

James R. Smith  
P.O. Box 790403  
Paia, Maui, Hawaii 96779

Attention: Lisa Kahuhu Maui Charter Commission

**FAX:** This is the CORRECTED VERSION

Fax number: 270-7152

Date: 6/24/12

To: Chairperson Joshua Stone and Members of the Maui Charter Commission

**Subject:** written testimony re: Item No. II.A. and attached testimony Maui County Council dated 6/06/12

From: Jim Smith

Message: I may not be able to attend and submit this written testimony for your consideration.

Number of pages: **3**

0625-12 - Written Public Testimony

**James R. Smith  
P.O. Box 790403  
Paia, Hawaii 96779**

June 25, 2012  
Chairperson Joshua Stone,  
Members of the Maui County Charter Commission  
200 S. High Street  
Wailuku, Hawaii 96793

**Subject: Communication Item No. II.A , transmitted via  
E-mail to Charter Commission members on June 15, 2012**

Dear Chairperson Stone and Members,

In the above mentioned communication a member poses the question: "Can we still drop our proposal?" This appears to be an ex parte communication that violates our Sunshine Law, as it relates to members meeting and take up in private, matters required to be noticed and considered in public. The agenda for this meeting does not list for consideration an item to take up a proposal to consider repeal of any proposed amendment to our Charter.

This is injurious to dignity. It takes away my right to see and/or participate in a meaningful way, in Commission decision-making. This right is guaranteed by general law of the State of Hawaii - HRS 92.

Equally as important to public trust, the member failed to provide you with a copy of the legislation referenced; the Policy Committee Report concerning the ordinance; nor did he inform the committee of written testimony provided the Council, for or against. I submitted written testimony to our Council when it considered the first reading of the bill related to publication of the charter, dated June 6, 2012. (see attachment)

It appears DeLeon relies upon his status as a member, to affirm the truth of his allegation. The Council did not adopted this Commission's proposal. It merely restated an existing law, that the Clerk failed to administer. (I assume the legality of its use of power, for the sake of argument)

If this Commission would like to take up reconsideration of the proposal referenced by Member DeLeon, or any other, I request that the Commission give adequate notice. The public needs the time and opportunity, as provided by law.

Thank you for your time and patience

Sincerely submitted,

  
James R. Smith

**James R. Smith**  
**P.O. Box 790403**  
**Paia, Maui, Hawaii 96790**

June 6, 2012

Chairperson Danny Mateo  
And Members of the Maui County Council  
200 S. High Street  
Wailuku, Hawaii 96793

Subject: Bill for an Ordinance Amending Chapter 1.14,  
Maui County Code relating to Publication of the Maui County  
Charter

Dear Chairperson Mateo and Members,

Our Charter Commission's proposal to bring to the community an amendment to Article 14 of our Charter is meaningful, appropriate and necessary. This is not an amendment to the duty, function and responsibility of the Office of the Clerk, at Article 5.

Article 14 establishes the importance of our Charter, in the lives of citizens. It assures and protects governance of and by the people. The proposed amendment finalizes that importance, and in light of experience, it is necessary. It advances public awareness of citizen power, and the limits of political power. By this awareness, consent is possible. And I believe this proposal to be a significant improvement to our existing Charter.

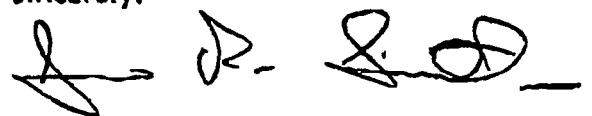
The timing of the Council hearing this proposed bill is unfortunate.

In effect the proposal is not an expression of public policy, rather simply an administrative directive, in the nature of the Rules of Council. Council rules are adopted by resolution not ordinance. If the council position that the proposed amendment does not merit inclusion in a constitutional document has merit, then it appears on its face this proposed bill does not merit inclusion in the Maui County Code.

We must possess a clear understanding of these differences. Because this difference defines the nature of our political structure, governance by law. The opportunity to take up these matters in your Policy Committee's review of our Charter Commission's response, dated May 25, 2012, should not be lost. I request that this bill be referred back to the Committee prior to final approval.

