

MAUI COUNTY CHARTER COMMISSION PUBLIC MEETING  
Prosecutors Room  
Tuesday, January 15, 2002  
8:30 a.m.

PRESENT

Terryl Vencl, Chair  
R. Sean McLaughlin, Vice-Chair  
Vince Bagoyo  
Bill Fuhrmann  
Gwen Hiraga  
Stephen Holaday  
Karolyn Mossman  
Stephen Petro  
Erlinda Rosario  
Donn Takahashi

STAFF

Brian Moto, Corporation Counsel  
Ke`ala Pasco, Charter Commission Assistant  
Jon Van Dyke, Charter Commission Analyst

CALL TO ORDER

Chair Vencl called the meeting to order at 8:35 a.m. and stressed the importance of today, saying that there's a lot of work to be done but we need to be out by 5 p.m. She'd like to move ahead with printing our display boards and handouts, and do meetings with Kiwanis, Rotary Clubs, etc., anything to get the message out. Remember that what's being decided upon today is not necessarily going on the ballot. This is an opportunity for commissioners to put issues forth to the communities beginning January 29. We're going back out to the public asking for comments on recommendations thus far, and will come back into meetings to rehash what the public gives us. We'll draft our report to the Council, they'll give their comments to us, then we'll submit our final report within 30 days.

Now for the record, present are Commissioners Takahashi, Mossman, Petro, Fuhrmann, Bagoyo, Hiraga, Rosario, and McLaughlin. Also present are Charter Commission Analyst Van Dyke and Counsel Moto. Commissioner Holaday will arrive after a morning appointment.

Chair Vencl said she would stick to the three plus one minute rule, or three plus three to finish. She's been lenient in the past, but we really need to stick to the timetable today. She called up the first testifier.

TESTIMONY

MS. SALLY RAISBECK

Ms. Raisbeck discussed the following:

- 1) Regarding the Water Department, the two alternative proposals on how to deal with the situation are Commissioner Bagoyo's and the complete proposal by Charmaine Tavares. She requested that the Commission send out both for public comment, saying it'd be the best way to elicit all responses.
- 2) A conflict of interest is determined by the existence of certain financial ties to a situation. Three members have a conflict where the Water Department is concerned. She said

that it's nothing bad or corrupt, but certain financial ties make it inappropriate to vote on the water issue. She gave an example of Linda Lingle and Goro Hokama with regard to Kapalua.

Chair Vencl announced that her three minutes were up. Ms. Raisbeck said she'd like to come back for three more.

MR. DAVID CRADDICK

Mr. Craddick submitted portions of the Charter of the City and County of Denver. He discussed section C4.33, which addresses the Continuity and Control of Water. He also referred to the letter he gave the Commission earlier.

Approximately 1/3 of the water system is non-potable, and a large part of their work is providing water to fight fires. There should be some recognition in the Charter that it's a requirement for them to do that so there's no debate. Mr. Craddick also said that regardless of the autonomy issue, what the Water Department is needs to be cleared up.

MR. JIM SMITH

Mr. Smith presented two recommendations that relate to the point that this is a political issue. We're dealing with a specific philosophy, us vs. the public. The provisions he suggested referred to certain points ~ his power has been circumvented. He submitted a memorandum from JP Schmidt that is very specific as to how the Corporation Counsel can thwart. The Council must ... he referred to a contract that involved equipment coming to the island. Don't have to approve, can sign contract without approval. He said the individual wanted to do this without your view.

Mr. Smith said that when dealing with fundamental questions, ethics are irrelevant. What concerns him most is our scheduling. He stated that if we don't have fundamental problems settled, then we're dealing with something that's irrelevant.

His three minutes were up. Mr. Smith said he'd like to come back.

MS. SALLY RAISBECK

Ms. Raisbeck returned to complete her testimony. Continuing her previous example, she stated that Goro Hokama was also found to have a conflict of interest in voting, so he didn't vote on Lana'i for the rest of the time he was on the County Council. The same goes for Sol Kaho'ohalahala.

The three members who have a conflict of interest are Commissioners Takahashi, Holaday, and Bagoyo. She remarked that in her written testimony, she goes into more detail about important financial factors affecting those companies that are affected by the Board of Water Supply.

MR. DAVID CRADDICK

Mr. Craddick resumed his testimony, saying that the current rate of pumping is not sustainable for the long run. He said that HC & S has diverted water for over 100 years ... it's where over half of the water comes from ... the rest is in his written testimony.

MR. JIM SMITH

Mr. Smith returned to say that we have an abuse of a system, and asked if that meant we have to "restructurally" change the system? He thinks not, saying that most abuses are by individuals. He says the Commission is going over all sorts of changes and taking out to the public something that misses the point.

He continued, saying that the Council appropriated monies that weren't spent. In the budget, we must address carry-over savings. He suggests making it something that's not a benefit; make it a disgrace.

There's a provision in the Charter regarding the majority of the board for voting. Three strikes and you're out ... He said it hurts no one but you; it's invalidated by a lawsuit he filed.

Mr. Smith concluded, this Charter has to be seen as a strength. Get away from individual changes and get to specific fundamentals.

MR. DAVE MACKWELL

Mr. Mackwell testified on behalf of the Maui Coastal Land Trust regarding the proposed Charter change to set aside open spaces. He's advocating this, saying it's long overdue. The emphasis is on ocean front areas, but other areas do need to be set aside. The goal is to set aside some of these properties to have them available for the future. Our poll said that 70% supported that issue, and setting aside 3% for it.

Vice-Chair McLaughlin thanked Mr. Mackwell for coming. He said we've received a lot of testimony about open space, and advanced that issue to the next round. He asked about a program for establishing funds.

