

Resolution

No. 26-93

PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO SIMPLIFY THE APPOINTMENT PROCESS FOR BOARDS AND COMMISSIONS AND DISSOLVE THE INDEPENDENT NOMINATION BOARD

WHEREAS, the County of Maui has more than 30 boards and commissions—established by either the County Code or the County Charter—that make decisions or provide advice on the County’s behalf; and

WHEREAS, County officials have long sought to encourage more members of the public to apply to serve on these important bodies; and

WHEREAS, the 2021-2022 Charter Commission proposed a Charter amendment that provided for the creation of a nine-member Independent Nomination Board tasked with recruiting, evaluating, and nominating candidates for County boards and commissions; and

WHEREAS, the Charter amendment also established a convoluted set of procedures, many of which have proven confusing, incomplete, or impracticable; and

WHEREAS, the Charter amendment was approved by voters in the 2022 General Election; and

WHEREAS, the Council finds that the 2021-2022 Charter Commission in proposing the Charter amendment was well intentioned in seeking to improve the County’s recruitment, evaluation, and nomination of candidates for boards and commissions; and

WHEREAS, the Council finds the Independent Nomination Board’s members and staff have been diligent in working to implement the Charter amendment; and

WHEREAS, after years of experience with the 2022 Charter amendment, Councilmembers and members of the public have critiqued its effectiveness; and

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WHEREAS, the County has faced ongoing vacancies in boards and commissions after the Independent Nomination Board's creation, impeding the ability of some boards and commissions to do their work; and

WHEREAS, the involvement of another layer of review by the Independent Nomination Board has slowed the appointment process and, lengthened the duration of some vacancies; and

WHEREAS, the Charter amendment reduced the Council's time to review the Mayor's nominations from 60 to 30 days, which is an insufficient amount of time considering the volume of nominations and the Council's responsibility to comply with Sunshine Law requirements; and

WHEREAS, the Charter amendment's new procedures created internal inconsistencies and gaps that have led to litigation and required legislative responses to fill gaps; and

WHEREAS, the Charter amendment also involved the Independent Nomination Board in the appointment of the Corporation Counsel, County Auditor, County Clerk, and Prosecuting Attorney, which the Council finds unnecessary; and

WHEREAS, the Charter amendment also allowed for an outgoing Mayor to nominate and an outgoing Council to approve the Corporation Counsel and Prosecuting Attorney for the next mayoral term, which the Council finds inappropriate; and

WHEREAS, the public interest would be served by allowing Maui County's voters to consider a new Charter amendment to simplify the procedures for board and commission appointments and dissolve the Independent Nomination Board; and

WHEREAS, Charter Section 14-1(1) allows the Council to initiate a Charter amendment through a resolution passed by a two-thirds vote on two separate readings; and

WHEREAS, the 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, should be amended to simplify the appointment process for boards and commissions and dissolve the Independent Nomination Board; and

WHEREAS, the proposed Charter amendment's revisions include:

- technical changes for clarity, consistency, and accuracy, including setting deadlines with specific dates for the annual mass nominations;
- increased flexibility in the process for appointments to boards and commissions by allowing policies to be set by ordinance;
- repealing an outdated subsection on public hearings and newspaper publication;
- changing the Mayor's deadline to take certain actions from 10 days to 30 days; and
- restoring the Council's standard 60-day deadline to review nominations; now, therefore,

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

1. That, under Charter Section 14-1(1), it proposes Charter Section 13-2 be amended to read as follows, with deleted material in brackets and new material underscored:

**"Section 13-2. Boards and Commissions;
Nomination of Certain Officers].**

1. Unless otherwise provided[,] in this charter or by ordinance, the members of all boards or commissions [shall] will serve for staggered terms of five years beginning on April 1 and ending on March 31[,] five years [thereafter.] later. Each new board or commission established by this charter [shall] will have nine members. Of the nine members initially appointed, five [shall] will serve for a term of three years, and four [shall] will serve for a term of two years.

2. In making appointments to all boards and commissions, the mayor and council [shall give due consideration to] must consider balanced geographic representation.

