

CHARTER COMMISSION
MEETING MINUTES
MAY 14, 1992
COUNCIL COMMITTEE ROOM

PRESENT

Sherrilee Dodson (Vice Chairman)
Dolores Fabrao
Annette Mondoy
Victor Reyes
Allan Sparks
Jamie Woodburn
Deborah Wright
Lloyd Yonenaka
Susan Nakano-Ruidas (Staff)

EXCUSED

James Cockett
Robert Nakasone (Chairman)
Anne Takabuki

GUESTS

Guy Haywood
Jim Smith

I. CALL TO ORDER

Vice Chair Dodson called the meeting to order at 4:35 p.m.

II. PUBLIC TESTIMONY

- A. Jim Smith, individual, testifying to Article 10, Section 4.d. of the Maui County Charter, read his testimony and request for amendment to the Article cited above verbatim [see Communication 92-40 hereby attached and becoming a permanent part of these minutes].

Vice Chair Dodson: Any questions? Victor.

Reyes: A lot of questions. Mr. Smith, I do recall that we did discuss this topic in one of the Committee C...which is in charge of ethics...at one of the Committee C's meetings, and I guess, the minutes would show that we did really think about this, but I don't know if it's exactly the same wording that you have here...I just wanted you to know that we did address it.

Smith: I appreciate that. I think it's very important to our Charter, to this governance that we experience

Vice Chair Dodson: Dolores.

Fabrao: You mentioned C. Brewer and also this religious political action group...what is the reference to? Why are you bringing that group up?

Smith: Simply because the suggestion is, okay, that the mayor is supporting the efforts of the group by her participating in a fund raising event at the same time that the group is actively lobbying for the passage of an ordinance that they will benefit from directly. The corporation counsel approved as to form and legality the bill, which has been spoken to by respected attorneys on Maui...Fred Rohlfing among them...James Krueger...the ACLU...as being blatantly unconstitutional, as creating an entanglement with government that's totally unacceptable. These men have come forward with testimony to those effect... that effect, and for the bill to even be processed...there's no county in the state that has a bill that does this, but to be processed and then to have this information that the mayor is speaking at a fund raiser and complimenting them on their efforts suggests...it just creates an impression. I'm not saying that there was...I mean, there's freedom of speech, you associate with who you want to associate, but when you're an elected official, it seems to me that the Article Ethics speaks to circumstances like this. And, that is

Smith: (Continued) what I'd just...

Vice Chair Dodson: Debbie.

Wright: The only problem I have with that is I can understand your concern, but you do realize that the mayor doesn't pass ordinances; so I mean, it's not directly in her area, and that's where I'm having a little problem understanding. If she supports a particular ordinance, or doesn't support...she isn't voting on that ordinance, you know, so I...

Smith: The mayor does, in fact, receive ordinances after they are approved and can veto the ordinance; that's in the process. The administration has a great deal to do with the processing of ordinance in the sense that they actually provide the language of ordinances, through the corporation counsel's office, and it seems to me to err on the side of restraint is certainly more legitimate than to allow something to happen like this. I've followed the process of the creation of ordinances at the council level for several years, and can never underestimate the impact the administration has on the language that occurs in the ordinance.

Vice Chair Dodson: Any other questions?

Haywood: For the record, I'm Guy Haywood, corporation counsel. Unaccustomed as I am to saying I hadn't planned on speaking until Jim Smith spoke, the last time Mr. Smith directly accused me of some level of wrongdoing he left the room before I had a chance to do it. It was part of my confirmation hearing and I didn't have a chance to adequately address him personally, but he's entitled to his opinion and certainly, if he's somehow implying that there's illegality or a collusion between the corporation counsel and the mayor's office, I would suggest he put his money where his mouth is.

I raise an interesting point, with respect to his comments about people attending functions for organizations that may or may not come before the county council. If you adopt a provision like that, you're effectively precluding every council member from ever going to any fund raiser, or any event at any entity that would ever come before the council for any action. I mean, I think if you look beyond what appears to be a personal attack, and look at the practical implications of the so-called watchdog policy here, you're going to find that it just does not make sense...it doesn't float, or it doesn't fly. That's all; thank you.

Vice Chair Dodson: Okay, any questions for him?

Sparks: I have one question. Part of what Jim Smith is talking about was, I think, the mayor supporting a particular zoning change in Wailuku Industrial Park... supporting it before who, I forgot...the planning commission; how does that square with the prohibition in the code that talks about prohibiting representing private interests in any action or proceeding against the county, or appear in behalf of private interests before any agency?

Haywood: Well, I don't know...I wasn't at the meeting, but I don't think the mayor was appearing on behalf of C. Brewer. That is a private interest, I believe, that was seeking the change. I think the mayor represents the people of the County of Maui; I think she has the opportunity from time to time to express herself and her points of view in her position...I don't think there's anything improper about that. But, as I said, I don't think she was representing C. Brewer. Without going too deeply into it, there was...the purpose of C. Brewer amending their project district...Wailuku Industrial Park Project District...was to allow for the creation of a whole lot of affordable housing in that area, and to take it from other projects that may have not been able to have been built

Haywood: (Continued) because of economic...I don't really know all the procedures; but, there was a definite benefit in the form of affordable housing to this amendment. This wasn't simply a zoning change on behalf of C. Brewer, as was represented to you very broadly.

Sparks: Yeah, I got the answer...I think I was... Thank you for helping me. Obviously a person, anyone in the county that is arguing for a...or before a board for a policy, isn't necessarily representing who that might benefit.

Vice Chair Dodson: Dolores.

Fabrao: I just wanted to make a comment that...an observation that we know a lot of times the newspapers do not quote accurately what really happens, so that to give credence to just a newspaper article...doesn't really go with me. If you needed to find out what was really said, and the mayor did speak in favor of C. Brewer, and outside of the context of what you said, then that needs to be thought on too; and, the people would have made an outcry on that, if that did happen.

