

Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
Alice L. Lee
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



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

February 28, 2019

Director of Council Services
Maria E. Zielinski

RECEIVED

2019 MAR -1 AM 8:00

OFFICE OF THE
COUNTY CLERK

The Honorable Kelly T. King
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair King:

SUBJECT: **SPECIAL COUNSEL REQUEST RELATING TO
MAYOR'S ABILITY TO APPOINT DISAPPROVED
DEPARTMENT HEADS AS INTERIM DEPARTMENT
HEADS** (PAF 19-113)

May I request the attached proposed resolution, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL TO ADVISE AND REPRESENT THE COUNCIL ON THE MAYOR'S APPOINTMENT AS "INTERIM" ADMINISTRATIVE HEADS THE SAME INDIVIDUALS DISAPPROVED BY THE COUNCIL," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, appearing to read "Keani N.W. Rawlins-Fernandez".

KEANI N.W. RAWLINS-FERNANDEZ
Council Vice-Chair

paf:cmn:19-113b

Attachment

COUNTY COMMUNICATION NO. 19-123

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL TO ADVISE AND REPRESENT THE COUNCIL ON THE MAYOR'S APPOINTMENT AS "INTERIM" ADMINISTRATIVE HEADS THE SAME INDIVIDUALS DISAPPROVED BY THE COUNCIL

WHEREAS, at its meeting of February 15, 2019, reconvened on February 22, 2019, the Council adopted resolutions disapproving the nominations of three department heads appointed by the Mayor, namely John D. Kim as Prosecuting Attorney, David Goode as Director of Public Works, and William R. Spence as Director of Housing and Human Concerns; and

WHEREAS, on February 25, 2019, the County Clerk delivered certified copies of Resolutions 19-29, 19-32, and 19-35 to the Mayor, which copies were stamped received by the Office of the Mayor at 11:00, 11:00, and 11:01 a.m., respectively (Exhibit "A"); and

WHEREAS, according to the attached press release dated February 26, 2019, the Mayor advised that he "has invoked the Maui County Charter's temporary appointment provision to maintain three acting department directors in their positions until replacements can be found and appointed." (Exhibit "B"); and

WHEREAS, the press release further stated, "Mayor Victorino announced Monday that he has appointed John Kim as temporary interim prosecuting attorney until March 1. He has appointed William Spence as temporary interim director of the Department of Housing and Human Concerns until March 17, and he has appointed David Goode as temporary interim director of the Department of Public Works."; and

WHEREAS, Subsection 6-2(5) of the Revised Charter of the County of Maui (1983), as amended ("Charter"), outlines the procedure for the Mayor to appoint administrative heads upon taking office and for the Council to confirm or deny such appointments, and provides in pertinent part, "The appointee shall take office upon appointment by the mayor but shall not continue in office if the council denies the appointment."; and

Resolution No. _____

WHEREAS, in making the “interim” appointments, the Mayor relied upon Charter Subsection 6-2(4), which authorizes the Mayor to appoint temporary administrative heads; and

WHEREAS, the Mayor’s appointments of the same individuals disapproved by the Council to serve as “interim” administrative heads create serious questions about the validity of the appointments and actions taken by departments under the direction of the “interim” heads; and

WHEREAS, Charter Subsection 8-2.3(2) provides that the Department of the Corporation Counsel (“the Department”) is the chief legal advisor and representative of the County, including both the legislative and executive branches of government; and

WHEREAS, Charter Subsection 3-6(6) authorizes the Council, by a two-thirds vote, to retain or employ special counsel for any special matter presenting a real necessity for such employment; and

WHEREAS, a real necessity for the Council to employ special counsel exists when the Department has provided advice or representation to the Mayor or other executive-branch officials that results in an actual or potential conflict of interests with the Council; and

WHEREAS, the Council finds the Mayor’s “interim” appointments appear to be based in part on advice from the Department; and

WHEREAS, the Council finds that, because of a conflict of interests, there is a real necessity to retain special counsel to investigate and evaluate the propriety and effect of the Mayor’s appointments, and recommend appropriate remedies and actions, including the initiation of a quo warranto proceeding under Chapter 659, Hawai‘i Revised Statutes, if appropriate; and

