

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

July 24, 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 30, 2020, 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 June 22, 2020, 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 THE CORPORATION COUNSEL."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether Sections 3-8 and 8-2 of the Charter should be amended, effective January 2, 2021, to allow the Council, in addition to the Mayor, to initiate removal of and provide direction to the County's chief legal advisor and legal representative, the Corporation Counsel.

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 intent of the proposal.

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Your Committee noted Corporation Counsel serves both the executive and legislative branches of government. Allowing Council the ability to remove Corporation Counsel would help to restore equity and remove any perception of bias.

Your Committee noted in accordance with Charter Section 3-6.6, the Council has the ability to retain, employ, or designate by a vote of two-thirds of its membership, special counsel as legal representative should the Council disagree with the legal opinion of Corporation Counsel.

Your Committee further noted "Corporation Counsel" refers to the head of the Department of the Corporation Counsel.

Your Committee agreed the Charter proposal is worthy of consideration but requires further discussion and should be considered by the 2021-2022 Charter Commission.

Your Committee voted 7-1 to recommend referral of the proposed resolution to the Charter Commission. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Hokama, Kama, Lee, Paltin, and Sinenci voted "aye." Committee member Sugimura voted "no." Committee member King was excused.

Your Governance, Ethics, and Transparency Committee **RECOMMENDS** that the attached proposed resolution, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO THE CORPORATION COUNSEL," be **REFERRED** to the Council Chair for the next Council term, for transmittal to the next Charter Commission.

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

A handwritten signature in black ink, appearing to read "Michael J. Molina", written over a horizontal line.

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 THE CORPORATION COUNSEL

WHEREAS, Section 8-2.3 of the Revised Charter of the County of Maui (1983), as amended ("Charter") provides that 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; and

WHEREAS, Section 8-2.2 of the Charter currently permits the removal of the Corporation Counsel only if initiated by the Mayor; and

WHEREAS, as the chief legal advisor and legal representative of both the Council and the Mayor, the Corporation Counsel should be subject to removal initiated by either the Council or the Mayor; and

WHEREAS, Rule 1.4 of the Hawai'i Rules of Professional Conduct establishes attorneys' ethical duty to communicate with and receive direction from clients; and

WHEREAS, the Charter should be brought into conformity with the Hawai'i Rules of Professional Conduct, ensuring that the Council has the ability to communicate with and provide direction to its attorney; now, therefore,

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 Subsection 2 of Section 3-8 of the Charter, pertaining to Restrictions on Council and Council Members, be amended to read as follows:

"2. Neither the council nor its members shall give orders to any county employees or county officers other than those appointed [pursuant to Section 3-7 or Article 5,] in the Office of the County Clerk, the Office of Council Services, or

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the Department of the Corporation Counsel, either publicly or privately. Any willful violation of the provisions of this subsection by a member of the council shall be sufficient grounds for the councilmember's removal from office by impeachment.”; and

2. That, in accordance with Section 14-1, Revised Charter of the County of Maui (1983), as amended (“Charter”), it proposes that Section 8-2.2 of the Charter, pertaining to the Corporation Counsel, be amended to read as follows:

“Section 8-2.2. Corporation Counsel. The corporation counsel shall be appointed by the mayor with the approval of the council and may be removed by (1) the council by resolution or (2) the mayor with the approval of the council. The corporation counsel shall be an attorney licensed to practice and in good standing before the Supreme Court of the State and shall have engaged in the practice of law for at least five years.”; and

3. That new material is underscored and deleted material in brackets;

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

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

6. 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 to allow the Council, in addition to the Mayor, to initiate removal of and provide direction to the County’s chief legal advisor and legal representative, the Corporation Counsel?”;

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7. That, in accordance with Subsection 14-2(2) of the Charter, the County Clerk publish this proposed amendment in a newspaper of general circulation;

8. That, upon approval by the majority of the voters voting on the proposed amendment and upon official certification of the result, the amendment proposed by this Resolution will 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

Department of the Corporation Counsel
County of Maui

paf:dmr:19-306a