Vice Chair Dodson: You had a question?

Reyes: No, it's not a question; just a comment...I think...

Vice Chair Dodson: If you have a comment, Victor, I think we should limit the comments to when it comes up during the committee, and we'll discuss it...but just questions for Mr. Haywood at this time; I know he's anxious to get out of here. Thank you.

III. APPROVAL OF MINUTES

The minutes of the May 7, 1992 Charter Commission meeting were approved as circulated.

IV. COMMUNICATIONS

The following Communications were accepted by the Commission:

- A. Communication 92-33 Additional page of petition for Lanai Planning Commission to be added to original Communication 92-33, submitted by G. Hokama
- Communication 92-36 Missing page to be added to original Communication 92-36, submitted by A. Lee
- Communication 92-38 Letter regarding the Board of Water Supply, and addendum report of Peat Marwick, submitted by L. Jefts
- Communication 92-39 Written copy of verbal testimony presented 5/14/92 (Committee B), submitted by J. Smith
- Communication 92-40 Written copy of verbal testimony presented 5/14/92, submitted by J. Smith

V. COMMUNICATIONS

- A. COMMITTEE A REPORT AND CONTINUATION OF DISCUSSION OF PROPOSED AMENDMENTS TO ARTICLES 1 THROUGH 7 - Allan Sparks, Chairman

Vice Chair Dodson: Okay, next we'll move into Committee A, Allan Sparks; I think we stopped off last time at four year terms...

Sparks: Yeah, we're up to that in theory, but since we decided not to go with districts, we do have the work of agreeing on how we want the residency areas to look.

Vice Chair Dodson: Okay; I thought Daryl was going to get with you on a map, and so forth...aren't we waiting for that?

Sparks: That's not going to change my proposal any. I talked to him, and all that will do is give us a map with census tracts on it, which are going to be a more permanent, effective way from his point of view, because precinct boundaries change. But right now, those census tract lines are very similar to the lines I'm using on this map.

Vice Chair Dodson: So, this is ready to be voted on?

Sparks: I think so; it needs to be discussed and you need to think about the ramifications of defining them this way...

Woodburn: Do you have population numbers for each one of those residency...

Sparks: Yes.

Vice Chair Dodson: Take it away, Al.

Woodburn: Any action we take today needs to be unanimous, is that correct?

Vice Chair Dodson: It has to be eight.

Fabrao: Eight votes.

Wright: And, there's only eight of us. Yes, it has to be unanimous.

Woodburn: Thank you.

Sparks: Let me make a couple comments first to set the stage for what you're considering. Keep in mind now that we're at large with residency requirements, so we're not saying one area gets a representative...that area looks like this, another area looks like this and they get a representative; those representatives are all our representatives, right, as far as electoral influence goes, everybody votes on each one of these.

You know from my previous talks why I thought the districts were better, but if we're going this way, the advantage to this system is that we can guarantee a resident for every more or less unique community; so that there's a voice on the council, even though the control over who that voice is is with everybody. You're all clear on that now. It's amazing how, even in my own thinking sometimes, it gets fuzzy again when you get into trying to define residency areas and thinking about those districts.

Okay, so part of this is easy...Molokai is a unique residence area -- we can guarantee them a resident. Lanai is a unique community -- we can guarantee them a resident. This part...there's a nice dividing line through here...West Maui is fairly easily defined as a unique area -- for a resident. South Maui...basically Makena and all the way up through Kihei, Maui Meadows, Maalaea...using the lines that they have there, and this is the same as census tracks...it kind of divides Waikapu, but anyway, that's pretty clearly one kind of an area that seems reasonable for a resident. This green area here is ...

Sparks: (Continued) ideally your unique community might start here, and not include Haiku and Ulumalu and all of those areas, has a more or less unique rural area much like Lanai; but if you don't include this portion, it gets to be a very small population...I figured it out as 2200, or something like that, if you do exclude Haiku and so forth.

Woodburn: What's the lower boundary level area on that area you're describing right now?

Wright: Down...

Woodburn: Down to the ocean...no, the other side...north...

Sparks: This one?

Woodburn: Yeah, where is that?

Sparks: This would include Haiku, as I understand it, and Pauwela and...

Reyes: Kokomo Road or Kuiaha Road or...

Sparks: I haven't seen a map with that detail on it, but let's see... probably Kokomo Road area by the looks of it...

Reyes: And the low end is Makena? Makena and Ulupalakua?

Sparks: This goes up to...Kaupo's over here, so this is all lava basically...

Yonenaka: La Perouse, probably.

Sparks: La Perouse, yes. So, my proposal includes, you know, all this remote area...Hana, Keanae, Kailua...includes in that this fairly populous area here... Haiku, Ulumalu, and all those areas in between...there's something like 3800 people in this...what's labeled 1202 here; and that makes it a population of I think 7,137...

Woodburn: Is that your reason for including it...is to boost the number up?

Sparks: Yeah, and I want to say a word about population...now we're not stuck with equal populations, so we don't want to get hung up on it; on the other hand, we don't want to ignore it so much that we get gross disparities, because there is a problem there, I think, especially with regard to equal pools of candidates, and so forth. And, it certainly appears to be gross disparities when you get really gross...like right now we have 28,000 here and there's only one...then there's Lanai with 2400 and it has one; and people see that and it doesn't seem right.

Woodburn: Without that area...that 1200 area or whatever the reference number was, you're looking at a population in an area of 3600 or something...roughly?

Sparks: No, it was 2287...

Woodburn: I mean in the whole area...

Sparks: If I started the line here...

Woodburn: Right; if you take that out...

Sparks: This area would be 2287.

Woodburn: Oh, okay...

Yonenaka: That's residents...

Sparks: That's population...1990 census.

Woodburn: And, the population of that 5th Senatorial District?