WHEREAS, the Council further finds it to be in the best interest of the County of Maui to provide special counsel to the Council on the matter; now, therefore,

Resolution No. _____

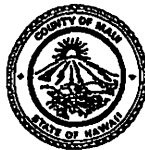
BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby authorizes the employment of special counsel, to be selected by the legislative branch's chief procurement officer, to advise and represent the Council on the Mayor's authority to appoint as "interim" administrative heads the same individuals already disapproved by the Council;
2. That the special counsel shall report to the Council's Governance, Ethics, and Transparency Committee on matters including proposed legal actions, including a quo warranto proceeding, if appropriate, to address the "interim" appointments and whether the appointments have usurped Council authority under the Charter to disapprove the Mayor's appointments;
3. That total compensation for the employment of special counsel shall not exceed \$30,000;
4. That special counsel shall take all possible steps to minimize the level of attorneys' fees and costs;
5. That the hourly rate for the primary attorney shall not exceed \$350;
6. That the hourly rate of associates shall not exceed \$310;
7. That the hourly rate of paralegals shall not exceed \$160;
8. That compensable costs shall be limited to: (1) fees for printing and witnesses; (2) fees for copies necessarily obtained for use in the case; (3) fees of the clerk and marshal; (4) fees of the court reporter for necessary transcripts; (5) docket fees; (6) compensation of court-appointed experts and interpreters; and (7) travel costs, only if justified by extraordinary or compelling circumstances and pre-approved by the Council Chair;

Resolution No. _____

9. That non-compensable costs shall include: (1) telephone calls; (2) facsimile charges; (3) postal charges; (4) messenger charges; (5) fees for computerized legal research; (6) travel costs, unless justified by extraordinary or compelling circumstances and pre-approved by the Council Chair; (7) investigative expenses; and (8) other costs reasonably considered part of the law firm's overhead;
10. That special counsel shall not initiate legal proceedings on the Council's behalf unless the Council adopts a separate resolution approving such action;
11. That increases in the total compensation authorized or substantial changes to the responsibilities of special counsel shall require prior Council approval by the adoption of a separate resolution by a two-thirds vote;
12. That the conduct of special counsel in this matter shall reflect special counsel's understanding that the Council is a public entity that has obligations, concerns, and interests that may extend beyond those of a similarly situated private litigant; and
13. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, the Director of Finance, and the Director of Council Services.

JOSIAH K. NISHITA
County Clerk



OFFICE OF THE COUNTY CLERK
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

MARGARET C. CLARK
Deputy County Clerk

RECEIVED

2019 FEB 25 AM 11:00

OFFICE OF THE MAYOR

COPY

February 25, 2019

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

Dear Sir:

We respectfully transmit for your information and attention as may be required, Committee Report No. 19-7, adopted by the Council of the County of Maui on February 22, 2019.

- ☒ Resolution(s) attached.
- ☐ Grant application returned.
- ☐ Document(s) attached.
- ☐ Please return document upon execution.
- ☐ Please provide recorded copy for our files.

BILL FOR AN ORDINANCE:

- ☐ Final reading on
- ☐ Recommitted to committee following first reading.

Respectfully,

A handwritten signature in black ink, appearing to read "Josiah K. Nishita", is written over a horizontal line.

JOSIAH K. NISHITA
County Clerk

Enclosure

EXHIBIT " A "

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

February 15, 2019

Committee
Report No. 19-7

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

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

Page 2

Committee
Report No. 19-7

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

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

Page 3

Committee
Report No. 19-7

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."

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

Page 4

Committee
Report No. 19-7

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

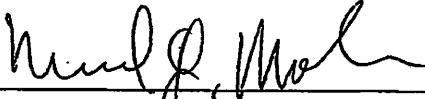
1. That Resolution 19-29, attached hereto, entitled
"DISAPPROVING THE MAYOR'S APPOINTMENT FOR
PROSECUTING ATTORNEY," be ADOPTED; and
2. That the proposed resolution, attached hereto, entitled
"APPROVING THE MAYOR'S APPOINTMENT FOR
PROSECUTING ATTORNEY," be FILED.

