

Resolution

No. 22-119, CD1, FD1

PROPOSING AN AMENDMENT TO THE
REVISED CHARTER OF THE COUNTY OF MAUI
(1983), AS AMENDED, TO ESTABLISH A MAUI
NUI COMMUNITY WATER SYSTEMS AND AN
EAST MAUI REGIONAL COMMUNITY BOARD

WHEREAS, the County Council proposes that the question of whether the Revised Charter of the County of Maui (1983), as amended ("Charter"), should be further amended to establish the Maui Nui Community Water Systems and the East Maui Regional Community Board be placed on the next General Election ballot; and

WHEREAS, the demand for water in the County continues to increase because of population growth, the need to enhance agricultural production to achieve food security; and

WHEREAS, more frequent and severe drought conditions, and other environmental factors impact the supply of water and the County's ability to meet demand; and

WHEREAS, the increasing demand for water requires long-term, efficient, transparent, equitable, and community-oriented management of watersheds and water resources in Maui County; and

WHEREAS, the majority of municipal wholesale regional water systems in the United States are managed by water authorities; and

WHEREAS, the establishment of a Maui Nui Community Water Systems with regional community boards and a staff with expertise in water system operations, public financing, grant acquisition, and watershed management would ensure management of the County's water resources in a competent, transparent, and fiscally and environmentally responsible manner that serves the public interest; and

WHEREAS, as a government agency, the Maui Nui Community Water Systems would have an unambiguous obligation to uphold the public trust doctrine and the legal obligations of the Hawaiian Homes Commission Act and the State of Hawai'i Constitution; and

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WHEREAS, as a government agency, the Maui Nui Community Water Systems would have the ability to obtain significant private, state, and federal funding not available to private, for-profit entities to manage and upgrade the water delivery systems and to protect local watersheds; and

WHEREAS, the County provides domestic and agricultural water to its residents, businesses, farmers, and ranchers and relies upon surface water from the Nāhiku, Ke‘anae, Honomanū, and Huelo License Areas (“License Areas”) granted by the State of Hawai‘i and situated in Makawao and Hāna to fulfill these needs; and

WHEREAS, the State of Hawai‘i Department of Land and Natural Resources (“DLNR”) Land Division is in the process of issuing 30-year water lease agreements for these License Areas; and

WHEREAS, these License Areas also impact Upcountry Maui, where due to a lack of water availability, residents must reduce their water usage during drought periods, and farmers and ranchers are unable to farm and provide for their animals during extended drought periods; and

WHEREAS, East Maui Irrigation Company, LLC (“EMI”) is applying for a 30-year water lease for the License Areas; and

WHEREAS, Alexander & Baldwin, Inc. and Mahi Pono Holdings, LLC both have 50 percent interest in EMI; and

WHEREAS, Mahi Pono Holdings, LLC’s sole investor and member-owner is one of Canada’s largest pension fund managers, Public Sector Pension Investment; and

WHEREAS, approval of a 30-year water lease to EMI would place a significant amount of Maui County’s water resources under the control of a foreign, for-profit investor entity; and

WHEREAS, a Temporary Investigative Group (“TIG”) was formed by the Maui County Board of Water Supply to explore the feasibility of purchasing and maintaining the EMI water delivery system and examine alternatives for ensuring the people of Maui County have authority over the delivery of water; and

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WHEREAS, the TIG's report dated December 19, 2019, included the following primary recommendation: "Maui County should immediately apply for a long-term (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas"; and

WHEREAS, on January 6, 2022, the Board of Water Supply unanimously voted to encourage the County to pursue the feasibility of acquiring the water lease and to contact DLNR as soon as possible to determine the next steps for doing so; and

WHEREAS, on January 7, 2022, the Council adopted Resolution 22-4, FD1, which did the following:

1. Urged the Mayor to propose an intergovernmental agreement with the State of Hawai'i's Board of Land and Natural Resources to provide a long-term, reliable, and affordable source of water for County domestic and agricultural use;
2. Directed the Council Chair to transmit correspondence expressing interest in pursuing the long-term water lease for the County of Maui to Suzanne D. Case, Chairperson, Board of Land and Natural Resources;
3. Expressed concern with issuing long-term water leases to private, for-profit entities; and
4. Supported the Board of Water Supply's TIG recommendation that Maui County should immediately apply for a long-term (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas; and

WHEREAS, by correspondence dated January 21, 2022, the Council Chair notified DLNR of the Council's interest in pursuing the long-term East Maui water lease; and

WHEREAS, if the Maui Nui Community Water Systems were granted a lease rate at no cost or at a cost comparable to those granted to the private lessee, the cost savings, additional revenue, and additional funding could be used to finance needed repairs and maintenance of the system,

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reduce water costs for local farmers, and restore the watershed in the License Areas; and

WHEREAS, if the Maui Nui Community Water Systems completed repairs and maintenance of the system and restored and maintained the watershed, more water would be available to be returned to streams, and for domestic and agricultural users, including the Department of Hawaiian Home Lands; and

WHEREAS, Article XI, Section 7 of the State of Hawai'i Constitution states: "The state has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people"; and