3. Any vacancy occurring on any board or commission [shall] will be filled for the unexpired term.

4. The members of boards and commissions appointed by the mayor, with approval of the council, may be

removed for cause upon recommendation of [such] removal by the mayor and the approval of two-thirds of the entire membership of the council[.] by resolution.

5. No member of any board or commission [shall] will be eligible for a second appointment to the same board or commission [prior to the expiration of] within two years[, provided] of the term expiration, except that members of any board or commission initially appointed for a term [not exceeding] of up to three years [shall] will be eligible to succeed themselves for an additional term. No member of any board or commission [shall] may serve beyond the time when the member's term expires unless the member is specifically reappointed. A vacancy [shall] will be automatically created upon the expiration of a member's term [which vacancy shall be filled as provided for herein].

6. Employees and officers of the State or County [shall] will be eligible to serve on boards and commissions, [provided that such] if the service does not result in a conflict of interest.

7. A majority of the entire membership of a board or commission [shall constitute] constitutes a quorum to do business, and the affirmative vote of a majority of the entire membership of a board or commission [shall] will be necessary to take any action.

8. Each board or commission [shall] must select a chair from its membership annually.

9. All boards and commissions [shall] have the power to subpoena witnesses and administer oaths to witnesses as to all matters within [the] their authority [of such boards or commissions].

10. [All boards and commissions shall hold public hearings whenever required or deemed necessary and shall provide due notice to the public by publication in a newspaper of general circulation in the County.] Additional policies on the process for appointments to boards and commissions may be established by ordinance. The policies may include a requirement that the mayor identify applicants and initiatives to recruit and vet applicants.

11. Except as otherwise provided in this charter, the deputies of the administrative head of any department [shall] will be appointed by the administrative head without the necessity of confirmation by any commission or board.

12. The members of boards and commissions [shall] will be entitled to be paid for necessary expenses incurred by them in the performance of their duties. Necessary expenses may be paid in advance as per diem allowances as may be established by ordinance.

13. Except for purposes of inquiry and as otherwise provided by this charter or by law, no board or commission nor its membership [shall] may interfere in any way with the administrative affairs of [the] a department.

14. Each board and commission [shall] will have the power to establish its own rules of procedures necessary for the conduct of its business, except as otherwise provided in this charter.

[15. The independent nomination board consists of nine members, one from each of the council residency areas, appointed by the mayor and approved by the council. Upon establishment, the board shall determine the staggering of their terms. A regular term shall be five years. No member shall run for or hold any other elected office under the United States, the State, or its political subdivisions. No member shall take an active part in political management or in political campaigns. No member shall be eligible for appointment to any office for which the commission makes nominations so long as a member of the commission and for a period of three years after the end of the entire term so appointed except that a member may be eligible for appointment to an unpaid position on a board or commission after the expiration of their entire term.

16. The independent nomination board shall recruit, evaluate, and nominate individuals to serve on boards and commissions established by this charter and by ordinance, and such other offices as shall be specified in this charter. The procedures for submitting applications and the form of applications shall be established by the independent nomination board based on the requirements of each office, commission, or board. To the extent permitted by law, information related to the consideration of any applicant for nomination shall not be public.]

[17.] 15. A vacancy on a commission[,] or board[, or of such office requiring nominees to be presented to the appointing authority by the independent nomination board due to] arising from the expiration of a member's [or officer's] term [shall] will be filled as follows:

[Not less than ninety days before a vacancy occurs, the independent nomination board shall submit a list of nominees to the mayor. Not more than seventy days nor less than sixty days before the vacancy is to occur,]

