

May 13, 1992

Honorable Robert Nakasone, Chairperson
Maui County Charter Commission
Wailuku, Hawaii 96793

SUBJECT: COMMITTEE REPORT OF COMMITTEE C

Dear Chairman Nakasone and Members of the Charter Commission:

Committee C was assigned to review the provisions of Articles IX through XV of the Charter. The Committee met with the County Budget Director; Board of Ethics Chairperson and counsel; Council Budget Committee Chairperson and County Clerk during the course of its review. The Committee also received testimony from Mr. Jim Smith.

Written communications were received from the Council Budget Chairperson relative to Article IX (Financial Procedures); Councilmember Goro Hokama and the Board of Ethics relative to Article X (Code of Ethics); and from the County Clerk, relative to Articles XI and XII (Initiative and Recall).

After review and consideration of the various proposals, Committee C, at its meeting of May 7, 1992, approved the recommendations contained in the attachment for submittal to the full Charter Commission as its Committee Report. Sections of Articles IX through XV which are not specifically referred to in the attachment are not proposed to be changed.

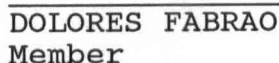
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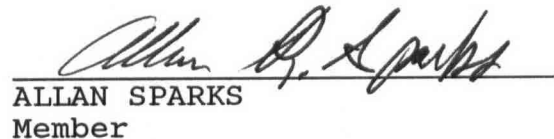
ANNE TAKABUKI
Chairperson



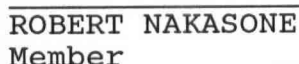
LLOYD YONENAKA
Member



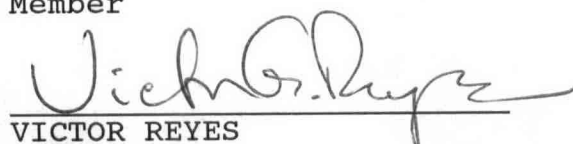
DOLORES FABRAO
Member



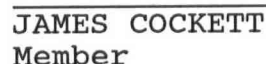
ALLAN SPARKS
Member



ROBERT NAKASONE
Member



VICTOR REYES
Member



JAMES COCKETT
Member

ARTICLES IX THROUGH XV - CHARTER AMENDMENTS FOR CONSIDERATION

ARTICLE IX - FINANCIAL PROCEDURES

1. Section 9-1 Fiscal Year

Proposal: Change annual budget to biennium budget.

Rationale: Promotes long-term planning; reduces time and money spent on production/passage of annual budget.

Recommendation: NOT REFERRED to Commission; no change to annual budget procedure. Both administration and council view annual budget as a vehicle for public input. Annual budget provides opportunity to review status of programs/project. Without support of either branch, it will be difficult to change to two-year budget.

2. Section 9-4 Budget and Capital Program: Notice and Hearing

Proposal: Change requirement that hearing shall be held by the council on the proposed budget "no sooner than the first day of April . . ."

Rationale: Council should be permitted to call for public hearing prior to April 1st.

Recommendation: REFERRED FOR APPROVAL by Commission. Change to read that public hearing shall be held "no later than the thirtieth day of April . . ."

3. Proposal: Add new section to require that Administration expend funds appropriated for council-initiated CIP projects.

Rationale: Currently the administration has the discretion as to which project it will pursue/release funds for. This has given the Council concern in cases where their priority projects are not implemented.

Recommendation: REFERRED WITHOUT RECOMMENDATION to Commission for further discussion to explore/review possible mechanisms to address council concerns with consideration of the effect on administration's authority; defer for further discussion.

4. Section 9-4 Budget and Capital Program: Notice and Hearing

Proposal: Require Mayor to make budget summaries available and publish budget summaries in newspaper by March 15.

Rationale: Give public notice as soon as possible to enable public to give testimony earlier.

Recommendation: REFERRED FOR APPROVAL by Commission, with amendment that budget summary shall be published in the newspapers within five (5) days of submittal to the council.

5. Section 9-6 Capital Program; Scope; Council Action

Proposal: Clarify Council authority to initiate changes to the capital program at any time during the fiscal year (provided the appropriate is unencumbered, unexpended and not otherwise deemed necessary for health and safety, etc.)

