

COUNCIL OF THE COUNTY OF MAUI

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE

July 5, 2013

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy and Intergovernmental Affairs Committee, having met on May 31, 2013, and June 17, 2013, makes reference to County Communication 13-41, from Council Chair Gladys C. Baisa, regarding litigation matters.

By correspondence dated May 17, 2013, Councilmember Mike White transmitted a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL TO ADVISE AND REPRESENT THE COUNCIL REGARDING THE POTENTIAL MISUSE OF COUNTY FUNDS".

The purpose of the proposed resolution is to authorize the employment of special counsel, for a sum not to exceed \$20,000, to advise and represent the Council regarding the potential misuse of County funds appropriated for rehabilitation of the Old Wailuku Post Office.

Attached to the proposed resolution are Exhibit "A", project description for the Old Wailuku Post Office Rehabilitation from the Fiscal Year ("FY") 2012 Budget, and Exhibit "B", correspondence dated April 15, 2013, from the Department of the Corporation Counsel to your Budget and Finance Committee's Chair. In his correspondence, the Corporation Counsel responded to questions relating to whether the County violated the law by entering into contracts to demolish the Old Wailuku Post Office and to begin the Kalana O Maui master plan.

The Corporation Counsel declined to answer the questions and cited the following from Rule 1.13(f) of the Hawaii Rules of Professional Conduct:

If a government lawyer knows that an officer, employee or other person associated with the government is engaged in action, intends to act or refuses to act in a matter related to the lawyer's representation that is a violation of a legal obligation to the government or the public,

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or a violation of law which reasonably might be imputed to the government, the lawyer shall proceed as is reasonably necessary in the best interest of the government or the public. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, governmental policies concerning such matters, governmental chain of command, and any other relevant consideration. Any measures taken shall be designed to minimize disruption of the governmental functions.

The Corporation Counsel suggested, as one option, the Council seek and consider a separate legal opinion on the matter from special counsel. The Corporation Counsel suggested other options, including amending the FY 2012 Budget ordinances to rectify the use of the FY 2012 appropriation for the demolition of the Old Wailuku Post Office and to begin the Kalana O Maui master plan, referring the matter to a higher authority in the government, or divulging the information to persons outside the County.

Your Committee expressed frustration with the lack of legal guidance on the matter; however, your Committee felt the hiring of special counsel may be premature. Your Committee expressed an interest in pursuing an investigation to gather more information prior to deciding whether to retain special counsel. Your Committee was concerned about spending taxpayers' money to hire outside legal counsel without more information about the circumstances surrounding the matter.

By correspondence dated June 6, 2013, the Chair of your Committee transmitted a proposed resolution entitled "AUTHORIZING THE POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE TO CONDUCT A FORMAL INVESTIGATION OF THE DEPARTMENT OF MANAGEMENT; DEPARTMENT OF FINANCE; BUDGET OFFICE, OFFICE OF THE MAYOR; DEPARTMENT OF PUBLIC WORKS; AND DEPARTMENT OF THE CORPORATION COUNSEL".

The purpose of the proposed resolution is to authorize the Policy and Intergovernmental Affairs Committee to conduct a formal investigation into the potential misuse of County funds appropriated for rehabilitation of the Old Wailuku Post Office.

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Your Committee notes pursuant to Section 3-6(3) of the Revised Charter of the County of Maui (1983), as amended ("Charter"), the Council is authorized to "conduct investigations of (a) the operation of any department or function of the county and (b) any subject upon which the council may legislate."

The Managing Director apologized for any misunderstanding or miscommunication relating to the demolition of the Old Wailuku Post Office and the master planning of the Kalana O Maui campus expansion project.

Your Committee appreciated the Administration's efforts to mend any misunderstandings with the Council. Nevertheless, your Committee felt an investigation could reveal weaknesses in policies and procedures that resulted in the Administration's failure to follow the legislative process established by the Charter. Your Committee further felt without a clear understanding of potential problems, the Council's ability to address the problems is limited. An investigation may reveal ways the Council can correct procedural problems with appropriate legislation.

Your Committee was satisfied that the proposed resolution sets appropriate parameters for your Committee to conduct an investigation. Your Committee notes the resolution also authorizes the Committee, as part of its investigation, to initiate an independent financial or performance audit of the departments identified in the proposed resolution.

Your Committee voted 6-3 to recommend adoption of the proposed resolution. Committee Chair Hokama and members Cochran, Crivello, Guzman, Victorino, and White voted "aye". Committee Vice-Chair Couch and members Baisa and Carroll voted "no".

