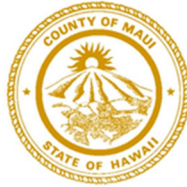


**RICHARD T. BISSEN, JR.**  
Mayor

**VICTORIA J. TAKAYESU**  
Corporation Counsel

**SONYA H. TOMA**  
First Deputy

**LYDIA A. TODA**  
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808)270-7740

March 2, 2023

**Memorandum**

**TO:** Alice Lee, Chair, Maui County Council  
**FROM:** Keola R. Whittaker, Deputy Corporation Counsel  
**SUBJECT:** Independent Nomination Board Reappointment Procedures

This memorandum responds to your Request for Legal Services dated February 27, 2023, which requested confirmation of the “reappointment procedures required under the 2022 Charter amendment related to the Independent Nomination Board and Charter Sections 3-9.1, 5-2, 8-2.2, and 8-3.2.” Since your request relates specifically to reappointment procedures, this memorandum does not detail all of the changes made by the charter amendment which establishes the Independent Nomination Board (“INB”).

The voters of the County of Maui approved the 2021-2022 Charter Commission’s amendment to the Charter of the County of Maui (1983), as amended, which establishes the Independent Nomination Board, effective July 1, 2023. This amendment sets certain new requirements for the positions of Auditor, County Clerk, Corporation Counsel, Prosecuting Attorney, and alters the procedures for appointments to all County boards and commissions.

For vacancies in these offices occurring after July 1, 2023, new applicants will need to be recruited, evaluated, and nominated by the INB. The procedures for reappointment of an existing officer or board member will be accomplished as follows:

**I. Corporation Counsel and Prosecuting Attorney.**

Reappointment of the Corporation Counsel and Prosecuting Attorney for an additional term will require the review and approval of the INB, pursuant to newly amended Maui County Charter sections 8-2.2, 8-3.2, and 13-2.17.

**II. County Auditor and County Clerk.**

By contrast, the incumbent County Clerk and Auditor may be reappointed by the Council for subsequent six-year terms without involvement of the INB. Charter section 3-9.1 provides that the “county auditor may be reappointed by

the council for subsequent terms of six years.” Similar language was added to Charter section 5-2, which deals with the appointment of the County Clerk. Since this language was added by the charter commission to section 3-9.1, and retained in section 5-2, we conclude that it is intended to provide for reappointment without INB review.

If, however, the Council decided to consider other applicants for the positions of the County Clerk and Auditor, in addition to incumbents, involvement of the INB is required and Council should inform the INB of its intent to consider multiple applicants and seek a list of nominees from the INB.


### **III. Boards and Commissions.**

Incumbent members of a board or commission are not eligible for immediate reappointment to that same board unless the term to which they were appointed was three years or less. (Charter section 13-2.5) The reappointment of a board or commission member will require the involvement of the INB nomination process detailed in Charter sections 13-2.17.

### **IV. Recommended changes to the Maui County Code.**

Council should consider two amendments to the Maui County Code in light of recent charter amendments detailed above. First, the salaries of the Clerk and Deputy Clerk are now set by the Salary Commission, and thus section 2.44.010, Maui County Code, should be amended to eliminate or revise that section. Second, the Council may consider revising the appointment of the Deputy County Clerk to serve at the pleasure of the Clerk. This is in keeping with the Charter Commission’s intent of establishing additional autonomy for the Office of the County Clerk by setting a six-year term for the Clerk, as well as Section 13-2.11 of the Charter, which assigns the appointment of deputies to the head of administrative departments.

Respectfully,



Keola R. Whittaker  
Deputy Corporation Counsel  
County of Maui