

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

April 5, 2019

Committee
Report No. _____

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 March 12, 2019, and reconvened on March 15, 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 and received on March 1, 2019, the Mayor transmitted a proposed resolution entitled "APPROVING THE APPOINTMENT OF DONALD S. GUZMAN AS THE PROSECUTING ATTORNEY." The purpose of the proposed resolution is to approve the Mayor's appointment of Donald S. Guzman 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 ("Charter").

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 confirmed. Accordingly, the deadline for the Council to confirm or deny the appointment of Mr. Guzman as the Prosecuting Attorney is April 30, 2019.

Your Committee notes it previously reported on this matter through Committee Report 19-7, which recommended adoption of the proposed resolution disapproving the Mayor's appointment of John D. Kim for Prosecuting Attorney and filing of the proposed resolution approving the appointment. At its meeting of February 15, 2019, reconvened on February 22, 2019, the Council adopted the recommendations in Committee Report 19-7 (Resolution 19-29).

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

Page 2

Committee
Report No. _____

Your Committee notes pursuant to Charter Section 6-2(5), if the appointment is denied by the Council, the Mayor shall make a new appointment within 60 days of the Council's denial, and the Council shall confirm or deny within 60 days after receiving notice of the new appointment by the Mayor.

Your Committee notes by Resolution 16-96, the Council proposed an amendment to the Charter to 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.

Your Committee notes Ordinance 4848 (2018) established additional qualifications for the Prosecuting Attorney in Chapter 2.14, Maui County Code. The effective date of the ordinance was January 2, 2019.

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 OF DONALD S. GUZMAN FOR PROSECUTING ATTORNEY," incorporating the minimum qualifications for the position and nonsubstantive revisions. The Department also transmitted a proposed resolution entitled "DISAPPROVING THE MAYOR'S APPOINTMENT OF DONALD S. GUZMAN FOR PROSECUTING ATTORNEY." The purpose of the proposed resolution is to disapprove the appointment.

At its March 12, 2019 meeting, your Committee received 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; 3) Donald S. Guzman's resume; and 4) a document showing Mr. Guzman's admittance to the Hawaii State Bar on June 2, 2000.

COUNCIL OF THE COUNTY OF MAUI

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Page 3

**Committee
Report No.** _____

As noted in his resume, Mr. Guzman served as a Deputy Prosecuting Attorney for the County of Maui from August 2000 to July 2005, and in that capacity, he represented the State and the County in pursuing criminal cases. Mr. Guzman's resume notes he has extensive litigation experience handling misdemeanor and felony convictions, arraignments, and plea negotiations. He maintained a private law office on Maui in general civil matters, including business and commercial law, administrative law, employment law, real estate law, family law, and workers' compensation from August 2005 to April 2016. Mr. Guzman was also elected a County Councilmember serving three 2-year terms from January 2, 2013 to January 2, 2019.

Your Committee met with Mr. Guzman. In his opening remarks, Mr. Guzman said his experience as a Deputy Prosecuting Attorney laid the foundation for him to work collaboratively. He was thankful for the opportunity to lead the Department in a position that will allow him to continue to serve the community.

Mr. Guzman told your Committee that, if confirmed as Prosecuting Attorney, he would prioritize the Department's goals of: 1) establishing the Maui County Children's Peace Center at a building recently acquired by the County, located at 2103 Wells Street, Wailuku, Maui, Hawaii; 2) developing a proactive recruitment to fill vacant Deputy Prosecuting Attorney positions; and 3) spearheading the creation of a victim/witness academy to train competent victim/witness advocates statewide.

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

COUNCIL OF THE COUNTY OF MAUI

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Page 4

**Committee
Report No. _____**

After reviewing Mr. Guzman's experience and capabilities and giving due consideration to public testimony, your Committee was satisfied Mr. Guzman met the minimum qualifications for the Prosecuting Attorney position and recommended his appointment be approved. Your Committee was particularly impressed with Mr. Guzman's commitment to address departmental issues such as nepotism, the backlog of cases, and curbing overtime by implementing a tracking system. Your Committee noted his leadership would be a fresh start for the Department.

Your Committee voted 8-0 to recommend adoption of the revised proposed resolution to approve the appointment of Donald S. Guzman as the Prosecuting Attorney and filing of the proposed resolution to disapprove the appointment. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye." Committee member Hokama was excused.

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

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

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

Page 5

**Committee
Report No.** _____

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



MICHAEL J. MOLINA, Chair

get:cr:19001(3)ab:ske

Resolution

No. _____

APPROVING THE MAYOR'S APPOINTMENT OF DONALD S. GUZMAN FOR PROSECUTING ATTORNEY

WHEREAS, by letter dated and received by the Council on March 1, 2019, Mayor Michael P. Victorino notified the Council he appointed Donald S. Guzman 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 6-4 authorizes the Council to establish specific qualifications for administrative heads appointed by the mayor in addition to any set forth in the Charter; and

WHEREAS, Section 2.14.110, Maui County Code, attached hereto as Exhibit "A," establishes additional qualifications for the Prosecuting Attorney effective January 2, 2019; 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 8-3.2 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 deems Donald S. Guzman to have satisfied the minimum qualifications for the position of Prosecuting Attorney;

Resolution No. _____

2. That it hereby approves the appointment of Donald S. Guzman as the Prosecuting Attorney; and
3. That a certified copy of this resolution be transmitted to the Mayor.

APPROVED AS TO FORM AND LEGALITY

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

Department of the Corporation Counsel
County of Maui

get:misc:001(3)areso04:ske

2.14.110 - Prosecuting attorney.

The prosecuting attorney shall have the following minimum qualifications:

1. As set forth in the charter, the prosecuting attorney shall be an attorney licensed to practice and in good standing before the Hawaii supreme court.
2. As set forth in the charter, the prosecuting attorney shall have engaged in the practice of law for five years.
3. As a part of in addition to the five years of experience in the practice of law, three years of criminal litigation experience.
4. As a part of or in addition to the five years of experience in the practice of law, three years of responsible managerial and budgetary experience.
5. As a part of or in addition to the five years of experience in the practice of law, three years of experience in one or more of the following functions:
 - a. Attending and appearing in courts of competent jurisdiction, and prosecuting criminal offenses on behalf of a municipality or other governmental entity or defending against such proceedings.
 - b. Instituting proceedings, or directing the chief of police of a municipality or other governmental entity to institute proceedings, before a judge of a court of competent jurisdiction for the arrest of persons charged with or reasonably suspected of criminal offenses.
 - c. Drawing and presenting indictments to a grand jury for consideration.
 - d. Prosecuting administrative violations of liquor laws.

(Ord. No. 4848 § 3, 2018, eff. 1-2-2019)

EXHIBIT "A"

Resolution

No. _____

DISAPPROVING THE MAYOR'S APPOINTMENT OF DONALD S. GUZMAN FOR PROSECUTING ATTORNEY

WHEREAS, by letter dated and received by the Council on March 1, 2019, Mayor Michael P. Victorino notified the Council he appointed Donald S. Guzman 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

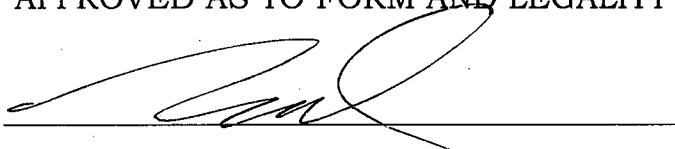
WHEREAS, Charter Section 6-2(5) requires the Council to confirm or deny the appointment within sixty days after receiving notice of the appointment by the Mayor; and

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 Donald S. Guzman 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