Mr. Mackwell said there was confusion about that fund; he doesn't know what that number is. Another concern is that the County already spends a lot of money on parks, ball fields, etc. he's not talking about active recreation areas but about more passive lands. The language in the bill needs to be worked on by a professional. Any property today costs so much money, but \$1 million from the County becomes \$3 million from another agency. There's lots of leverage; there are things that can be done.

Chair Vencl asked for clarification regarding if there's not several million, if that were a number, and that were to happen, should we not do it? Mr. Mackwell replied that they'd take it; it's a good place to start. 3% was a wish list.

Chair Vencl said she'd like to close testimony at this time. Commissioner Fuhrmann asked Mr. Moto to respond about recusement.

Mr. Moto replied that there was time to think about and discuss this matter, and they don't believe the current law would disqualify either person from voting on the issue. No authority would support the disqualification. The mere fact that a commission member works for a company that has water issues doesn't mean they have a financial issue. It's generalized; any connection between such issues and the private business of a commissioner are very attenuated at best. Ms. Raisbeck's approach would eventually disqualify all of you at one time or another, so it makes no sense in this context.

Mr. Van Dyke concurred; he completely agrees with Mr. Moto's analysis. One thing is that the Commission doesn't make any final decision (it's a recommendatory body). You're supposed to

come with different points of view and interests from around the county. Diversity provides balance, and diversity will reflect the views of the public.

Moving along with the agenda, Vice-Chair McLaughlin moved to defer the approval of minutes. However, a few items needed to be corrected: in number five of Council Member Charmaine Tavares' testimony, change 1900 to 1990; correct the spelling of Mr. Van Dyke's name on the top of page three; and in Commissioner Mossman's comment on page eight, change "months" to "meetings." Commissioner Mossman seconded the motion to defer. The motion was unanimously approved.

Chair Vencl announced that we'd be accepting into record communications from the following: Council Member Pat Kawano, land use deadlines; Council Member Charmaine Tavares, her testimony in Ramseyer format; Nihilananda; Mr. Goode, the information that was requested at the last meeting; and a new draft from Mr. Van Dyke on possible amendments, which will be our working paper for today. Motion was made (Commissioner Bagoyo) and seconded (Commissioner Takahashi) to accept these communications.

Vice-Chair McLaughlin said he'd like to circulate his "Home Rule for Maui County." Commissioner Bagoyo said he needed to be excused at 4 p.m. Commissioner Petro also needed to leave at 4.

Chair Vencl wanted to begin with Mr. Van Dyke's possible charter amendments (draft). Two drafts regarding Water were given at the Commission's request. They specifically talk about autonomy in the Water Department. Commissioner Rosario said she felt that we should give the public two options, autonomy and semi-autonomy, and believes that's where we left it. Commissioner Petro said he had no objection to both options going out to the public. Vice-Chair McLaughlin supports the proposal to ask the question more generally: shall the Charter make the Water Department less autonomous? Commissioner Rosario seconded the motion.

Commissioner Mossman wanted to amend the motion by adding "privately owned." She said Commissioner Bagoyo's proposal didn't have Mr. Van Dyke's first section; she'd like that piece in both proposals. She thanked him, saying that he captured it very well. Her motion was seconded by Commissioner Petro.

Commissioner Takahashi asked for clarification on the January 7 document. Mr. Van Dyke explained that it was his draft based on the concept paper Commissioner Bagoyo submitted during the previous meeting. It incorporates Commissioner Mossman's suggestions as well. He explained that where he lists the eleven proposals that we have agreed upon, with the exception of one of them, he doesn't include specific language. He's submitting the ideas only, capturing the key ingredients of each, but it's not in Ramseyer format.

Chair Vencl stressed the importance of talking about issues vs. using people's names. She doesn't want to take privilege in taking people's things. We are forwarding two options to the public: autonomy (including Commissioner Mossman's comments about public wells); and putting Water under County control (also to include Commissioner Mossman's comments). She said this would not technically be a vote; she's just doing a consensus. Anyone opposed? Commissioner Bagoyo wouldn't support this. Chair Vencl asked for anyone else; okay, it passes.

Chair Vencl said the next item is the document we requested from David Goode. She asked if anyone had any questions about his proposal. Commissioner Bagoyo said that at the last meeting, a major focus on transportation had been suggested, and asked how we could protect our environment and address the issue of transportation, which is very silent in the

current Charter. He continued that at first he wanted to split the Public Works department into separate sections; however, if we could come up with the verbiage and handle it within the current structure, he'd be okay with that. Perhaps Mr. Van Dyke or Mr. Moto could help put together language that could be included in the Charter.

Mr. Moto responded that it doesn't call for creating new departments; an intermediate step addresses some of the issues. Broken up functions are one way of addressing Commissioner Bagoyo's comments. He continued by saying Mr. Goode's draft doesn't specifically address transportation (other than bills and county highways). The second matter regarding the name of the department is entirely up to the Commission. Discussion continued regarding the importance of focusing on the transportation issue (which isn't covered in the draft at all), the name of the department, and establishing a body that would be given the assignment of protecting the environment.

Mr. Van Dyke pointed out that there'd been some discussion on trying to develop public transportation, and asked which department would have that responsibility. He suggested that if the Commission were interested in promoting public transportation, this would be a way to do it. Mr. Moto added that he'd follow up on what Mr. Van Dyke said. He thinks this might explain why Honolulu calls their department the Department of Environmental Services.

