

COUNCIL OF THE COUNTY OF MAUI

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE

June 20, 2014

**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 13, 2014, and June 5, 2014, makes reference to County Communication 09-229, from Michael J. Molina, Chair, Committee of the Whole, relating to proposed amendments to the Revised Charter of the County of Maui (1983), as amended ("Charter").

By correspondence dated January 3, 2012, Councilmember Donald G. Couch, Jr., transmitted a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO PENALTIES" ("Resolution to Remove the Limitation on Penalties"). The purpose of the proposed resolution is to place on the next General Election ballot the question of whether Section 13-10 of the Charter shall be amended to remove the limitation on the amount of penalties that may be imposed for violations of any provisions of the Charter and violations of ordinances and rules having the force and effect of law.

By correspondence dated December 11, 2013, the Chair of your Committee transmitted a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO MAXIMUM AMOUNT OF PENALTIES" ("Resolution to Increase the Maximum Amount of Penalties"). The purpose of the proposed resolution is to place on the next General Election ballot the question of whether Section 13-10 of the Charter shall be amended to increase the current maximum penalty that may be imposed for violations of any provisions of the Charter and violations of ordinances and rules having the force and effect of law from \$1,000 or one year's imprisonment, or both, to \$10,000 or one year's imprisonment, or both.

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At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised Resolution to Increase the Maximum Amount of Penalties, approved as to form and legality, incorporating a nonsubstantive revision.

Your Committee notes Section 13-10 of the Charter authorizes the Council to enact legislation to punish violations of the Charter and violations of ordinances and rules having the force and effect of law, but does not permit a penalty to exceed the amount of \$1,000 or one year's imprisonment, or both. The provision has not been amended since 1983.

Your Committee noted the \$1,000 maximum may no longer serve as a sufficient punishment or deterrent in all circumstances. Removing the limitation on the amount of penalties or, alternatively, increasing the maximum amount of penalties, would allow the Council to set the amount of a penalty according to the violation at stake.

A Deputy Corporation Counsel advised your Committee the Council would still need to amend existing fines or penalties to set their amount by ordinance; however, either proposal, if passed by the voters, would allow for a higher amount to be set than the existing \$1,000.

Your Committee voiced support for changing the \$1,000 limitation, but debated whether the complete removal of the limitation on penalties would leave the amounts too open-ended. Your Committee noted there is a balance to be achieved in setting a ceiling to penalties that would allow for the appropriate deterrence while also being palatable to the voters.

Your Committee decided a \$10,000 maximum may not be sufficient given the length of time that may elapse before another Charter amendment is considered, and fixing a higher maximum would allow ordinances to be adjusted over time as needed to provide the desired deterrent.

Your Committee voted to revise the Resolution to Increase the Maximum Amount of Penalties to set the amount in the text of Section 13-10 of the Charter and in the associated ballot question at \$25,000, rather than \$10,000. The option of one year's imprisonment, or both imprisonment and a monetary penalty, would still apply.

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Your Committee voted 7-0 to recommend passage of the Resolution to Increase the Maximum Amount of Penalties incorporating your Committee's recommended revisions on first reading, and filing of the correspondence transmitting the Resolution to Remove the Limitation on Penalties. Committee Chair Hokama and members Baisa, Carroll, Cochran, Crivello, Guzman, and White voted "aye". Committee Vice-Chair Couch and member Victorino were excused.

Your Committee is in receipt of a further revised Resolution to Increase the Maximum Amount of Penalties, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

Your Committee notes Section 14-1(1) of the Charter provides that amendments to the Charter shall be initiated by resolution of the Council adopted after two readings on separate days and passed by a vote of six or more members of the Council.

Your Policy and Intergovernmental Affairs Committee RECOMMENDS the following:

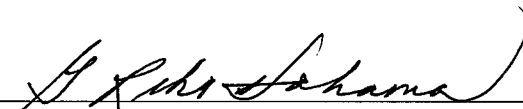
1. That Resolution _____, attached hereto, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO MAXIMUM AMOUNT OF PENALTIES", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That the correspondence dated January 3, 2012, from Councilmember Donald G. Couch, Jr., be FILED.

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



G. RIKI HŌKAMA, Chair

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Resolution

No. _____

PROPOSING AN AMENDMENT TO THE REVISED
CHARTER OF THE COUNTY OF MAUI (1983), AS
AMENDED, RELATING TO MAXIMUM AMOUNT OF
PENALTIES

WHEREAS, Section 13-10 of the Revised Charter of the County of Maui (1983), as amended (“Charter”) authorizes the Council to enact legislation to punish violations of the Charter and violations of ordinances and rules having the force and effect of law, but does not permit a penalty to exceed the amount of \$1,000 or one year’s imprisonment, or both; and

WHEREAS, this provision has not been amended since 1983, and the \$1,000 maximum may no longer serve as a sufficient punishment or deterrent in all circumstances; and

WHEREAS, increasing the maximum penalty to \$25,000 would allow the Council to fix the amount of a penalty more meaningfully, in accordance with the violation at stake; now, therefore,

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

1. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 13-10 of the Charter, pertaining to penalties, be amended to read as follows:

“**Section 13-10. Penalties.** The council shall, by ordinance, provide for the punishment of violations of any provisions of this charter and may provide for punishment of violations of ordinances and rules having the force and effect of law, but no penalty shall exceed the amount of [\$1,000.00,] \$25,000, or one (1) year’s imprisonment, or both.”; and

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

3. That, pursuant to Section 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

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5. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that the following question be placed on the next general election ballot:

“Shall Section 13-10 of the Charter be amended to increase the current maximum penalty that may be imposed for violations of any provisions of the Charter and violations of ordinances and rules having the force and effect of law from \$1,000 or one year’s imprisonment, or both, to \$25,000 or one year’s imprisonment, or both?”; and

6. That, pursuant to Section 14-2(2) of the Charter, the County Clerk publish this proposed amendment 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 such result, the amendment proposed herein shall take effect; and

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

APPROVED AS TO FORM AND LEGALITY



EDWARD S. KUSHI

Department of the Corporation Counsel

County of Maui

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