Sparks: Don't read the senatorial...

Woodburn: Well okay, the red one.

Sparks: That one is, as drawn there...what we'd call the Paia/Makawao district, is 10,831. This one is 7,187...the Kula one here and the Ulupalakua one is 11,633; Kahului would be 15,210; Wailuku, which includes Kahakuloa and Wailuku Heights area...and everything that side of Kaahumanu Avenue, is 16,209; this Kihei and Makena one is 15,786; West Maui is 14,574. So they are not incredibly different...and I think it's important to try and keep them to two criteria; in other words, unique communities and, the other criteria is not grossly disparate population, if you can help it. This seems to be a fairly common, similar type of community...so it's a natural. You do get areas that don't fit one community or another in neat fashion, right? What is Spreckelsville, for example? Or, Puunene...so, how to divide those; those could probably be part of Kahului, as well as part of this...but they're small, in any case, and you want to include the whole geographic area in some residency area. This line here bothers me a little bit because you could argue that Makawao is like Pukalani and Kula, and maybe should be part of the same residency area. But, it's also, in my mind at least, not too different from Paia in the kinds of population that they have there; and this one's getting too big... this one needs more to make it more or less similar populations. But, that's what we need to discuss. It seems to me our task is to define residency areas that make sense, and that aren't too disparate in population.

Woodburn: My comment along that line, would be to give some consideration to moving...incorporating the Haiku area that is currently recommended to be a part of the Hana district, and find some other dividing line that makes a little bit more sense...only because I really see the rural nature of the green area distinctly different than what's happening at that green/red boundary in there. I think that the nature of the changes that are taking place population-wise, development-wise, are going to be more consistent with what's going on in the red district versus then what any of...than what the population on Maui might want to see happen in the green area. So, I think you are looking at larger open spaces in the green area typically, where down in that Haiku/Pauwela area you're looking at community subdivisions, agricultural subdivisions, population densities that are going to exceed the bounds of the development intent in the rest of that area.

Sparks: So, if I hear you right, you're saying that a resident from this area on the council that happened to live here, would be seeing more of those kinds of concerns than the concerns these guys would see.

Woodburn: Oh yeah, I think even if you just went to Pauwela maybe, or Huelo... Huelo probably even more typically...if you went to the Huelo area, and included Huelo in the green area and everything west of that with your Makawao/Haiku area... I think what's going on in those areas and the densities that...what's being experienced there, isn't what you're going to find if you go further out towards Nahiku, Hana, Kipahulu and some areas up there.

Sparks: I agree, and that's a troublesome division right in there, and I worried about that...

Wright: Al, what did you tell us is the population in that area? The...

Vice Chair Dodson: The red area or the green?

Wright: That's red? It doesn't look red from here...

Vice Chair Dodson: It's red.

Yonenaka: Orange.

Fabrao: Red-Orange.

Yonenaka: Orange.

Sparks: If we drew the line here...like this boundary line here...

Woodburn: Alright...

Sparks: We would lose 3,800...

Fabrao: And add on to the red would be that many more...

Sparks: That would leave us over here with 2,287; that's smaller than Lanai's population.

Woodburn: But, it's more consistent in what's going on in that area.

Fabrao: So then how much more would go into that red area?

Sparks: Well, 3800 into this red area would make that 14,600.

Vice Chair Dodson: That's consistent with the other areas, and then East Maui would be consistent with Molokai and Lanai, which is more...

Woodburn: I just see that it's really distinctly different in that one area; I don't think that you're going to see that the rate of growth, the changes in the environment, in the neighborhood community anywhere else in that district other than that one area. And, it's much more consistent with what is happening in Haiku, Paia...

Sparks: Let me see if I told you that right...10,800 plus...

Wright: It will be 14,600.

Sparks: Yeah, 3,800...so 14,600 -- that wouldn't be too gross. It's only the one...this one being so small that bothered me, and so I left it at this level for discussion. The implications then are...we have two residency areas that are...

Woodburn: Tiny.

Sparks: ...between 2,000 and 2500 in population. They are really tiny; that means that while we all control who represents that area, it's not a very big pool of

Sparks: (Continued) population for candidates to come from. And yet once they get on the council, and get well-known throughout the county, it's going to be hard for any opposition from this area, just like it is from Lanai, then to compete. So, remember all the implications when you decide to do something like that.

Woodburn: Well I think in fairness to that area though, you may come up with a candidate, let's say from that Pauwela/Haiku area...around in there, that will have... again, I recognize the at large nature of the system, but he's going...he or she is going to be speaking for principally...

Sparks: Well, his experience is likely to be that close to home...that area rather than...

Woodburn: And I think the people out in Hana and Nahiku are going to feel like they lost out again.

Sparks: That's a strong argument...

Yonenaka: And because we do have...because we can make it unique community voices...

Fabrao: And, I think that's consistent with what he said at one of our other meetings regarding Lanai and Molokai and Hana being pretty much the same kind of areas and districts population-wise; of course, Molokai is 7,000.

Wright: I tell you, on this one I really could go either way, and again, since we're going to have a chance to present it to the public, I don't know that it's going to be set in stone; because I agree, it seems a little bit unfair to have too many districts that are very, very small and everybody else having... You know, I understand again, representative geographic residents districts is what I'm talking of...but it does seem a little unfair not to try and balance it out some. But, I do think that Hana is like Lanai in that it's remote enough that it's almost its own world, and it's not going to feel...the people aren't going to feel, once again, like they really have a representative who understands their area. With the kind of residency requirement, but you know, Al, I know what you mean by the pool being limited, and then somebody getting in...you've got them in for a long time. That's what I'm saying, I could really go either way on this. But, the rest of them look...I mean the rest of the dividing lines look like they're just like they should be. I don't know on that one.