More discussion followed regarding the coordination of Public Works. Vice-Chair McLaughlin moved to have Mr. Van Dyke incorporate the primary responsibility for transportation and the environment to Public Works; it was seconded by Commissioner Bagoyo and unanimously approved.

Commissioner Mossman mentioned two other issues, the director's recommendations for including a deputy director, and his elimination of maintaining county buildings. The only other place that refers to a deputy director is Water; she and Commissioner Takahashi agree that "necessary staff" allows them the flexibility to meet their own needs, and support leaving it as is. Chair VencI requested a show of hands; three voted to leave the language alone and six wanted to clarify having a deputy director in this department, so we're going out with it.

When Mr. Van Dyke clarified that it was only for this department, Commissioner Petro moved that we include the deputy director language for consistency in all departments. Vice-Chair McLaughlin supported taking this out to the public. Commissioner Hiraga moved that we accept numbers 3, 4, and 5 of Mr. Goode's document (separated); this motion was seconded by Commissioner Rosario and all commissioners were in agreement.

Commissioner Takahashi asked if, in regards to numbers 4 & 5, there was any necessity to put in standards, such as protecting the environment and sewage overflow (general language that says the department is accountable). Commissioner Hiraga doesn't think we need that as standards are already in place.

Commissioner Mossman repeated that Mr. Goode got rid of the section regarding maintaining county buildings. Chair VencI said it was his belief that everyone maintains their own building.

Commissioner Hiraga moved that we take this out to the public. It was seconded by Vice-Chair McLaughlin and unanimously approved.

Chair VencI said that the next item is Ethics, and began with Mr. Moto, who repeated the comments he made at the last meeting for those who weren't there. When Don Couch appeared before you, four questions were raised. Mr. Moto reported that the Board of Ethics

discussed the questions and drafted a letter that will respond to each of them. The second letter will be reviewed tomorrow at their meeting and then issued. It will go through each of the four issues raised and state that the board is not going to recommend any changes to the Charter.

Vice-Chair McLaughlin responded to Commissioner Petro's question regarding the wording that would allow certain people that weren't decision makers to serve on the Planning Commission by saying that we got the proposed language that met the criteria he described. Vice-Chair McLaughlin supports not changing anything but taking this out to the public. Commissioner Rosario seconded this motion.

Commissioner Mossman spoke against that, saying she doesn't support taking this out because the broader issue is undue influence. Commissioner Bagoyo said the language was basically consistent with HRS 84-3; it's just to define what is a financial interest. He wants legal counsel to look at that; it's also being used in the city and Council of Honolulu. Chair Vencl commented that up to this point, we've received considerable information on everything we're taking out to the public. She expressed concern about making a decision on something we haven't received, and asked if we could hear comments when we go out but come back to decide about it.

In the discussion that followed, Mr. Van Dyke said he was listing these as proposals. Vice-Chair McLaughlin said his intention was to have the issue of amending the ethics code placed out for discussion. Mr. Van Dyke said perhaps the idea should be proposals and things for further discussion (like Water with two alternatives). Chair Vencl asked if it would help the issue to propose some sort of balance. Mr. Van Dyke replied that he'd proposed an amendment to 10-4.1F regarding the failure to disclose a financial situation or vote on any matter affecting such interest. Eliminate that, add otherwise ... legal counsel, advisor, or other capacity.

Mr. Moto wanted to give his guess of what was intended by their choice of language. The important clause is "substantial financial interest," which is a departure from the current Charter. They're trying to limit the scope or kind of financial interest the court would be concerned about. There's no definition of "substantial" within this proposal. He suspects that what it's trying to do is distinguish certain classes or type of employment. Throwing in the word "substantial" should be a distinction between those that have it and those who don't; he thinks that call would be left to the Board of Ethics.

Commissioner Petro asked if we could define "substantial," saying that he'd be willing to change his view if the majority wasn't willing to change or revisit the issue. He urged the Commission to not take out anything that we're not willing to change. If we're firm in our position, then why take it out? Vice-McLaughlin withdrew his motion; Commissioner Rosario withdrew her second of that motion. Commissioner Fuhrmann moved to go forward with this; Commissioner Petro seconded it. Commissioner Mossman spoke against it again, saying it's not an appropriate step.

After further discussion, Chair Vencl asked for a show of hands. Four commissioners wanted to take the matter out to the public; three didn't. Commissioner Mossman said we need six votes. Chair Vencl said she didn't think it was a dead issue; it'll come back. Commissioner Hiraga pointed out that there was no consensus, and asked if we could move on. She said that Jim Smith has testified at all of our meetings, and she wanted to know if we could consider his proposed amendments, which were distributed at our meeting last week (since we're on the subject matter).

Chair Vencl asked if anyone wanted to make a motion. Vice-Chair McLaughlin asked for a brief recess. There was no motion. Chair Vencl called a ten minute recess.

#### BREAK

Chair Vencl called the meeting back to order at 10:45 a.m., saying that the two things left to discuss are Mr. Van Dyke's salary commission, and boards and commissions. She's leaving the issue of salary until Mr. Moto comes back because he had a comment, so discussion began on boards and commissions.

Vice-Chair McLaughlin submitted his "Home Rule" testimony regarding having the Charter establish community or district boards. Such boards would be given all appropriate authority currently given to all other boards. He said that the core issue is the erosion of democratic government (lack of participation at the polls). The current system is broken; it's not an accountable democracy. Local decisions need to be made on a local level. We've created planning commissions for Moloka'i and Lana'i, but haven't given them local authority. We need community district boards in the district residency areas. There'd be a community district board for Moloka'i. All the decision making would be done at the local level.

