

REQUEST FOR LEGAL SERVICES

RECEIVED
CORPORATION COUNSEL

Date: September 10, 2019

From: Shane M. Sinenci, Chair

SEP 10 AM 8:57

Environmental, Agricultural, and Cultural Preservation Committee


TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Richelle Thomson, Esq.

Subject: **ESTABLISHING AN AGENCY TO ADDRESS CLIMATE CHANGE, SUSTAINABILITY, AND RESILIENCY** (EACP-26)

Background Data: Please review the attached proposed alternative resolutions, and if appropriate, approve the resolutions as to form and legality. Please provide hard copies of the proposed resolutions with your response. Please disregard the Request for Legal Services on the same subject matter, dated August 27, 2019.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY
☐ [] OTHER:

Requestor's signature  Shane M. Sinenci	Contact Person <u>Kasie Apo Takayama</u> (Telephone Extension: <u>7665</u>)
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- ☐ [] ROUTINE (WITHIN 15 WORKING DAYS) ☐ [] RUSH (WITHIN 5 WORKING DAYS)
☐ [] PRIORITY (WITHIN 10 WORKING DAYS) ☐ [] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): September 17, 2019 at 9:00am
REASON: For reference at the September 17th EACP Committee meeting

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>RMT</u>	ASSIGNMENT NO. <u>2019-0096</u>	BY: <u>jeo</u>
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TO REQUESTOR: ☐ [] APPROVED ☐ [] DISAPPROVED ☒ [X] OTHER (SEE COMMENTS BELOW)
☐ [] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

MEMO with comments provided for the committee's consideration of the three proposals.

Date 9/12/19 By RMT

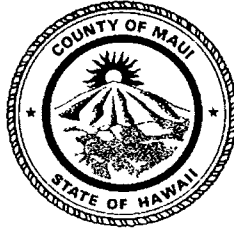
DEPARTMENT OF THE CORPORATION COUNSEL

MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
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September 12, 2019

To: Shane Sinenci, Chair
Environmental, Agricultural, and Cultural Preservation Committee

From: Richelle M. Thomson, Deputy Corporation Counsel 

RE: Establishing an agency to address climate change, sustainability,
and resiliency (EACP-26)

This memo provides a few considerations for the Environmental, Agricultural, and Cultural Preservation Committee in the committee's review of the three (3) draft Charter amendments concerning establishing an office or department of climate change, sustainability, and resiliency. With the committee's indulgence, we would like to obtain the direction and feedback of the committee and work with Council Services staff to refine the preferred alternative based on the committee's direction.

General comments on all 3 proposed Charter amendments

Some of the duties overlap with long-range planning (e.g., "integrate sustainable and environmental values into county plans, programs, and policies"), and there are provisions that might reach into the jurisdiction of the planning commissions as the authority related to coastal zone management under Charter 8-8.4(4). Consulting with the Planning Department is advisable.

The Committee may also consider whether it would be desirable to remove overlapping duties from the Department of Environmental Management (DEM) under Section 8-15.3(4) of the Charter, or perhaps clarify DEM's duties in relation to the new office.

One final general comment, for the language on the ballot, it is recommended to clarify whether the new office or department will be attached to the legislative or executive branch.

Stand-alone County department under Article 8 of the Charter

For Sustainability Director:

The “develop and coordinate” and “integrate” duties under 8-18.3 may be difficult from a practical perspective for a stand-alone department to accomplish on a Countywide basis.

For the Resiliency Commission:

The Committee may consider adding the Resiliency Commission under the organization of the new department under Section 8-18.1. The Commission should also be added to the title of the proposed resolution. This could resolve the issue of staff support for the Resiliency Commission. See, for example, 8-7.1, Charter, establishes the Fire Department, which consists of the commission, fire chief, and staff; and, 8-8.1, Charter, which establishes the Planning department, including director, commissions, and staff.

8-18-4(3) – the commission’s duties include advising on law and policy. Recommend changing the phrasing to “informing,” to avoid overlap with Corporation Counsel’s being the County’s legal advisor pursuant to Section 8-2.3, Charter.

Office of Sustainability under Article 3 (County Council)

The current Section 3-9.4 of the Charter appears to be a definitions section relating to the entire Article 3. It begins, “For the purpose of this section, the following definitions apply... .” The Committee may consider revising this to read: “For the purpose of this article ... ” and leave this as a stand-alone section within Article 3. The current proposed draft moves these definitions to the end of the proposed amendment establishing this office under Council, but those definitions don’t appear in the text of the new/proposed amendment.

Section 3-9.4(3): The prohibition on supporting candidates could be an infringement on free speech, and we request the opportunity to conduct additional research if the Committee wishes to move forward with this proposal. We realize this language is modeled after the restrictions on the County Auditor;

however, at this time we do not have sufficient background on the inclusion of this language to provide an opinion.

Office of Economic Development and Office of Climate Change, Sustainability, and Resiliency under Article 7 (Office of the Mayor)

Related to the Office of Economic Development, it is advisable to do a thorough search of the Maui County Code in order to include those duties assigned to the current OED. For example, §3.81.030.D, Maui County Code (MCC), discusses a “coordinator” of this office, who can adopt administrative rules in coordination with the Finance Director related to the economic development revolving fund; §22.04A.050, MCC, related to Agricultural Parks, refers to a “director.” The current proposed Charter amendment refers to an “executive.” The MCC references can be amended to flow from the final language in the Charter (in terms of “director” or “coordinator” or “executive”), but the established duties in the County Code may be advisable to include in the proposed Charter amendment.

Related to the proposed Office of Climate Change, Sustainability, and Resiliency under the Office of the Mayor, Section 7-8.8 authorizes the executive to “convene” a climate change commission twice annually. Will this be a board established under §13-2 of the Charter? If it is a Charter-established board, it may be advisable to change the language from “convene” to “provide administrative support to” the commission, reference §13-2, and also add the creation of this new commission to the title of the proposed Charter amendment.