

COUNCIL OF THE COUNTY OF MAUI
GOVERNANCE, ETHICS, AND
TRANSPARENCY COMMITTEE

February 15, 2019

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Governance, Ethics, and Transparency Committee, having met on January 23, 2019, and reconvened on January 30, 2019, and February 5, 2019, makes reference to County Communication 19-1, from Council Chair Mike White, relating to the appointment and removal of administrative heads of departments.

By correspondence dated January 2, 2019 (received on January 8, 2019), the Mayor notified the Council Chair of his appointments of the Managing Director, Corporation Counsel, Prosecuting Attorney, Director of Water Supply, Director of Finance, Director of Public Works, Director of Environmental Management, Planning Director, Director of Housing and Human Concerns, Director of Transportation, and Director of Parks and Recreation, pursuant to Section 6-2(5) of the Revised Charter of the County of Maui (1983), as amended ("Charter").

By correspondence dated January 14, 2019, the Mayor transmitted proposed resolutions for each administrative head to your Committee, including a proposed resolution entitled "APPROVING THE APPOINTMENT OF JOHN D. KIM AS THE PROSECUTING ATTORNEY." The purpose of the proposed resolution is to approve the Mayor's appointment of John D. Kim as the Prosecuting Attorney, pursuant to Charter Sections 6-2(5) and 8-3.2.

Your Committee notes Charter Section 8-3.2 provides that the Prosecuting Attorney shall be appointed by the Mayor with the approval of the Council. In addition, Charter Section 6-2(5) provides that the Council shall confirm or deny the confirmation within 60 days after receiving notice of the appointment by the Mayor, or the appointment shall be deemed

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confirmed. Accordingly, the deadline for the Council to confirm or deny the appointment of Mr. Kim as the Prosecuting Attorney is March 9, 2019.

By correspondence dated January 14, 2019, the Mayor transmitted the following: 1) County of Maui Job Description for the Prosecuting Attorney; 2) Ordinance 4848 (2018), relating to the minimum qualifications of the Prosecuting Attorney; and 3) John D. Kim's resume.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed resolution, entitled "APPROVING THE MAYOR'S APPOINTMENT FOR PROSECUTING ATTORNEY," approved as to form and legality, incorporating the minimum qualifications for the position and nonsubstantive revisions. The Department also transmitted a proposed resolution entitled "DISAPPROVING THE MAYOR'S APPOINTMENT FOR PROSECUTING ATTORNEY." The purpose of the proposed resolution is to disapprove the appointment.

Your Committee notes by Resolution 16-96, the Council proposed an amendment to the Charter be placed on the General Election ballot to require Council approval of the Mayor's appointment of administrative heads of departments and allow additional qualifications for administrative heads appointed by the Mayor to be established by ordinance. The proposed Charter amendment was approved at the 2016 General Election.

Ordinances 4803, 4840, 4841, 4847, 4848, and 4864, respectively, established additional qualifications for administrative heads appointed by the Mayor in Chapter 2.14, Maui County Code. The effective date of the ordinances was January 2, 2019.

Your Committee notes Mr. Kim served as Prosecuting Attorney from January 2011 through December 2018 under the prior Administration. As noted in his resume, Mr. Kim also served as Deputy Prosecuting

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Attorney for the County of Maui for over 15 years, with continuous experience as a government attorney starting in December 1985.

Your Committee met with Mr. Kim. In his opening remarks, Mr. Kim said he would like to continue coordinating and establishing partnerships with Federal, State, and County agencies in serving as Prosecuting Attorney.

Mr. Kim told your Committee that, if confirmed as Prosecuting Attorney, he would prioritize establishing a Family Justice Center on Maui, the first of its kind in the State, at a building recently acquired by the County. The building would house some of the Department's prosecuting attorneys and create a victim-centered, one-stop center for victims of crime.

Your Committee received numerous written testimonies in support of and in opposition to Mr. Kim's appointment.

After reviewing Mr. Kim's experience and capabilities and giving due consideration to public testimony, your Committee recommended his nomination be disapproved. Your Committee was concerned with the level of morale within the Department. Your Committee was also concerned with staff turnover and vacancies, including the amount of overtime being incurred by employees, specifically by clerks who are covered under a collective bargaining agreement. Therefore, your Committee determined another nominee would be more well suited to lead the Department at this time. Your Committee commended Mr. Kim for his commitment to public service.

Your Committee voted 5-4 to recommend adoption of the proposed resolution to disapprove the appointment of John D. Kim as the Prosecuting Attorney and filing of the revised proposed resolution to approve the appointment. Committee Vice-Chair Rawlins-Fernandez and members Kama, King, Paltin, and Sinenci voted "aye." Committee Chair Molina and members Hokama, Lee, and Sugimura voted "no."