He mentions page three of his testimony, in the second to last paragraph ... community plan amendments, zoning variances and appeals, traffic safety measures, urban design and review, street naming, designation of exceptional trees, etc. He said it's amazing how much decision making is made at an inadequately attended meeting in Wailuku. This doesn't make sense; it has turned off voters, and disengaged people from their communities, so he supports more local decision making.

Commissioner Petro asked if this board would assume the responsibilities of the current one (intent shouldn't be to take away current home rule). That body should be elected on Moloka'i. Vice-Chair McLaughlin replied that it's related but not the same. It's broken out into much smaller districts; this would go quite a few steps beyond that.

Commissioner Mossman said the suggestions in his paragraphs aren't clear; she'd be more inclined to look at this if it was very specific about which boards. So while she's intrigued by the idea and would like to put forth this concept and get discussion on it, she'd like to be clearer about what we're talking about.

Mr. Van Dyke concurred, saying that if this goes forward, we'd need to revise the second sentence to clarify the kind of authority that'd be given to these boards, and emphasize the last paragraph on page three. He asked Vice-Chair McLaughlin why he wasn't making these electives. The reason is that he thought it'd be difficult to get that point. In the narrative, he supports the elected role. He feels like there's probably a whole other discussion to have about appointed vs. elected positions; maybe there's a middle ground. He'd push for the elected positions, but left it open.

When Chair Vencl asked if these people be paid or if they'd be volunteers, Vice-Chair McLaughlin said it's an excellent question and he'd love to hear the public's views. Chair Vencl stated that the issue has never gone anywhere except for being passed on to each Charter Commission. Not more than a year ago, a Honolulu man said the election process is a huge monetary drain for people. Those with money get in; those without, don't. She didn't think Vice-Chair McLaughlin was thinking of neighborhood boards as we know it.

Commissioner Fuhrmann raised the issue of staffing costs. Vice-Chair McLaughlin presented two points about the cost issue, saying that the most cost efficient government is totalitarian. He feels strongly that if we want to have a quality government, it involves a cost that we should be prepared to pay. The level of inefficiency (34 boards and commissions with all the staff and Corporation Counsel needed to run them; flying people into Wailuku every day to participate) would pay for this.

Commissioners Petro and Mossman expressed support for this idea and taking it out to the public. Commissioner Hiraga was unsure if she supported taking this out, saying that she needs more information; this is something that could be recommended to a separate commission for its review. Vice-Chair McLaughlin made the motion and Commissioner ER seconded it. Chair Vencl said the only reservation is that we don't know enough at this point. Maybe we can just listen to what people say. Mr. Van Dyke said democracy always needs to be refreshed, and this just might be the way to do it, but we need to look at how to do that without taking away the boards that require expertise.

Discussion continued until Chair Vencl asked for a consensus to take this out for further discussion (not a vote), saying that we don't have time to "shape this out" at this time. Four supported taking this out to the public; the rest weren't prepared to do so.

More discussion followed. Mr. Van Dyke suggested putting the broad framework out there (establish nine district boards with those powers and responsibilities as described by Council). Commissioner Petro recommended having a separate commission look at this. Commissioner Holaday cautioned that we'd have to be pretty specific about this or it'd be too broad for the Council.

Commissioner Takahashi tried to move things forward by saying there's a lot here that leads to a lot of questions, so perhaps this will be too much to bite off and chew at one time. He asked how to put this into effect, how Palau addressed things affected some but not others, and expressed concern about who'd oversee these nine bodies.

Conversation then turned to the issue of enforcement. Mr. Moto replied that assuming there's a proposal for further consideration, one thing that could be considered would be an amendment to establish a separate commission.

Upon further discussion, it was determined that this was worthy of the Commission's consideration, and that public opinion was needed. Commissioner Takahashi suggested presenting two proposals to get a good public reaction. Commissioner Bagoyo wanted Mr. Van Dyke and Mr. Moto to work on a more detailed concept. Chair Vencl reminded everyone that we have work to be done, saying that she doesn't want to push this back to the 29<sup>th</sup>. Commissioner Petro emphasized that this is just to get feedback; there's no need to go any further than this.

Commissioner Hiraga suggested recessing today's meeting until tomorrow or the next day so she could get more information from Vice-Chair McLaughlin, and information on the alternative that Commissioner Takahashi suggested. Chair Vencl asked what happens with the posting for a recessed meeting, and said that we didn't even have the room reserved any more. David Rantz said he'd check on it.

Chair Vencl asked Vice-Chair McLaughlin if there was any other way to deal with this. He responded that the reason he made it so general was so our analyst could develop the pros and cons (to illuminate any questions). He stated that he was in opposition to recessing.

Chair Vencl asked to record the votes for taking Vice-Chair McLaughlin's concept out to the community. Commissioner Hiraga said the first one failed anyway, and urged everyone to move on. For the record: ayes from Vice-Chair McLaughlin and Commissioners Rosario, Petro, and Mossman; nays from Commissioners Bagoyo, Fuhrmann, Holaday, and Hiraga. Commissioner Takahashi abstained.

Commissioner Takahashi admitted that he was confused. The first vote was for taking Vice-Chair McLaughlin's suggestion out to the community as written. Then he proposed taking out a revised concept to see where the community stands. Chair Vencl asked if anyone wanted to put a new motion on the table. Commissioner Takahashi moved to permanently establish the community advisory councils, establish a permanent council, and add specific boards (street naming, lighting, arborists, etc.) We'd need to have some language to clarify how all nine CACs would interact with the County Council. Commissioner Mossman seconded the motion.

Commissioner Hiraga clarified that the proposed permanent CACs would follow the current structure in the County code regarding their method of appointment. They'd remain the same as the existing CACs; we're just expanding their rules.

