

COUNCIL OF THE COUNTY OF MAUI
POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE

July 15, 2016

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 March 14, 2016, May 23, 2016, June 1, 2016, June 27, 2016, June 29, 2016 (reconvene), and July 5, 2016 (reconvene), makes reference to following:

1. 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.

2. Correspondence dated June 13, 2016, from Committee Chair Michael P. Victorino, transmitting a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS, ALLOW THE COUNCIL TO INITIATE REMOVAL OF DEPARTMENT DIRECTORS, AND ALLOW ADDITIONAL QUALIFICATIONS FOR DEPARTMENT DIRECTORS TO BE ESTABLISHED BY ORDINANCE."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether the Charter shall be amended to: (1) require Council approval of the Mayor's appointment and removal of department directors; (2) allow the Council to remove department directors by a two-thirds vote of its entire membership; and

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(3) allow additional qualifications for department directors to be established by ordinance.

The proposed resolution was intended to combine elements of the following proposals relating to the appointment, removal, and qualifications of department directors appointed by the Mayor:

1. A proposed resolution, transmitted by County Communication 14-313, from Council Vice-Chair Robert Carroll, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, ALLOWING THE COUNCIL TO INITIATE REMOVAL OF THE CORPORATION COUNSEL."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether the Charter should be amended to allow the Council to remove the Corporation Counsel by resolution approved by a two-thirds vote of the entire Council with the approval of the Mayor.

2. A proposed resolution, transmitted by County Communication 15-305, from Councilmember Riki Hokama, entitled "PROPOSING AN AMENDMENT TO THE CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether the Charter should be amended to require Council approval of the Mayor's appointments of department directors.

3. A revised proposed resolution, attached to correspondence dated April 21, 2016, from the First Deputy Corporation

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Counsel, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS."

The purpose of the revised proposed resolution is to place on the next General Election ballot the question of whether the Charter should be amended to require Council approval of the Mayor's appointment of department directors.

4. A proposed resolution, transmitted by correspondence dated April 28, 2016, from Council Vice-Chair Don S. Guzman, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF THE DIRECTOR OF FINANCE."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether the Charter should be amended to provide for: (1) Council approval and removal of the Director of Finance; and (2) written notice to the Council from the Mayor within 60 days of a vacancy of the Director of Water Supply and the Director of Finance.

Your Committee notes Article 14 of the Charter sets forth 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 notes the Charter provides for a process by which the Council shall confirm or deny the confirmation of the Mayor's appointments of the Corporation Counsel, Prosecuting Attorney, and Director of Water Supply, but no such process exists for the

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appointments of other department directors, even though they are also charged with responsibilities that warrant the Council having approval authority.

Your Committee further notes the Charter currently allows the Mayor to remove the following directors with the Council's approval: Corporation Counsel, Prosecuting Attorney, and Director of Water Supply. In addition, the Charter allows the Mayor to unilaterally remove the following department directors: Managing Director, Director of Finance, Director of Public Works, Director of Parks and Recreation, Planning Director, Director of Housing and Human Concerns, Director of Transportation, and Director of Environmental Management.

Your Committee noted the Council possessing the authority to remove some department directors would improve the balance of power between the executive and legislative branches.

Your Committee discussed the need for the Council to have approval authority for all of the Mayor's appointments of department directors to ensure transparency in the appointment process and the appointment of qualified candidates.

Your Committee approved revisions to the proposed resolution to require Council approval of the Mayor's appointment of the following department directors: Managing Director, Director of Finance, Director of Public Works, Director of Parks and Recreation, Planning Director, Director of Housing and Human Concerns, Director of Transportation, and Director of Environmental Management.

Your Committee also approved revisions to provide that the Managing Director, Corporation Counsel, Prosecuting Attorney, and Director of Finance may be removed by the Mayor or the Council by a two-thirds vote of its entire membership following consultation with the Mayor. Your Committee recognized the need for these officials to be accountable to both the executive and legislative branches.

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Your Committee noted the Charter sets forth general qualifications for department directors, but determined the Council should be allowed to establish more specific qualifications by ordinance. Your Committee approved a revision for that purpose.

Your Committee approved a revision to the proposed resolution to make the effective date January 2, 2019, to coincide with the beginning of the term of the next Mayor.

Your Committee voted 7-0 to recommend passage of the revised proposed resolution on first reading. Committee Chair Victorino and members Baisa, Carroll, Cochran, Guzman, Hokama, and White voted "aye." Committee Vice-Chair Couch and member Crivello were excused.