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

Page 5

Committee
Report No. 19-7

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



MICHAEL J. MOLINA, Chair

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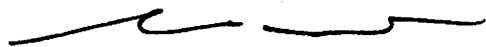
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 19-7 were adopted by the Council of the County of Maui, State of Hawaii, on the 22nd day of February, 2019, by the following vote:

MEMBERS	Kelly T. KING Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Alice L. LEE	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	No	Aye	No	No	Aye	Aye	No



COUNTY CLERK

Resolution

No. 19-29

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

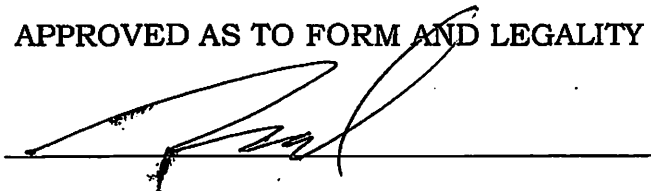
WHEREAS, Charter Section 6-2(5) requires the Council to confirm or deny the appointment within sixty (60) days after receiving notice of the appointment by the Mayor; and

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

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 19-29 was adopted by the Council of the County of Maui, State of Hawaii, on the 22nd day of February, 2019, by the following vote:

MEMBERS	Kelly T. KING Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Alice L. LEE	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuldi Lei K. SUGIMURA
ROLL CALL	Aye	Aye	No	Aye	No	No	Aye	Aye	No



COUNTY CLERK

JOSIAH K. NISHITA
County Clerk



MARGARET C. CLARK
Deputy County Clerk

RECEIVED

2019 FEB 25 AM 11:00

OFFICE OF THE MAYOR

COPY

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

February 25, 2019

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

Dear Sir:

We respectfully transmit for your information and attention as may be required, Committee Report No. 19-10, As Amended, adopted by the Council of the County of Maui on February 22, 2019.

- ☒ Resolution(s) attached.
- ☐ Grant application returned.
- ☐ Document(s) attached.
- ☐ Please return document upon execution.
- ☐ Please provide recorded copy for our files.

BILL FOR AN ORDINANCE:

- ☐ Final reading scheduled for
- ☐ Recommended to committee following first reading.

Respectfully yours,

A handwritten signature in black ink, appearing to be "J. Nishita", is written over a horizontal line.

JOSIAH K. NISHITA
County Clerk

Enclosure

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

February 15, 2019

Committee
Report No. 19-10
As Amended

NOTE: The recommendation contained in this committee report was amended by the Council at its reconvened meeting of February 22, 2019, by deleting the bracketed material and underscoring the new material. This committee report was then adopted as amended.

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 29, 2019, and reconvened on February 1, 2019, February 5, 2019, and February 7, 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 DAVID C. GOODE AS THE DIRECTOR OF THE DEPARTMENT OF

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

Page 2

Committee
Report No. 19-10
As Amended

PUBLIC WORKS.” The purpose of the proposed resolution is to approve the Mayor’s appointment of David C. Goode as the Director of Public Works, pursuant to Charter Sections 6-2(5) and 8-5.2.

Your Committee notes Charter Section 8-5.2 provides that the Director of Public Works 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 confirmed. Accordingly, the deadline for the Council to confirm or deny the appointment of Mr. Goode as the Director of Public Works is March 9, 2019.

By correspondence dated January 14, 2019, the Mayor transmitted the following: 1) County of Maui Job Description for the Director of Public Works; 2) Ordinance 4840 (2018), relating to the minimum qualifications of the Director of Public Works; and 3) David Goode’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 DIRECTOR OF PUBLIC WORKS,” 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 DIRECTOR OF PUBLIC WORKS.” 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.

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

Page 3

Committee
Report No. 19-10
As Amended

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.

According to his resume, Mr. Goode has served as Director of Public Works since 2011. He has also served as Director or Deputy Director of Public Works and Waste Management, the precursor to the Department of Public Works and Environmental Management, from 1995 to 2002. Mr. Goode received his Bachelor of Science in Electrical Engineering in 1984.

