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**2009-2010
HAWAI'I COUNTY
CHARTER COMMISSION**

To: Chair Edmund K. Haitzuka and
Members of the Hawai'i County Charter Commission

From: Levi K. Hookano, Attorney

Date: August 6, 2009

RE: Recommended Division of CA-4 into Three Separate Proposals

Dear Chair Haitzuka and Members of the Hawai'i County Charter Commission,

This memo is to present a recommendation to divide proposed charter amendment CA-4, from Michael R. Ben, into three separate proposals (e.g. CA-4, CA-5, and CA-6). The reason for this is that there appears to be three distinct amendments contained within the whole proposal. These would be the following amendments:

1. Amendment relating to civil service laws;
2. Amendment relating to the Merit Appeals Board; and
3. Amendment relating to the removal of department heads serving under commissions.

Because there appears to be three distinct amendments, it may be easier for the Commission to decide these parts separately than as a whole, and it would make the drafting of a ballot question easier in the event any of these amendments are approved by the Commission. I have attached the divided proposals to this memo for the Commission's consideration.

If you have any questions regarding this matter, please do not hesitate to contact me.

A handwritten signature in black ink, appearing to read 'Levi Hookano'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Levi Hookano
Charter Commission Attorney

CHARTER AMENDMENT NO.

BE IT ENACTED BY THE PEOPLE OF THE COUNTY OF HAWAI‘I:

Section 1. The Hawai‘i County Charter contains numerous references to civil service laws that are under the jurisdiction of the State of Hawai‘i.

Section 2. Article III, section 3-6(b), Hawai‘i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

“ARTICLE III LEGISLATIVE BRANCH COUNTY COUNCIL

Section 3-6. Organization of the Council; Officers; Employees

- (b) The council shall appoint the county clerk [which position shall be exempt from civil service laws and classifications]. The county clerk shall:
- (1) Be the clerk of the council.
 - (2) Be custodian of the county seal.
 - (3) Conduct all elections held within the county.
 - (4) Appoint the deputy county clerk, with the approval of the council [and such position shall be exempt from civil service laws and classifications].
 - (5) Perform such other functions as the council may prescribe.
 - (6) Appoint necessary staff for which appropriations have been made by the council[, subject to civil service laws and classifications,] and exercise the same power with respect to the personnel of the clerk’s office as the department heads in the executive branch, with the exception of the office of the legislative auditor.”

Section 3. Article IV, section 4-5(a), Hawai‘i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

“ARTICLE IV EXECUTIVE BRANCH GENERAL PROVISIONS

Section 4-5. Powers and Duties of Agency Heads.

Subject to the provisions of this charter, the administrative heads of each agency or executive agency of the county shall have the power to:

- (a) Appoint and remove a deputy or assistant and a private secretary [and such positions shall be exempt from civil service laws and classifications]. No such appointment shall be made unless the positions have been created and appropriations therefor have been made by the council.”

Section 4. Article V, Chapter 1, section 5-1.3, Hawai‘i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

**“ARTICLE V
EXECUTIVE BRANCH
THE MAYOR AND STAFF AGENCIES**

**CHAPTER 1
MAYOR**

Section 5-1.3. Powers, Duties and Functions.

The mayor shall be the chief executive officer of the county vested with all the executive powers of the county, except as otherwise provided by this charter. The mayor shall have the power to:

- (a) Through the managing director supervise and coordinate all executive agencies of the county, except as otherwise provided by this charter.
- (b) Appoint necessary staff for which appropriations have been made by the council. [All positions in the mayor’s office shall be exempt from civil service laws and classifications.]
- (c) Create positions, including position of deputy or assistant to each head of an agency where such position has not been created by this charter, for which appropriations have been made by the council and abolish positions with the consent of the council.
- (d) Make transfers of positions between agencies or between subdivisions of agencies [subject to applicable civil service regulations].
- (e) Recommend to the council a pay plan for all officers and employees of the county or any of its boards and commissions, except those whose pay is otherwise provided for; provided that the salary of any officer or employee who is exempt from civil service laws shall be subject to approval by the council and the mayor.
- (f) Submit an operating budget, an operating program, a capital budget and a capital program annually to the council.”

