducted an independent financial audit of the funds, accounts, and other evidences of financial transactions of the county and of all operations for which the county is responsible[.] for the audited fiscal year. The audit shall be [made] conducted by a certified public accountant or firm of certified public accountants[, designated by the council,] who have no personal interest, direct or indirect, in the fiscal affairs of the county or any of its operations. The audit shall include both financial accountability and adequacy of the financial and accounting system. If the State makes such an audit, the [council] county auditor may accept it as satisfying the requirements of this section. The scope of the audit shall be in accordance with the terms of a written contract [to be] recommended by the county auditor and signed by the council chair[,] as the contracting officer for the legislative branch, which contract shall encourage recommendations for better financial controls and procedures and shall provide for the completion of the audit within a reasonable time after the close of the previous fiscal year. A copy of the audit reports shall be filed with the county clerk and shall be a public record[.], unless otherwise provided by law.

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

3. That it does hereby propose that Article 15 of the Charter, relating to Transitional Provisions, be amended to add a new section to be appropriately designated and to read as follows:

“Section 15-5. Transfer of Audit Functions to the Office of the County Auditor. 1. All lawful obligations and liabilities owed by or to the office of council services relating to financial and performance audits on June 30, 2013 shall remain in effect on July 1, 2013. The obligations and liabilities shall be assumed by the office of the county auditor.

All contracts held by the office of council services relating to financial and performance audits which are to remain effective after June 30, 2013 shall be assumed by the office of the county auditor. The contracts shall continue in effect until fulfilled or lawfully terminated.
All financial and performance audit activities administered by the office of council services on June 30, 2013 shall be assumed by the office of the county auditor on July 1, 2013.

2. On July 1, 2013, all records, data, and information held by the office of council services relating to financial and performance audits which have not been completed as of June 30, 2013 shall be transferred to the office of the county auditor.”; and

4. That it does hereby propose that Article 8, Chapter 16 of the Charter, relating to the Cost of Government Commission, be deleted in its entirety as follows:

“[Section 8-16.1. Declaration of Policy. It is declared to be the policy of the county to promote economy, efficiency and improved service in the transaction of the public business in the legislative and executive branches of county by:

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

Section 8-16.2. Cost of Government Commission. For the purpose of carrying out the policy set forth herein the mayor with the approval of the council shall biennially appoint a cost of government commission consisting of nine members. Each such commission shall:

1. Prepare and submit to the mayor a request for an appropriation for the operation of the commission.
2. Study and investigate the organizations and methods of operations of all departments, commissions, boards, offices and other instrumentality of all branches of the county government and determine what changes, if any, may be desirable to accomplish the policy set forth herein.
3. Be authorized to secure directly from any department, commission, board, office, or any other instrumentalities of all branches of the county government or from any individual officer or employee of the county, information, suggestions, estimates, and statistics necessary to carry out its duties.
4. Submit a report of its findings and recommendations to the mayor and council not later than eleven months after its appointment.

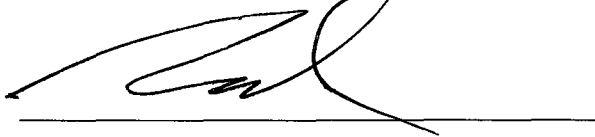
Section 8-16.3. Term of Commission. Members of the Cost of Government Commission shall serve for staggered terms of two years, with an initial appointment of four members to serve two year terms and five members to serve one year terms. A member may be reappointed, but shall not serve on the commission for more than a total of four years.]; and

5. That material to be repealed is bracketed and new material is underscored;

and

6. That certified copies of this resolution be transmitted to the Charter Commission and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Department of the Corporation Counsel
County of Maui

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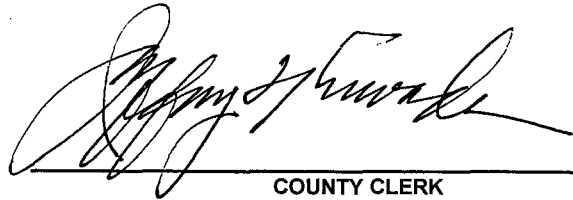
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 12-45 was adopted by the Council of the County of Maui, State of Hawaii, on the 26th day of April, 2012, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
Michael P. Victorino
Mike White