In addition, I believe the proposed bill to be defective, particularly as it repeals the inclusion of the Rules of Council as appended to the Maui County Code.

Sincerely,



ORDINANCE NO. 3958

BILL NO. 54 (2012)

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

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

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

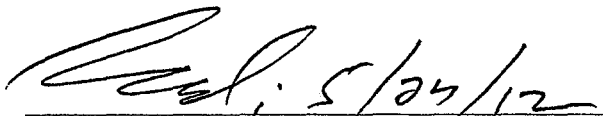
**“1.14.020 Duties.** In performing the function of revising and publishing county laws, the duties of the revisor of county laws, in order of priority, shall be:

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

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

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

APPROVED AS TO FORM AND LEGALITY:



Edward S. Kushi, Jr.  
Department of the Corporation Counsel  
County of Maui  
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062512 - Additional material

WE HEREBY CERTIFY that the foregoing BILL NO. 54 (2012)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 15th day of June, 2012, by the following vote:


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

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 15th day of June, 2012.


DATED AT WAILUKU, MAUI, HAWAII, this 15th day of June, 2012.

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2012 JUN 15 PM 2:05  
OFFICE OF THE MAYOR

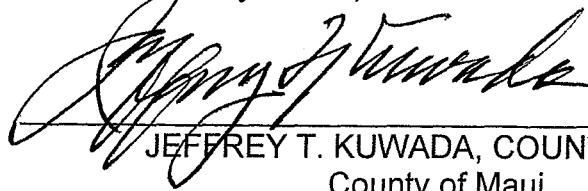
  
JOSEPH PONTANILLA, VICE-CHAIR  
Council of the County of Maui

  
JEFFREY T. KUWADA, COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 18 DAY OF June, 2012.

  
ALAN M. ARAKAWA, MAYOR  
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3958 of the County of Maui, State of Hawaii.

  
JEFFREY T. KUWADA, COUNTY CLERK  
County of Maui

Passed First Reading on June 6, 2012.  
Effective date of Ordinance June 18, 2012

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OFFICE OF THE COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3958, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui

MESSAGE TO MAUI COUNTY VOTERS

FROM

THE MAUI COUNTY CHARTER COMMISSION (2011-12)

During the upcoming General Election, Maui County Voters are going to be asked to review and vote on (10?) amendments to the Maui County Charter. The County Charter is like the County's constitution. It is the fountain on which our local government is based. It sets the rules for how we select our leaders; spend our tax dollars to run the county government; and how that government is organized. Because the Charter is so important, all changes to it require the approval of the voters.

Every 10 years a panel of 11 citizens is selected by the Mayor and approved by the County Council to review the charter, seek comments on it from our elected leadership and the general public; and then after careful review, make recommendations for amending the Charter. This Charter Commission is chaired by Joshua A. Stone and Wayne N. Hedani serves as the Vice Chair. The other members are: Artemio C. Baxa, Stephanie S. Crivello, David P. DeLeon, Frank R. DeRego, Clifford P. Hashimoto, Susan A. Moikeha, Linda Kay Okamoto, Yuki Lei Sugimura, and Flo V. Wiger. The Commission held 23 regular meetings ((including three we have not held yet: remember this is to be read in September)) and held public hearings throughout the County twice. After consulting with the Maui County Council as required by law, the Commission chose to place the following 10 proposed Charter Amendments on the November General Election ballot for the voters' consideration and approval:

**PROPOSAL ONE -- SHALL THE TERM OF OFFICE FOR COUNTY COUNCIL MEMBERS BE CHANGED FROM TWO (2) TO FOUR (4) YEARS; THE NUMBER OF TERMS LIMITED TO THREE (3) OR NOT MORE THAN 12 YEARS OF CONTINUOUS SERVICE; AND THAT THE TERMS BE STAGGERED?**

Currently, our nine-member County Council is elected every two years. This proposal would increase the term length to four years. The purpose for this increase is to give the Council Members more time to do the work they were elected to do by not requiring them to run for re-election every 2 years.

This amendment would create a limit of three four-year terms, or a maximum of 12 years, after which members would have to vacate their office. Currently, Council Members are limited to a maximum of five 2-year terms or 10 years.