Several commissioners expressed an awareness of Council Member Charmaine Tavares' efforts to make the CACs more permanent, and the desire to have our recommendation be flexible enough to allow any of her changes. Mr. Moto said that if such a proposal were adopted, whatever steps were taken would have to work with this new structure (couldn't undo it, but could pass ordinances to implement this).

Other aspects of this issue that commissioners wanted to address include: districts on the community plan process differ from the political process; this could encourage citizens to participate in their local issues (this might be a way to achieve quorums and good participation from the community); and the voting process (elected or appointed, fair and balanced representation is key).

Commissioner Takahashi clarified that his motion was just to make the CAC permanent. Chair Vencl said that this concept requires thorough consideration of the pros and cons. Everyone seems favorable to the concept; however, the problem is the scope of details involved and not knowing how to handle it. She's not closing this discussion, but suggested going to lunch to allow everyone time to think about this. To sum things up, CACs should be permanent, they should be under an umbrella, and they may take on more duties and responsibilities (trees, street naming, etc.).

There was much discussion but Chair Vencl interjected a procedural comment: there is a motion on the floor. She asked if anyone wanted to amend it. Commissioner Hiraga wanted to amend the motion so that it'd be similar to what Mr. Van Dyke suggested regarding the powers and duties of the CACs, the creation of community district boards, conformance to council districts (not community planning districts), and expanded powers. Commissioner Petro seconded the amended motion. Voting on the amended motion: all commissioners approved with the exception of Commissioner Mossman. She stressed looking at the needs of different communities when planning the district representational boards.

Mr. Moto said the Commission voted on the amendment, but it now needs a show of hands on the main motion as amended. All were in favor. Chair Vencl announce a recess for a 45 minute lunch. She asked everyone to reconvene at 1:00 p.m.

BREAK

Chair Vencl called the meeting back to order at 1:05 p.m. She thanked everyone and mentioned that she'd been reminded of something regarding about boards and commissions, and whether or not they should have three or five year terms.

Commissioner Mossman said she already gave her recommendation for the Water Board to have three year terms. For consistency, she moved to change all terms to three years. Commissioner Bagoyo asked about the rationale for changing the terms from five to three years. She answered him by saying that some people thought five year terms were too long to ask for a commitment. The terms are already staggered, so she couldn't see a rationale for keeping it at five years, and they'd be allowed to serve two terms (structuring it like the Water Board). Vice-Chair McLaughlin and Commissioner Takahashi shared their views, and Chair Vencl asked for consensus; only one in favor, so this item is a NO.

Commissioner Mossman asked why we decided to go with three years for Water; Commissioner Bagoyo answered that it was proposed by Mr. Van Dyke. Vice-Chair McLaughlin added that the boards created by the Charter usually have greater responsibilities. If we went with the Board of Water Supply having autonomy, then we might look at the qualifications of the officers a little differently, and the term of commitment might be a significant factor. We're not ready to address all those boards with a broad sweep.

Vice-Chair McLaughlin said he actually had another idea because under this area of boards and commissions, whatever we're doing now is not working. It's not possible for a citizen to know where and when meetings are. Proposing under 13-2, subsection 11, page 53 of printed version, Boards and Commissions; he asked Corporation Counsel for advice.

Mr. Moto asked that he please be aware that this section applies to public hearings (as opposed to regular meetings), so today's meeting wasn't published in the paper. The current policy is that agendas are filed with the County clerk for the bulletin board of the County building and as close as possible to the actual meeting area. Some have postings on a website.

Vice-Chair McLaughlin reiterated that there really isn't one location where everything needs to be posted except for the county clerk's. He doesn't have any suggestions except to incorporate encouraging language to have that information more easily accessible to the public. He said we could come back to this, but would like to ask for some suggestions on that.

Chair Vencl was ready to move on to the Salary Commission, but Commissioner Hiraga brought up the issue of the requirement to meet in county buildings (section 13-9.2). Chair Vencl said it's very difficult to find venues in county facilities because there are a lot of meetings going on. There's a lot of public space out there that could be used; seems that would be a plus.

Mr. Moto said he didn't believe the State of Hawaii operates as the County of Maui does. It currently states that "all meetings of boards and commissions shall be held in the County building or in a publicly owned place." This is an issue that has come up from time to time. Meetings are often held in a hotel or a golf course restaurant, places with public accessibility. Commissioner Mossman moved to amend it to "in buildings that are accessible to the public." Seconded by Commissioner Hiraga, the motion was unanimously approved.

Mr. Van Dyke said we skipped over the issue of 10-4.1D regarding Ethics. Public testimony referred us to this, which is inconsistent with other areas of the Charter. The proposal was just to

eliminate 1B. Mr. Moto added to what was just stated, saying that he'd just been reminded by David Raatz from Council Services that council member Wayne Nishiki wrote a letter in June to Chair Kawano. It says in 1992 the voters approved a Charter amendment that revised 10-4.4 of the Code of Ethics regarding to what extent officers of the County of Maui can appear before other boards and commissions. According to the letter dated August 6, 1992, they should not be allowed to testify; intended to add this section but delete 10-4.1D in its entirety. Thus, 10-4.1D should be eliminated. Motion to delete 10-4.1D was made (Commissioner Mossman) and seconded (Commissioner Petro). Vice-Chair McLaughlin clarified that the reason for the motion is 10-4.4 essentially replaces that section.