Rationale: The council should not be restricted from initiating changes in priorities in the area of capital project appropriations. Mayor's authority is protected by veto power.

Recommendation: REFERRED FOR APPROVAL by the Commission, with clarification that funds are available (unencumbered) to transfer.

6. Section 9-6 Capital Program; Scope; Council Action

Proposal: Clarify that the capital program shall be set forth in a separate ordinance which may be amended at any time during its effective period.

Rationale: Section 9-1 requires separate ordinances although the practice has been to combine the operating budget and capital program. (Corporation Counsel has found the practice to be legally permissible) Since the effective periods vary, (Operating budget terminates June 30; capital program December 31st) the operating budget and capital program should be separated.

Recommendation: REFERRED FOR APPROVAL by Commission.

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

Proposal: Recognize procedures established by state law relating to the setting of fees, rates, taxes and assessments.

Rationale: State law sometimes requires a different procedures for establishing certain fees, rates, taxes and assessments. Compliance with state law should satisfy the legality of the method of setting such items, and duplicate procedures on the County level should not be required.

Recommendation: REFERRED FOR APPROVAL by Commission.

8. Section 9-9 Appropriations and Changes.

Proposal: Allow the Mayor to certify additional estimated revenues to be received and require the Mayor to certify actual revenues received.

Rationale: In certain situations, where there is a reasonable certainty of the receipt of certain revenues, authority to recognize/expend revenues should be given prior to actual receipt.

Revenues actually received should be disclosed and certified to the policy-making body as soon as possible. Currently, the Mayor has discretion as to when to report such revenues and may carryover/accumulate.

Recommendation: REFERRED FOR APPROVAL by Commission to:

Recognize estimated revenues under specific circumstances only. If not, it is possible to "overauthorize expenditure" and if revenues do not materialize, a deficit situation could occur. Approved as to specific situations as identified by Administration/council.

Require certification of revenues on a periodic basis (e.g., quarterly). It is not practical to require the Mayor to certify at any time there additional revenues are received.

9. Section 9-10 Appropriations Reduction and Transfer

Proposal: Clarify that appropriation changes within the Executive Branch are initiated by the Mayor, and that the Council Chair has the authority to initiate changes to the legislative budget.

Rationale: Each branch should have the authority to propose amendments to its budget.

Recommendation: REFERRED FOR APPROVAL by Commission.

10. Section 9-10 Appropriations Reduction and Transfer

Proposal: Allow transfers between the departments to be done by resolution initiated by the Mayor.

Rationale: The resolution process allows for changes to be made efficiently.

Recommendation: REFERRED FOR APPROVAL by Commission.

11. Section 9-10 Appropriations Reduction and Transfer

Proposal: Authorize transfers between the legislative and executive branch.

Rationale: Transfers from certain County-wide accounts to the Legislative branch may be required during a fiscal year.

Recommendation: REFERRED FOR APPROVAL by Commission.

12. Section 9-10 Appropriations Reduction and Transfer

Proposal: Authorize the Council chair to initiate appropriation transfers within the Legislative branch.

Rationale: Council should have authority to initiate transfers in its budget.

Recommendation: REFERRED FOR APPROVAL by Commission.

13. Section 9-10 Appropriations Reduction and Transfer

Proposal: Allow for the reduction of an appropriation to pay an indebtedness if the indebtedness is not in existence.

Rationale: Appropriation transfers of funds not required to be paid during a fiscal year should be allowed to best utilize available financial resources.

Recommendation: REFERRED FOR APPROVAL by Commission, subject to a determination that the appropriation balance is unencumbered, unexpended and is not necessary to repay an outstanding debt.

14. Section 9-11 Lapse of Appropriations

Proposal: Establish a longer CIP appropriation lapsing period.

Rationale: Large CIP projects need a period longer than six months after the end of the fiscal year (i. e., 18 months) to reach contract stage.

Recommendation: NOT REFERRED to Commission. Administration does not feel a longer lapsing period is required.

15. Section 9-11 Lapse of Appropriations

Proposal: Define "abandonment" procedure.

