

LINDA CROCKETT LINGLE
Mayor



91-20

GUY A. HAYWOOD
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 243-7740

September 20, 1991

Mr. Robert Nakasone
Chairman
Maui County Charter Commission
200 South High Street
Wailuku, Maui, Hawaii 96793

Re: CHARTER OF THE COUNTY OF HAWAII, ARTICLE III, SECTION
2, COMPOSITION AND TERMS

Dear Mr. Nakasone:

At the last meeting of the Charter Commission you requested that I obtain information regarding Article II, Section 2 of the Charter of the County of Hawaii.

Specifically, you requested that I obtain from the County of Hawaii's last Charter Commission a report explaining the reasons for the Commission's amendment ("The Amendment") that changed Council member terms from four years to two years.

I contacted two individuals who were directly involved with this issue, John Wagner, County of Hawaii Clerk, and Robert Bethea, former Chairperson of the Commission.

According to Mr. Wagner, the Commission did not issue a report on this matter. He added that the minutes of the Commission's meeting dealing with the change in terms are vague and not very helpful. Mr. Wagner said the Commission passed the amendment at its second to the last meeting and little discussion occurred prior to the Commission vote.

Mr. Wagner said he believes the impetus for that amendment was a petition for a change in the electoral system by residents in the Kona, Puna and North Kohala districts ("The Residents"). The residents requested that the Commission amend the Charter to provide for a single member district system rather than the election at-large system with residency requirements.

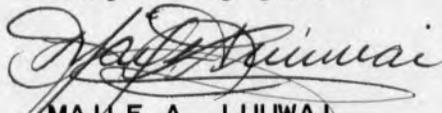
Mr. Robert Nakasone
September 20, 1991
Page 2

According to Mr. Wagner and Mr. Bethea, the majority of the Commission members ("The Members") supported amending the Charter to provide for single member districts. Supporters felt that tying the two year term provision with the amendment to change Council composition would ensure the passage of the amendment. Other members who did not support the amendment felt that lumping the term provision with the composition provision would ensure that the amendment would fail. These members were "surprised" when County voters passed the amendment.

From the information provided, it seems that the 4-2 year term issue appeared secondary to the district system issue and the term provision may have been used to defeat/or gain support for the composition provision of the amendment.

If you have any additional questions or comments, or desire any additional information, please feel free to contact our office.

Very truly yours,



MAILE A. LUUWAI
Deputy Corporation Counsel

MAL:ln
ltrs\nakasone

91-21

Council Chair
Howard S. Kihune

Council Vice-Chair
Patrick S. Kawano

Council Members
Vince G. Bagoyo, Jr.
Goro Hokama
Alice L. Lee
Rick Medina
Wayne K. Nishiki
Joe S. Tanaka
Leinaala Teruya Drummond



COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

Gwen Yoshimi-Ohashi
Director of Council Services

RECEIVED

1991 SEP 25 AM 7:45

OFFICE OF THE MAYOR

September 23, 1991

Honorable Linda Crockett Lingle
Mayor, County of Maui
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Linda Crockett Lingle 9/26/91
Mayor Date

For transmittal to:

Mr. Robert Nakasone, Chair
and Members of the Charter Commission
County of Maui
Wailuku, Hawaii 96793

Reference is made to your letter of September 19, 1991, which was received today, requesting that representatives from the Council attend your Commission meeting of September 26, 1991, to discuss: 1) a proposed resolution pertaining to Sec. 4-2 of the Charter, preferably with the introducer of the resolution, and 2) Articles III and IV of the Charter in general, with myself or my designee.

I am aware of your previous request to discuss these matters, however, was not able to attend your meeting of September 12, 1991, due to other commitments out-of-state. With regard to your meeting of September 26th, I am again unable to attend as I will be in Honolulu for meetings that were scheduled over a month ago. I would like the opportunity to meet with the Charter Commission, however, I would appreciate receiving advance notice of such a meeting.

I have asked that Councilmember Rick Medina attend your meeting of September 26th to discuss the proposed resolution pertaining to Sec. 4-2. With regard to Articles III and IV, I prefer discussing these sections with the Charter Commission myself, or have Councilmember Goro Hokama represent the Council. Unfortunately, Councilmember Hokama will also be in Honolulu on September 26th.

