

**COUNCIL OF THE COUNTY OF MAUI**  
**POLICY AND INTERGOVERNMENTAL**  
**AFFAIRS COMMITTEE**

July 15, 2016

**Committee**  
**Report No. \_\_\_\_\_**

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy and Intergovernmental Affairs Committee, having met on May 23, 2016, June 1, 2016, June 27, 2016, June 29, 2016 (reconvene), and July 5, 2016 (reconvene), makes reference to following:

1. County Communication 09-229, from Michael J. Molina, Chair, Committee of the Whole, relating to proposed amendments to the Revised Charter of the County of Maui (1983), as amended.
2. County Communication 14-165, from Councilmember Don S. Guzman, transmitting a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO ATTORNEYS WITHIN THE OFFICE OF COUNCIL SERVICES."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether Charter Sections 3-7 and 8-2.3 should be amended to allow Office of Council Services attorneys, in addition to Department of the Corporation Counsel attorneys, to serve as legal advisors to and legal representatives of the Council and its members.

Your Committee notes the Council's Policy and Intergovernmental Affairs Committee (2013-2015 Council term) met on June 30, 2014, and December 8, 2014.

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Your Committee notes Article 14 of the Charter sets forth procedures related to amending the Charter. The Council, by resolution adopted after two readings on separate days and passed by a vote of six or more members, may place a Charter amendment question on the ballot at the next General Election.

Your Committee further notes Section 8-2.3 of the Charter provides the Corporation Counsel is the chief legal advisor and legal representative of the County, the Council, the Mayor, all departments, all boards and commissions, and all officers and employees in matters relating to their official duties.

Your Committee noted attorneys within the Office of Council Services assist the Council in its legislative duties, including staffing Council committees, interfacing with the public, drafting legislation, memoranda, and other working documents, and conducting legal research, but they cannot provide legal opinions under the current structure.

Your Committee further noted a need for the Council and its members to have ready access to independent legal advice, particularly when there is an actual or potential conflict or disagreement between the executive and legislative branches.

Your Committee also noted the multiple duties of representation of the Corporation Counsel under Section 8-2.3, on occasion, create a conflict between the duties owed to the executive and legislative branches such that separate representation is required.

The First Deputy Corporation Counsel stated the proposed amendment to Section 3-7 of the Charter is sufficient to allow Office of Council Services attorneys to give legal advice on a routine basis; however, Section 3-6 would need to be amended if your Committee intends to allow the Council to have the additional authority to designate those attorneys to serve as special counsel on certain occasions.

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Your Committee approved revisions to the proposed resolution to amend Section 3-6 of the Charter to authorize the Council to designate attorneys within the Office of Council Services as special counsel to serve as legal representatives upon a vote of two-thirds of its entire membership "for any special matter presenting a real necessity."

Your Committee approved revisions to the proposed resolution to amend Section 3-7 of the Charter to allow attorneys within the Office of Council Services to serve as legal advisors.

Your Committee voted 7-1 to recommend passage of the revised proposed resolution on first reading and filing of the communication. Committee Chair Victorino and members Baisa, Carroll, Cochran, Crivello, Guzman, and White voted "aye." Committee member Hokama voted "no." Committee Vice-Chair Couch was excused.

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Policy and Intergovernmental Affairs Committee RECOMMENDS the following:

1. That Resolution \_\_\_\_\_, as revised herein and attached hereto, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO ATTORNEYS WITHIN THE OFFICE OF COUNCIL SERVICES," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 14-165 be FILED.

