

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

July 10, 2020

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 June 23, 2020, and June 30, 2020 (reconvene), makes reference to County Communication 19-28, from Council Chair Kelly T. King, relating to proposed amendments to the Revised Charter of the County of Maui (1983), as amended ("Charter").

By correspondence dated December 30, 2019, Council Vice-Chair Keani N.W. Rawlins-Fernandez transmitted a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO CONFLICTING INTERPRETATIONS OF THE CHARTER."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether the Charter should 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.

Your Committee notes Article 14 of the Charter sets 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 discussed the need to establish standards that would provide guidance when interpreting conflicts with the Charter.

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Your Committee further discussed the use of established law and extrinsic aids such as committee reports and minutes, to determine intent and prevent misinterpretation.

A Deputy Corporation Counsel advised the language included in proposed Charter Sections 15-1.2 (a) through (e) represented a generally accurate representation of case law on the construction of laws, such as Charter provisions.

Your Committee concluded it would be helpful to have the Charter explain how its provisions are to be interpreted and to include direction on how to resolve conflicting interpretations.

Your Committee agreed to incorporate nonsubstantive revisions to further clarify the intent and ensure the accuracy of the proposal.

Your Committee voted 8-0 to recommend passage of the revised proposed resolution on first reading. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye." Committee member Hokama 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 Governance, Ethics, and Transparency Committee RECOMMENDS that Resolution _____, attached hereto, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO CONFLICTING INTERPRETATIONS OF THE CHARTER," be PASSED ON FIRST READING and be ORDERED TO PRINT.

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



MICHAEL J. MOLINA, Chair

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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

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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



Digitally signed by Gary Murai
DN: cn=Gary Murai,
o=Corp.Counsel, ou=C & D,
email=gary.murai@co.maui.hi.us,
c=US

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Department of the Corporation Counsel
County of Maui

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