I apologize for any inconvenience that my scheduling conflicts have created for you. Please let me know as soon as possible when your next meeting will be. I will make every effort to attend this meeting.

Mr. Robert Nakasone
September 23, 1991
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Thank you for your understanding. I look forward to meeting
with the Charter Commission soon.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Howard S. Kihune".

HOWARD S. KIHUNE
Council Chair

11:HSK:g

91-22

Gwen Yoshimi-Ohashi
Director of Council Services

Council Chair
Howard S. Kihune

Council Vice-Chair
Patrick S. Kawano

Council Members
Vince G. Bagoyo, Jr.
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Leinaala Teruya Drummond



COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

RECEIVED

1991 SEP 26 AM 10:16

OFFICE OF THE MAYOR

September 25, 1991

Honorable Linda Crockett Lingle
Mayor, County of Maui
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Linda Crockett Lingle 9/26/91
Mayor Date

For transmittal to:

Mr. Robert Nakasone, Chair
and Members of the Charter Commission
County of Maui
Wailuku, Hawaii 96793

Dear Chair Nakasone and Members:

SUBJECT: PROPOSED RESOLUTION AMENDING THE REVISED CHARTER
OF THE COUNTY OF MAUI RELATING TO RESOLUTIONS AND
ORDINANCES

Council Chair Howard S. Kihune had asked that I attend your meeting of September 26, 1991, to discuss with you the proposed resolution pertaining to resolutions and ordinances.

I am sorry I will not be able to attend your meeting. As the introducer of the proposed resolution during the 1989-1991 Council term, I had requested that consideration be given to change the number of Councilmembers who may request a public hearing from three (3) members to five (5) members.

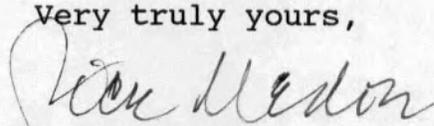
I had proposed this amendment primarily for the purpose of the costs involved and associated with every public hearing that the Council schedules. The existing Charter provision also provides an opportunity for unnecessary delays in the Council's consideration of resolutions and ordinances.

Attached is an excerpt of the Council's Committee of the Whole meeting minutes of February 22, 1990, when this proposal was discussed last year.

Mr. Robert Nakasone, Chair
and Members of the Charter Commission
September 25, 1991
Page 2

Should you have any questions or require additional information, please feel free to contact me.

Very truly yours,



RICK MEDINA
Councilmember

1:LTR:g

Attachment

Chairman says, we appropriate and they spend and they can spend whichever way they want.

MR. FUKUSHIMA: That's correct. It would be my opinion that the Council, by law, set up a list of priorities and said that before you get to number two, you must do number one, and before you get to number three, you must do number two, I would see that as being an encroachment upon the administration's authority to decide where to spend the money. And I think it's an interrogation to the powers of the mayor under the Charter. You may have a cooperative mayor that says, yes, okay I'll do it but I don't think he's bound to do that by any law.

COUNCILMEMBER MEDINA: But anyway, that was why I thought we should at least let the appointees know how we might feel about certain things before we finally decided to confirm them. But if we don't have the confirmation power, then we're back to square one, maybe.

CHAIRMAN HOKAMA: Okay. Next is -

"PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), RELATING TO ORDINANCES AND RESOLUTIONS" (Medina)

This is regarding the request for public hearing. Right now, under the Charter, under the Council, any time any three members ask for a public hearing, we have to hold a public hearing. So, what the amendment says is that at least the majority has to request for a public hearing.

COUNCILMEMBER CROCKETT LINGLE: Is Mr. Medina going to say why he wants to make this amendment?

COUNCILMEMBER MEDINA: Excuse me, Mr. Chairman, I wasn't listening.

CHAIRMAN HOKAMA: This is the amendment to the Charter changing from three to five.

COUNCILMEMBER MEDINA: I've discovered that, as I might have added in my rationale regarding this change is that three members stand up and want a public hearing and don't show up for the public hearing when the Council finally holds it. Are they really sincere and to find out if we really want a public hearing I think that maybe five members should stand up and say, we do want a public hearing, it is important, it is in the interest of the public, let's have it. But when three people stand up and say they want it and one decides to support it because that's the person's desire to support anybody who wants a public hearing but is really not interested in the public hearing we waste a lot of time and money. If we're going to hold a public hearing, let's be sincere about it. Let's have

the majority say that we want to hold a public hearing and we're going to attend this public hearing. But that was the reason why I think it should be five members.