Rationale: Abandonment procedures are unclear. If the Administration abandons a project, council should be notified of appropriation balance so that it has an opportunity to re-appropriate funds which will not be spent.

Recommendation: REFERRED FOR FURTHER REVIEW AND DISCUSSION by Commission.

16. Section 9-13 Audit of Accounts

Proposal: Provide for an audit to be performed upon the expiration of finance director's term.

Rationale: An audit should be performed at least every four years to maintain fiscal control and integrity.

Recommendation: REFERRED FOR APPROVAL by Commission with condition that the scope of audit should not duplicate the annual independent audit.

17. 9-14 Surplus and Reserves.

Proposal: Provide more flexibility in the use of a capital improvement reserve fund; clarify non-lapsing of reserve appropriations.

Rationale: Current provisions are unclear as to how reserve is set up and administered (and thus, a reserve has never been established).

Recommendation: NOT REFERRED FOR APPROVAL by Commission; no change. Subject to further review and discussion if specific problems and suggestions are received by Council or Administration.

18. Proposal: Add new section to require Mayor to submit five-year operating plan with budget.

Rationale: Promotes long-term planning; allows review and consideration of additional expenditures in future years for new or current programs.

Recommendation. REFERRED FOR APPROVAL by Commission with the provision that proposed long-term plan should not be viewed as a commitment on the part of the Administration; intended as a guide as to future financial impacts.

ARTICLES IX THROUGH XV - CHARTER AMENDMENTS FOR CONSIDERATION

ARTICLE X - CODE OF ETHICS

1. Section 10-1 Declaration of Policy

Proposal: Clearly set forth language which states Code of Ethics applies to board and commission members.

Rationale: Promote awareness of application to board and commission members.

Recommendation: REFERRED FOR APPROVAL by Commission.

2. Section 10-2 Board of Ethics

Proposal: Require answers to advisory opinions to be issued within forty-five (45) days of its filing.

Rationale: The 30-day period does not always allow for receipt of all information necessary to formulate a response/scheduling difficulties.

Recommendation: REFERRED FOR APPROVAL by Commission of an additional 15 days to render decision with notation in report that Board should use its best efforts to deal with advisory opinions in a shorter time frame if the advisory opinion request concerns an event/action to take place in the immediate future.

3. Section 10-3 Financial Disclosure

Proposal: Amend to delete reference to specific boards and commissions and to generally provide that financial disclosures are required to be filed by any commission or board established by this Charter.

Rationale: Any board or commission established by the Charter is vested with substantial authority. Boards/commissions are added/changed from time to time (e.g. Molokai Planning Commission) and this general requirement would cover any such changes.

Recommendation: REFERRED FOR APPROVAL by Commission.

4. Section 10-4 Prohibitions

Proposal: Revise subsection 1.d to prohibit the representation of a private interest before the department of which the individual is employed or the agency to which the individual is appointed and if related to any official action taken or expected to be taken by the individual.

Rationale: Current language is too restrictive with regard to employees, board and commission members who are affiliated with non-profit organizations which appear before an agency or department.

Recommendation: REFERRED FOR APPROVAL by Commission; specific language needs to be carefully reviewed.

5. Section 10-4 Prohibitions

Proposal: Expand subsection e to specify that it is prohibited to use county time, equipment or facilities for other than public activity or purpose.

Rationale: Use of county time and equipment (e.g., vehicles) have been specifically questioned and should be specifically mentioned.

Recommendation: REFERRED FOR APPROVAL by Commission to include addition of "county time"; current language sufficiently encompasses "equipment" and "facilities".

6. Proposal: Add a new section to include within Board's authority, "the receipt and filing of lobbyist registrations".

Rationale: Lobbyist registrations should be addressed in Charter (currently generally provided for in Maui County Code).

Recommendation: REFERRED FOR APPROVAL by Commission with the following additional language, "pursuant to requirements established by ordinance". (Such an ordinance should set forth definition of "lobbyist" and establish form and substance of registration/reporting requirements.)

7. Proposal: Add a new section requiring any elected or appointed county officer or employee to disclose position with County when appearing at public meetings.