Your Committee met with Mr. Goode. In his opening remarks, Mr. Goode said a goal of his as Director is to continue to make strides by working collaboratively with departments to address issues relating to highway and road repairs and maintenance, and emergency response. He said he understands the safety concerns of his employees and wants to ensure they are given sufficient tools, including training, to do their jobs.

Mr. Goode told your Committee that, if confirmed as Director, he would prioritize the electronic filing and review of permits once the Maui Automated Permitted and Planning System, or MAPPS, is online. He would also work on expanding the countywide pavement preservation program to address an increased number of highway and road repairs and maintenance. He is committed to addressing issues such as sea level rise and lowering carbon emissions, and has pledged to make affordable housing a priority.

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

After reviewing Mr. Goode's experience and capabilities and giving due consideration to public testimony, your Committee was satisfied Mr. Goode met the minimum qualifications for the Director of Public

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

Page 4

Committee
Report No. 19-10
As Amended

Works position and recommended his appointment be approved. Your Committee was particularly impressed with several initiatives he made in the past eight years as Director under the prior Administration, including amendments to the Subdivision Code, Building Code, Plumbing Code, and Electrical Code; repairing over 31 lane miles of roadway through the enhanced efforts of the pavement preservation crew; and being responsive to the community in times of emergency.

Your Committee voted 5-3 to recommend adoption of the revised proposed resolution to approve the appointment of David C. Goode as Director of Public Works and filing of the proposed resolution to disapprove the appointment. Committee Chair Molina and members Kama, Lee, Sinenci, and Sugimura voted "aye." Committee Vice-Chair Rawlins-Fernandez and members King and Paltin voted "no." Committee member Hokama was excused.

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

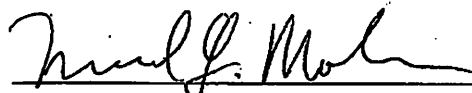
1. That [Resolution _____,] the proposed resolution, attached hereto, entitled "APPROVING THE MAYOR'S APPOINTMENT FOR DIRECTOR OF PUBLIC WORKS," be [ADOPTED] FILED; and
2. That [the proposed resolution,] Resolution 19-32, attached hereto, entitled "DISAPPROVING THE MAYOR'S APPOINTMENT FOR DIRECTOR OF PUBLIC WORKS," be [FILED] ADOPTED.

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

Page 5.

Committee
Report No. 19-10
As Amended

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



MICHAEL J. MOLINA, Chair

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COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 19-10, As Amended were adopted by the Council of the County of Maui, State of Hawaii, on the 22nd day of February, 2019, by the following vote:

MEMBERS	Kelly T KING Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Alice L. LEE	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	No	No	Aye	Aye	No



COUNTY CLERK

Resolution

No. 19-32

DISAPPROVING THE MAYOR'S APPOINTMENT FOR DIRECTOR OF PUBLIC WORKS

WHEREAS, by letter dated January 2, 2019, received by the Council on January 8, 2019, Mayor Michael P. Victorino notified the Council he appointed David C. Goode as the Director of Public Works, pursuant to Sections 6-2(5) and 8-5.2 of the Revised Charter of the County of Maui (1983), as amended; and

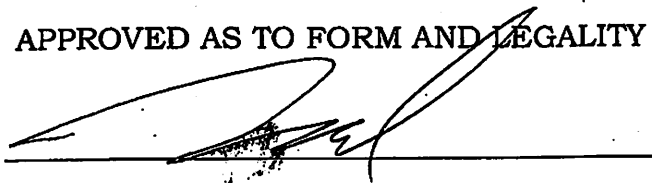
WHEREAS, Charter Section 6-2(5) requires the Council to confirm or deny the appointment within sixty days after receiving notice of the appointment by the Mayor; and

WHEREAS, Charter Section 8-5.2 states: "The director of public works 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 David C. Goode as the Director of Public Works; 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

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

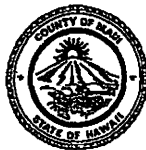
It is HEREBY CERTIFIED that RESOLUTION NO. 19-32, was adopted by the Council of the County of Maui, State of Hawaii, on the 22nd day of February, 2019, by the following vote:

MEMBERS	Kelly T KING Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Alice L. LEE	Michael J. MOLINA	Tamara A. M. PALTIN	Shene M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	No	No	Aye	Aye	No



COUNTY CLERK

JOSIAH K. NISHITA
County Clerk



OFFICE OF THE COUNTY CLERK
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.maui-county.gov/county/clerk

MARGARET C. CLARK
Deputy County Clerk

RECEIVED

2019 FEB 25 AM 11:01

OFFICE OF THE MAYOR

COPY

February 25, 2019

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

Dear Sir:

We respectfully transmit for your information and attention as may be required, Committee Report No. 19-13, adopted by the Council of the County of Maui on February 22, 2019.