Your Committee voted 5-0 to recommend filing of County Communications 14-313 and 15-305, and correspondence dated April 28, 2016. Committee Chair Victorino and members Cochran, Guzman, Hokama, and White voted "aye." Committee Vice-Chair Couch and members Baisa, Carroll, and Crivello were excused.

Your Committee is in receipt of a revised proposed resolution, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS; ALLOW THE COUNCIL OR THE MAYOR TO REMOVE THE MANAGING DIRECTOR, DIRECTOR OF FINANCE, CORPORATION COUNSEL, AND PROSECUTING ATTORNEY; AND ALLOW ADDITIONAL QUALIFICATIONS FOR DEPARTMENT DIRECTORS TO BE ESTABLISHED BY ORDINANCE," incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Policy and Intergovernmental Affairs Committee RECOMMENDS the following:

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1. That Resolution _____, attached hereto, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS; ALLOW THE COUNCIL OR THE MAYOR TO REMOVE THE MANAGING DIRECTOR, DIRECTOR OF FINANCE, CORPORATION COUNSEL, AND PROSECUTING ATTORNEY; AND ALLOW ADDITIONAL QUALIFICATIONS FOR DEPARTMENT DIRECTORS TO BE ESTABLISHED BY ORDINANCE," be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That County Communication 14-313 be FILED;
3. That County Communication 15-305 be FILED; and
4. That correspondence dated April 28, 2016, be FILED.

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



MICHAEL P. VICTORINO, Chair

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Resolution

No. _____

PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS; ALLOW THE COUNCIL OR THE MAYOR TO REMOVE THE MANAGING DIRECTOR, DIRECTOR OF FINANCE, CORPORATION COUNSEL, AND PROSECUTING ATTORNEY; AND ALLOW ADDITIONAL QUALIFICATIONS FOR DEPARTMENT DIRECTORS TO BE ESTABLISHED BY ORDINANCE

WHEREAS, the Revised Charter of the County of Maui (1983), as amended , provides for a process by which the Council shall confirm or deny the confirmation of the Mayor's appointments of the Corporation Counsel, Prosecuting Attorney, and Director of Water Supply; and

WHEREAS, although other department directors appointed by the Mayor are also charged with responsibilities that warrant the Council having approval authority over the appointments, no such process exists for the Mayor's appointments of the other department directors; and

WHEREAS, the Council should have the same authority as the Mayor to remove the Managing Director, Director of Finance, Corporation Counsel, and Prosecuting Attorney; and

WHEREAS, the Charter sets forth general qualifications for department directors, but there is a need to allow flexibility to establish, by ordinance, more specific qualifications and to adjust those qualifications; 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 a new Section 6-4 of the Charter, pertaining to the specific qualifications of administrative heads of departments, to be inserted and to read as follows:

"Section 6-4. Specific Qualifications of Administrative Heads of Departments. In addition to any

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qualifications set forth in this charter, specific qualifications for administrative heads appointed by the mayor may be established by the council by ordinance.”;

2. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 3-8, pertaining to restrictions on the Council and Council members, be amended to read as follows:

“Section 3-8. Restrictions on Council and Council Members.

1. [Neither] Unless otherwise provided in this charter, neither the council nor any of its members shall, in any manner, dictate the appointment or removal of any officer or employee appointed by the mayor or by the mayor's subordinates.

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, 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.”;

3. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 6-2 of the Charter, pertaining to the 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 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[, including the corporation counsel and the prosecuting attorney,] shall end with the term of office of the mayor, except that any such

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administrative head may be earlier removed as provided for in this charter. Such officers shall not hold over more than sixty (60) days after their respective terms of office, and shall immediately vacate their respective offices at the end of the 60-day period or upon the appointment of a successor in accordance with this charter, whichever occurs first.

4. The mayor shall have the authority to appoint, on a temporary basis, an administrative head of any department, provided that such department is one where the administrative head is appointed by the mayor.

