

KATHY L. KAOHU
County Clerk



JAMES G.M. KRUEGER
Deputy County Clerk

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

March 11, 2020

RECEIVED
2020 MAR 12 PM 2:48
OFFICE OF THE
COUNTY CLERK

Honorable Michael J. Molina, Chair
Governance, Ethics and Transparency Committee
Maui County Council
County of Maui
Wailuku, Hawaii 96793

Dear Chair Molina,

SUBJECT: PROPOSED CHARTER AMENDMENT (CHANGING COUNCIL AND MAYORAL TERMS TO START ON THE FIRST MONDAY IN DECEMBER FOLLOWING A GENERAL ELECTION) (GET-10 (6))

Pursuant to your letter dated March 4, 2020, requesting 1) details specific to the legislative record of origins of Council and Mayoral terms of office, and 2) details specific to election certifications, I offer the following:

- 1) The second day of January following a General Election has served as the start/inauguration date of both Council and Mayoral terms from the inception of our County Charter approved at Maui County's September 2nd, 1967 Special General Election.

The proposed Charter was drafted and introduced by the County of Maui's second Charter Commission and was a second attempt to pass a Charter proposal that was favorable to a majority of Maui County voters. The proposed Charter did pass in the 1967 Special General Election and took effect January 2, 1969.

A cursory review of the first period (June 28, 1963 – August 13, 1964) of Charter Commission meeting minutes (35 total + 6 Public Hearings) reveal no specific discussions significant to the designation of the "second day of January" marking the beginning of both Council and

Honorable Michael J. Molina, Chair
Governance, Ethics and Transparency
Committee
March 11, 2020
Page 2

Mayoral terms.

Attached for your reference are some meeting minute excerpts and details of the history of the Charter of the County of Maui.

- 2) On the matter of a general election (HRS 11-174.5), certification, and any subsequent announcement of such certification, can occur no earlier than the end of the challenge period, which is currently after 4:30 p.m. on the twentieth day following the election.

In the event a particular contest is challenged in accordance to HRS 11-174-5, and a complaint is filed with the office of the clerk of the supreme court no later than 4:30pm on the twentieth day following the general, special general, special or runoff election, results of all non-challenged contests would still be certified after the close of the twenty-day challenge period.

Thank you for the opportunity to provide this background and clarification.

Sincerely,



Kathy L. Kaohu
Maui County Clerk

Attachments

COUNTY CLERK'S OFFICE
COUNTY OF MAUI
WAILUKU, HAWAII 96793



MOLOKAI



MAUI



LANAI



CHARTER

County of Maui

EFFECTIVE JANUARY 2, 1969

COUNTY CLERK'S OFFICE
COUNTY OF MAUI
WAILUKU, HAWAII 96793

HISTORY OF THE CHARTER OF THE COUNTY OF MAUI

The neighbor island counties of the State of Hawaii were empowered to adopt charters under the provisions of Act 73, S.L.H. 1963.

The first Charter Commission of the County of Maui was appointed in the latter part of 1963. This commission consisted of Masaru Yokouchi, as Chairman, and William F. Crockett, Emil Balthazar, Richard Caldito, Cornwell Friel, C. H. Burnett, Jr., Shiro Hokama, Nadao Honda, Harry Kobayashi, Keith Tester and Thomas Yagi, as Members.

The first Charter Commission finished drafting what was thought to be a model charter in the early part of 1964. This charter was presented to the voters of the County of Maui for adoption at the General Election of November 3, 1964. Unfortunately, the proposed charter was defeated by a close vote of 6,219 for the charter and 7,715 against the charter.

Thereafter, in June, 1966, a second Charter Commission was appointed by the late Chairman Eddie Tam. The new Charter Commission consisted of Douglas Sodetani, as Chairman, and William F. Crockett, Emil Balthazar, Edward L. Cluney, who succeeded Cornwell Friel, Shiro Hokama, Nadao Honda, Harry Kobayashi, George Kondo, Paul Pladera, Keith Tester and James S. Ushijima, as Members.

As can be seen, many of the members of the first Charter Commission were selected for the second Charter Commission.

The second Charter Commission drafted a document which met many of the objections voiced against the first proposed charter. The second proposed charter was submitted to the voters of the County of Maui at a Special General Election on September 2, 1967. It was passed overwhelmingly by the voters of the County of Maui by a vote of 10,418 for the charter to 3,483 against the charter.

The Charter of the County of Maui is the "constitution" of the county. It outlines the basic framework for the operation of the county government. It is the hope of many that once the Charter becomes effective the county government will be run in a much more efficient manner than in the past.

I wish to thank the members of the staff and especially the secretarial staff of Aileen Unemori, Harriette Miyamoto and Diannah Goo for their invaluable aid in making possible this publication of the Charter of the County of Maui.

