

REQUEST FOR LEGAL SERVICES

D a t e: June 26, 2020

F r o m: Michael J. Molina, Chair

Government Ethics and Transparency Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Gary Murai, Esq.

Subject: PROPOSED CHARTER AMENDMENTS (CONFLICTING INTERPRETATIONS OF THE CHARTER) (GET-10(8))

Background Data: Please review the revised proposed resolution and, if appropriate, approve as to form and legality.

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

Requestor's signature <u>Michael J. Molina</u> Michael J. Molina	Contact Person <u>Shelly Espeleta</u> (Telephone Extension: <u>7134</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)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): July 1, 2020
REASON: For posting on July 10, 2020 Council meeting agenda

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ 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): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____
(Rev. 7/03)

get:ltr:010(8)acc01:ske

Attachment

Resolution

No. _____

PROPOSING AN AMENDMENT TO THE
REVISED CHARTER OF THE COUNTY OF MAUI
(1983), AS AMENDED, RELATING TO
CONFLICTING INTERPRETATIONS OF THE
CHARTER

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

1. That, in accordance with Section 14-1, Revised Charter of the County of Maui (1983), as amended (“Charter”), it proposes that Section 15-1 of the Charter, pertaining to Existing Laws and Conflicting Laws, be amended to read as follows:

“Section 15-1. Existing Laws and Conflicting Laws.

1. All laws, ordinances, resolutions, and rules in force at the time this charter takes full effect, and not in conflict or inconsistent with this charter, are [hereby] continued in force until repealed, amended, or superseded by proper authority. All laws [which] that are inconsistent with this charter [shall be] are superseded by the provisions of this charter at its effective date. All laws relating to or affecting this county or its departments, officials, or employees, and all county ordinances, resolutions, orders, and regulations [which] that are in force when this charter takes full effect[,] are repealed to the extent that they are inconsistent with or interfere with the effective operation of this charter or of ordinances or resolutions adopted by the county council under the provisions of this charter.

2. a. When construing provisions of this charter, the foremost obligation is to ascertain and give effect to the intent of the drafters—either members of the county council, members of the charter commission, or registered voters. Intent is to be obtained primarily from the language contained in this charter itself. This charter’s language must be read in the context of the entire charter and construed in a manner consistent with the drafters’ intent.

b. When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a

Resolution No. _____

statute, an ambiguity exists. In construing an ambiguous charter provision, the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, to ascertain their true meaning.

c. Extrinsic aids may be reviewed to determine intent. In the case of a charter provision drafted by the county council, the relevant committee report may be reviewed. In the case of a charter provision drafted by the charter commission, the relevant charter commission report may be reviewed. Courts may also consider the reason and spirit of the law, and the cause that induced the county council, the charter commission, or registered voters to propose the charter provision to discover its true meaning.

d. Charter provisions on the same subject matter must be construed with reference to each other. What is clear in one charter provision may be used to explain what is unclear in another.

e. Conflicting interpretations of the provisions of this charter must be resolved by complying with the intent of the most recent charter amendment pertaining to the conflict.

f. Elected and appointed officials, including the corporation counsel, must carefully interpret the provisions of this charter to ensure the officials do not violate the charter.

g. If a question in interpretation is the source of a conflict between the administration and the county council, then the corporation counsel or special counsel, if any, must seek a declaratory judgment, a writ of quo warranto, or other appropriate judicial remedy on the county's behalf within thirty days of the conflict being identified to obtain clarity in the interpretation of this charter's provisions, unless another party has already brought a viable judicial action for the same purpose.

h. A willful violation of a charter provision by an elected or appointed county officer or employee constitutes use of county property or personnel for other than public activity or purpose under Article 10 and, therefore, is grounds for the commencement of impeachment proceedings. A willful violation of a charter provision by an employee is grounds for discipline including termination of employment.”; and

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

3. That, in accordance with Subsection 14-2(1) of the Charter, this Resolution be submitted to the voters of the County of Maui at the next General Election; and

4. That the County Clerk prepare the necessary ballot for presentation to the voters at the next General Election; and

5. That, in accordance with Section 14-1 of the Charter, it proposes that the following question be placed on the next General Election ballot:

“Shall the Charter be amended, effective January 2, 2021, to establish standards for interpreting and complying with the Charter, including by requiring a viable judicial action to be filed within 30 days to seek clarity when a conflict in the interpretation of the Charter is identified?”; and

6. That, in accordance with Subsection 14-2(2) of the Charter, the County Clerk will publish the proposed amendment as set forth in this Resolution in its entirety in a newspaper of general circulation; and

7. That, upon approval by the majority of the voters voting on the proposed amendment, the amendment proposed in this Resolution will take effect as of January 2, 2021; and

8. That certified copies of this Resolution be transmitted to the Mayor and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY

Department of the Corporation Counsel
County of Maui

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