Woodburn: I think it also compromises the position of the representative from that area to try to figure out what hat he or she's got to put on. You know, do I have my distinctly rural position with the Hana/Kipahulu area...or do I represent the more developed or overdeveloped in some instances Haiku/Paia area...

Sparks: Or, if I get into a real crunch over election time, do I spend my time down here where the voters are?

Fabrao: Yes.

Sparks: Remember now, that's one of...

Woodburn: Well, they're going to do that anyway.

Sparks: Yeah, they've got to do that anyway; he's right.

Woodburn: Unless you can ban waving and all the rest of that...

Sparks: You see you do the same thing I do...do I represent these guys or these guys, and you forget that you have to...from an election point of view, you've got...

Woodburn: No matter what you do up there, as long as it's at large they are going to go where the people are.

Yonenaka: Right, right.

Vice Chair Dodson: Go down Kaahumanu Avenue...

Woodburn: Right. They're going to go there and Haleakala Highway...

Sparks: So maybe we should have a motion then and decide that. We can just change this line here...I'm pretty sure I can do that with census tracts. What I'm going to do is shift from precincts to census tracks, and then I'll have more precise population figures...although they're close to what I'm showing you...very close to what I've shown you here. And those census tracts I understand, talking to Daryl, don't change election to election like precincts do. So with the final way we'd be putting it in the Charter, we'll be defining each residency area by census tract; and then he's getting me a map with those census tract lines on them and I can color it up like this one.

But it sounds like right now, people are interested in doing what Jamie suggested here.

Reyes: What you are saying is if you move those boundary lines, there would be no technical problems as far as printing the ballots, and all those...there'll be no technical problem...

Yonenaka: No, there won't be anyway because it's all at large.

Sparks: It's all at large, you see, the ballot's the same throughout the county.

Reyes: Well as far as residency requirements...

Sparks: Just defining the residency areas in precision in the Charter...I'm suggesting they do that by census tracts, and then we could do it and it'd look like this, or like moving this line over like this.

Vice Chair Dodson: You want to make a motion?

Yonenaka: Well, we're going to make a motion to accept...

Vice Chair Dodson: I don't know...he's going to make a motion...

Fabrao: You were considering the notion of making that change first, yeah?

Sparks: Yeah.

Yonenaka: Let Jamie make the motion.

Woodburn: And I...

Vice Chair Dodson: Don't change, just make a motion.

Woodburn: I make a motion...

Yonenaka: Okay.

Vice Chair Dodson: Make it.

Woodburn: ...for the inclusion of the area that's been discussed...

Sparks: 1202 on this map.

Woodburn: ...1202 with the area that includes Paia, Spreckelsville and most of Haiku, and with the balance of the area to include the Hana/Pauwela area.

Vice Chair Dodson: Okay, the motion is to accept the map as is, with the change from 1202 to be included in the red section.

Woodburn: Right; thank you.

Vice Chair Dodson: Is there a second?

Wright: Seconded.

Vice Chair Dodson: Any more questions? Any more discussion?

Yonenaka: Yeah; will be able to know exactly where those lines are?

Vice Chair Dodson: Yeah, he's going to be getting, from Daryl, a map.

Reyes: If that's the case, Al also has a concern about the dividing line between Makawao and Pukalani. Al, would you be able to do something if you are going to transfer some of those green areas into the orange...would you be able to do something between the orange and yellow...or the yellowish-orange? About your other concern...transfer some there maybe?

Sparks: The problem is if you added Makawao to this one, that's adding a lot of population.

Reyes: Where's Olinda there? Is it orange?

Sparks: Yeah, it's up here. I don't remember...let's see...that's 2800, see. We could add that to 11,600, I guess, and have 14,400...

Reyes: What I'm trying to say, Al, is maybe encroach the yellowish more for the sake of the additional green that goes into the orange.

Sparks: It might work, yeah, that might work...at least this top part...

Reyes: Right, right...because it's more like the Kula, Pukalani...

Sparks: Still, you've got this dividing line going right through Makawao town...if you add 1006 and 1007, then you'd have over 7,000...that's if you add all of that to here, you'd make this one a little too large...and this one would still be too small.

Vice Chair Dodson: 1007...the dividing line is right in the middle of Makawao town... between 1007 and 1006...see that line right there?

Sparks: But, you got an idea there...now that we're going to add this population to the red, it gets up over 14,000...we could bring it back down about 2800 and maybe this one would be more close in population, certainly the Olinda and upper Makawao part...it doesn't matter...

Wright: I don't think it's a good idea to divide Makawao, personally.

Fabrao: Yeah, I don't think so.

Vice Chair Dodson: I don't think so. I think you mentioned that Makawao is a lot like Pukalani right now, and that the character of the people, you know, the Makawao town shops and the Paia town shops, and there's a lot...parking's a concern up in Makawao and it's a concern in Paia...

Reyes: Excuse me...Al, where is the dividing line between 1006 and 1007... where is that? Is it Makawao Avenue?

Sparks: Yeah, it's right in the middle of town.

Reyes: Oh, okay.

Wright: It's in an odd place, so that makes it difficult, Victor.

Woodburn: It'd be unworkable unless it's a deadend road or something.

Reyes: And, how about Maui Uplands area...where is Maui Upland area there?

Sparks: I'm not sure...it's right along this line here somewhere...

Reyes: Okay, that's all I'm concerned...because it maybe might...you did catch that...not taking the whole area, but you might want to do that...if you want to do that...lucky man...

Sparks: Keep in mind we're not talking about true districts now...

Reyes: Yeah, I know.

Sparks: The precision of the population isn't that crucial. What can happen though, if your line divided the town, you could have somebody on the council from upper Makawao and somebody from lower Makawao, or something like that...and so Makawao gets more than its share of residents on the council in a way...or potentially could. We already have something like that if you say Pukalani and Makawao are similar...you could have one from each of those two communities.