Director of Council Services
Ken Fukuoka

RECEIVED

COUNTY COUNCIL 2012 MAY -1 PM 2: 41
COUNTY OF MAUI OFFICE OF THE MAYOR
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.maui-county.gov/council

April 30, 2012

The Honorable Danny A. Mateo, Chair
and Members of the Council
County of Maui
Wailuku, Hawaii 96793

Dear Chair Mateo and Members:

SUBJECT: PUBLICATION OF THE MAUI COUNTY CHARTER (PAF 12-104)

Please find attached a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 1.14, MAUI COUNTY CODE, RELATING TO PUBLICATION OF THE MAUI COUNTY CHARTER". The purpose of the proposed bill is require that the County Clerk compile, publish, and distribute the Maui County Charter following any general or special election on any proposed Charter, or amendments thereto, to include all amendments adopted.

May I request that the attached proposed bill be referred to the appropriate standing committee for discussion and action.

Sincerely,

DONALD G. COUCH, JR.
Council Member

paf:kmh:12-104c

Enclosure

cc: Joshua Stone, Chair, Maui County Charter Commission

RECEIVED
CORPORATION COUNSEL
2012 MAY -2 AM 11: 03

Additional 5/7/12

ORDINANCE NO. _____

BILL NO. _____ (2012)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 1.14, MAUI COUNTY CODE,
RELATING TO PUBLICATION OF THE MAUI COUNTY CHARTER

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 1.14.020, Maui County Code, is amended to read as follows:

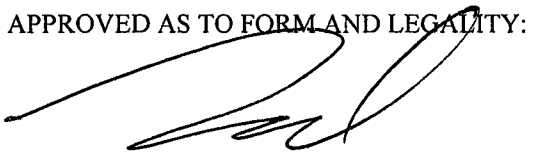
“1.14.020 Duties. In performing the function of revising and publishing county laws, the duties of the revisor of county laws, in order of priority, shall be:

- A. To publish and distribute supplements to the Maui County Code;
- B. To publish and distribute replacement volumes of the Maui County Code;
- C. [To compile, publish, and distribute the following as appendices to the Maui County Code:
 - 1. County charter;
 - 2. Rules of the council; and
 - 3. Rules and regulations promulgated by county agencies.] To compile, publish, and distribute the Maui County Charter in its entirety following any special or general election on any proposed charter, or amendment thereto to include all amendments adopted.

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



Edward S. Kushi, Jr.
Department of the Corporation Counsel
County of Maui
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NOTES ON COUNCIL RESPONSE TO CHARTER COMMISSION PROPOSALS

May 4, 2012

"Your committee was reluctant to overburden the electorate with proposed changes to the Charter that could be accommodated through revisions to the Maui County Code or in another election cycle. With that in mind, your committee carefully considered the need and relative merits of the Charter Commission's proposals, as well as its own proposed alternatives."

Proposal 1. Council Term.

The Council raised concerns about proposing a three-part question; raised concerns about the situation that Chairman Mateo found himself in regarding partial terms; and proposed that each Council Member be given three-full four-year terms. Those that draw the initial two-year terms would be subsequently given an additional "full term" or 14 years in office before they term out.

Question on the final part of this proposal: the members of who draw the shorter initial terms will be chosen because they received a lower vote counts in this election. The Council's proposal suggests that those with the lower voter counts should be rewarded with an additional 2-year term of office over the allotment allowed for the members with the higher vote count. And would result in some members serving 14 years before they term out.

On the three part question: rephrase: **The term of office of council members shall be for [two (2) years,] four (4) years, beginning at twelve o'clock meridian on the second day of January following their election. Effective January 2, 2015 no member of the county council for any residency area shall serve more than three (3) consecutive terms of office. The terms of office shall be staggered so that no more than five (5) council members will elected at a time.**

Proposal 2 Shoreline and Ocean Safety

The Council proposes that we wait on the state assigning DLNR to this function. That will be a long wait. The Council's arguments seem to be more of a stall than true alternative and suggests that the Council does not support the proposal to shift Ocean Safety to the Fire Department. That question should be resolved by the people and not the Council.