COUNCILMEMBER CROCKETT LINGLE: Mr. Chairman, may I address this?

CHAIRMAN HOKAMA: Go ahead.

COUNCILMEMBER CROCKETT LINGLE: This section of the Charter was, I feel was a very conscious effort five members of the Charter Commission to recognize the rights of the minority. And having experienced being in the minority more than most, I want to talk about the importance of democracy that is guided by majority rule, why a provision like this is so important. The justification just stated about, well, they don't show up is really specious because I have been here for ten years and there are many public hearings where it's even required by law and none of us show up. In fact, we have reached the point where we have agreed that we can appoint our Chairman to serve as a hearings officer for that public hearing because it's required by law but we know that no one from the public is going to come anyway and so we've all agreed that we can designate the Chair to sit in on those cases. But being in the Council for this time I found that there are instances where, obviously, it's a lot easier to get two other people to go along with you than it is four other people especially being in the minority. Keep in mind with our at large system of voting here, that there are times when you are representing a specific segment of the community. For instance, let's say you are the Molokai representative on the Council, and there are some issues and you happen to be in the minority at that time. If you had to be able to get five votes . . . (CHANGE TAPE) . . . which again because of our at large system of voting this can occur and does occur. And I feel that there are issues even though I might, and this has happened to me also, even though I agree with the majority, I've had members from the public come to me and say, you know, I want one more opportunity to address this issue, and I'll vote to have a public hearing even though my mind is pretty well set on the other side or I'll have Councilmembers come to me and say, you know Linda, we really have to have another public hearing on this and I'll say, yes, but my mind is already made up, but okay, I'll vote. I don't think you can have too many public opportunities for residents to express themselves. I think the number of things that we spend money on with not a care for what the purpose is or what we're accomplishing as compared to what you accomplish by having a public hearing, I really think it's specious to argue that. I just feel, again, in a society that is ruled by the majority, minority rights are very important and those rights have been recognized at a variety of levels in a variety of ways, and our Charter Commission, I mean, this is so specific, they wanted this in there to recognize that even though you don't have the votes to carry today, you do represent the

public, you three people. And you should be able to bring this to the public forum. So, I would argue very strongly against something like this.

COUNCILMEMBER MEDINA: May I respond, Mr. Chairman?

CHAIRMAN HOKAMA: Go ahead.

COUNCILMEMBER MEDINA: One of the things that we have done recently is to allow for a testimony at our regular Council meeting. We didn't used to do this. When this statement in the Charter was inserted, our meetings at the Council were _____ by any public testimony. If you wanted to speak on an issue, the Council gave you that privilege by opening it up for the public at our regular Council meetings to speak. I felt that at that time, if you had anything to tell us in the 11th hour that something occurred to you that you didn't like this bill, we gave you that opportunity to speak to us. And now that we have that opportunity for the public in addition to the regular public hearings that we have to hold by law that the person who might be aggrieved or might support an issue still has an opportunity to speak to us at the Council meeting. So, because of that opportunity, I think that would be the saving grace for that person who wants to give us his final opinion. So, that's why at this time if we didn't have that, I wouldn't propose this. But since we do have that avenue now, well, we're going to give that person an opportunity to talk to us.

COUNCILMEMBER CROCKETT LINGLE: Mr. Chairman.

CHAIRMAN HOKAMA: Anybody else?

COUNCILMEMBER KAWANO: Go ahead, Linda.

COUNCILMEMBER CROCKETT LINGLE: Thank you. On this particular point, so I don't lose this thought, I would remind Councilman Medina that most people are working at 10:00 a.m. on a Friday morning, and it is extremely difficult for them to come in and talk and this has been stated to us so many times that it really hardly bears repeating. But a public hearing we usually hold them at night and it does give people an opportunity, I feel that they wouldn't otherwise have because of their work schedules.

COUNCILMEMBER KAWANO: I wish I didn't let her talk. That was my point too that the people work during the day. However, I agree with that part of Councilwoman Linda Lingle's remark but I don't agree about the majority or minority because I do believe even the majority have problems as far as trying to pass some things on, as far as even getting a public hearing. So, I agree that we should stick with the three. As I said, I don't think it's a justified . . . it's a good point, it's a good selling point as far as the minority. But as I said earlier, the majority has the same problems too, Mr. Chairman.