Mondoy: At any rate, you're going to have a map of what it's going to look like anyway...whatever you're going to end up with anyway.

Sparks: I'm telling you it's going to look just like this.

Reyes: I just wanted you to have some flexibility if you wanted to do that; it doesn't have to be exactly, I just want to give you some flexibility. It doesn't have to

Reyes: (Continued) be a north-south division but it could be an east-west around that Makawao/Pukalani area. There seems to be a broad space between Maui Uplands and Pukalani...

Fabrao: But don't you have the feeling that they are really pretty close in spirit now? Pukalani and Makawao areas and all that, and to divide them up...

Yonenaka: It's divided right now.

Wright: Pukalani is divided from Makawao; Paia and Makawao are together... but Pukalani and Kula are together up there...

Sparks: Well, I don't think that will end up being any better, but I like the contribution anyway...we could possibly do something with that...like that...

Reyes: That's the reason I'd like to amend that you'll be able to do that, if you prefer.

Sparks: Before I do that, I'll come back and get...make a case and get another vote on it.

Reyes: Okay.

Vice Chair Dodson: Any other questions? If not, then I'll ask you to take roll call...
Mondoy: Yes.
Fabrao: Yes.
Woodburn: Yes.
Sparks: Yes.
Wright: Yes.
Reyes: Yes.
Yonenaka: Yes.
Dodson: Yes.

[It's unanimous.]

Sparks: Something that I supported is unanimous? Are we making progress or did we just cave in?

Wright: We're just trying to lull you...

Vice Chair Dodson: Don't get comfortable there, Al... Okay, moving on to Section 3.2. Terms. The recommendation is to keep two year terms and limit the consecutive terms to five. Do you want to discuss these together, or do you want me to take them separately?

Sparks: I think they're going to get discussed together whether we want them to or not...

Vice Chair Dodson: I think so too. Al, do you have anything further to add besides your committee report or...

Sparks: What do I have to add? Well, just to get you into the frame of mind of what the rationales are here...of course, the two year term idea was that they can't get too far from bending away from the voters by having to go back every two years. The idea for a four year term is that they don't interrupt county business with having to go and run for reelection so often and also, possibly, they don't have to spend so much time collecting money and then perhaps being beholden to some of that money to run elections,

Sparks: (Continued) by having it every four years. You've heard these arguments before; I'm not sure we want to go around and around on them too many more times. I've heard a fairly persuasive argument that if we went to four year terms and limited it to two four year terms, that that might be a way of getting four year terms...if you believe that that's a good idea, because the limitation would be so popular with the voters; whereas if you just go four year terms, we know from our experience that's not very popular with the voters. So, all kinds of philosophical questions arise...do we just want to be a weather vane, and because limitations are real popular, and go for it; or do we really believe it's a good idea, and go for it because it's politically feasible, and then tack on the four year terms because we also might believe that's a better way to go?

One of my concerns there is, I can imagine a good share of the council...maybe at the same time as the mayor...all being lame duck for four years. I don't know about that one...

Fabrao: Yes.

Wright: Also, as much as I think there'd be probably a good pool of people with responsibilities on the council, I don't think it's a good idea to limit it to two four year terms. I understand if we go five two year terms it's just a little bit longer, not much, but...I don't know, you do need to have somebody have some time and not have that long time of being a lame duck, and I think really it could be a problem. Also, the four year terms, as much as they say well...you don't have to run as often, you don't have to spend as much time collecting money...you've got a bigger prize...when it's four years, you've got a bigger prize and bigger contributions, so sometimes that argument just balances out on the money and how much somebody is beholden to somebody else. So, I think I'm more concerned like what Al talked about...about the second term not being that productive because of that, than I am about just what the voters would go for. But, I also don't believe that there's a whole lot of point, unless we have very strong feelings about it... very strong feelings in proposing something that we know is completely unacceptable to the community. And, I really think it's unacceptable to the community. Unless you have very strong feelings that this needs to be changed regardless of what the community thinks. And personally, I don't have that strong of a feeling, is what I'm saying, that it's absolutely necessary to go to a four year term recommendation; so, I wouldn't probably go ...feel like going along with that.

Sparks: Let me add one point along these lines here...I was thinking this out... If we go to the polls with something like a two four year terms in '92, and it goes into force in '94...we're electing a mayor and a council. And, eight years after that, in 2002...

Vice Chair Dodson: Everybody's going to be new.

Sparks: All but those who lost in 1988 [sic] would be lame ducks.

Vice Chair Dodson: Not only...we could have a whole brand new council, a whole brand new mayor...

Wright: Without experience...

Vice Chair Dodson: Actually, no experience in this building whatsoever...except for the civil service.

Sparks: I really don't worry about lame duckism that much, and sometimes it depends on the personality that is the lame duck...it can free them up to do a lot of things

Sparks: (Continued) that they might not be able to do otherwise, being nervous about being reelected. But, in this case it seems a bit of lame duck overkill...to coin a phrase.

Vice Chair Dodson: Dolores.

Fabrao: I like the term limitations to five two years because if they take a stop and go and rest for a couple years, they can always come back if they are real good people. And that way, every two years the people have a choice if they want to keep them in for ten years or so...that's fine; or if they don't want to keep them in, they vote them out. I feel comfortable with that...

Vice Chair Dodson: Jamie.

Woodburn: If we went with five two year terms, is there also a provision to stagger that? Where you've got some way of...

Vice Chair Dodson: There is no provision for it now, but we could suggest a provision where you could stagger it, but I don't know how you'd do that though...

Wright: These are five consecutive; I think the way they meant it was that you can have no more than five consecutive two year terms, so, if you served two times and then, as Dolores said, you were off for two years, you could still do five consecutive terms after that. But, it has to be five consecutive before it kicks in as far as a prohibition, or something like that. I have to say too that Maui County is changing so much right now, that I really do feel like everybody wants a chance to review what's going on every couple of years; because there's just an awful lot of decisions to be made right now.

