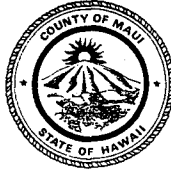


JAMES "KIMO" APANA
Mayor



JAMES B. TAKAYESU
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740 FAX (808) 270-7152
February 5, 2002

MEMO TO: Roy T. Hiraga
County Clerk

F R O M: Brian T. Moto
First Deputy Corporation Counsel

A handwritten signature in black ink, appearing to read "Brian T. Moto", is written over the typed name in the "FROM" field.

SUBJECT: Charter Commission and HRS Chapter 50 Timeline for
Proposed Charter Amendments

The purpose of this memorandum is to respond to your request for legal advice regarding the schedule and deadlines associated with the Maui County Charter Commission's ongoing review of the Revised Charter of the County of Maui (1983), as amended ("Charter"), and the submission of Charter amendment proposals to the Council and the voters. This memorandum follows up on our telephone conference on the same subject matter.

1. Chapter 50, Hawaii Revised Statutes.

As discussed, our Department has advised the Maui County Charter Commission ("Charter Commission" or "Commission") that Chapter 50, Hawaii Revised Statutes ("HRS"), constitutes the enabling statutory law on county charter commissions and that it continues to be valid and applicable to the establishment and procedures of county charter commissions. We have further advised the Charter Commission that HRS Chapter 50 governs, among other matters, the duties, functions and powers of the Charter Commission.

Accordingly, our Department has advised the Charter Commission that it should comply with, and, when scheduling its proceedings, take into account, the requirements set forth in HRS Sections 50-8 and 50-9, relating to the submission of proposed charter amendments to Council and the County Clerk, respectively.

2. Submission of Charter amendment proposals to Council.

HRS Section 50-8 states:

§50-8 Submission of proposed charter to legislative body of the county. Within one year of its appointment, the charter commission shall submit a report in writing on its activities, findings, and recommendations to the legislative body of the county together with a draft of the proposed charter. The legislative body of the county may in turn propose one or more sections as alternative, or alternatives to any section of the proposed charter; provided that there shall not be more than a single proposition under any alternative proposal. Within thirty days after the receipt of the proposed charter from the commission, the legislative body shall return the proposed charter with the alternatives to the commission for its study.

As background, we note that Mayor James Apana, Jr., submitted the names of Charter Commission nominees to the Council by letter dated January 30, 2001.¹ Nine of the eleven nominees were approved by Council on March 16, 2001; the remaining two nominees were approved by Council on April 20, 2001.² HRS Chapter 50 does not define the term "appointment", and there is some ambiguity as to which date should serve as the date of appointment when members are confirmed by the legislative body on different dates; however, it appears reasonable to use April 20, 2001 as the date of "appointment" for purposes of HRS Section 50-8, inasmuch as the Charter Commission's membership was fully and finally confirmed by that date.

Based on the foregoing, we have advised the Charter Commission that HRS Section 50-8 requires that the Commission submit, within one year of April 20, 2001, a written report to the Council on its

¹Committee Report No. 01-51, As Amended, p. 2.

²Committee Report No. 01-51, As Amended; Committee Report No. 01-74.

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activities, findings, and recommendations. Because the one-year anniversary date, April 20, 2002, falls on a Saturday, we have further advised the Charter Commission that it may submit its report no later than the next business day, Monday, April 22, 2002.³

For your information, the Charter Commission has scheduled a series of weekly public meetings in local community centers. The purpose of the public meetings is to facilitate public review of various Charter amendment proposals and ideas put forward by the Commission. The Commission has also tentatively scheduled meetings at which it anticipates making final decisions with regard to the proposals. The Commission's schedule of meetings takes into account the April 22, 2002 deadline.

For your convenience, a copy of the schedule of meetings is attached. We recommend that you periodically contact the Commission for any schedule changes that may occur.

3. Other applicable deadlines for Council action upon proposed Charter amendments.

As noted above, under HRS Section 50-8, the Council will have thirty days after receipt of the Charter Commission's report to submit any proposed alternatives to the Charter Commission. Therefore, assuming, for purposes of illustration, that the Charter Commission submits its report to the Council on April 22, 2002, the Council will have until May 22, 2002 to return the proposed Charter with any alternatives.