Vice-Chair McLaughlin brought up a provision from the Honolulu City and County Charter, saying he'd like to make a motion that we amend the language in 13-2.11 regarding public hearing notice requirements. For purposes of the motion, we consider letting our analyst revise the language. Mr. Van Dyke responded that this applies to the formal public hearing, and asked if it eliminated his concern about those events. Vice-Chair McLaughlin said he's only suggesting in his motion that it applies to public hearings. Mr. Van Dyke replied that we now have the Internet as a tool to get information out to the public, so just say it needs to be on the website (in addition to other mechanisms). Vice-Chair McLaughlin said he thinks it'd be a quantum leap forward and amended his motion to include posting on a website. Commissioner Mossman said that while she truly appreciates the sentiment, she's concerned about the limiting nature of specifying "Internet" or "TV." She'd prefer "use the technology and resources available."

Commissioner Petro addressed the ten day notice, citing Moloka'i's situation. They didn't have very many days to post their notice in the newspaper. While he can understand the public hearing part, it's a little different from a commission meeting because there are specific subjects for the public to address. A Commission meeting should be advertised, but it shouldn't have to be on the same scale as a public hearing.

Commissioner Holaday said that if we put out so many items, we'll lose everything! We need to determine priorities (not every sentence in the Charter). How many things do we want to put out there? Commissioner Mossman thought that we should come out with the best possible document. Chair Vencl's only comment was that when we go back out, some will have more expressions than others will. Commissioner Holaday's concerned about confusing the public and not fixing government. Mr. Van Dyke answered that it's just tweaking and dealing with inconsistencies. Taking out 10-4.1D is a housekeeping issue, so we'll put that down there with other things we're doing to clean up the document, so we'll avoid your legitimate fear.

Commissioner Bagoyo said he's very sensitive to wording and asked if we can cover general circulation and other means for specific unique areas like Lana'i, Moloka'i, and Hana. Chair Vencl said ten days vs. six days would be better for them. Commissioner Bagoyo said the most effective method on Lana'i is posting on bulletin boards. Commissioner Petro said not very many people take The Maui News on Moloka'i, but they have two local papers that they all read, and six days might miss it. He added that when it comes to Moloka'i, contact both of their local papers, not only The Maui News.

Chair Vencl reminded everyone that there was a motion on the floor. Commissioner Mossman was confused; one is the length of time and one is how we go about it. She said that maybe Vice-Chair McLaughlin needed to clarify what his intent is. He tried again: take out to public the recommendation to improve and extend public notification to include all possible outlets (leave it to the analyst to come up with wording). Motion passed.

Commissioner Holaday shared his concern about what we would do if we go out to the community and no one says anything about these items. He said we need to "pre-decide" or we'd have meetings about words instead of the important issues. Chair Vencl said that while she understands, she doesn't want to limit anything. He said nor is that his intent, but if there's no comment, what do we do? Commissioner Mossman thinks what we do then is sit down again and decide if something needs to be changed or not (make that decision without that input).

Mr. Van Dyke said that with regard to housekeeping matters, they could all be "revise language in Charter for purposes of consistency and modern usage." Alternatively, we could have several questions like "Should we adopt gender-neutral wording," etc.

Chair Vencl asked Mr. Moto to reiterate what he said at the last meeting and clarify what was done at legislature last year. Mr. Moto replied that in 2000, the Civil Service Reform law was actually broader; it included those exempt from collective bargaining. One of the issues we're dealing with, Corporation Counsel and the Salary Commission, deals with the salary and compensation for cabinet members. Therefore, under act 253, we believe it appears that 8-16.1 appears to be inconsistent with the new state law. He just finished an eight page letter to the Attorney General, asking for an opinion on this issue. Is act 253 a law of statewide concern that in effect supercedes Charter provisions that are inconsistent with it? If so, is this particular section inconsistent to the extent that it says that salaries of directors are determined by the Salary Commission? The Charter Commission will get a copy of the completed and signed letter soon. Chair Vencl concluded that the bottom line is they may not set salaries for cabinet members.

Commissioner Mossman moved that should it not override, that our charter stay the same. If it does override, delete the sixth line after the word "official." Then drop down to the next line, of County of Maui, and delete the rest. The motion was seconded by Commissioner Petro. Commissioner Bagoyo asked if the elected official's salary would be set by the Salary Commission. Mr. Moto replied in the affirmative, saying that when they read the new law, we don't think it changes it to that extent, just the cabinet members (directors and deputy directors). The language of the act itself is quite extensive. Commissioner Bagoyo asked if they defined the directors and deputy directors as state and county directors. Mr. Moto said no; they just use cabinet members.

Commissioner Takahashi asked if a state law that is passed supercedes County Charters. Mr. Moto cited a Supreme Court case, HGEA vs. the County of Maui, and said counties have been granted a great deal of home rule. However, that grant of authority isn't total; it's limited. The answer is if it relates to the structure of the government, it will survive and not be superceded. When Commissioner Takahashi asked if Water could be a statewide concern, Mr. Moto said he was aware of a couple circumstances in which the legislature identified public concern. In another case regarding zoning by initiative, the Honolulu City Charter was struck down; it was contrary to the state law that granted zoning powers.

Vice-Chair McLaughlin spoke in opposition to the motion, saying that we should exercise our own home rule. It's premature for us to anticipate a law that hasn't taken effect yet. Mr. Van Dyke was also going to suggest that it might be premature, and said we might consider a change that'd give the power to recommend to the mayor.

Mr. Moto responded to the second point first. In a certain sense, the legislative bodies of each county has a say in salaries. With the Civil Service Reform Act, if you're dealing with an excluded employee, then they're not subject to the new rules. To date, he's unwilling to read that provision that all salaries are therefore limited or fixed by legislative action. The County had more in mind places where you had places or classes of employees. First question, the new act

also provides another exemption for excluding employees whose pay is set by the discretion of the appointing authority. Strictly speaking even today, the Board of Water Supply doesn't set the salary of the director, the same goes for the police chief or Director of Civil Service. Based upon the reading, we think that authority would be turned over to the mayor.