- ☒ Resolution(s) attached.
- ☐ Grant application returned.
- ☐ Document(s) attached.
- ☐ Please return document upon execution.
- ☐ Please provide recorded copy for our files.

BILL FOR AN ORDINANCE:

- ☐ Final reading on
- ☐ Recommitted to committee following first reading.

Respectfully,

A handwritten signature in black ink, appearing to read "Josiah K. Nishita", is written over a horizontal line.

JOSIAH K. NISHITA
County Clerk

Enclosure

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

February 15, 2019

Committee
Report No. 19-13

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 29, 2019, and reconvened on February 1, 2019, February 5, 2019, and February 7, 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 WILLIAM ROBERT SPENCE AS THE DIRECTOR OF THE DEPARTMENT OF HOUSING AND HUMAN CONCERNS." The purpose of the proposed resolution is to approve the Mayor's appointment of William Robert Spence as the Director of Housing and Human Concerns, pursuant to Charter Sections 6-2(5) and 8-10.2.

Your Committee notes Charter Section 8-10.2 provides that the Director of Housing and Human Concerns 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

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GOVERNANCE, ETHICS, AND
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days after receiving notice of the appointment by the Mayor, or the appointment shall be deemed confirmed. Accordingly, the deadline for the Council to confirm or deny the appointment of Mr. Spence as the Director of Housing and Human Concerns is March 9, 2019.

By correspondence dated January 14, 2019, the Mayor transmitted the following: 1) County of Maui Job Description for the Director of Housing and Human Concerns; 2) Ordinance 4841 (2018), relating to the minimum qualifications of the Director of Housing and Human Concerns; and 3) William Spence'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 DIRECTOR OF HOUSING AND HUMAN CONCERNS," 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 DIRECTOR OF HOUSING AND HUMAN CONCERNS." 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.

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According to his resume, Mr. Spence began his service as Director of Housing and Human Concerns in July 2018. By Resolution 18-137, the Council approved Mr. Spence's appointment to the position. Mr. Spence served as Planning Director from January 2011 through July 2018. He also served as a land use planning consultant from 2002 to 2011 and as a County staff planner from 1992 to 2002.

Your Committee met with Mr. Spence. In his opening remarks, Mr. Spence said a goal of his as Director is to promote the development of affordable housing. He acknowledges the need for residents to secure rental or owned housing, and intends to pursue smart-growth initiatives to achieve this goal.

Mr. Spence told your Committee that, if confirmed as Director, he would prioritize instituting a program to address the construction of affordable housing units. He plans to determine the best use of the County-owned parcel adjacent to the University of Hawaii Maui College campus and the County-owned lots in Maui Lani. He expressed support for increasing the annual allocation of certified real property tax revenue to the Affordable Housing Fund beyond the level of 2 percent required by the Charter.

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

After reviewing Mr. Spence's experience and capabilities and giving due consideration to public testimony, your Committee recommended his nomination be disapproved. Your Committee was concerned whether Mr. Spence meets the minimum qualifications set forth in Section 2.14.060, Maui County Code, particularly those in paragraph 3, which states: "As a part of or in addition to the five years of administrative experience, three years of experience in developing, supervising and coordinating programs and projects designed to meet housing and/or human needs."

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Your Committee was also concerned that after six months as Director under the prior Administration, Mr. Spence had not yet implemented a plan to incorporate recommendations from the County of Maui Affordable Housing Policy Plan Final Report and County of Maui Affordable Housing Implementation Plan Final Report prepared by SMS, dated August 15, 2018, nor had he established a clear strategy to address the County's housing shortage.

Your Committee commended Mr. Spence for his commitment to public service.