Vice Chair Dodson: Victor.

Reyes: And also there's an argument that...there's an argument not to limit the term because if the person is good, let the people decide. I think with the five consecutive two year terms, you'll still be able to have the kind of person...and let's say the layoff period is only two years, and so if the person is really good and the people like, you know...two years is a short time...it's not really that long to go on the ballot again. So, I think that will accommodate that concern, which means that if the Commission adopts it, it will be a lot easier to educate and sell it to the public.

Vice Chair Dodson: This dovetails with what we were talking about in terms of small residency areas too, where one person might become an incumbent and have an overwhelming advantage, this means they have to step out after ten years. It kind of helps alleviate that concern a little.

Fabrao: I like that.

Yonenaka: So Victor, what is your stand on that?

Reyes: I like it, because it address that particular concern that...

Yonenaka: Term limits...five consecutive terms?

Reyes: Yeah, five...I'm in favor because it also addresses my concern...

Vice Chair Dodson: Okay, is there a motion on the floor?

Fabrao: I so move.

Vice Chair Dodson: So move what?

Fabrao: That we...

Vice Chair Dodson: Limit...we don't need to keep the two year terms because we already have that. If you are going to make a motion...the motion is to limit consecutive terms.

Fabrao: Limit the terms to five consecutive two year terms.

Vice Chair Dodson: Is there a second?

Reyes: Second the motion.

Vice Chair Dodson: Do we need to discuss any further?

Yonenaka: Yeah. I understand the problem and I understand the concept, but we look at it in terms of an incumbent has...is going to stay there forever, and basically according to the election laws, he is guaranteed two years. The guy gets in...he knows he's going to get a paycheck for two years; there's no guarantee he's going to be there forever. But actually a five year term limitations [sic] is not that big a deal for me, but I don't like the restrictions and possibly the precedence we can set; because I think it takes away from the responsibility of the voters -- this is your choice, not mine -- I don't think we should have a law that says you can't run. I mean it should be...this is a democracy...it's an election... Theoretically it doesn't always work that way, and I realize that too. Go ahead...

Fabrao: If the people really wanted that person to go in with a term limitation of five consecutive two years...that's ten years...all he needs to do is rest two years and come back the next time; I wouldn't think that's real bad. But, it gives somebody else a chance to get in for those two years, and let the people then decide if they want that person then to be in, instead of the former incumbent. I mean, it works.

Woodburn: I think a point that was made at the last meeting was that you get a lot of name recognition, and people may not pay a whole lot of attention to an individual's voting record or his performance, or whatever, but if the name's out there a lot, that person can stay in office and maybe not be the most contributing member of the council, but just get in almost by default. I think this would provide an opportunity to reevaluate that person's effectiveness, and if he wants to get back on in two years...go for it, you know.

Yonenaka: It's not that big a deal for me, but I really wanted all of you to just be 'Lloyd, we're going to beat you down on this because we feel strongly.'

Vice Chair Dodson: Okay, are we ready to vote? Roll call...

Yonenaka: Yes.

Reyes: Yes.

Wright: Yes.

Sparks: Yes.

Woodburn: Yes.

Fabrao: Yes.

Mondoy: Yes.

Dodson: Yes.

[Unanimous]

Vice Chair Dodson: You got two in a row.

Sparks: I don't believe it!

Fabrao: We're rolling...

Woodburn: Our chairman will be impressed.

Wright: He'll be astounded.

Vice Chair Dodson: He's going to make me do this all the time. Okay, Section 3.3.
Qualifications.

Sparks: No, no, no, no...we have another recommendation, if you have the report in front of you...

Vice Chair Dodson: I'm sorry...

Sparks: Under 3.2. Terms. We are recommending that the terms of the council and subsequently, you'll notice, of the mayor officially start on the first working day of December following their election.

Vice Chair Dodson: Is there any discussion on that? It would just make it the same as the mayor. Didn't we already vote on the mayor? We did vote on the mayor, but now you're saying you want the council to start on December 1st, too...so everybody would be in line.

Sparks: So I will move that we adopt this recommendation...starting the first working day of December.

Vice Chair Dodson: Any discussion?

Reyes: Second the motion.

Vice Chair Dodson: Oh, sorry. Any discussion? Vote.

Woodburn: Maybe we can do this by ayes and nays.

Sparks: Yeah, try ayes and nays -- see if we get any...

Fabrao: No but this...we're supposed to go by roll call.

Sparks: Did we adopt those kind of rules?

Vice Chair Dodson: Yes, you did.

Woodburn: Well, let's amend it.

Vice Chair Dodson: Okay, roll call.

Yonenaka: Yes.
Reyes: Yes.
Wright: Yes.
Sparks: Yes.
Woodburn: Yes.
Fabrao: Yes.
Mondoy: Yes.
Dodson: Yes.

[Unanimous]

Wright: I move that we take a short break.

Vice Chair Dodson: Okay, we'll be in recess for ten minutes.

Woodburn: No, you didn't get a second.

[RECESS/RECONVENE]

Vice Chair Dodson: Moving back to Section 3.3. Qualifications.

Sparks: That one we already did. That was making it clear that you don't have to be in a district for ninety days.

Wright: We already voted on that.

Sparks: Yes, so that one's covered.

Vice Chair Dodson: Okay, Section 3.4. Vacancy in Office. The recommendation is no change unless anybody has anything else.

Section 3.5. Salary Commission. Recommendation...relocate the section to Article 8 as a separate chapter just prior to the current Chapter 14. Discussion?

Reyes: I think that's a housecleaning type of...

Sparks: It is; I don't think anybody's objected to...

Vice Chair Dodson: Can we have a motion please?

Yonenaka: I move to...

Vice Chair Dodson: Move to relocate the Section to...

Fabrao: Second.