Your Policy and Intergovernmental Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING THE POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE TO CONDUCT A FORMAL INVESTIGATION OF THE DEPARTMENT OF MANAGEMENT; DEPARTMENT OF FINANCE; BUDGET OFFICE, OFFICE OF THE MAYOR; DEPARTMENT OF PUBLIC WORKS; AND DEPARTMENT OF THE CORPORATION COUNSEL", be ADOPTED.

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



G. RIKI HOKAMA, Chair

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Resolution

No. _____

AUTHORIZING THE POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE TO CONDUCT A FORMAL INVESTIGATION OF THE DEPARTMENT OF MANAGEMENT; DEPARTMENT OF FINANCE; BUDGET OFFICE, OFFICE OF THE MAYOR; DEPARTMENT OF PUBLIC WORKS; AND DEPARTMENT OF THE CORPORATION COUNSEL

WHEREAS, Section 3-6(3) of the Revised Charter of the County of Maui (1983), as amended (“Charter”), authorizes the Council to investigate the operation of any department or function of the County, and any subject upon which the Council may legislate; and

WHEREAS, as part of its investigation, the Council or Council committee is authorized by Section 78-9, Hawaii Revised Statutes, to compel persons elected to or appointed or employed in County government to testify regarding the government, property or affairs of the County; and

WHEREAS, the Council is concerned that the County may have violated the Fiscal Year 2012 Budget or other laws by entering into contracts to demolish the Old Wailuku Post Office and to begin the Kalana O Maui Campus Expansion master plan using an appropriation for rehabilitation of the Old Wailuku Post Office building; and

WHEREAS, the Council is also concerned about whether expenditures for work performed on the Old Wailuku Post Office site subsequent to demolition of the building, including paving of the site for parking purposes, were authorized; and

WHEREAS, the Council finds that, as the legislative body of the County, it is the Council’s duty to ensure that payments authorized or made and obligations incurred against the County by the executive branch are in accordance with appropriations duly made and under such procedures and policies as established by ordinance; and

WHEREAS, the Council finds that in order to ensure the Council is fully informed of the relevant facts and circumstances, a formal investigation is required; now, therefore,

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

1. That it hereby authorizes the Policy and Intergovernmental Affairs Committee (“Committee”) to conduct a formal investigation of the Department of Management; Department of Finance; Budget Office, Office of the Mayor; Department of Public Works; and Department of the Corporation Counsel (the “Departments”); and
2. That during the formal investigation of the Departments, the Committee may summon the following employees to appear or testify before the Committee:
 - a. Department of Management:
 - (1) Managing Director;
 - (2) Countywide Capital Improvement Program (“CIP”) Coordinator;
 - (3) CIP Coordinator (Project Manager); and
 - (4) CIP Project Coordinator;
 - b. Department of Finance:
 - (1) Director of Finance; and
 - (2) Central Purchasing Agent;
 - c. Budget Office, Office of the Mayor:
 - (1) Budget Director;
 - d. Department of Public Works:
 - (1) Director of Public Works; and
 - (2) Highways Division Chief;
 - e. Department of the Corporation Counsel:
 - (1) Corporation Counsel; and
 - (2) Appropriate Deputy Corporation Counsel; and
3. That upon lawful notice or process, the Committee may summon any other person elected, appointed, or employed in the County who is necessary to complete the formal investigation; and
4. That a formal investigation may be conducted on the following matters:
 - a. Use of the Fiscal Year 2012 appropriation for the Old Wailuku Post Office Rehabilitation project, including:

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- (1) Contract C5155 for the Kalana O Maui Campus Expansion and Contract C5228 for the demolition of the Old Wailuku Post Office building;
 - (2) Any Request for Proposals;
 - (3) Policies and procedures for authorizing or approving the contracts; and
 - (4) Policies and procedures for Department of the Corporation Counsel's review and approval as to form and legality of the contracts;
- b. Work performed on the Old Wailuku Post Office site subsequent to demolition of the building, including paving for parking purposes:
 - (1) Any funds used to pay for the work;
 - (2) Any Requests for Proposals; and
 - (3) Any contracts for work; and
5. That the Committee, as part of its investigation, is authorized to initiate an independent financial or performance audit of the Departments; and
6. That the Committee shall prepare and submit its findings and recommendations to the Council on a periodic basis; and
7. That certified copies of this resolution be transmitted to the Mayor; the Managing Director; the Countywide CIP Coordinator, Department of Management; the CIP Coordinator (Project Manager), Department of Management; the CIP Project Coordinator, Department of Management; the Director of Finance; the Central Purchasing Agent, Department of Finance; the Budget Director, Office of the Mayor; the Director of Public Works; the Highways Division Chief, Department of Public Works; the Corporation Counsel; the Chair of the Policy and Intergovernmental Affairs Committee; and David Louie, Attorney General, State of Hawaii.