

Council Chair
Mike White

Vice-Chair
Don S. Guzman

Presiding Officer Pro Tempore
Michael P. Victorino

Councilmembers
Gladys C. Baisa
Robert Carroll
Elle Cochran
Don Couch
Stacy Crivello
Riki Hokama



Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

May 26, 2016

Mr. Dayton Nakanelua, State Director
United Public Workers
841 Kolu Street
Wailuku, Hawaii 96793

BY U.S. MAIL AND EMAIL TO flo@upwhawaii.com

Dear Mr. Nakanelua:

**SUBJECT: PROPOSED CHARTER AMENDMENTS RESTRICTING
COUNTY OFFICIALS' POLITICAL ACTIVITY**
(PIA-10(10); PIA-10(13))

The Maui County Council's Policy and Intergovernmental Affairs Committee is considering two proposed Charter amendments that would place restrictions on some political activities of public employees. The attached resolutions would propose amendments to the County Charter that would, respectively, prohibit:

- (1) the County's top civil attorney (the Corporation Counsel), top criminal attorney (the Prosecuting Attorney), and their respective deputies from aiding in the election or defeat of any candidate for County elected office (PIA-10(10)); and
- (2) County employees from making campaign contributions to support or oppose any candidate for County elected office (PIA-10(13)).

In different ways, the two proposals seek to implement the declared policy of the Code of Ethics, which Section 10-1 of the Charter sets forth as follows:

Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government.

May 26, 2016
Page 2

It is clear, however, these proposals raise First Amendment and perhaps other constitutional and policy issues. The body of case law addressing the constitutional issues appears to be complex and varied across the country. The Committee would welcome your perspective on the constitutional and policy merits of each of the proposed Charter amendments.

The County's Policy and Intergovernmental Affairs Committee will take up the resolutions at its meeting commencing at 9:00 a.m. on June 1, 2016, at the Kalana O Maui Building, 200 S. High Street, in Wailuku, Maui, Hawaii.

We would like to invite you or a representative to attend the meeting or submit written testimony to the Committee to aid in its consideration of these proposals.

To ensure efficient processing, please include the relevant Committee item numbers in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Kimberley Willenbrink at 808-270-7761, or Tammy Frias at 808-270-8005).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Victorino". The signature is fluid and cursive, with a large initial "M" and "P".

MICHAEL P. VICTORINO, Chair
Policy and Intergovernmental Affairs
Committee

pia:ltr:010(10 and 13)a05:kcw

Attachments

Resolution

No. _____

PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO PROHIBIT COUNTY EMPLOYEES FROM MAKING CAMPAIGN CONTRIBUTIONS TO SUPPORT OR OPPOSE ANY CANDIDATE FOR MAYOR OR COUNTY COUNCIL

WHEREAS, residents of the County of Maui are entitled to government services that are effective, efficient, and responsive to their needs, as stated in the General Plan; and

WHEREAS, the Revised Charter of the County of Maui (1983), as amended, at Section 10-1 states that "employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government."; and

WHEREAS, the County should protect its employees from pressure by elected officials and candidates for County office to support their political campaigns; and

WHEREAS, campaign contributions by County employees to political campaigns for County office can lead to undue political influence in decisions relating to the employment, promotion, and retention of employees, which diminishes the County's ability to provide effective, efficient, and responsive government services and raises questions about the integrity of government; and

WHEREAS, the County has compelling interests in prohibiting County employees from making campaign contributions to support or oppose any candidate for County public office; now, therefore,

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

1. That, pursuant to Section 14-1(1) of the Revised Charter of the Maui (1983), as amended, it hereby proposes that Subsection 1 of Charter Section 10-4, pertaining to the Code of Ethics, be amended to read as follows:

Resolution No. _____

"1. No officer or employee of the county shall:

a. Solicit, accept or receive any gift; directly or indirectly, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the officer or employee in the performance of the officer's or employee's official duties or is intended as a reward for any official action on the officer's or employee's part.

b. Disclose information which, by law or practice, is not available to the public and which the officer or employee acquires in the course of the officer's or employee's official duties or use such information for the officer's or employee's personal gain or for the benefit of anyone.

c. Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of the officer's or employee's official duties or which may tend to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties.

d. Use county property or personnel for other than public activity or purpose.

e. Fail to disclose a financial interest in any matter which may be affected by an action of a county agency or vote on any matter affected by such interest.

f. Receive compensation for any service rendered in behalf of any private interest after termination of service to or employment with the county in relation to any case, proceeding or application with respect to which the officer or employee was directly concerned, or which was under his or her active consideration, or with respect to which knowledge or information not generally available to the public was made available to him or her during the period of service to or employment with the county.

g. Make a political contribution, as defined in the state elections statute, to support or oppose any candidate for mayor or county council."

2. That new material is underscored;

Resolution No. _____

3. That the County Clerk prepare the necessary ballot for presentation to the voters at the next general election;

4. That, pursuant to Section 14-2(1) of the Charter, it hereby proposes that the following question be placed on the next general election ballot:

Shall the Charter be amended to prohibit County employees from making political contributions to support or oppose any candidate for Mayor or County Council?; and

5. That pursuant to Section 14-2(2) of the Charter, the County Clerk shall publish the proposed amendment in a newspaper of general circulation; and

6. That, pursuant to Section 14-2(3), upon approval by the majority of the voters voting on the proposed amendment and upon official certification of such result, the amendment proposed herein shall take effect; and

7. That certified copies of this resolution be transmitted to the Mayor and the County Clerk.

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel
County of Maui

paf:gig:16-068a