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

  
\_\_\_\_\_  
MICHAEL P. VICTORINO, Chair

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# Resolution

No. \_\_\_\_\_

PROPOSING AN AMENDMENT TO THE  
REVISED CHARTER OF THE COUNTY OF MAUI  
(1983), AS AMENDED, RELATING TO  
ATTORNEYS WITHIN THE OFFICE OF COUNCIL  
SERVICES

WHEREAS, Section 8-2.3 of the Revised Charter of the County of Maui (1983), as amended, provides that the Corporation Counsel shall be the chief legal advisor and legal representative of the County, the Council, the Mayor, all departments, all boards and commissions, and all officers and employees in matters relating to their official duties; and

WHEREAS, Section 3-7 of the Charter provides that the Council may create such positions in the Office of Council Services as it deems necessary to assist it in the exercise of its legislative power; and

WHEREAS, permitting attorneys within the Office of Council services to serve as legal advisors to the Council and its members will allow the Council and its members to have access to independent legal advice when there is an actual or potential conflict or disagreement between the executive and legislative branches of government; now, therefore,

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 3-6 of the Charter, pertaining to the powers of the Council, be amended to read as follows:

**“Section 3-6. Powers of Council.** The council shall be the legislative body of the county. Without limitation of the foregoing grant or of other powers given it by this charter, the council shall have the power:

1. To legislate taxes, rates, fees, assessments and special assessments and to borrow money, subject to the limitations provided by law and this charter.

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2. To legislate appropriations for county purposes subject to the limitations provided by this charter.

3. To conduct investigations of (a) the operation of any department or function of the county and (b) any subject upon which the council may legislate.

4. To fix the salaries of such employees and officers as may be necessary.

5. To require periodic and special reports from all county departments concerning their functions and operations. Such reports shall be requested and submitted by and through the mayor.

6. To retain, [or] employ, or designate, by a vote of two-thirds of its entire membership, special counsel as legal representative for any special matter presenting a real necessity for such employment. Any such employment shall specify the compensation, if any, to be paid for said services.

7. To designate attorneys within the office of council services to serve as legal advisors.”;

2. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 3-7 of the Charter, pertaining to the Office of Council Services, be amended to read as follows:

**“Section 3-7. Office of Council Services. 1.** There shall be an office of council services. The council may create such positions in the office of council services as it deems necessary to assist it in the exercise of its legislative power. The salaries of such positions shall be fixed by ordinance. Persons appointed to such positions by the council shall be exempt from civil service.

2. The attorneys within the office of council services, in addition to the attorneys within the department of the corporation counsel, may serve as legal advisors to the council and its members.”;

3. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-2.3 of the Charter, pertaining to the powers, duties, and functions of the Corporation Counsel, be amended to read as follows:

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**“Section 8-2.3. Powers, Duties, and Functions.**

The corporation counsel shall:

1. Appoint such deputy corporation counsel and necessary staff as shall be authorized by the council. Deputy corporation counsel shall be exempt from civil service and shall serve at the pleasure of the corporation counsel.

2. Be the chief legal advisor and legal representative of the County of Maui; of the council, the mayor, all departments, and all boards and commissions, and of all officers and employees in matters relating to their official duties[.], except as otherwise provided in this charter.

3. Represent the county in all legal proceedings.

4. Perform such other duties and functions as may be incident to the department or required by law.”;

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

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

6. 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 Sections 3-6, 3-7, and 8-2.3 of the Charter be amended to allow attorneys within the Office of Council Services, in addition to the attorneys within the Department of the Corporation Counsel, to serve as legal advisors to the Council and its members, and to allow the Council to designate, by two-thirds vote of its entire membership, attorneys within the Office of Council Services as special counsel to serve as legal representatives for any special matter presenting a real necessity for such employment?”;

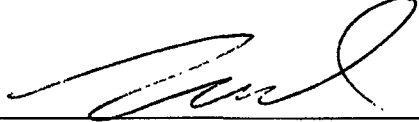
7. That, pursuant to Section 14-2(2) of the Charter, the County Clerk shall publish the proposed amendment in a newspaper of general circulation;

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8. That, pursuant to Section 14-2(3) of the Charter, 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

9. That certified copies of this resolution be transmitted to the Mayor and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY

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

Department of the Corporation Counsel

County of Maui

2014-2966

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