5. Within sixty (60) days of taking office, or within sixty (60) days after a vacancy is created, the mayor shall appoint the managing director, corporation counsel, [and] 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 confirm or deny the [confirmation] appointment within sixty (60) days after receiving notice of the appointment by the mayor. If the council does not act within the 60-day period, the appointment shall be deemed to be confirmed. The [corporation counsel and prosecuting attorney] appointee shall take office upon appointment by the mayor but shall not continue in office if the council denies [confirmation.] the appointment. If the appointment is [not confirmed] denied by the council, the mayor shall make a new appointment within sixty (60) days of the council's denial, and the council shall 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 period, the appointment shall be deemed to be confirmed.”;

4. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-1.2 of the Charter, pertaining to the Managing Director, be amended to read as follows:

“Section 8-1.2. Managing Director. The managing director shall be appointed by the mayor with the approval of the council and may be removed by the mayor[.] or by

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resolution approved by a two-thirds vote of the entire membership of the council following consultation with the mayor. The managing director shall have had a minimum of five years of experience in an administrative capacity, either in public or private business, or both.”;

5. That pursuant to Section 14-1(1) of the Charter, it hereby 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 the mayor [with the approval of the council.] or by resolution approved by a two-thirds vote of the entire membership of the council following consultation with the mayor. 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 [three] five years.”;

6. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-3.2 of the Charter, pertaining to the Prosecuting Attorney, be amended to read as follows:

“Section 8-3.2. Prosecuting Attorney. The prosecuting attorney shall be appointed by the mayor with the approval of the council and may be removed by the mayor [with the approval of the council.] or by resolution approved by a two-thirds vote of the entire membership of the council following consultation with the mayor. The prosecuting attorney 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 [three] five years.”;

7. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-4.2 of the Charter, pertaining to the Director of Finance, be amended to read as follows:

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“Section 8-4.2. Director of Finance. The director of finance shall be appointed by the mayor with the approval of the council and may be removed by the mayor[.] or by resolution approved by a two-thirds vote of the entire membership of the council following consultation with the mayor. The director of finance shall have had a minimum of five years of experience in a public or private financial position, at least three [years] of which shall have been in an administrative capacity.”;

8. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-5.2 of the Charter, pertaining to the Director of Public Works, be amended to read as follows:

“Section 8-5.2. Director of Public Works. The director of public works shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The director of public works shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.”;

9. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-6.2 of the Charter, pertaining to the Director of Parks and Recreation, be amended to read as follows:

“Section 8-6.2. Director of Parks and Recreation. The director of parks and recreation shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The director of parks and recreation shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.”;

10. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-8.2 of the Charter, pertaining to the Planning Director, be amended to read as follows:

“Section 8-8.2. Planning Director. The planning director shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The

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planning director shall have had a minimum of five years of experience in the field of planning, at least three of which shall have been in an administrative capacity[.], either in public service or private business, or both.”;

11. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-10.2 of the Charter, pertaining to the Director of Housing and Human Concerns, be amended to read as follows:

“Section 8-10.2. Director of [the Department of Housing and Human Concerns. The director of [the department of] housing and human concerns shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The director of [the department of] housing and human concerns shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.”;

12. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-11.5 of the Charter, pertaining to the Director and Deputy Director of Water Supply, be amended to read as follows:

“Section 8-11.5. Director and Deputy Director of Water Supply. The director of [the department of] water supply shall be appointed by the mayor with the approval of the council, and may be removed by the mayor with the approval of the council. The director of [the department of] water supply shall have had a minimum of five years of experience in a management capacity, either in public service or private business, or both. The deputy director of [the department of] water supply shall be appointed by the mayor and may be removed by the mayor. The director or deputy director of [the department of] water supply shall be a registered engineer.”;

13. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-14.2 of the Charter, pertaining to the Director of Transportation, be amended to read as follows:

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“Section 8-14.2. Director of Transportation. The director of transportation shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The director of transportation shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.”;

14. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-15.2 of the Charter, pertaining to the Director of Environmental Management, be amended to read as follows:

“Section 8-15.2. Director of Environmental Management. The director of environmental management shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The director of environmental management shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.”;

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

16. That the County Clerk prepare the necessary ballot for presentation to the voters at the next general election;

17. That, pursuant to Section 14-2(1) of the Charter, it hereby proposes that the following question be placed on the next general election ballot:

“Shall the Charter be amended to require Council approval of the Mayor’s appointment of the Managing Director, Director of Finance, Director of Public Works, Director of Parks and Recreation, Planning Director, Director of Housing and Human Concerns, Director of Transportation, and Director of Environmental Management; to allow the Council to remove the Managing Director, Corporation Counsel, Prosecuting Attorney, and Director of Finance by a two-thirds vote of its entire membership following consultation with the Mayor; and to allow additional qualifications for department directors to be established by ordinance?”;

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18. That, pursuant to Section 14-2(2) of the Charter, the County Clerk shall publish the proposed amendment in a newspaper of general circulation;

19. That, pursuant to Section 14-2(3) of the Charter, after approval by the majority of the voters voting on the proposed amendment and after official certification of such result, the amendment proposed shall take effect on January 2, 2019; and

20. 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

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