

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

November 20, 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 February 25, 2020, March 10, 2020, 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 March 22, 2019, Council Chair Kelly T. King transmitted a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO APPOINTMENT OF TEMPORARY ADMINISTRATIVE HEADS."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether Section 6-2 of the Charter should be amended, effective January 2, 2021, to prohibit the Mayor from appointing a temporary appointee as an administrative head of any department if that person was previously denied appointment as a department head within the same mayoral term.

By correspondence dated December 31, 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 APPOINTMENT AND REMOVAL OF OFFICERS AND EMPLOYEES."

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

Page 2

Committee
Report No. _____

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether Section 6-2 of the Charter should be amended, effective January 2, 2021, to prohibit the Mayor from appointing a temporary appointee as an administrative head of any department if that person was previously denied appointment as a department head within the same mayoral term.

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.

Because the two Charter proposals are identical, your Committee agreed to consider one of the two proposals. Your Committee further agreed to file the correspondence dated March 22, 2019, transmitting a proposed resolution.

Your Committee discussed the intent of the proposal submitted by the Council Vice-Chair. The proposal makes clear the intention of Charter Section 6-2 that would disallow director nominees from being temporarily appointed by the Mayor after being disapproved by the Council.

Your Committee noted the Council disapproved the appointment of the Director of Public Works at the start of the Mayor's 2019-2021 term. The Mayor then temporarily appointed the disapproved individual as Director until a replacement was named.

Your Committee further noted separate, but differing, legal opinions were received by the Council and the Mayor on this matter by the same Deputy Corporation Counsel.

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

Page 3

Committee
Report No. _____

Your Committee noted the Council then retained special counsel who confirmed the language in Charter Section 6-2 was clear and the Council was correct in their interpretation that an individual disapproved as director must not continue in office if the Council denies the appointment.

A motion to recommend passage of the proposed resolution on first reading failed.

Your Committee agreed the Charter proposal is worthy, but required further discussion. Your Committee further agreed the Charter proposal should be considered by the 2021-2022 Charter Commission.

Your Committee voted 7-2 to recommend referral of the proposed resolution to the Charter Commission. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Kama, King, Lee, Paltin, and Sinenci voted "aye." Committee members Hokama and Sugimura voted "no."

Your Governance, Ethics, and Transparency Committee **RECOMMENDS** the following:

1. That the attached proposed resolution, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO APPOINTMENT AND REMOVAL OF OFFICERS AND EMPLOYEES," be REFERRED to the Council Chair for the term beginning January 2, 2021, for transmittal to the next Charter Commission; and
2. That correspondence dated March 22, 2019, be FILED.

COUNCIL OF THE COUNTY OF MAUI

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Page 4

Committee
Report No. _____

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

get:cr:20010(1)aa:ske

Resolution

No. _____

PROPOSING AN AMENDMENT TO THE
REVISED CHARTER OF THE COUNTY OF MAUI
(1983), AS AMENDED, RELATING TO
APPOINTMENT AND REMOVAL OF OFFICERS
AND EMPLOYEES

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 6-2 of the Charter, pertaining to Appointment and Removal of Officers and Employees, be amended to read as follows:

"Section 6-2. Appointment and Removal of Officers and Employees.

1. The administrative head of a department may not appoint more than the staff for which appropriations have been made by the council.

2. No appointing authority [shall] may appoint any person to any office or position exempted from civil service until satisfied by proper investigation that the person to be appointed is fully qualified by experience and ability to perform the duties of the office or position.

3. The term of office of any administrative head of a department who is appointed by the mayor [shall end] ends with the term of office of the mayor, except that any such administrative head may be earlier removed as provided for in this charter. Such officers [shall] may not hold over more than sixty [(60)] days after their respective terms of office, and [shall] must immediately vacate their respective offices at the end of the [60-day] sixty-day period or upon the appointment of a successor in accordance with this charter, whichever occurs first.

4. The mayor [shall have] has the authority to appoint, on a temporary basis, an administrative head of any department, [provided] if that [such] department is one where the administrative head is appointed by the mayor and the appointee was not previously denied appointment for

the same or any other department within the same mayoral term.

5. Within sixty [(60)] days of taking office, or within sixty [(60)] days after a vacancy is created, the mayor [shall] must appoint the managing director, corporation counsel, prosecuting attorney, director of finance, director of public works, director of parks and recreation, planning director, director of housing and human concerns, director of water supply, director of transportation, and director of environmental management, with written notice of the appointment to the council. The council [shall] must confirm or deny the appointment within sixty [(60)] days after receiving notice of the appointment by the mayor. If the council does not act within the [60-day] sixty-day period, the appointment [shall] will be deemed to be confirmed. The appointee [shall take] takes office upon appointment by the mayor but [shall] may not continue in office if the council denies the appointment, for any period of time or for any reason, including appointment as a temporary department head. If the appointment is denied by the council, the mayor [shall] must make a new appointment within sixty [(60)] days of the council's denial, and the council [shall] must confirm or deny within sixty [(60)] days after receiving notice of the new appointment by the mayor. If the council does not act within the [60-day] sixty-day period, the appointment [shall] will be deemed to be confirmed.”; and

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 to prohibit the Mayor from appointing a temporary appointee as an administrative head of any department if that person was previously denied appointment as a department head within the same mayoral term?”; and

6. That, in accordance with Section 14-2(2) of the Charter, the County Clerk 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 and upon official certification of the result, 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

paf:kmatt:19-391a