

COUNCIL OF THE COUNTY OF MAUI

GOVERNMENT RELATIONS, ETHICS, AND TRANSPARENCY COMMITTEE

July 1, 2022

**Committee
Report No.** _____

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

Chair and Members:

Your Government Relations, Ethics, and Transparency Committee, having met on June 7, 2022, and reconvened on June 15, 2022, makes reference to the following:

1. County Communication 21-45, from Council Chair Alice L. Lee, relating to amendments to the Revised Charter of the County of Maui (1983), as amended.
2. Resolution 22-144, entitled “PROPOSING AN AMENDMENT TO SECTION 13-2 OF THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH THE MAUI COUNTY PLANNING COMMISSION, ESTABLISH PLANNING COMMISSIONS FOR ALL COMMUNITY PLAN AREAS ON MAUI, AND DISSOLVE THE MAUI PLANNING COMMISSION.”

Resolution 22-144’s purpose is to place on the next General Election ballot the question of whether the Revised Charter of the County of Maui (1983), as amended (“Charter”), should be further amended, effective July 1, 2023, to establish a Maui County Planning Commission, establish planning commissions for all community plan areas on Maui, and dissolve the Maui Planning Commission.

Your Committee notes Article 14 of the Charter sets procedures related to amending the Charter. The Council, by resolution adopted after two readings on separate days, and passed by a vote of six or more members, may place a Charter amendment question on the ballot at the next General Election.

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Your Committee notes County and State law provide planning commissions with advisory authority on some matters—such as zoning ordinances and community plan amendments—and final decision-making authority on other matters, notably including the Special Management Area rules and permits under the Coastal Zone Management Act.

Your Committee notes the idea of individual planning commissions has been discussed by prior Councils to provide a stronger voice for communities regarding development occurring in their areas.

Your Committee notes the proposed Charter amendment would promote home rule in land use and planning by giving each of Maui’s six community plan areas its own planning commission.

Your Committee notes the 2021-2022 Charter Commission included in its Final Report a proposal to require the Maui Planning Commission have representation from each Maui community plan area; allow for Kalaupapa to be included within the jurisdiction of the Moloka’i Planning Commission upon State action; clarify the order of community plan development; and set a 10-year deadline for the review of all community plans.

Your Committee notes this proposal would amend the same Charter section as a Charter Commission proposal that will be on the General Election ballot. Your Committee further notes that it is not uncommon for multiple proposals amending the same Charter section to be on the same ballot, as indicated by the Charter Commission itself having multiple proposals on a single Charter section for this year’s General Election.

Your Committee notes all successful Charter amendments must be read in harmony with each other, as has happened throughout the County’s history. Except when the Charter Commission and the Council have competing alternatives under Chapter 50, Hawai’i Revised Statutes—in which case only the proposal with the largest number of votes is given

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effect—the County Clerk is otherwise empowered and obligated to give effect to each proposed Charter amendment that receives a majority vote.

Your Committee notes legal action has not been required in the past to determine how to incorporate approved Charter amendments into an updated Maui County Charter after a General Election, and it is not required here.

Your Committee notes that in addition to the Hana Advisory Committee, the Council approved the creation of the South Maui Advisory Committee and Pā'ia-Ha'ikū Advisory Committee to the Maui Planning Commission by Ordinance 5210 (2021), but to date, they have not been operational, nor do they have decision-making authority.

Your Committee agreed to amend Resolution 22-144 to no longer establish a Maui County Planning Commission; remove redundancies, clarify the powers, duties, and functions of planning commissions for all community plan areas on Maui; extend the timeline for the commissions to transmit proposed land use ordinances and amendments to the Council; and incorporate nonsubstantive revisions.

Your Committee also agreed to keep the 120-day deadline for findings and recommendations prepared by the Planning Director and returned to the Council for consideration and action after the final public hearing.

Your Committee further amended Resolution 22-144 to clarify that the planning commission for each community plan area may consist of nine members and allow the Council to make changes if community plan areas are consolidated or changed.

Your Committee notes Charter Section 8-8 is the appropriate section to be referenced in the Resolution's title.

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The Planning Director did not support creating seven separate planning commissions and does not believe there is a sufficient volume of projects to justify a planning commission for each community plan area.

Your Committee notes the proposal to establish a planning commission for each community plan area on Maui would further a number of policies in the Countywide Policy Plan, including the following:

1. "...ensure that land use decisions are consistent with County plans and the vision local populations have for their communities." (Page 76.)
2. "Support community-based decision making." (Page 79.)
3. "Expand advisory functions at the community level." (Page 79.)

Your Committee valued receiving well-informed testimony in support of the Charter amendment from a number of highly regarded community leaders.

Your Committee concluded it was appropriate to let the electorate decide whether each community plan area on Maui should have its own planning commission and, therefore, voted to recommend passage of Resolution 22-144, as amended.

Your Committee voted 5-3 to recommend passage of Resolution 22-144, CD1, on first reading. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members King, Paltin, and Sinenci voted "aye." Committee members Kama, Lee, and Sugimura voted "no." Committee member Johnson was excused.

Your Committee is in receipt of Resolution 22-144, CD1, entitled "PROPOSING AN AMENDMENT TO CHAPTER 8 OF ARTICLE 8 OF THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH PLANNING COMMISSIONS FOR ALL COMMUNITY PLAN

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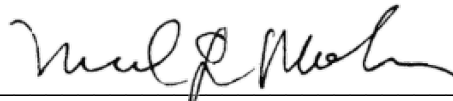
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AREAS ON MAUI AND DISSOLVE THE MAUI PLANNING COMMISSION,” incorporating your Committee’s recommended revisions and nonsubstantive revisions.