This proposal would also stagger the Council elections so that the five members with the highest vote counts in the 2014 election would be given an initial four-year term and the four with the lowest vote counts would be given an initial two-year term for that election only and thereafter would be given four-year terms. The purpose for staggering the terms is so that the whole Council would not be running for re-election at the same time. The Council Members with the initial two-year terms of office would be limited to a maximum of 10 years in office.

While this proposal has three parts, the voter will be asked to vote on all three as a unit, in a single yes or no vote.

062512 - Additional material submitted by Dave DeLeon

*BALLOT QUESTION*

Shall Section 3.2, of the Charter of the County of Maui be amended to:

- (a) Change the term of office for Council Members from two (2) to four (4) years; and
- (b) Limit the term to no more than three (3) consecutive terms;
- (c) Have the terms be staged?

**PROPOSAL TWO -- SHOULD THE RESPONSIBILITY FOR OCEAN AND SHORELINE RESCUE AND SAFETY BE PLACED IN THE DEPARTMENT OF FIRE AND PUBLIC SAFETY**

Currently, County Beach Lifeguards or Ocean Safety Officers are based in the County Parks and Recreation Department primarily because they work at Beach Parks. However, there has been a long-term effort to move this responsibility to the Fire and Public Safety Department because it is primarily a public safety function that would be enhanced by being part of a department with a public safety mission. This shift, however, has not been accomplished and remains an open question. If approved by the voters, the County's Ocean Safety function would be moved to the Department of Fire and Public Safety.

*BALLOT QUESTION*

Shall Section 8-7.4 of the Charter of the County of Maui be amended to assign shoreline and ocean rescue and safety to the Department of Fire and Public Safety?

**PROPOSAL THREE -- SHOULD MAUI COUNTY ESTABLISH AN INDEPENDENT OFFICE OF COUNTY AUDITOR**

Maui County does not currently have an auditor function with a broad range of authority to study the operations of the government in order to enhance both governmental accountability and efficiency. This proposed Charter amendment would create a new office of County Auditor that would be responsible for both fiscal and management audits of county accounts and operations. While the County Auditor, who would head up this new office, would be appointed by the County Council and may be removed by the Council, the goal for this office is to be independent of the county's administrative and legislative leadership so that the auditor would be able to issue complete, accurate, unbiased and reliable reports to the Mayor, the Council and the Public about how Maui County is operating and how efficiencies can be achieved. The auditor will appoint the auditor's staff, which will not be subject to civil service laws. Under this proposal the County Cost of Government Commission will serve in an advisory capacity to the County Auditor. The Commission will be appointed by the Mayor and confirmed by the County Council.

*BALLOT QUESTION*

**Shall the Charter be amended to establish an independent Office of the County Auditor, to provide for the appointment and removal of an independent County Auditor by the County Council, to define the County Auditor's duties and powers in order to increase accountability and efficiency of County operations, to attach the Cost of Government Commission as an advisory board to the County Auditor, and to make other clarifying, conforming, transitional, and related amendments?**

**PROPOSAL FOUR -- SHALL THE COUNTY COUNCIL BE REQUIRED TO ESTABLISH A SYSTEM TO ALLOW FOR RESIDENTS OF MOLOKAI, LANAI AND HANA TO TESTIFY LIVE AT COUNCIL MEETINGS VIA AN INTERACTIVE COMMUNICATIONS SYSTEM**

Currently for residents to testify live at County Council meetings they have to appear in person in Wailuku. For residents from Hana that means two hours driving one way. For Lanai and Molokai residents it means committing a full day and considerable expense. While the idea of establishing a communications system that would allow residents of remote districts to give testimony without traveling long distances, has been frequently discussed over the years, to date no such system has been created. This proposal requires that one be created.

*BALLOT QUESTION*

**Shall Article 3, County Council, of the Charter of the County of Maui be amended to require interactive communications access for public testimony at all County Council and County Council committee meetings for the residents of Hana, Lanai, Molokai and other geographic areas as the Council deems appropriate and reasonable?**

**PROPOSAL FIVE -- SHALL THE COUNTY CLERK BE REQUIRED TO RE-PUBLISH THE COUNTY CHARTER EVERY TIME IT IS AMENDED**

Currently the County Charter is re-published every so often and if amendments to the charter are approved by the voters before the charter is re-published, those amendments are attached as addendums to the last published version of the Charter. This creates a confusing presentation of the Charter. Because the Charter is a public document, meant to be clearly understood by one and all, it is proposed that the County Clerk be required to republish the Charter whenever it is amended.

