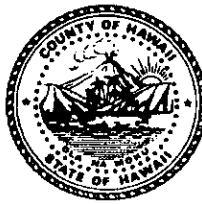


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October 8, 2009

Sent via e-mail to keoff@co.hawaii.hi.us; no hard copy will follow

Honorable Chairman Edmund Haitsuka and
Members of the County of Hawai'i Charter Commission
c/o Hawai'i County Council
333 Kilauea Ave., 2nd Floor
Hilo, Hawai'i 96720

Dear Chairman Haitsuka and Commission Members:

Re: Comments in Opposition to Proposal CA-8, Section 1, Section 13-18 (Claims)

Section 1 of Proposal No. CA-8 seeks to have a Claim for Damages to be filed with the Corporation Counsel instead of the County Clerk. There are several reasons to maintain the current procedure of filing a Claim for Damages with the County Clerk.

The Proposal provides:

Section 1. Article XIII, section 13-18, Hawai'i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed.

"Section 13-18. Claims.

No action shall be maintained for the recovery of damages for any injury to persons or property by reason of negligence or other act of any official or employee of the county unless a written statement stating fully when, where and how the injuries occurred, the apparent extent thereof and the tentative amount claimed therefore shall have been filed with the [county clerk] corporation counsel within two years after the date the injury was sustained.

Honorable Chairman Edmund Haituka and
Members of the County of Hawai'i Charter Commission
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Furthermore, HRS, § 46-72, Liability for injuries or damages (notice), provides that:

Before the county shall be liable for damages to any person for injuries to person or property received upon any of the streets, avenues, alleys, sidewalks, or other public places of the county, or on account of any negligence of any official or employee of the county, the person injured, or the owner or person entitled to the possession, occupation, or use of the property injured, or someone on the person's behalf, within two years after the injuries accrued shall give the individual identified in the respective county's charter, or if none is specified, the chairperson of the council of the county or the clerk of the county in which the injuries occurred, notice in writing of the injuries and the specific damages resulting, stating fully when, where, and how the injuries or damage occurred, the extent of the injuries or damages, and the amount claimed.

Although HRS § 46-72 does not prohibit the Corporation Counsel from receiving the notice of claim, there are salient considerations in authorizing the clerk of the council to continue the practice of accepting a claim for damage. First, the statute does state a preference for the notice of claim to be filed with the chairperson or the clerk of the council. Second, since the County Council has to appropriate monies for settlement and approve settlements in excess of \$1,500, and the County Clerk is the repository for all releases/settlements, there is no compelling reason to change the current practice. Third, there is no evidence that there is an urgent need to change the current practice. Fourth, neither is there any evidence that it has been an onerous burden on the County Clerk to initially intake any claim for damage. And fifth, the fact that our office does the investigation of the claims (as, declared by the former County Clerk) should not be a sufficient rationale to change a process that provides public access and ensures public confidence that the elected officials are initially aware (have notice) of the manner, nature and frequency of the claims the citizens are petitioning against the County.

Should you have any further comments, please contact me at (808) 936-4937.

Very truly yours,



JOSEPH K. KAMELAMELA
Deputy Corporation Counsel
Litigation Supervisor

JKK:fc