Your Government Relations, Ethics, and Transparency Committee RECOMMENDS that Resolution 22-144, CD1, as revised herein and attached hereto, entitled “PROPOSING AN AMENDMENT TO CHAPTER 8 OF ARTICLE 8 OF THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH PLANNING COMMISSIONS FOR ALL COMMUNITY PLAN AREAS ON MAUI AND DISSOLVE THE MAUI PLANNING COMMISSION,” be PASSED ON FIRST READING and be ORDERED TO PRINT.

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. _____

PROPOSING AN AMENDMENT TO CHAPTER 8 OF ARTICLE 8 OF THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH PLANNING COMMISSIONS FOR ALL COMMUNITY PLAN AREAS ON MAUI AND DISSOLVE THE MAUI PLANNING COMMISSION

WHEREAS, the Maui County Council proposes that the question be placed on the next General Election ballot of whether the Revised Charter of the County of Maui (1983), as amended (“Charter”), should be further amended to establish planning commissions for all community plan areas on Maui and dissolve the Maui Planning Commission; and

WHEREAS, this proposed Charter amendment would promote home rule in land use and planning by giving each of Maui’s six community plan areas its own planning commission; now, therefore,

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

1. That in accordance with Charter Section 14-1(1), it proposes Charter Section 8-8.1 be amended by amending to read as follows, with deleted material in brackets and new material underscored:

“Section 8-8.1. Organization. There shall be a department of planning consisting of [a Maui planning commission, a Moloka`i planning commission and a Lāna`i planning commission,] a planning director, a board of variances and appeals, planning commissions, and the necessary staff.”

2. That in accordance with Charter Section 14-1(1), it proposes Charter Section 8-8.4 be amended by amending to read as follows, with deleted material in brackets and new material underscored:

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“Section 8-8.4. Planning Commissions. Each planning commission for each community plan area shall consist of nine members appointed by the mayor with the approval of the council. The members of each planning commission shall be residents of the [island of the planning commission on which the member serves.] relevant community plan area. The director of the department of public works, [and] the director of the department of environmental management, and the director of the department of water supply shall be non-voting ex-officio members of each commission.

Each planning commission shall exercise its powers, duties, and functions as follows:

1. [The Maui planning commission shall be concerned with and the area encompassing the islands island of Maui and Kaho`olawe and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto.] Each of Maui Island’s community plan areas may have its own planning commission. Each planning commission will be concerned with the area encompassing its community plan area and any islands lying within three nautical miles of the community plan area’s shores and the waters adjacent thereto. The South Maui (Kihei-Makena) planning commission will have jurisdiction over matters on Molokini and Kaho’olawe.

2. The Moloka`i planning commission shall be concerned with the area encompassing the island of Moloka`i and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto. [, except that portion of the island known as Kalaupapa, Kalawao, and Waikolu and commonly known and designated as the Kalaupapa Settlement.]

3. The Lāna`i planning commission shall be concerned with the area encompassing the island of Lāna`i and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto.

The appropriate planning commission shall:

1. Advise the mayor, council, and the planning director in matters concerning planning programs.

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2. Review the general plan and revisions thereof prepared by the planning director, a citizen advisory committee, or at the request of the council. The commission shall hold public hearings on such plans and revisions thereof and shall transmit them, with its findings and recommendations to the council for consideration and action no later than one hundred eighty (180) days after the final public hearing.

3. Review other proposed land use ordinances and amendments thereto prepared by the director or the council and, after public hearings, transmit such ordinances with its findings and recommendations thereon to the council for consideration and action no later than one hundred twenty (120) days after the final public hearing.

4. Act as the authority in the relevant community plan area in all matters relating to the Coastal Zone Management law.

5. Adopt rules pursuant to land use ordinances or law.

6. Have such other powers and duties as may be provided by law.

7. The council by ordinance may establish transitional policies for the creation or dissolution of a planning commission or the change in the number of members to which a planning commission is entitled. The policies may include determinations of jurisdiction over pending or prospective matters and the waiver or extension of deadlines.

8. The council by ordinance must establish community plan area boundaries for the island of Maui.”

3. That, in accordance with Charter Section 14-2(1), this Resolution be submitted to the voters of the County of Maui at the next General Election;

4. That the County Clerk prepare the necessary ballot for presentation to the voters at the next General Election;

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5. That, in accordance with Charter Section 14-1(1), it proposes that the following question be placed on the next General Election ballot:

“Shall the Charter be amended, effective July 1, 2023, to establish planning commissions for all community plan areas on Maui and dissolve the Maui Planning Commission?”

6. That, in accordance with Charter Section 14-2(2), the County Clerk must publish the proposed amendment in this Resolution in its entirety in a newspaper of general circulation;

7. That, upon approval by the majority of the voters voting on the proposed amendment and upon official certification of the result, the amendment proposed in this Resolution takes effect on July 1, 2023;

8. That as authorized by Charter Section 14-4, the County Clerk must revise and publish in its entirety a revised Charter including amendments adopted in this Resolution and renumbering provisions and cross-references as may be necessary by the approval of the revisions or amendments; and

9. That certified copies of this Resolution be transmitted to the Mayor and the County Clerk.

INTRODUCED BY:

Kelly T. King

KELLY TAKAYA KING