a. For a board and commission membership requiring the mayor's nomination and council's approval with a term expiring on March 31, the mayor [shall] will submit to the council the name of the mayor's nominee to fill the vacancy during county work hours by January 31 of the year in which the term expires. [Within thirty days thereafter the] The council [shall act to] will approve or disapprove the [nominee] nomination by resolution by March 31. If the council disapproves the [nominee, it shall immediately so notify the mayor and the independent nomination board of its action. The] nomination, the mayor [shall] will then submit [the name of a second nominee from the list] a second nomination to the council within [ten] 30 days, and the council [shall act thereon] will approve or disapprove the nomination within [thirty] 60 days. The process [shall] will continue until the vacancy is filled. [If no nominee remains on the list submitted to the mayor, the independent nomination board shall have seventy-five days to submit a new list of nominees to the mayor, and the timelines shall be set under those applicable to the original list of nominees. In the event that] If the council fails to approve or disapprove a nominee [within the time periods provided for herein] by its deadline, the [nominee shall be deemed appointed to fill the vacancy upon its occurrence.] nomination is automatically approved. If the mayor fails to submit [the name of a nominee within the times provided for herein] a nomination by the deadline, the council may, within [thirty] 60 days, nominate and approve the appointment of an individual to fill the vacancy [from the list of nominees presented to the mayor].

b. For boards and commissions not subject to paragraph (a.), procedures to fill vacancies upon term expiration will be set by ordinance, if the procedures are not set elsewhere in this charter.

[18.] 16. A vacancy on a commission or board [due to] arising from a member's death, resignation, or removal [shall] will be filled as follows:

[Within sixty days of the occurrence of a vacancy, the independent nomination board shall submit to the mayor a list of nominees to fill the vacancy.]

a. Within [thirty] 30 days [thereafter,] of the occurrence of a vacancy, the mayor [shall] will submit a nomination to the council. [the name of the mayor's nominee to fill the vacancy.] Within [thirty] 60 days, [thereafter,] the council [shall act to] will approve or disapprove the [nominee. If the council disapproves the nominee, it shall immediately so notify the mayor and the independent nomination board of its action. The] nomination by resolution. If the council disapproves the nomination, [The] the mayor [shall] will then submit [the name of a second nominee from the list] another nomination to the council within [ten] 30 days, and the council [shall act thereon] must approve or disapprove the nomination by resolution within [thirty] 60 days. This process [shall] will continue until the vacancy is filled]. If no nominee remains on the list submitted to the mayor, the independent nomination board shall have sixty days to submit a new list of nominees to the mayor, and the timelines shall be set under those applicable to the original list of nominees. In the event that], unless paragraph (b) or (c) applies.

b. If the council fails to approve or disapprove a [nominee within the time periods provided for herein, that nominee] nomination by its deadline, [shall be deemed appointed to fill the vacancy upon its occurrence.] the nomination is automatically approved.

c. If the mayor fails to submit [the name of a nominee within the times provided for herein,] a nomination by the deadline, the council may within [thirty] 60 days nominate and approve the appointment of an individual to fill the vacancy [from the list of nominees presented to the mayor].

[19. If the independent nomination board fails to provide a list of nominees within the prescribed time limits, the appointing authority may make its own appointment within thirty days therefrom without consulting with the independent nomination board. The council shall approve or disapprove a mayoral nominee and shall immediately so notify the mayor of its action. The mayor shall then submit the name of a second nominee to the council within ten days and the

council shall act thereon within thirty days. This process shall continue until the vacancy is filled.

20. If the mayor, for mayoral appointments, or council, for council appointments, rejects all nominees presented by the independent nomination board, the appointing authority shall notify the independent nomination board of such rejection within thirty days of submission of the nominee list. The board shall present a new list of nominees within seventy-five days of such notice. The timelines shall be set under those applicable to the original list of nominees.];

2. That, under Charter Section 14-1(1), it proposes Charter Subsection 3-9.1(1) be amended to read as follows, with deleted material in brackets and new material underscored:

“1. The office of the county auditor is headed by a county auditor who is appointed by the council [from a list of nominees presented to the council by the independent nomination board.] by resolution. The auditor [shall serve for] serves a term of six years. The county auditor may be reappointed by the council for subsequent terms of six years. The county auditor’s terms starts on July 1 at six-year intervals. The county auditor may hold over until a successor is appointed. The salary of the county auditor [shall be] is determined by the salary commission. The council may remove the county auditor from office at any time for cause[.] by resolution. If the position of county auditor becomes vacant before term expiration, the council must appoint a new county auditor by resolution to fill the unexpired term. The county auditor is exempt from civil service.”;