Proposal 3 Office of Auditor

Clearly, the Council's proposal would make the auditor a political instrument of the council, answerable and taking orders from the Council. **(The county auditor shall also make such additional reports and conduct such other investigations as may be directed by the council.)** A full-fledged Cost of Government Commission – five year terms and with strong appointments –

Additional rec'd from Dave DeLeon
on 5/7/12

will help keep the auditor from becoming just a “political instrument” of the Council, because it will be independent of the Council. The Council will not appoint the commission members and can not fire them. And under the description given here, all County agencies, including the Council, will be subject to the commission’s oversight. As such this newly aligned Cost of Government Commission can greatly help our goal of creating a truly independent audit function.

Proposal 4 Providing Remote Communities With An Electronic Means to Testify Before the County Council

Some members of the Council actively support this measure and want to see it happen and may initiate measures to see that happens immediately. However, previous Council Member also earnestly hoped to establish such systems decades ago. Let’s see if there is real momentum for taking action but continue this proposal until we are given firm assurances that action will be taken.

The Council raised some significant issues that need to be addressed:

- (1) Limit this requirement to meetings held in the Council Chambers.
- (2) Clarify that the purpose is only for testimony purposes and not for Council Members to participate in meeting from a remote location
- (3) Define “interactive.” The ability to communicate, question and answer, 2-way communication.
- (4) Clarify that if a communication link inadvertently is lost during a meeting, that fact will not require the meeting to be stopped.
- (5) The cost of this requirement. How much does a telephone call cost? Or a skype transmission? When the last commission proposed creating a Transportation Department, it did not and could not provide the public with the potential cost of developing a bus system. The same principle applies here.
- (6) I agree that the commission’s proposal is poorly written. I would change it to:
Shall Article 3, County Council, of the Charter of the County of Maui be amended to require interactive communications access for public testimony at all County Council and County Council committee meetings held in the Council Chambers for the residents of Lanai, Molokai, and Hana. (Note: if communications to a remote site is lost, the official meeting will be allowed to proceed.)

PROPOSAL FIVE PUBLISHING A NEW CHARTER WHEN AMENDMENTS OCCUR

It was suggested by more than one Council Member that the County Clerk will be required to republish the charter every time it is amended. Again, trust but verify. Wait for evidence that the Council will actually act and meanwhile, proceed with the proposal.

It was noted that every change to the charter is “significant” so that distinction should be dropped from the proposal.

PROPOSAL SIX REQUIRING DEFENSE AND INDEMNIFICATION OF COMMISSIONERS

The Corporation Counsel says he will not do anything differently. The Council says they are already doing this. So why aren't those who serve the County as commissioners reassured? Note that Council Chair Mateo has to spend his own money in defense of his proper elective status last year. That does not create reassurance.

I think that the proposed question language is a bit too legalistic: “in bona fide and good faith discharge of their official duties” How about “**who have served the county in good faith and within the legal scope of their duties as officers of the county...**”

PROPOSAL SEVEN RESIDENCY FOR COUNCIL MEMBERS

There is agreement

PROPOSAL EIGHT RESIDENCY FOR THE MAYOR

The Council said that the one-year requirement is so insignificant so to be meaningless. I agree. Make it three years.

PROPOSAL NINE ENVIRONMENTAL PROTECTION AND SUSTAINABILITY

When the Public Works Department was divided, creating the Department of Environmental Management, there was an active debate about whether to name the department Waste Management or Environmental Management. The Arakawa Administration fought for it to be named Environment Management to allow for it to someday include all matters of environmental concerns, and not just solid and liquid waste. The environmental and to some degree sustainability issues can be handled in a separate division in the department as originally envisioned. It is true that “sustainability” can mean everything and anything, so it is less precise term than environmental protection. The purpose of this measure is to indicate how important these concerns are and that there needs to be someone who is clearly assigned this function, and that they not just be left to the whims subsequent mayors. I am not surprised that there is resistance to this change in the existing department. Actually, I would be surprised if there was not resistance. That is nature to resist change and perceived increases to assignments. But the additional staff that would be included with this new assignment would do the new work, not the existing staff.

PROPOSAL TEN CONSISTENCY IN COMMISSION REFERENCES

The Council says that it was in agreement with this proposal, but because it is not “critical” at this time, it should be deleted. None of the proposals, the Commission’s nor the Council’s, are “critical” so by that measure we should not have met for the last year.

PROPOSAL 11 Preamble

I would argue that “history, heritage and culture” are in fact the same thing and being redundant can be reduced to “heritage” as it is used in the state constitution.