Commissioner Mossman withdrew her motion. Commissioner Petro withdrew his second.

Chair VencI said we're still on salary. On September 14, we got a letter from the chair of the Salary Commission recommending that the Charter be amended to require a permanent nine member commission with five year terms. Every four years, the entire commission would change (no continuity). She put that on the table for comments. Commissioner Hiraga moved to take the matter out to the public, Vice-Chair McLaughlin seconded it, all in favor.

Commissioner Takahashi said he was on the Salary Commission and this came up; he's in favor of supporting that motion. Commissioner Bagoyo asked what's done in between (only review once every four years)? Commissioner Takahashi said they were reviewing it every two years. You have to get background, and are starting from scratch every single time. The Commission would meet for a concentrated period in that two year time frame. If there was a change in directors, it was a reason to meet. Chair VencI said it seems like the history, the continuity, is important. Mr. Van Dyke said he's concerned about the math because one year you only replace one. The Water Board and Police Commission are the same way. Chair VencI concluded that the consensus was not to change the five year terms to three.

Still working off the first draft, Chair VencI said that before turning to housekeeping matters, she wanted to talk about letters we received. Regarding the chair of the Public Safety Commission, what would happen to them? Civil Service Commission ~ no changes. Cost of Government Commission ~ no recommendations.

A letter from the Deputy Corporation Counsel (Victoria Takayesu) regarding the Police Commission suggested the following revisions: Chapter 12, section 8, 12.1, not a change. 8-12.2, Police Commission has nine members. Shall adopt rules as necessary for its conduct ... #2. It now must say review and submit to mayor for an annual appropriation; asking to bypass the Mayor and the Council. Chair VencI asked if this meant that they're asking to set their own budget and no one takes a look at it ... Move on.

The next one is the Cost of Government Commission. We talked about this earlier (Buck Joiner's three to five year option). Vice-Chair McLaughlin noted that this is one of the commissions established by the Charter. It has only two year terms and they may be reappointed. Chair VencI said so it suggests that the term of office be increased from two to three years with a maximum of two terms. Any motion?

Commissioner Bagoyo asked if we were going to address each of these. He said he'd like to focus on Open Space before he leaves.

Chair VencI said it's in Mr. Van Dyke's second draft. She had three more letters. For the Salary Commission, we're dealing with the compensation issue so we have to wait. She then asked if anyone else looked at the Liquor Department on this? They're suggesting two main changes: to have the authority by eminent domain to purchase, lease, or sell in the name of the Liquor Department; and revenues of the department shall be kept in a separate fund, the goal being to make the department self-supporting.

Commissioner Mossman mentioned an item brought forth earlier on the Civil Service Commission. No decision was made. He asked for due process similar to police commission. Commissioner Petro said there was so much discussion, and no one was willing to change. Commissioner Hiraga said that once appointed, there's no removal, so you're on until you retire. Commissioner Petro wanted to require written notice. The question was if they needed to have an evaluation. Chair Vencl has since talked to them, and it's changed to annual evaluation.

Commissioner Mossman said discussion on that time was on the Personnel services Director; a lifetime position was the problem. She wanted to move that we do the process similar to hiring and releasing the police chief. The motion was seconded by Commissioner Bagoyo.

Vice-Chair McLaughlin said there's one item that's no longer under consideration (he made a motion that wasn't seconded). Regarding Article 8, he moves to take it out to the public that department heads appointed by the Mayor should be subject to a Council confirmation. Commissioner Mossman seconded. It's a process already in our state government, so this is just a balancing of power. He hopes the council won't abuse this process. Commissioner Holaday said that we've had this conversation several times, but feels strongly that the Mayor has the ability to put his own team together and move on. Chair Vencl asked for those in favor of going back to the public; motion failed.

Chair Vencl said that Mr. Kawano provided testimony today on an action we took. He's given his opinion on Planning, Land Use ordinances, etc. Vice-Chair McLaughlin said he'd like to receive that as testimony and leave it at that. Between today and the next time we meet, a written record will have been established. Now is the chance to get more thoughtful input. He hopes that now that we have narrowed the issues we're considering, he hopes we'll post it on the website ASAP.

Chair Vencl asked if that was okay with everyone (yes). Mr. Moto will address this issue. Mr. Moto responded that he's emailed the Chair and Analyst; hasn't been able to fully analyze this issue. One of the proposals that's going out is the enactment of land use by default. What he's expressed to a number of people is his concern about enactment by virtue of the inaction of the Council (especially since he's not aware of any similar provision. He wanted to be sure to point out that such a provision ran counter to other charter provisions.

Commissioner Petro said it's the lack of a timetable for getting things done. The Council didn't act in a timely fashion. It was submitted seven years ago, but it's just now getting active. Council Member Tavares suggested giving it a year deadline, but what happens if they don't act within that period of time? Does the original stay in place and render all the Council's work null and void? Chair Vencl said that if we can understand that there's a concern, when we get Council Member Tavares' latest testimony, just be aware. Vice-Chair McLaughlin asked Mr. Moto to recommend language that we can put into the Charter to get action within a reasonable time, and what is a reasonable time.

There was further discussion on this issue regarding putting something into place to move CACs along, enforcement if the specified date isn't met, and examples of legislative inaction leading to a result. We have options here. With regard to Planning, we can return to this question after the public hearings. Mr. Moto stated that while he's aware of default provisions, those situations are different from the proposals that were discussed at the last meeting.