³Cf. Rule 6(a), Hawaii Rules of Civil Procedure ("In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a holiday. . . .")

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HRS Section 50-9 sets forth additional deadlines for Charter Commission and Council action. HRS Section 50-9 states:

§50-9 Submission of proposed charter to county clerk. If the legislative body of the county proposes no alternative sections to the charter, the charter commission shall submit a draft of the proposed charter to the county clerk within thirty days after it has received the charter from the legislative body. If alternatives are submitted by the legislative body of the county to the commission, then the commission shall accept or reject the alternatives within thirty days after the charter has been returned to it and shall report to the legislative body of the county any rejection. The legislative body of the county may within ten days after receiving such notification recall any or all of the alternative proposals rejected by the commission. Upon the expiration of the time for recall by the legislative body as provided herein or sooner with the consent of the legislative body the commission shall submit to the county clerk the proposed charter together with any alternatives proposed by the legislative body of the county which have not been accepted by the commission and incorporated in its draft.

As set forth in HRS Section 50-9, if the Council does not propose any alternative sections to the Charter, the Charter Commission must transmit the proposed Charter amendments to you, as County Clerk, within thirty days after the Charter has been returned to it by the Council. If, however, the Council does propose alternative sections, the Charter Commission will have thirty days within which to accept or reject the alternatives and to report any rejection to the Council.⁴ Following receipt of such

⁴Assuming, for purposes of illustration, that the Charter Commission and Council use the maximum amounts of time allowed under HRS Sections 50-8 and 50-9, and assuming that the Council proposes alternative Charter sections, the deadline for Charter Commission action upon said alternatives would be June 21, 2002.

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notification, the Council will have ten days within which to recall any alternative proposals rejected by the Charter Commission.⁵

BTM:ko

Enclosure

cc: Teryl Vencyl, Chair,
and Members of the Charter Commission
Professor Jon Van Dyke
James B. Takayesu

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APPROVED FOR TRANSMITTAL:



JAMES B. TAKAYESU
Corporation Counsel

⁵Assuming, for purposes of illustration, that the Charter Commission and Council use the maximum amounts of time allowed under HRS Sections 50-8 and 50-9, and assuming that the Council proposes alternative Charter sections that are rejected by the Charter Commission, the deadline for Council recall of any such rejected alternatives would be July 1, 2002.

**Maui County Charter Commission
2002 Meeting Schedule**

Month	Date	Day	Times		Purpose	Location
January	7 th	Mon.	8:30	4:30	Commission Work	6 th Floor Committee Room
	15 th	Tues.	8:30	4:30	Commission Work	Prosecutors Meeting Room
	29 th	Tues.	6:00	8:00	Community Input	Lahaina Civic Center Social Hall
February	6 th	Wed.	6:00	8:00	Community Input	Kihei Community Center Small Meeting Room
	13 th	Wed.	6:00	8:00	Community Input	Moloka'i Kaunakakai Cafetorium
	20 th	Wed.	6:00	8:00	Community Input	Lāna'i Hale Kupuna
	27 th	Wed.	6:00	8:00	Community Input	Pāyia Community Center
March	6 th	Wed.	6:00	8:00	Community Input	Old Hana School Cafeteria
	13 th	Wed.	6:00	8:00	Community Input	Wailuku Community Center
	20 th	Wed.	6:00	8:00	Community Input	Pukalani Hannibal Tavares Center
April	3 rd	Wed.	8:30	4:30	TENTATIVE (AS NEEDED)	7 th Floor Committee Room
	10 th	Wed.	8:30	4:30	Commission Work	7 th Floor Committee Room
	12 th	Fri.	8:30	4:30	Commission Work	7 th Floor Committee Room
	13 th	Sat.	8:30	4:30	TENTATIVE (AS NEEDED)	7 th Floor Committee Room
	15 th	Mon.	8:30	4:30	Review Draft	
	22 nd	Mon.	8:30	4:30	Submit to Council	

1/25/02 1:25 PM