

May 26, 2016

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CITY OF CHICAGO

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MEMO TO: Michael P. Victorino, Chair
Policy and Intergovernmental Affairs Committee

F R O M: Mike White, Council Chair



SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO
CHARTER AMENDMENTS** (PIA-10)

The attached legislative proposal pertains to Item 10 on your committee's agenda.

paf:gig:15-171e

Attachment

Resolution

No. _____

PROPOSING AN AMENDMENT TO THE
REVISED CHARTER OF THE COUNTY OF MAUI
(1983), AS AMENDED, TO AUTHORIZE THE
BOARD OF ETHICS TO APPOINT STAFF,
IMPOSE CIVIL FINES, AND RECOMMEND
DISCIPLINARY ACTION AGAINST COUNTY
OFFICERS AND EMPLOYEES FOR VIOLATIONS
OF THE MAUI COUNTY CODE OF ETHICS

WHEREAS, Article 10 of the Revised Charter of the County of Maui (1983), as amended (the "Charter"), establishes a Board of Ethics (the "Board") "to the end that the public may justifiably have trust and confidence in the integrity of government"; and

WHEREAS, the Board is charged with initiating, receiving, hearing, and investigating complaints of violations of the Code of Ethics as set forth in Article 10 of the Charter, and in Chapter 2.56 of the Maui County Code ("MCC"); and

WHEREAS, the Board currently relies upon the Department of the Corporation Counsel for its staffing and does not have the authority to appoint its own staff to assist in the performance of its duties; and

WHEREAS, to effectively carry out its duties, the Board requires independent legal counsel and other staff; and

WHEREAS, the Board currently may recommend, but does not have the authority to impose civil fines for violations of the Code of Ethics; and

WHEREAS, the Board must therefore usually rely upon the appropriate appointing authority for enforcement of its opinions or recommendations; and

WHEREAS, providing the Board with independent enforcement authority would promote ethical conduct in County government; now, therefore,

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

1. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 10-2 of the Charter, pertaining to the authority of the Board, be amended to read as follows:

"Section 10-2. Board of Ethics. There shall be a board of ethics.

1. The board shall consist of nine members appointed by the mayor with the approval of the council.

2. The board shall be within the department of the corporation counsel for administrative purposes only. The board shall appoint an executive director by a majority vote of its entire membership, and who may be removed by the board upon a two-thirds vote of its entire membership. The executive director shall be an attorney qualified to practice law in the State of Hawaii. The salary of the executive director shall be determined by the salary commission.

3. The board shall appoint necessary staff to assist it in the performance of its duties, as authorized by law. Such staff may include attorneys who may advise and represent the board independently of the department of the corporation counsel. Such staff shall be under the supervision of the executive director. The executive director and persons appointed to staff positions shall be exempt from civil service and shall serve at the pleasure of the board.

[2.] 4. The board shall:

a. Initiate, receive, hear, and investigate complaints of violations of this Article.

b. Initiate impeachment proceedings in accordance with Section 13-13 of the Charter against elected officers and officers appointed to elective office who are found by the board after [investigation] a hearing to have violated this Article. Such proceeding shall be brought in the name of the board, which shall be represented by the board's executive director, the board's staff attorney, or special counsel of the board's choosing.

c. [Render] On its own initiative and discretion, render advisory opinions with respect to application of this Article. The board may also render advisory opinions with respect to application of this Article on request. All requests

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for advisory opinions shall be answered within forty-five (45) days of its filing; failure to submit an advisory opinion within the forty-five (45) days shall be deemed a finding of no breach of this Article. Prior to rendering any advisory opinion, the board shall conduct a hearing, and thereafter issue findings of fact, conclusions of law, and recommendations. The board shall publish its advisory opinions on the County's website with such redactions as may be appropriate prevent disclosure of privileged or confidential information.

d. Prescribe forms for the disclosures provided in this section and to implement the requirements of the disclosure provisions.

e. Examine all disclosure statements filed and to comment on or advise corrective action as to any matters that may indicate a conflict of interest.

f. Impose civil fines established by ordinance against officers and employees of the County found by the board to have violated any provisions of this Article.

g. Recommend appropriate disciplinary action against officers and employees found to have violated any provisions of this Article. Appropriate disciplinary action may include probation, demotion, suspension, discharge from employment, or other action pursuant to law. The appointing authority shall promptly notify the board of the action taken on the recommendation.

h. Notwithstanding Section 3-6(6), the board of ethics may, without council approval, retain special counsel to represent and advise the board in implementing its powers.

[f.] i. Adopt such rules, having the force and effect of law, as will be necessary to provide for the enforcement of the provisions of this Article.

j. Perform such other duties as may be prescribed by law.

[3.] 5. In the course of its investigations, the board shall have the power to administer oaths and subpoena witness and to compel the production of books and papers pertinent thereto.

[4.] 6. The board, after due deliberation on issues before it, shall make findings of facts and conclusions of law regarding such issues and shall transmit the same to the

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appropriate appointing authority and the prosecuting attorney for appropriate disposition.

[5.] 7. If any officer or employee, or former officer or employee, obtains an advisory opinion from the board and acts accordingly, or acts in accordance with the opinions of the board, the officer or employee shall not be held liable for violating any of the provisions of this Article.

[6.] 8. The council and mayor shall cooperate and provide financing and personnel reasonably required by the board in the performance of its duties."

2. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 10-5 of the Charter, pertaining to penalties for violation of the Code of Ethics, be amended to read as follows:

"Section 10-5. Penalties. Any person who violates the provisions of this Article shall be subject to a fine to be provided for by ordinance adopted by the county council, and in addition to any such fine that may be imposed, non-elected officers or employees may be suspended or removed from office or employment by the appropriate appointing authority upon recommendation of the board and elected officers may be removed through impeachment proceedings pursuant to Section 13-13."

3. That material to be repealed is bracketed and new material underscored;

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

5. 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 grant the Board of Ethics authority to enforce the Code of Ethics through the imposition of fines and other action and to appoint independent staff?

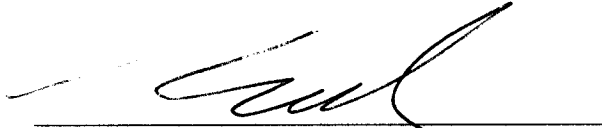
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6. That, pursuant to Section 14-2(2) of the Charter, the County Clerk shall publish the proposed amendment in a newspaper of general circulation;

7. 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

8. That, certified copies of this resolution be transmitted to the Mayor, the County Clerk, and the Board.

APPROVED AS TO FORM AND LEGALITY



EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui
2014-2966