Chair Vencl said three commissioners had to leave shortly, so she wanted to bring up the issues (Open Space), pros, and cons. Commissioner Bagoyo opened up the discussion by saying there are other needs the County Council has to address. They need funds to use, but can't touch

Open Space money. He said he wants to leave it up to the Council to decide what's best. Situations like the major hurricane fund really concern him. Commissioner Mossman said she didn't want to establish a set amount to be put into that account yearly, but something needs to be put in (compromise). Commissioner Bagoyo said to put in language for "economic devastation" and define it. Chair Vencl said it's something we'll wrestle with in the end; she's not recommending that we change it right now, but when we get ready to put language in the Charter. Additionally, we're going to have a problem with the description of Open Space as it stands now. We can talk to our analyst more about that. To list each of these things may be to miss something. Mr. Van Dyke interjected that the language came from the Maui Coastal Land Trust.

Chair Vencl turned back to the first document and housekeeping matters. The first issue is Hawaiian language spellings. Mr. Van Dyke said the newspapers try to spell proper nouns correctly, as does the legislature, so we should try to bring "Hawaiianness" to the Charter. Commissioner Hiraga cautioned that unless you're very knowledgeable, you could change the meaning of a word. Mr. Van Dyke reassured her that it'd only be place names, and that it'd bring the Charter into modern usage. Motion was made (Commissioner Mossman), seconded (Vice-Chair McLaughlin), and unanimously approved.

Next is capitalization. Mr. Van Dyke said there are random capital letters, anomalies. He'd be happy to change it himself, but thought he should seek guidance. There were no objections, so Chair Vencl gave him the go ahead.

Clarification: if we're going to use "moral turpitude," do we define it? Vice-Chair McLaughlin said we took it out and used "felony."

Working off of the new draft, Chair Vencl asked for clarification regarding the 50 + 1 then you're elected rule? The answer is YES. Another question was about initiative and recall being separated; they're still connected, and went from 20 to 10. More discussion followed regarding the reason for recall and whether it's just someone who disagrees with council? Mr. Van Dyke said typically, YES, if anyone disagrees, they can recall. Chair Vencl said that's why the comment came up that maybe it should be harder than the initiative. Vice-Chair McLaughlin said it seems we have the ability for an extremely low recall. Commissioner Mossman answered that it's only 10% to get it on a ballot that everyone can then vote on. Mr. Van Dyke said we have 75,000 registered voters, so it could be 4,000 voters. This is a tradeoff to extending the four year terms. Give voters the opportunity to get the person out. He stressed that some have a provision that you couldn't recall someone in such and such a time. Commissioner Petro reminded everyone that this is not the final language.

Chair Vencl agreed that it's something to start with, and said Mr. Van Dyke has done a wonderful job of putting everything together. As a closing note and information for the public, she said she'd like to visit with the press on all the islands, and make sure we send out our list of proposals and pros and cons. Hopefully, she'll be able to respond in interviews. She'd like to get this information to a graphics person and turn it around in time for our meeting on January 29<sup>th</sup>.

Mr. Van Dyke asked if she was still planning on an ad; Chair Vencl thinks in the newspapers. Commissioner Petro asked to please give it to his local papers as well. Chair Vencl asked if Mr. Van Dyke could turn it around by Thursday so she could get it to the commissioners for review.

Commissioner Bagoyo asked how much the graphics designer is charging, or is it pro bono? Chair Vencl responded that Robert Glick would be doing the job for us. Motion was made (Commissioner Hiraga), seconded (Commissioner Petro), and unanimously approved to

authorize the chair to decide, not to exceed \$5,000. Commissioner Petro stressed the importance of getting the information ahead of time so he can explain it to the public. Chair VencI commented that Mr. Van Dyke's format makes everything very easy to explain.

Vice-Chair McLaughlin announced his understanding of Chapter 50, saying that his personal commitment is to donate that money to Akaku for mauicharter.net. He also wanted to acknowledge Mr. Ray DeMello, who's been appointed by the Mayor. He hasn't been confirmed by the Council yet, but it's important that he's here.

Chair VencI said we have a lot of people to thank. She reminded everyone that our first public meeting would be on January 29<sup>th</sup> in Lahaina.

Commissioner Takahashi asked if we have a responsibility to respond to each person that sent us recommendations. Mr. Moto said to do a cover letter and attach the proposal.

Commissioner Takahashi asked if anything changed, if there was anything we need to be prepared for with the public meetings. Chair VencI said that her perception is of putting large boards around the meeting room, and have handouts that they can take home. She said we'd follow the Agenda (approve minutes, Chair's introductory remarks, then take testimony), and that she's open to suggestions to make things smoother. Commissioner Takahashi asked how we could get the proposals out before people see it for the first time in Lahaina (besides in the papers). Chair VencI replied that the proposals will be in the binders, and asked those people for suggestions. Commissioner Petro asked for five copies and said he'd distribute to the Chamber, etc. Commissioner Bagoyo said he'd post it in stores, etc. Commissioner Hiraga suggested leaving copies at the libraries in each of the districts. Commissioner Petro said we'd have to do much of the legwork for the upcoming testimony, and said hopefully we'd invite press to Moloka'i.

Commissioner Bagoyo thanked fellow commissioners for great discussions. He also thanked the testifiers. Commissioner Mossman also thanked Chair VencI for "putting up with us."

#### CONCLUSION

Chair VencI thanked everyone. The meeting was adjourned at 3:15 p.m.

  
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Ke'ala Pasco, Charter Commission Assistant