WHEREAS, the public trust doctrine mandated by the Hawai'i State Supreme Court in the Waiāhole Ditch case of 2000 and the Kaua'i Springs case of 2014 requires the management of water resources to achieve the most equitable and beneficial allocation; and

WHEREAS, the four public trust uses of water are: (1) domestic use, such as drinking water; (2) native Hawaiian traditional and cultural practices; (3) "the maintenance of waters in their natural state," in the Supreme Court's words; and (4) use by the Hawaiian Homes Commission for homestead needs; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That in accordance with Charter Section 14-1(1), it proposes that Subsection 1 of Section 8-11.2 of the Charter, pertaining to the Department of Water Supply, be amended to read as follows:

"1. [The] Except as set forth in chapter 19, the department of water supply shall manage and operate all water systems owned by the county."

2. That in accordance with Charter Section 14-1(1), it proposes that Article 8 of the Charter, pertaining to County Departments, be amended by adding a new chapter to be appropriately designated and to read as follows:

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“CHAPTER 19 MAUI NUI COMMUNITY WATER SYSTEMS

Section 8-19.1 Organization. There is a Maui Nui community water systems, also referred to as the “water systems,” consisting of one or more regional community boards, regional administrators, and necessary staff to manage water collection and delivery systems acquired or operated by the water systems.

Section 8-19.2 Regional Community Boards. There is an East Maui regional community board. In conjunction with the investigation, acquisition, or control of water collection and delivery systems by the water systems, the council may establish additional regional community boards by ordinance.

1. The East Maui regional community board is concerned with the Nāhiku, Ke‘anae, Honomanū, and Huelo license areas, and consists of eleven members with a minimum of two members from each license area. Eight members must have experience in water resource management and watershed restoration in the applicable watershed and reside in the applicable community plan area. Of these eight members, four are appointed by the council, and four are appointed by the mayor. The three remaining members are appointed by the council based on the following requirements: one member with experience in water resource management who is actively engaged in ranching, farming, aquaculture, or loko i‘a in the area where water service is provided; one member with experience in water resource management who resides full-time in the area where water service is provided; and one member who is a representative of the Hawaiian Homes Commission, and is recommended by the Department of Hawaiian Home Lands. If the Department of Hawaiian Home Lands fails to recommend a member within thirty days after receiving notice of a vacancy, the council will appoint a Hawaiian Home Lands representative as member.

2. Of the eleven members initially appointed, three are appointed for a term of five years, three are appointed to a term of four years, three will serve a term of three years, and two will serve a term of two years. Board vacancy

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appointments are conducted in the same manner as the initial seat appointment. The director of finance, the director of water supply, the councilmember holding the residency area seat for the applicable watershed area, and the chair of the council committee with jurisdiction over water issues are non-voting, ex-officio members of the board.

3. The department of personnel Services will provide assistance with the administrator hiring process if requested.

4. Other regional boards may be established by ordinance with residents in the watershed area comprising two-thirds of board membership and with one member who is a representative of the Hawaiian Homes Commission, and is recommended by the Department of Hawaiian Home Lands. If the Department of Hawaiian Home Lands fails to recommend a member within thirty days after receiving notice of a vacancy, the council will appoint a Hawaiian Home Lands representative as member.

Section 8-19.3 Regional Community Board Powers, Duties, and Functions. As to the applicable watershed area, each regional community board will:

1. Appoint the administrator.
2. Review preliminary assessments, studies, and environmental reports prepared by or for the water systems.
3. Review and approve a long-range watershed management plan, review the plan annually, and provide a written evaluation of each plan goal and implementation status to the administrator, mayor, and council.
4. Review and approve watershed related programs and priorities.
5. Review and approve the request to the mayor for an annual appropriation for the regional operations and capital improvements.
6. Provide an annual evaluation of the regional administrator to the mayor and the council.
7. Provide written comments on the regional long-term capital improvement plan, annual maintenance plan, annual report, and annual operating budget, including recommendations on water rates and the federal, state, and private funding plan.

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8. Hold at least two public community meetings a year in the region, which may be conducted as virtual meetings if necessary.

Section 8.19.4 Regional Administrators. There is an East Maui regional administrator. Additional regional administrators may be appointed by a regional community board in conjunction with the acquisition of water systems under the control of the water systems. Regional administrators are appointed by the applicable regional community board with the approval of the council, and may be removed by the applicable regional community board with approval of the council, or directly by a two-thirds vote of the entire membership of the council. The salary of an administrator is set by the salary commission after a review of the salaries of water authority administrators in other jurisdictions.

Section 8-19.5 Regional Administrator Powers, Duties, and Functions. Regional administrators will:

1. Acquire water systems and leases to be managed by the water systems, including East Maui water licenses.
2. Notwithstanding section 9-18(1), sign intergovernmental agreements and other legal instruments directly related to the acquisition or management of water collection or delivery systems subject to approval by corporation counsel as to form and legality and certification by the director of finance as to the availability of funds.
3. Oversee State water lease agreements or other operating agreements in the region.
4. Negotiate purchase agreements and, if needed, recommend eminent domain proceedings directly related to the acquisition of land, easements, or interests in land related to water collection or delivery systems.
5. Seek funding for water systems operation, maintenance, and capital improvements.
6. Manage the distribution of water under the control of the water systems, including providing water to the department of water supply.