COUNCILMEMBER TANAKA: Mine is more for the person that wants a public hearing. Maybe he has a final chance to present his case. So, mine is the process. So this guy would have his last chance. To get five votes is highly impossible. Three votes, I think he can get it. I think in due process, I think he's entitled to go and speak for the last time or to have a public hearing to present his case, if he feels it's that important. And I'm sure whoever wants a public hearing feels that it's important so we should give them the opportunity. By increasing the vote by five does not help the individual. So, I would say to keep it at three.

CHAIRMAN HOKAMA: Any other comment? Okay, we'll go to the next one.

"PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), RELATING TO THE APPROVAL OF RULES OF THE DEPARTMENT OF WATER SUPPLY"

Is that yours, Linda?

COUNCILMEMBER CROCKETT LINGLE: I don't know but it certainly follows my philosophy so maybe I'll address it. This is eliminating the requirement for a two-thirds vote of the Council to override a rule by the Water Department. And my basic underlining feeling, and this will come out in the subsequent amendments, and that is, an elected body should not need a super majority to override an appointed body. The Council is elected by the people. If five members believe that the rule is not in the best interest of the public, then I think a simple majority should be able to override an appointed board. That's simply stated what this is. So, it's requiring instead of a two-thirds vote to override the Water Board, it would be a vote of five members of the Council.

CHAIRMAN HOKAMA: Any other comment?

COUNCILMEMBER MEDINA: You're going to change that seven votes to, Linda?

COUNCILMEMBER CROCKETT LINGLE: It's currently six.

COUNCILMEMBER MEDINA: No, the other one.

COUNCILMEMBER CROCKETT LINGLE: Those are coming up later.

COUNCILMEMBER MEDINA: Are you in favor of changing that too?

CHAIRMAN HOKAMA: Wait, wait, let's stay on the water one right now.

COUNCILMEMBER MEDINA: I just wanted to know because if I'm going to be uniform on my selection . . .

CHAIRMAN HOKAMA: When we get to that, she'll talk about that. But right now, we're on the Water Board issue.



MAUI COUNTY COUNCIL

COUNTY OF MAUI
200 S. High Street
Wailuku, Hawaii 96793
Telephone 243-7667

HOWARD S. KIHUNE
Council Chair

91-23

September 25, 1991

RECEIVED
1991 SEP 26 AM 10:29
OFFICE OF THE MAYOR

Honorable Linda Crockett Lingle
Mayor, County of Maui
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Linda Crockett Lingle 9/26/91
Mayor Date

For transmittal to:

Mr. Robert Nakasone, Chair
and Members of the Charter Commission
County of Maui
Wailuku, Hawaii 96793

Dear Chair Nakasone and Members:

SUBJECT: PROPOSED RESOLUTIONS AMENDING THE REVISED CHARTER OF THE COUNTY OF MAUI (1983) AS REFERRED BY THE COUNTY COUNCIL AT ITS MEETING OF JUNE 1, 1990

I am transmitting copies of the following documents which may be helpful in your review of the fourteen (14) proposed resolutions which were considered by the County Council in 1990 and subsequently referred to your Commission:

1. Minutes of the February 22, 1990, meeting of the Committee of the Whole;
2. County Communication No. 90-136, As Amended, reporting on the discussions and recommendations of the Committee of the Whole at its meeting of February 22, 1990; and
3. Minutes of the May 17, 1990, meeting of the Committee of Whole.

I note that County Communication No. 90-260, As Amended, reporting on the discussions and recommendations of the Committee of the Whole at its meeting of May 17, 1990, was previously transmitted to you by County Clerk Daryl T. Yamamoto in his letter of July 9, 1991.

I believe your review of the minutes will provide you with information on the introducers of the resolutions as well as the reasons for their introduction.

Mr. Robert Nakasone
September 25, 1991
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As I had mentioned in my letter of September 23, 1991, I would like the opportunity to meet with the Charter Commission. If there are specific questions or areas of concern you would like for me to address, I would be happy to do so in writing or at a future meeting of the Commission.

Again, I apologize for not being able to attend your meeting on September 26, 1991. If I can be of any assistance to you, please do not hesitate to contact me.

Very truly yours,



HOWARD S. KIHUNE
Council Chair

16:HSK:g

Transmittals