Rationale: Public needs to know if the speaker is representing an official position or personal opinion; comments need to be taken with an understanding of whether reflective of a official position or personal opinion.

Recommendation: REFERRED FOR APPROVAL by Commission, with the clarification that disclosure SHOULD (and not "shall") be made by officers or employees vested with substantial discretionary authority.

8. Section 10-4 Prohibitions

Proposal: Amend Section 10.4.1.c by the addition of the following: "Wages earned for work performed and not having decision making authority of a private business or interest shall not constitute a violation of this section."

Rationale: Current provisions restrict persons who work for large corporations or subsidiaries from fully participating in an appointed or elected position.

Recommendation: NOT REFERRED to Commission. Board of Ethics should decide this issue.

9. Proposal: Amend Article 10 to remove application of the Code of Ethics to legislative branch, and provide that legislative body shall govern the ethical conduct of its members.

Rationale: An administrative agency should not govern the standards of conduct of the legislative body.

Recommendation: NOT REFERRED to Commission; same standards should be applied to all in County government.

ARTICLE XI - INITIATIVE

1. Section 11-3 Petitions

Proposal: Amend subsection 2 to reduce the requirement that a valid petition contain the signatures of twenty percent (20%) of the voters registered in the last general election.

Rationale: The number of signatures currently required makes it overly burdensome to formulate a valid petition. While the initiative power should not be too easily exercised, the process should not be so difficult as to effectively preclude the presentation of a valid petition. (See also, Section 11-4 relating to time for filing petition)

Recommendation: REFERRED FOR APPROVAL by Commission to reduce requirement to 15%.

2. Section 11-3 Petitions

Proposal: Amend subsection 3 to delete disclosure of voting precinct of person signing petition; add requirement that petition include printed name and address. (If legally possible, require social security number for verification purposes.)

Rationale: Voting precinct information is unnecessary. Printing of name will assist in verification where signature is illegible.

Recommendation: REFERRED FOR APPROVAL by Commission. (Need to check legality of requiring disclosure of social security number)

3. Section 11-4 Filing and Certification

Proposal: Amend subsection 1 by deleting the thirty (30) day time limit for filing of Petition; include a provision to allow for withdrawal of a signature within fifteen (15) days of the filing of the Petition.

Rationale: The thirty (30) day time limit does not allow sufficient time to obtain the necessary signatures.

Individuals should be allowed to reconsider their decision to sign (in case of mistake, misunderstanding or additional information, etc.)

Recommendation: REFERRED FOR APPROVAL to Commission to eliminate a specific time for filing and include a provision to permit withdrawal of signature within 15 days of the filing of the Petition.

4. Section 11-6 Action on Petitions

Proposal: Amend subsection 1 to provide that the proposed or referred ordinance be submitted to the voters at the next general election; amend subsection 2 to delete requirement of special election if a regularly scheduled election is not within one (1) year of the final action on the proposed or referred ordinance.

Rationale: Special elections are very costly. With elections every two years, the delay would not be unreasonable.

Recommendation: REFERRED FOR APPROVAL by Commission.

5. Section 11-7 Results of Election

Proposal: Amend to require a majority of votes to approve or reject a measure based upon ballots drawn and not votes cast.

Rationale: Past experiences with Charter amendments have shown that measures sometimes pass with only a small percentage of the total ballots drawn. (e.g., 20,000 ballots drawn; 10,000 votes cast; 5,001 votes enough to pass/reject measure)

Recommendation: REFERRED FOR APPROVAL by Commission. A strong showing of voter commitment should be required to modify decisions of the legislative body.

ARTICLE XII - RECALL

1. Section 12-3 Petitions

Proposal: Amend subsection 3 to delete disclosure of voting precinct of person signing petition; add requirement that petition include printed name and address. (If legally possible, require social security number for verification purposes.)

Rationale: Voting precinct information is unnecessary. Printing of name will assist in verification where signature is illegible.

Recommendation: REFERRED FOR APPROVAL by Commission.
(Check on legality of requiring disclosure of social security number)

2. Section 12-4 Filing and Certification.

Proposal: Amend subsection 1 by deleting the thirty (30) day time limit for filing of Petition; include a provision to allow for withdrawal of a signature within fifteen (15) days of the filing of the Petition.