Vice Chair Dodson: Ready to take a vote? Okay, roll call please.

Mondoy: Yes.

Fabrao: Yes.

Woodburn: Yes.

Sparks: Yes.

Wright: Yes.

Reyes: Yes.

Yonenaka: Yes.

Dodson: Yes.

[Unanimous]

Okay, the next recommendation is Salary Commission to have authority to determine the salaries of all department directors. Discussion on this?

Sparks: With the requirement that they consult with the boards that hire...

Vice Chair Dodson: Well, I know, but everybody else can read that.

Yonenaka: Do they necessarily consult with any board or commission now?

Vice Chair Dodson: My understanding from Roger MacArthur is that they did try to get

Vice Chair Dodson: (Continued) as much input as possible from all the boards and commissions, and anybody else who was interested in testifying and who had an interest in it, including the mayor's office, council members, etc.

Yonenaka: Okay.

Sparks: This just guarantees that they do that. It doesn't...

Fabrao: And, what they did do was provide a range...they didn't go specific.

Vice Chair Dodson: That was the first time; and then they were told to reconvene...

Woodburn: Doesn't this also address the issue of the intent of the Salary Commission...wasn't there an issue at the last meeting, where the Salary Commission Charter authority is for elected officials only, and ordinance-wise is now for department heads?

Sparks: That's the next recommendation. But this recommendation deals with the fact that right now there's a provision in here that says the water board fixes the salary of their director, so this would include deleting that provision and making that one, like all the others, department heads...now wait a minute...there is a complication here. Jumping ahead a little bit, the next one has to do with...

Woodburn: Well, shall we just stick...shall we just deal with this one first?

Vice Chair Dodson: We've got a motion on the floor...

Sparks: But this one relates to it; let me finish...and it just occurred to me this way. The Charter right now talks about elected officials, and then it says 'and other duties provided by law.' And, it's that ordinance that includes department heads. So, we're not just revising the wording in the Charter if we do this, we're actually saying all department heads...we're actually putting into the Charter the substance of the ordinance.

Fabrao: We talked about that...we agreed.

Yonenaka: We're just coming in line with the ordinance.

Vice Chair Dodson: We're just making it mandatory...an ordinance they can rescind at any point, and this would mean that they cannot; they have to stick to all department heads would be reviewed by the Salary Commission.

Sparks: Then, the next recommendation is sort of redundant.

Wright: Yeah, it is.

Vice Chair Dodson: If we pass this one, yeah.

Sparks: It just hadn't occurred to me to see it that way before; I'm sorry. And the reason I brought that up, is because I am not any longer real sure about the next recommendation...whether we want to... I'm not sure as a body, we wanted to put that ordinance into the Charter. I remember generally some conversation about leaving that flexibility up to the council. If we decide to do that, we can't fix this other thing... you make it consistent across department heads, because it's not even in our language yet.

Vice Chair Dodson: Well, do you want to change the wording that the Salary Commission shall have authority to determine the salaries of all elected officials...well, I don't know how you could do it then...

Yonenaka: Yeah, you can...

Wright: Yeah, you could do it...well wait...you could do it to the extent... all you'd have to say is what you said about elected officials and to the extent that they determine the salaries of department directors...because there's an ordinance you know, but to the extent that they may be designated to appoint department directors, they must do so... or they must consult with those commissions and boards that hire their directors...

Vice Chair Dodson: But then that would not bring water board in it, because they don't consult with water board now because they don't make the...

Wright: No, no, no...you would say, well...

Fabrao: But they don't now...

Wright: No, I understand that, but I'm saying to...

Fabrao: Oh, so that would bring it in line with...

Wright: You could do that, it would just say to the extent that they are appointed to do that. If you want to bring water board in, then yeah, you're going to have to change that whole thing and not leave that flexibility where it's just an ordinance.

Sparks: Yeah.

Vice Chair Dodson: I think you're right.

Wright: You know, it's one or the other; you can leave it and then just say that to the extent that they do that, they have to consult with the different boards and commissions to get their input, but they're not required to do that, see, unless there's an ordinance they wouldn't be doing it.

Vice Chair Dodson: I kind of like what the ordinance is doing right now. I think it's a good idea to have all department heads reviewed by the Salary Commission; somebody independent of the mayor's office, somebody independent of the...independent as much as they can be outside of the council, and so forth, and making those recommendations based upon the boards because...

Wright: I don't disagree, I'm just telling you that you do have to go one of two ways...Al's right.

Reyes: What is wrong with the original recommendation of Al, before he thought about...in other words, putting in the Charter the review the department heads... or the directors...

Wright: There's nothing wrong with it...

Vice Chair Dodson: There's nothing wrong with it...

Sparks: There's nothing wrong with it but I was raising...

Vice Chair Dodson: It's just that if we vote on the second recommendation, then it would be redundant. The first recommendation, if we vote it and it passes, then we don't need to go on to the second recommendation. That's all.

Reyes: Right; okay.

Sparks: And, I raised that because there was some hesitancy about the second recommendation in a previous discussion. Now an ordinance gives the Salary Commission all that authority, and we can't just fix the ordinance because that is not in our jurisdiction. But, if somebody here wanted to keep it as an ordinance matter, then it would be incompatible with this recommendation that we're dealing with.

Reyes: If we do it that way, the Salary Commission would continue to have its problem of determining the salaries of...

Sparks: But, I'm not sure how we would fix that problem if we did it that way.

Vice Chair Dodson: And, you know what...on this first one we talk about all department directors, and on the second we talk about including the salaries of elected and appointed officials, which would include any deputies that are appointed. Are we going to have the Salary Commission determine just department heads...just like the director of finance, not his deputy?

Sparks: Where's the appointed one language now?