KASE HIGA
County Attorney
County of Maui

Article 3. County Council.

Sec. 3—1. Composition.

There shall be a county council of the county of Maui, State of Hawaii, composed of nine members, all to be elected at large. Of the nine members elected to the county council, at least one shall have been a resident voter of the island of Molokai (except that portion defined as the county of Kalawao) for at least one year immediately prior to his election, and at least one shall have been a resident voter of the island of Lanai for at least one year immediately prior to his election. The person charged with the duty of conducting elections in the county of Maui shall prescribe such modification of the form of the nomination paper, as well as the form of the ballots, both for the primary and general elections, as shall secure such representation for the islands of Molokai and Lanai. In case only one candidate seeking office as a member is a resident voter of the island of Molokai (except that portion defined as the county of Kalawao) or a resident voter of the island of Lanai, as the case may be, and such candidate shall be nominated at the primary election, or in case one candidate only is nominated at such primary election who shall be a resident voter of the island of Molokai (except that portion defined as the county of Kalawao) or a resident voter of the island of Lanai, then the sole candidate nominated for the office of councilman as a resident voter of the island of Molokai (except that portion defined as the county of Kalawao) or as a resident voter of the island of Lanai, as the case may be, shall be deemed and declared to be duly and legally elected as a member of such council, regardless of the number of votes received by him. Should the council member from Molokai or Lanai cease to be a resident voter of Molokai or Lanai, as the case may be, his seat shall thereupon become vacant. All such elections shall otherwise be conducted in the manner prescribed by law for the election of county officers.

Sec. 3—2. Terms.

The terms of office of councilmen shall be for two years, beginning at twelve o'clock meridian on the second day of January following their election.

Sec. 3—3. Qualifications.

To be eligible for election or appointment to the council, a person must be a citizen of the United States and have been a voter in the county for at least one year immediately preceding his election or appointment. If a councilman ceases to be a voter of the county or is convicted of a crime involving moral turpitude, he shall immediately forfeit his office.

the council shall, by ordinance, adopt an administrative code providing for a complete plan of administrative organization of the departments of the county government not inconsistent with the provisions of this charter. Upon recommendation of the mayor, the council may, by a vote of six or more of its members, create, change, abolish, combine or rearrange the departments of the county.

Sec. 6—3. Appointment And Removal Of Officers And Employees.

1. The administrative head of a department may not appoint more than the staff for which appropriations have been made by the council.

2. No appointing authority shall appoint any person to any office or position exempted from civil service until satisfied by proper investigation that the person to be appointed is fully qualified by experience and ability to perform the duties of his office or position.

Sec. 6—4. Power And Duties Of Administrative Heads Of Departments.

1. Subject to the provisions of this charter and applicable regulations adopted thereunder, the administrative heads of departments shall have the power to take all personnel actions.

2. The administrative head of a department may assign and reassign duties to employees and supervise the performance thereof.

3. The administrative head of a department which is not governed by a board or commission may, subject to the approval of the mayor, prescribe such rules as are necessary for the organization and internal administration of the department.

4. The administrative head of a department shall perform such duties not inconsistent with the duties of his office, as may be assigned by the mayor, provided that this shall not apply to the administrative head of a department which is governed by a board or a commission.

Article 7. Mayor.

Sec. 7—1. Election And Term Of Office.

The voters of the county shall elect a mayor whose term of office shall be two years beginning at twelve o'clock meridian on the second day of January following his election.

Maui County Charter
Commission
Meeting Minutes of
October 3, 1963
(1st reference to
January 2nd)

- Mr. Young: How many members are there on the Board?
- Chairman Tam: Now there are 9 of us, including myself. If the Council goes for a charter, you could make the Mayor preside and also have a vote.
- Mr. Testers: Suppose we have a strong mayor type of government, instead of having an administrative assistant, would you suggest we have a business manager or managing director?
- Chairman Tam: The title could be changed.
- Mr. Testers: He would be appointed by the Mayor?
- Chairman Tam: Yes.
- Mr. Testers: How many elected officials would you think there should be?
- Chairman Tam: Four - the Attorney, the Treasurer, Auditor and Clerk.
- Mr. Testers: Should they be elected or appointed?
- Chairman Tam: I think the four officials should be appointed also.
- Mr. Crockett: What do you think of district representation of the Council?
- Chairman Tam: Lanai always say they should be represented. On Molokai it is the same. As long as they have one member sitting on the Council they are satisfied. For the island of Maui I am divided as to whether or not there should be one from Hana. We are elected by the people to be responsible for your welfare. The law has provided good representation for the neighbor islands. For Maui I have no answer whether or not we should have it by districts.
- Mr. Honolulu: What about terms of office for the Council and the Mayor?
- Chairman Tam: I don't think this County should ask for six years when the other counties have four. Two years is ridiculous. You cannot carry on continuance for any sort of programs. If a new man is responsible to formulate his program for two years - let us say, from January 2nd - by the time he can get any action on his program, it would be about September or October. By the time he gets that thing going, it would be January of the next year. In the two-year term maybe he can get about 1/4 of the program going. Supposing the Chairman loses in the next election, another man is the new Chairman; and if he does not like the previously elected Chairman's program, he'll have to start all over. But if you have a four-year term, you can really have a good program. Not that Maui has not had any good programs. I think that Maui can say that we are really proud. I would say, in answer to you, the Mayor's term should be 4 years and on the members of the Council, at this point, I am not ready to answer. Maybe staggered terms might be good; maybe two-year terms might be better.