Rationale: The thirty (30) day time limit does not allow sufficient time to obtain the necessary signatures.

Individuals should be allowed to reconsider their decision to sign (in case of mistake, misunderstanding or additional information, etc.)

Recommendation: REFERRED FOR APPROVAL by Commission to extend the time limit to sixty (60) days; approve provision to permit withdrawal of signature.

3. Section 12-6 Recall Election

Proposal: Amend to provide that the recall petition be submitted to the voters at the next general election, provided that the term of office of the person sought to be recalled does not end at the next general election; amend to change the voting requirement to fifty percent (50%) of the voters "eligible to vote for the office" (repeal "registered to vote in the last general elction").

Rationale: Special elections are very costly. However, if the person sought to be recalled would enjoy a full term if the election were deferred, the purpose of the recall would be defeated. Voting requirements should be more specific to the office concerned in the recall petition.

Recommendation: REFERRED FOR APPROVAL by Commission.

4. Section 12-7 Ballots

Proposal: Amend to require a majority vote of voters drawing ballots to recall an officer.

Rationale: Past experiences with Charter amendments have shown that measures sometimes pass with only a small percentage of the total ballots drawn. (e.g., 20,000 ballots drawn; 10,000 votes cast; 5,001 votes enough to pass/reject measure)

Recommendation: REFERRED FOR APPROVAL by Commission.

ARTICLE XIII GENERAL PROVISIONS

1. Section 13-2 Boards and Commissions

Proposal: Amend subsection 1 to reduce five (5) year terms.

Rationale: Five year terms discourage public participation and does not allow for timely turnover.

Recommendation: NOT REFERRED to Commission; no change to five-year terms.

2. Section 13-2 Boards and Commissions

Proposal: Amend subsection 3 to require balanced geographic representation.

Rationale: With the exception of certain Boards specific to an area (e.g., Molokai Planning Commission), boards and commissions should have representatives from all major geographic areas in Maui County to obtain widest range of community input.

Recommendation: REFERRED FOR APPROVAL to Commission to require Mayor to give due consideration with regard to representation from each of the nine community plan districts.

ARTICLE XIV CHARTER AMENDMENT

1. Section 14-1 Initiation of Amendments

Proposal: Amend subsection 2 to require that any proposed amendment supported by a petition signed by not less than 20% of the voters registered in the last general election be placed on the ballot at the next general election.

Rationale: Allows proposals contained in a valid petition to be directly presented to voters. (Current provisions require approval by Council of a petition signed by at least 10% of voters registered in last general election.)

Recommendation: REFERRED FOR APPROVAL by Commission.

2. Section 14-1 Initiation of Amendments

Proposal: Amend subsection 3 to require a majority vote of voters drawing ballots to approve or reject a proposed charter amendment.

Rationale: The Charter, as a constitutional document, should not be changed without a showing of a clear commitment by the voters.

Recommendation: REFERRED FOR APPROVAL by Commission.

3. Section 14-3 Mandatory Review

Proposal: Amend to require that a Charter Commission be appointed prior to March 1st, 2001; allow sixteen (16) months for Commission to submit its report.

Rationale: Allow an additional month to complete review and recommendations.

Recommendation: REFERRED FOR APPROVAL by Commission.

4. Section 14-4 Special Charter Commissions

Proposal: Consider the establishment of one or more special charter commissions to review one or more of the following articles:

1. Article III, County Council;
2. Article VIII, County Departments;
3. Article VIII, Chapter 11, Department of Water Supply; and/or
4. Boards and commissions established by the Charter.

Rationale: These areas have been frequently discussed as being of special concern, and thorough review prior to the ten-year mandatory review may be appropriate.

Recommendation: REFERR TO COMMISSION for further review and discussion.

ARTICLE XV TRANSITIONAL PROVISIONS

Proposal: Effective date of January 1, 1993; election of council in 1992 to be in accordance with existing provisions of the Charter. Other appropriate transitional provisions should be discussed following the approval of amendments to be placed on the ballot.

Recommendation: REFERRED FOR FURTHER REVIEW by Commission.