Your Committee voted 6-1 to recommend adoption of the proposed resolution to disapprove the appointment of William Robert Spence as Director of Housing and Human Concerns and filing of the revised proposed resolution to approve the appointment. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Kama, King, Paltin, and Sinenci voted "aye." Committee member Lee voted "no." Committee members Hokama and Sugimura were excused.

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

1. That Resolution 19-35, attached hereto, entitled "DISAPPROVING THE MAYOR'S APPOINTMENT FOR DIRECTOR OF HOUSING AND HUMAN CONCERNS," be ADOPTED; and
2. That the proposed resolution, attached hereto, entitled "APPROVING THE MAYOR'S APPOINTMENT FOR DIRECTOR OF HOUSING AND HUMAN CONCERNS," be FILED.

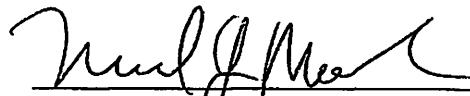
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This report is submitted in accordance with Rule 8 of the Rules of the Council.

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MICHAEL J. MOLINA, Chair

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 19-13 were adopted by the Council of the County of Maui, State of Hawaii, on the 22nd day of February, 2019, by the following vote:

MEMBERS	Kelly T. KING Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Alice L. LEE	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	No



COUNTY CLERK

Resolution

No. 19-35

DISAPPROVING THE MAYOR'S APPOINTMENT FOR DIRECTOR OF HOUSING AND HUMAN CONCERNS

WHEREAS, by letter dated January 2, 2019, received by the Council on January 8, 2019, Mayor Michael P. Victorino notified the Council he appointed William Robert Spence as the Director of Housing and Human Concerns, pursuant to Sections 6-2(5) and 8-10.2 of the Revised Charter of the County of Maui (1983), as amended; and

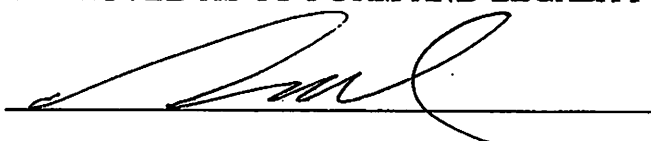
WHEREAS, Charter Section 6-2(5) requires the Council to confirm or deny the appointment within sixty days after receiving notice of the appointment by the Mayor; and

WHEREAS, Charter Section 8-10.2 states: "The director of housing and human concerns 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 William Robert Spence as the Director of Housing and Human Concerns; 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

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

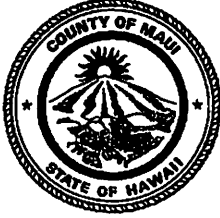
CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 19-35 was adopted by the Council of the County of Maui, State of Hawaii, on the 22nd day of February, 2019, by the following vote:

MEMBERS	Kelly T. KING Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Alice L. LEE	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	No



COUNTY CLERK



County of Maui
Public Information Office
200 South High Street
Wailuku, Hawai'i 96793-2155
Phone: (808) 270-7855
Fax: (808) 270-7870

Brian Perry
Communications Director

Ryan Piros & Chris Sugidono
Asst. Communications Directors

For Immediate Release
February 26, 2019

Mayor Victorino makes temporary department head appointments

Mayor Michael Victorino has invoked the Maui County Charter's temporary appointment provision to maintain three acting department directors in their positions until replacements can be found and appointed.

Pursuant to Article 6, Section 6-2(4), "the mayor shall have the authority to appoint, on a temporary basis, an administrative head of any department, provided that such department is one where the administrative head is appointed by the mayor."

Mayor Victorino announced Monday that he has appointed John Kim as temporary interim prosecuting attorney until March 1. He has appointed William Spence as temporary interim director of the Department of Housing and Human Concerns until March 17, and he has appointed David Goode as temporary interim director of the Department of Public Works.

"I have some people in mind already to fill some of these director positions; I'm still searching for other appointees," Mayor Victorino said. "I am taking the time, permitted under the Maui County Charter, to interview candidates for these positions. When I have found new, qualified candidates, who share my vision of delivering outstanding customer service to the people of Maui County, I will nominate them for director positions."

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EXHIBIT " B "