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7. Develop and implement a long-term capital improvement and annual maintenance plan for the regional water collection and delivery systems.

8. Develop and implement a watershed management plan for each watershed providing water to a regional water system.

9. Prepare an annual operating and capital budget for regional community board review and approval.

10. Submit to the mayor the water systems' request for annual appropriations for operations and capital improvements.

11. Submit an annual report to the mayor and the council providing a general assessment of each water collection and delivery system under the control of the water systems; a proposed operation, maintenance, and capital improvement plan for each system; an overview of state, federal, or other funding available for each system's operation, maintenance, and capital improvements; a business model, including power generation options; an overview of State license status; and specific public trust and nonpublic trust water usage amounts for each water system including required uses based upon State regulations and judicial requirements.

12. Prepare a public annual report, including operation, maintenance, and long-term capital improvement plans and budgets for each system, summary and status of funding sources applied for or received, regional community board comments and recommendations, public testimony from community meetings, and other relevant information.

13. Prepare an annual operating and capital budget for regional community board review and approval.

14. Provide administrative support to the regional community board.

15. Have such other powers and duties as may be provided by law.

16. The East Maui administrator will oversee water lease agreements and purchase agreements, which may include the Nāhiku, Ke'anae, Honomanū, and Huelo license areas and other water systems in the East Maui region.

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Section 8-19.6 Maui Nui Community Water Systems Funds. All of a portion of the revenues of the water systems may be transferred to a regional water system fund, which may be used for the regional water system. The funds may be used to fulfill the powers, duties, and functions of the water systems, including operation, maintenance, and capital improvements of water collection and delivery systems under control of the county. Any unencumbered balance in this fund at the end of each fiscal year will not lapse, but remain in the fund, accumulating from year to year. The council will establish procedures for the administration and expenditure of the revenues in this fund by ordinance. In any fiscal year, the council may make appropriations to this fund.”;

3. That material to be repealed is bracketed, and new material is underscored;

4. That, in accordance with Charter Section 14-2(1), this Resolution be submitted to the voters of the County of Maui at the next General Election;

5. That the County Clerk prepare the necessary ballot for presentation to the voters at the next General Election;

6. That, in accordance with Charter Section 14-1(1), it proposes that the following question be placed on the next General Election ballot:

“Shall the Charter be amended to establish the Maui Nui Community Water Systems with regional community boards to manage water collection and delivery systems acquired by the Water Systems, including State license areas in East Maui, and to pursue long-term water lease agreements with the State to provide a long-term reliable supply of water for domestic and agricultural needs?”

7. That in accordance with Charter Section 14-2(2), the County Clerk publish the proposed amendment set forth in this Resolution in its entirety in a newspaper of general circulation;

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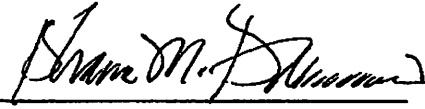
8. That upon approval by the majority of the voters voting on the proposed amendment and upon certification of such result, the amendment proposed in this Resolution will take effect upon certification of the vote;

9. That in accordance with Charter Section 14-4, the County Clerk must revise and publish in its entirety a revised Charter including amendments adopted in this Resolution and renumbering provisions and cross-references as may be necessary by the approval of the revisions or amendments, and the County Clerk must read the amendments adopted in this Resolution with any amendments adopted through the approval of any Charter Commission proposals or Council alternatives to Charter Commission proposals; and

10. That certified copies of this Resolution be transmitted to the Mayor, the Board of Water Supply, the State of Hawai'i Board of Land and Natural Resources, and the County Clerk.

paf:ans:22-158a

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Shane M. Sinenci", written in a cursive style.

SHANE M. SINENCI

DIGEST

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The purpose of this resolution is to place on the next General Election ballot the question of whether the Revised Charter of the County of Maui (1983), as amended, should be further amended, effective January 2, 2023, to establish the Maui Nui Community Water Systems and the East Maui Regional Community Board.

I, KATHY L. KAOHU, County Clerk of the County of Maui, State of Hawaii, DO HEREBY CERTIFY that the foregoing RESOLUTION NO. 22-119, CD1, FD1, was passed on First Reading by the Council of the County of Maui, State of Hawaii, on the 1st day of July, 2022, by the following vote:

AYES: Councilmembers Gabriel Johnson, Kelly T. King, Michael J. Molina, Tamara A.M. Paltin, Shane M. Sinenci, and Vice-Chair Keani N.W. Rawlins-Fernandez.

NOES: Councilmember Yuki Lei K. Sugimura and Chair Alice L. Lee.

EXCUSED: Councilmember Natalie A. Kama.

DATED at Wailuku, Maui, Hawaii, this 8th of July, 2022.



KATHY L. KAOHU, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Resolution, in full, are on file in the Office of the County Clerk, County of Maui, for use and examination by the public.