Mr. Yagi: In view of the strong sentiments I move that we lay the two proposals before the public. Seconded by Mr. Caldito.

The motion that the two proposals (four years for the mayor and two years for the council members; four years for the mayor and four years for the council members) be put before the public was carried unanimously.

6. When should charter go into effect?

Mr. Balthazar: I see no reason for special election. I am for the election being held in 1966 and the new government take office on January 1, 1967.

Mr. Crockett: We shouldn't have the election for the county officials at the same time that we have the election for the State and Federal officials. The cost would be outweighed, but you would gain the effectiveness of the government. By having separate elections, the people should be able to focus on the local government. I think we can have better governments by having frequent elections.

Mr. Yokouchi: The point which you mention is very good; however, too frequent elections will tire the people.

Mr. Tester: I think that is one of the reasons that the present meetings prior to elections don't hold too many people.

Mr. Yokouchi: If everyone is elected on four-year terms, I think you have more active participation by the public.

Mr. Crockett: If you lump these elections, you are going to have a long ballot.

Mr. Balthazar: I feel that the State and County level of government work hand in hand. I do not favor "off-the-year" elections.

I would like to see the prestige and power of political parties grow. I think we sometimes tend to minimize their influence. I think that the State and the County should be together and should be taken up at the same time.

Mr. Caldito: I favor a regular election in 1966.

Mr. Balthazar: I move that the charter go into effect at the 1966 election with the elected officials taking office in January 1967. Seconded by Mr. Caldito and carried.

7. Should some departments, now under independent boards or commissions, come under the control of the Mayor or Council?

Mr. Crockett: We have three types of boards: operational, regulatory and advisory. I feel that the operational boards should be kept because they

maui county charter
Commission
Meeting minutes of
June 4, 1964
(3rd reference to
January 2nd)

Mr. Higa: To be really consistent you should keep it like the vacancy in the Lanai or Molokai councilman. If it is less than one year, have the council appoint. If it is more than one year, it is important enough to have a special election. This is only a matter of technicality, but we should do it in a practical way.

Mr. Balthazar: I think the procedure for the Molokai or Lanai vacancy is consistent.

Mr. Yagi: Moved that this provision be retained as is. Seconded by Mr. Burnett and carried unanimously.

Mandatory Review:

Mr. Higa: The only other change is the mandatory review every ten years of the existing charter, which you commissioners had agreed upon at the last meeting. We have included this on page 57.

Hiring of County Physicians:

Mr. Higa: Among the powers of the finance director we have included specifically the fact that he shall be hiring county physicians. In other words, the charter will be self-executing in that respect. On page 19, paragraph 7 reads: "Contract for services of independent contractors, including contractors for public works and county physicians, and ..." As far as the indigent burials, we will explain this in your report to the Board of Supervisors.

SUGGESTIONS BY MR. CROCKETT:

Mr. Crockett: Under Section 3-2, shouldn't we eliminate the year 1967 because the terms of office of the first councilmen will be 1967, but thereafter the terms will be from 1971, 1975, etc.

(It was agreed that this section shall be changed to read "The terms of office of councilmen shall be for four years, beginning at twelve o'clock meridian on the second day of January following their election.")

Mr. Crockett: Suggested that under Section 3-3, in the last sentence, decisions made by the council shall be subject to review by the Second Circuit Court, State of Hawaii. (Agreed)

Mr. Crockett: Under subparagraph 2 of Section 3-9, which county employees or which county officers are subject to the direction and supervision of the mayor? For example, are the employees of the hospitals and police department considered in that category? I suggest we delete the words "who are subject to the direction and supervision of the mayor". (Agreed)

Mr. Crockett: In Section 4-3 I suggest we insert the words "or resolutions having the effect of law" after the word "bill". (Agreed)

Suggested the use of the word "agency" only, wherever it says "agency, department, board or commission" in the charter. (Agreed)

0385