Vice Chair Dodson: Under the second recommendation, you've got determining the salaries of all elected and appointed officials, which would include deputies...because a lot of the deputies are appointed. In the first one, it's just all department directors...which does not include deputies. So, if you want it included, you're going to have to change the language to determine the salaries of all department directors and any deputies that are appointed...

Wright: Or, change it to appointed officials.

Sparks: Actually, this recommendation is not intended to define the language, because you would...

Vice Chair Dodson: Yeah, but the form of the motion...right now the motion just reads all department directors.

Sparks: All department directors...what's your pleasure?

Reyes: And deputies follow, because deputies are always...

Vice Chair Dodson: Yeah, I would like to amend the motion...or see somebody amend the motion...to include, or to change the language to instead of all department directors... all appointed officials.

Sparks: Right.

Vice Chair Dodson: Is there a second?

Fabrao: Second.

Sparks: So now we're voting on that amendment?

Vice Chair Dodson: Now we're voting on that...combining the two recommendations.

Reyes: Excuse me...did you move the motion?

Vice Chair Dodson: Well, I asked somebody to...

Reyes: We have to be technical here, so...

Vice Chair Dodson: Did somebody else move?

Woodburn: I'll move...

Sparks: But if we didn't, we don't have to amend it...we can start fresh.

Vice Chair Dodson: Okay, Jamie moved...we need a second...

Fabrao: I did second.

Vice Chair Dodson: Okay, Dolores. Is there any further discussion?

Sparks: What are we voting on?

Vice Chair Dodson: We're voting on the recommendation that the Salary Commission have the authority to determine the salaries of all appointed officials, with the requirement that they consult the boards and commissions that hire their department directors.

Reyes: So, elected and appointed is the language?

Sparks: It would be elected and appointed because we're not changing that, we're just adding this.

Vice Chair Dodson: We're just adding in appointed as well. Okay, are we ready to take a vote? Roll call please.

Mondoy: Yes.

Fabrao: Yes.

Woodburn: Yes.

Sparks: Yes.

Wright: Yes.

Reyes: Yes.

Yonenaka: Yes.

Dodson: Yes.

[Unanimous]

Okay, moving on to Section 3.6. Procedure, Meetings, Rule and Journal. Voting recommendation...change the wording of the first sentence to read 'voting, except on procedural matters shall be according to council rule, except that it shall be by roll call if one member so requires.'

Wright: So requests.

Vice Chair Dodson: So requests; I'm sorry.

Sparks: This says right now 'voting except on procedural motions shall be by

Sparks: (Continued) roll call and the ayes and nays shall be recorded in a journal.'

Vice Chair Dodson: And, I think their argument was that it was just too time consuming.

Sparks: Too time consuming...

Reyes: But on the other hand, we want to...

Sparks: Yeah, we didn't want to frustrate anybody who might be in a minority and wants to put the others on record.

Vice Chair Dodson: So I think the one number is good, if any one member wants the roll call then they can.

Yonenaka: Great.

Vice Chair Dodson: Is there a motion on it? Can we have a motion on the floor, please?

Sparks: I move for the recommendation as stated.

Vice Chair Dodson: Second?

Mondoy: Second the motion.

Vice Chair Dodson: Any further discussion? Okay, roll call.

Mondoy: Yes.

Fabrao: Yes.

Woodburn: Yes.

Sparks: Yes.

Wright: Yes.

Reyes: Yes.

Yonenaka: Yes.

Dodson: Yes.

[Unanimous]

Okay, no change in Section 3.7.

Sparks: Can I insert something here? In my mind, we're making fairly final but not completely final decisions...is that correct? Final tentative, or whatever you want to call it.

Vice Chair Dodson: At any point anybody can bring up a motion and bring on the floor districting again in a different form or...

Sparks: They'd better not...I'm tired of that.

Vice Chair Dodson: Maybe I shouldn't have used that one as an example, but...

Wright: I think we understood that this was going to be our initial recommendations to the public...that none of us were bound, necessarily ultimately to approve this in it's final form...we don't have the final form of the wording anyway.

Vice Chair Dodson: We're just trying to narrow down what we're going to take to the public right now. Do we have time to go on to one more?

- Woodburn: One more what? Committee Report?
- Vice Chair Dodson: No... Article 4. Ordinances and Resolutions. The recommendation is that the Commission may wish to further discuss???? I don't think we'll have time to go into this one, to tell you the truth.
- Wright: That's going to be a long one.
- Yonenaka: Right.
- Vice Chair Dodson: Was there any other just kind of housecleaning stuff? How about Section 7.2. Election of Mayor and Term of Office.
- Wright: We did that.
- Sparks: I guess we did that one. Oh, we did this one too, Section 6.2. -- didn't we do that one?
- Wright: Yes, we did.
- Yonenaka: Yeah, and I think we passed that one too.
- Wright: Yes, we did. So, that's all we've got left on here is just that one on the ordinance.
- Sparks: I think we've covered ours, except for this one.
- Vice Chair Dodson: Okay, why don't we go ahead, if there's no further business, and adjourn for tonight, and pick up on the last one of your committee...Ordinances and Resolutions, and then we're ready to move on to Committee B.
There was one other thing though...do we have a date on when we have to be finished with all this stuff?
- Wright: August 15th...it has to be submitted in final form to the Clerk on August 15th.
- Vice Chair Dodson: Are we starting to submit our minutes to Paul so he can start going...

- V. NEXT MEETING DATE
- A. May 21, 1992 - 4:00 p.m. - Council Committee Room
 - B. May 28, 1992 - TENTATIVE PUBLIC MEETING WITH PUKALANI COMMUNITY ASSOCIATION
(Date to be confirmed at next meeting)
 - C. June 25, 1992 - SKYBRIDGE (Postponed from May 21, 1992)

- VII. ADJOURNMENT
There being no further business, Vice Chair Dodson adjourned the meeting at 5:56 p.m.

ACCEPTED:

Sherrilee Dodson, Vice Chairman Date