*BALLOT QUESTION*

**Shall Article 14, Charter Amendments, be amend to add a new section to require that the Maui County Charter be reviewed and published to include all new significant amendments adopted?**



**PROPOSAL SIX -- INCREASING THE DISTRICT RESIDENCY REQUIREMENT FOR COUNCIL CANDIDATES TO ONE YEAR**

While County Council Members are elected at-large in Maui County, they also must run from the residency district that includes their home address. They are currently required to have lived in the residency district they run from for 90 days. This proposal would increase that requirement to a full year. The purpose for this increase is better assure that the candidates for County Council have a strong relationship to their residency district.

*BALLOT QUESTION*

**Shall Section 3.3 of the Charter of the County of Maui be amended to increase the time period for residency requirements in the County of Maui, and from the area which the person seeks to be elected from 90 days to one year before a candidate for council files nomination papers?**

**PROPOSAL SEVEN -- INCREASING THE RESIDENCY REQUIREMENT FOR MAYORAL CANDIDATES TO ONE YEAR**

Candidates for Mayor are now required to have lived in Maui County for 90 days. This proposal would increase that required residency in the County to a full year. The purpose is to better assure that the candidates for Mayor have a stronger knowledge of our three-island County.

*BALLOT QUESTION*

**Shall Section 7.3 of the Charter of the County of Maui be amended to increase the time period for residency requirement in the County of Maui from 90 days to one year before a candidate for Mayor files nominations papers?**

**PROPOSAL EIGHT --INCREASING THE RESPONSIBILITIES OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT TO INCLUDE ENVIRONMENTAL PROTECTION AND SUSTAINABILITY**

Currently the Department of Environmental Management has two functions: wastewater and solid waste processing and management. The County does not have an agency responsible for environmental protection and sustainability. This proposal would assign that responsibility to the Department of Environmental Management. The purpose of this proposal is to assign an agency with the responsibility to work to protect the natural environment and increase our community's ability to sustain itself.

*BALLOT QUESTION*

**Shall Section 8-15.3 of the Charter of the County of Maui be amended to add the following to the Powers, Duties and Functions of the Director of the Department of Environmental Management:**

**Guide efforts to optimize opportunities for environmental, natural resource protection, sustainability, conservation, and restoration?**

**PROPOSAL NINE -- CREATE CONSISTENCY IN THE CHARTER'S REFERENCES TO DEPARTMENTS OVERSEEN BY COMMISSIONS**

Currently there are four County Departments that are overseen by Commissions: Police, Fire and Public Safety, Personnel Services, and Liquor. While the responsibilities and powers among these commissions are identical, their powers and duties, as described in the charter vary. The purpose of this provision is to bring consistency in how the directors for these departments are hired, evaluated, and if necessary removed from office.

*BALLOT QUESTION*

**Shall Chapters 7 (Department of Fire and Public Safety), 9 (Department of Personnel Services), 12 (Department of Police), and 13 (Department of Liquor Control) of Article 8 of the Charter be amended to provide consistency in the process in which the various commissions of the listed department that appoint its directors or chiefs handle the evaluation and removal of its directors or chiefs?**

**PROPOSAL 10 -- AMENDING THE PREAMBLE OF THE CHARTER TO RECOGNIZE MAUI COUNTY'S HAWAIIAN HERITAGE AND CONSISTING OF FOUR ISLANDS**

Currently the Preamble of the Charter does not make reference to our community's unique heritage and the fact that the County includes four main islands. This proposal would correct that oversight.

*BALLOT QUESTION*

**Shall the Preamble of the Maui County Charter be amended to add that the people of the County of Maui being mindful of their Hawaiian history, heritage, and culture and uniqueness as a four island county shall dedicate their efforts to fulfill the philosophy decreed by the Hawaii State motto, "Uamaukeea o kaainaikapono," ["The life of the land is perpetuated in righteousness."]**