Section 5. Article VI, Chapter 3, section 6-3.4, Hawai‘i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

**“ARTICLE VI
EXECUTIVE BRANCH
THE MANAGING DIRECTOR AND AGENCIES
UNDER THE MANAGING DIRECTOR**

**CHAPTER 3
DEPARTMENT OF PARKS AND RECREATION**

Section 6-3.4. County Bands.

The county bands shall be a part of the department of parks and recreation for administrative purposes[. The bandmasters shall be appointed by the mayor and may be removed by the mayor. The members of the bands and other employees connected therewith shall be appointed by the bandmasters and may be removed by the bandmasters with the approval of the managing director, and all positions in the bands shall be exempt from civil service laws and classifications.]; provided, the appointing authority for the bandmasters shall be the mayor, and the appointing authority for the band members shall be the appropriate bandmaster.”

Section 6. Article VI, Chapter 9, section 6-9.1, Hawai‘i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

**“ARTICLE VI
EXECUTIVE BRANCH
THE MANAGING DIRECTOR AND AGENCIES
UNDER THE MANAGING DIRECTOR**

**CHAPTER 9
MISCELLANEOUS**

Section 6-9.1. Clerical Pool.

There may be a clerical pool consisting of such positions as the mayor may recommend and for which appropriations have been made by the council. The purpose of such pool shall be to provide periodic staff assistance to the various agencies of the county when necessitated by heavy workloads. The clerical pool shall be attached to the mayor’s office for purposes of administration, assignment and coordination [but the personnel of the clerical pool shall be subject to the civil service laws of the State].”

Section 7. Article VII, Chapter 1, section 7-1.5, Hawai‘i County Charter, is deleted in its entirety with subsequent sections appropriately renumbered, with deleted language bracketed:

**“ARTICLE VII
EXECUTIVE BRANCH-DEPARTMENTS OR
AGENCIES UNDER COMMISSIONS**

**CHAPTER 1
DEPARTMENT OF HUMAN RESOURCES**

[Section 7-1.5. Position Classification Plan; Compensation.

Except as otherwise provided by law or this charter, all positions in the service of the county shall be classified within a position classification plan, and all persons holding such positions shall be compensated as provided by the compensation law of the state.]”

Section 8. Article VII, Chapter 2, section 7-2.5, Hawai‘i County Charter, is deleted in its entirety with subsequent sections appropriately renumbered, with deleted language bracketed:

**“ARTICLE VII
EXECUTIVE BRANCH-DEPARTMENTS OR**

AGENCIES UNDER COMMISSIONS

**CHAPTER 2
POLICE DEPARTMENT**

[Section 7-2.5. Dismissal, Suspension, Demotion, or Grievance.

The dismissal, suspension, demotion, or grievance of any police officer or employee in the police department shall be under procedures set forth by civil service laws and regulations.]”

Section 9. Article XIII, section 13-3, Hawai‘i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

**“ARTICLE XIII
GENERAL PROVISIONS**

Section 13-3. Appointments, civil service, exemptions.

(a) All appointments to positions prescribed in this charter shall be subject to applicable provisions of the civil service laws of the State. Where civil service laws are not applicable, a position shall be considered exempt from civil service, provided, civil service laws may exempt certain positions yet require such position to be included in the position classification plan prescribed by such civil service laws.

(b) No appointing authority shall appoint any person to any office or position which is exempt from the civil service laws until satisfied by proper investigation that the person to be appointed is fully qualified by experience and ability to perform the duties of that office or position.”

Section 10. Article XIII, section 13-9, is deleted in its entirety with subsequent sections appropriately renumbered, with deleted language bracketed:

**“ARTICLE XIII
GENERAL PROVISIONS**

[Section 13-9. Non-Civil Service Status and Classification.

From and after the full effective date of this charter, no employees or officers of the county who are exempt from the civil service laws shall have their positions included in a position classification plan established under the civil service laws.]”

Section 3. This amendment shall take effect upon its approval by the electorate.

CHARTER AMENDMENT NO.

BE IT ENACTED BY THE PEOPLE OF THE COUNTY OF HAWAI‘I:

Section 1. Article VII, Chapter 1, section 7-1.2, Hawai‘i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

“ARTICLE VII EXECUTIVE BRANCH-DEPARTMENTS OR AGENCIES UNDER COMMISSIONS

CHAPTER 1 DEPARTMENT OF HUMAN RESOURCES

Section 7-1.2. Merit Appeals Board.