3. That, under Charter Section 14-1(1), it proposes Charter Section 5-2 be amended to read as follows, with deleted material in brackets and new material underscored:

“Section 5-2. County Clerk. The county clerk is appointed by the council [from a list of nominees presented to the council by the independent nomination board.] by resolution. The county clerk [shall serve for] serves a term of six years. The county clerk may be reappointed by the council for subsequent terms of six years. The county clerk may hold over until a successor is appointed. The salary of the county clerk and deputy county clerk [shall be] is set by the salary

commission. The council may remove the county clerk from office at any time for misfeasance, malfeasance, or nonfeasance[.] by resolution. If the position of county clerk becomes vacant before term expiration, the council will appoint a new county clerk by resolution to fill the unexpired term.”;

4. That, under Charter Section 14-1(1), it proposes Charter Section 8-2.2 be amended to read as follows, with deleted material in brackets and new material underscored:

“Section 8-2.2. Corporation Counsel. The corporation counsel is appointed by the mayor [from a list of nominees presented to the mayor by the independent nomination board, and as further provided for in section 13-2] with the approval of the council by resolution for a term coincident with the mayor’s and may be removed by the mayor with the approval of council[.] by resolution. The corporation counsel [shall] must be an attorney licensed to practice and in good standing before the Supreme Court of the State and [shall] must have engaged in the practice of law for at least five years. If the position of corporation counsel becomes vacant before term expiration, the mayor will appoint a new corporation counsel with the approval of the council by resolution to fill the unexpired term.”;

5. That, under Charter Section 14-1(1), it proposes Charter Section 8-3.2 be amended to read as follows, with deleted material in brackets and new material underscored:

“Section 8-3.2. Prosecuting Attorney. The prosecuting attorney is appointed by the mayor [from a list of nominees presented to the mayor by the independent nomination board, and as further provided for in section 13-2] with the approval of the council by resolution for term a coincident with the mayor’s and may be removed by the mayor with the approval of council[.] by resolution. The prosecuting attorney [shall] must be an attorney licensed to practice and in good standing before the Supreme Court of the State and [shall] must have engaged in the practice of law for at least five years. If the position of prosecuting attorney becomes vacant before term expiration, the mayor will appoint a new

prosecuting attorney with the approval of the council by resolution to fill the unexpired term.”;

6. That, under Charter Section 14-1(1), it proposes Charter Article 15 be amended by adding a new section to read as follows, with new material underscored:

“Section 15-2. Transitional Provisions After 2026 Charter Amendment on Nominations. 1. Any final action approving or disapproving a nomination to any position before this section’s effective date must remain valid despite voter approval of the 2026 charter amendment on nominations or any other 2026 charter amendments.

2. Deadlines for actions to fill a mid-term vacancy for a board or commission member will be reset as if the vacancy occurred on this section’s effective date, unless a council resolution to fill the vacancy was introduced before this section’s effective date, in which case the earlier deadlines remain in effect.

3. Any process that has been initiated to fill a mid-term or end-of-term vacancy for Corporation Counsel, County Auditor, County Clerk, or Prosecuting Attorney is void, unless the vacancy has been filled before this section’s effective date, in which case the appointee’s term is based on the charter in effect on the day before this section’s effective date.”;

7. That, under Charter Section 14-2(1), this Resolution be submitted to the voters of the County of Maui at the next General Election;
8. That the County Clerk prepare the necessary ballot for presentation to the voters at the next General Election;
9. That, under 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 immediately, to repeal the parts of the 2022 Charter amendment that created the Independent Nomination Board and related procedures for nominations to various County offices?”

10. That, under 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;

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- 11. That, on approval by a majority of the voters voting on the proposed amendment and on official certification of the result, the amendment proposed in this Resolution takes immediate effect upon passage;
- 12. That, as authorized by Charter Section 14-4, the County Clerk must revise and publish in its entirety a revised Charter including revisions proposed in this Resolution approved by the electorate, and renumber provisions and cross-references as necessary; and
- 13. That certified copies of this Resolution be transmitted to the Mayor and the County Clerk.

APPROVED AS TO FORM AND LEGALITY:



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INTRODUCED BY:

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