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Your Governance, Ethics, and Transparency Committee
RECOMMENDS the following:

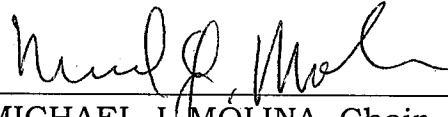
1. That Resolution _____, attached hereto, entitled
"DISAPPROVING THE MAYOR'S APPOINTMENT FOR
PROSECUTING ATTORNEY," be ADOPTED; and
2. That the proposed resolution, attached hereto, entitled
"APPROVING THE MAYOR'S APPOINTMENT FOR
PROSECUTING ATTORNEY," be FILED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

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Resolution

No. _____

DISAPPROVING THE MAYOR'S APPOINTMENT FOR PROSECUTING ATTORNEY

WHEREAS, by letter dated January 2, 2019, received by the Council on January 8, 2019, Mayor Michael P. Victorino notified the Council he appointed John D. Kim as the Prosecuting Attorney, pursuant to Sections 6-2(5) and 8-3.2 of the Revised Charter of the County of Maui (1983), as amended ; and

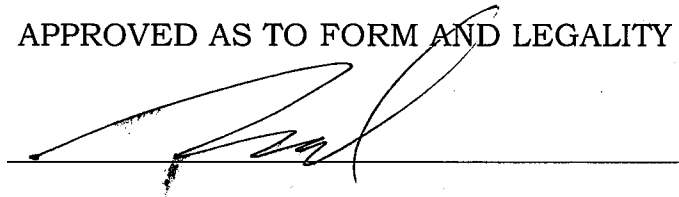
WHEREAS, Charter Section 6-2(5) requires the Council to confirm or deny the appointment within sixty (60) days after receiving notice of the appointment by the Mayor; and

WHEREAS, Charter Section 8-3.2 states: "The prosecuting attorney shall be appointed by the mayor with the approval of the council"; now, therefore,

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

1. That it hereby disapproves the appointment of John D. Kim as the Prosecuting Attorney; and
2. That a certified copy of this resolution be transmitted to the Mayor.

APPROVED AS TO FORM AND LEGALITY



Department of the Corporation Counsel
County of Maui

Resolution

No. _____

APPROVING THE MAYOR'S APPOINTMENT FOR PROSECUTING ATTORNEY

WHEREAS, by letter dated January 2, 2019, received by the Council on January 8, 2019, Mayor Michael P. Victorino notified the Council he appointed John D. Kim as the Prosecuting Attorney, pursuant to Sections 6-2(5) and 8-3.2 of the Revised Charter of the County of Maui (1983), as amended; and

WHEREAS, Charter Section 6-4 authorizes the Council to establish specific qualifications for administrative heads appointed by the mayor in addition to any set forth in the Charter; and

WHEREAS, Section 2.14.110, Maui County Code, attached hereto as Exhibit "A," establishes additional qualifications for the Prosecuting Attorney effective January 2, 2019; and

WHEREAS, Charter Section 6-2(5) requires the Council to confirm or deny the appointment within sixty days after receiving notice of the appointment by the Mayor; and


WHEREAS, Charter Section 8-3.2 states: "The prosecuting attorney shall be appointed by the mayor with the approval of the council"; now, therefore,

Resolution No. _____

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

1. That it deems John D. Kim to have satisfied the minimum qualifications for the position of Prosecuting Attorney;
2. That it hereby approves the appointment of John D. Kim as the Prosecuting Attorney; and
3. That a certified copy of this resolution be transmitted to the Mayor.

APPROVED AS TO FORM AND LEGALITY



Department of the Corporation Counsel
County of Maui

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2.14.110 - Prosecuting attorney.

The prosecuting attorney shall have the following minimum qualifications:

1. As set forth in the charter, the prosecuting attorney shall be an attorney licensed to practice and in good standing before the Hawaii supreme court.
2. As set forth in the charter, the prosecuting attorney shall have engaged in the practice of law for five years.
3. As a part of in addition to the five years of experience in the practice of law, three years of criminal litigation experience.
4. As a part of or in addition to the five years of experience in the practice of law, three years of responsible managerial and budgetary experience.
5. As a part of or in addition to the five years of experience in the practice of law, three years of experience in one or more of the following functions:
 - a. Attending and appearing in courts of competent jurisdiction, and prosecuting criminal offenses on behalf of a municipality or other governmental entity or defending against such proceedings.
 - b. Instituting proceedings, or directing the chief of police of a municipality or other governmental entity to institute proceedings, before a judge of a court of competent jurisdiction for the arrest of persons charged with or reasonably suspected of criminal offenses.
 - c. Drawing and presenting indictments to a grand jury for consideration.
 - d. Prosecuting administrative violations of liquor laws.

EXHIBIT "A"