(a) The merit appeals board shall consist of five members who shall be appointed by the mayor and confirmed by the council [in the manner prescribed in section 13-4].

(1) The new board member who will replace the board member whose term expires on December 31, 2010 shall serve a four year term ending on December 31, 2014.

(2) Of the two new board members who will replace the board members whose terms expire on December 31, 2013, one shall serve a four year term ending on December 31, 2017, and the other shall serve a five year term ending on December 31, 2018.

(3) Of the two new board members who will replace the board members whose terms expire on December 31, 2012, one shall serve a three year term ending on December 31, 2015 and the other shall serve a four year term ending on December 31, 2016.

Thereafter, board members shall serve five year terms in the manner prescribed in section 13-4.

(b) Board membership shall be representative of the community, and the members shall all be in sympathy with and believe in the principles of the merit system in public employment.”

Section 2. This amendment shall take effect upon its approval by the electorate.

CHARTER AMENDMENT NO.

BE IT ENACTED BY THE PEOPLE OF THE COUNTY OF HAWAI‘I:

Section 1. Article VII, Chapter 1, section 7-1.3, Hawai‘i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

“ARTICLE VII EXECUTIVE BRANCH-DEPARTMETNS OR AGENCIES UNDER COMMISSIONS

CHAPTER 1 DEPARTMENT OF HUMAN RESOURCES

Section 7-1.3. Director.

The director of human resources shall be appointed by the merit appeals board and may be removed by the merit appeals board. Any motion for removal of the director of human resources must contain a statement of reasons, and the board shall not vote to remove the director of human resources unless the director of human resources has been given an opportunity to respond to the statement of reasons at a hearing before the board.”

Section 2. Article VII, Chapter 3, section 7-3.4, Hawai‘i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

“ARTICLE VII EXECUTIVE BRANCH-DEPARTMETNS OR AGENCIES UNDER COMMISSIONS

CHAPTER 3 DEPARTMENT OF LIQUOR CONTROL

Section 7-3.4. Director of the Department of Liquor Control.

- (a) The director of the department of liquor control shall be appointed by the liquor commission and may be removed by the liquor commission. Any motion for removal of the director of the department of liquor control must contain a statement of reasons, and the commission shall not vote to remove the director of the department of liquor control unless the director of the department of liquor control has been given an opportunity to respond to the statement of reasons at a hearing before the commission. .
- (b) The director of the department of liquor control shall:
- (1) Be the administrative head of the department.
 - (2) Provide clerical and administrative services for the liquor commission and the liquor control adjudication board, including the submission of budget for the operation of the department.

- (3) Investigate complaints regarding violations of the liquor control laws of the State or complaints regarding violations of rules and regulations established by the liquor commission and report such violations to the prosecuting officer of the county.”

Section 3. Article VI, Chapter 4, section 6-4.3, Hawai‘i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

**“ARTICLE VI
EXECUTIVE BRANCH
THE MANAGING DIRECTOR AND AGENCIES
UNDER THE MANAGING DIRECTOR**

**CHAPTER 4
FIRE DEPARTMENT**

Section 6-4.3. Fire Chief.

- (a) The fire chief shall be appointed by the fire commission and may be removed by the fire commission at its sole discretion. Any motion for removal of the fire chief must contain a statement of reasons, and the commission shall not vote to remove the fire chief unless the fire chief [must be allowed] has been given an opportunity to respond to the statement of reasons [before being removed] at a hearing before the commission.
- (b) The fire chief shall have had a minimum of five years’ training and experience in fire control, including at least three years experience in a responsible administrative capacity.”

Section 4. Article VIII, section 8-3, Hawai‘i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

**“ARTICLE VIII
DEPARTMENT OF WATER SUPPLY**

Section 8-3. Manager and Deputy.

- (a) The manager of the department of water supply shall be appointed by the water board and may be removed by the water board. Any motion for removal of the manager of the department of water supply must contain a statement of reasons, and the board shall not vote to remove the manager of the department of water supply unless the manager of the department of water supply has been given an opportunity to respond to the statement of reasons at a hearing before the board.
- (b) The deputy shall be appointed by the manager with the confirmation of the water board and may be removed by the manager with the approval of the water board.
- (c) The manager shall be a registered engineer and shall have had a minimum of five years’ experience in an administrative capacity.”

Section 5. This amendment shall take effect upon approval by the electorate.