

**KENNETH G. GOODENOW**  
County Clerk



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December 17, 2009

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

Honorable Edmund Hiatsuka and Members of the  
County of Hawai'i Charter Commission  
c/o Hawai'i County Council  
25 Aupuni Street  
Hilo, Hawai'i 96720

RE: Comments about Charter Amendment Proposal CA-22

Dear Chairman Hiatsuka and Commission Members:

Thank you for the opportunity to comment on proposed Charter amendment CA-22 which would amend section 3-7 of the Charter to require notices of all regular and special meetings of the council to be posted on the bulletin board of the Hawai'i County Building and on the county website prior to 4:30 p.m. on the sixth calendar day prior to meeting dates.

Currently, our agendas are posted on the county website. Agendas are placed on-line on our Laserfiche document system which is accessible to the public via the county website almost simultaneously with official posting. A link to an agenda is also posted on our Council website by the Data Systems Department, usually one day after official posting on the County Building bulletin board. There have been occasions, however, when this link has been added to the website later than one day after posting.

While our office is open to the concept of posting agendas on the internet, we have the following concerns with CA-20:

- 1) Subsection (f) of the amendment proposed in CA-22 states that "[a]ll referrals forwarded to the council shall be placed on the council agenda with a minimum of six

calendar days notice to the public.” It is not clear what is exactly meant by referrals. Our current council rules state that it is the duty of the chairperson to “receive all reports, communications, bills, resolutions, and other items from the public, the Mayor, various departments of the government, and individual Council Members, and immediately make the proper referrals of these matters to the Council or to the appropriate Committee.” Our current rules also provide that committee chairs “may place referrals on the agenda, provided that matters required by law for Council action, bills, and resolutions shall be placed on the Committee agenda within two scheduled meetings of the date of the referral.” Our office also interprets our rules to provide that the chair of the council may indefinitely hold matters off the council agenda unless overruled by a council majority. Subsection (f) would end this flexibility which has proven useful in the past, e.g., when a chair would prefer to have a matter heard in Kona or Hilo or in conjunction with similar matters. Furthermore, we have been advised by the Office of Information Practices that putting communications from the public on an agenda allows any member of the public or Council to comment on that communication. Because of this, it has been our practice to not place public testimony on the agenda. Subsection (f) might require us to place public testimony on agendas. We strongly suggest that reference to “referrals” be deleted.

- 2) Filing and posting of public notice of agendas prior to 4:30 p.m. on the sixth calendar day prior to a council meeting would provide limited benefit to the public while creating a significant risk of delay to the legislative process. The Sunshine Law already provides that an agenda be posted on the sixth calendar day prior to any public meeting. The Office of Information Practices has determined that this provision requires posting by the end, or midnight, of the sixth day. Subsection (g) would provide an extra 7.5 hours of public notice, albeit during the evening and night. I question whether this would be of any benefit to most members of the public or our local newspapers. In order to understand the impact of such a requirement on the legislative process I have attached a page from our legislative calendar to this letter. As you will note, agenda deadlines are often immediately following Council meetings. Former Clerk Casey Jarman can inform you of the very tight timetable in processing matters for agendas. Efforts to shorten the time period between agenda deadlines and actual posting have proven unworkable. Because of this, we cannot simply move the agenda deadline back one day as many items on an agenda involve Council or committee action at the previous meeting. Adding the requirement of internet posting would compound this problem. In order to ensure compliance with a 4:30 p.m. deadline, I foresee that a two-week delay would be required between Council readings, i.e., a matter that passed first reading would not be placed on the next agenda, but rather on the agenda subsequent to the next agenda.
- 3) While the language in CA-22 that requires “posting the agenda on the county website” implies that it only needs to be posted at the 4:30 p.m. deadline, I am

Honorable Edmund Hiatsuka and Members of the  
County of Hawai'i Charter Commission

Re: CA-22

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concerned about possible legal challenge if the website goes down for a significant period of time between posting and the time of the meeting. While not a regular occurrence, the county's website does go down on occasion. Also, if the website or our internal network system did not function prior to the 4:30 p.m. deadline, our office would not be able to comply with this requirement.

- 4) Given that the Department of Data Systems, an executive branch agency, is currently responsible for posting items on the county website, it would be repugnant to the Separation of Powers doctrine if this practice were to continue in the event the language in CA-22 were to be adopted by the voters. The expense to have an independent server located in our office for the specific purpose of posting agendas should not be that great, between \$5,000 and \$8,000. I request, however, that the effective date in section 2 be amended to provide adequate time to implement this change.
- 5) The Legislative Research Branch of the Office of the County Clerk reviewed the charters of the three other counties in our state. None of these charters list requirements relating to council agendas. I believe there are two major reasons for this. First, the State Sunshine Law is relied upon to provide appropriate parameters for the provision of public notice in a uniform manner for all state entities, including the counties which are political subdivisions of the state. Second, agenda procedures are best addressed via council rules or the county code as the charter should be limited to providing a *basic* framework for the county's organization and operation.

If I can provide further information or assistance, please do not hesitate to contact me at 961-8271.

Yours, very truly,



KENNETH G. GOODENOW  
County Clerk

# February

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
	1	2 Committees	3 Council	4 <u>Deadline:</u> Committee Agendas and Reports - 12 noon (2/17 mtg.)	5 <u>Deadline:</u> Council Agenda - 12 noon (2/18 mtg.)	6
7	8	9	10	11	12	13
14	15 Presidents Day	16	17 Committees (West Hawai'i)	18 Council (West Hawai'i) <u>Deadline:</u> Committee Agendas and Reports - 12 noon (3/2 mtg.)	19 <u>Deadline:</u> Council Agenda - 12 noon (3/3 mtg.)	20
21	22	23	24	25	26	27
28						

2010