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MEMORANDUM

May 21, 2012

T O: Kirk Tanaka, Chair
Maui Police Commission

F R O M: Jeffrey Ueoka, Deputy Corporation Counsel *JU*

SUBJECT: AUTHORITY TO DISCIPLINE THE CHIEF OF POLICE

We are in receipt of your request for a legal opinion regarding who has the authority over the Chief of Police in regards to disciplinary action, suspension, and accountability in his job duties, dated April 20, 2012. In responding to this request we have reviewed the Rules of the Police Commission for the Maui County Department of Police, Title MC-13, Subtitle 01, Chapter 101 ("Rules"), and the Revised Charter of the County of Maui (1983), as amended ("Charter").

Section 8-12.2 of the Charter, pertaining to the Police Commission ("Commission"), authorizes the Commission to, "[a]dopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law." Section 8-12.3 of the Charter, pertaining to the Chief of Police ("Chief") states, "[t]he chief of police shall be appointed and may be removed by the police commission." When read together it is clear that the rules adopted by the Commission may pertain to the appointment and removal of the Chief as this is matter committed to its charge by law.

Section 13-101-18 of the Rules, pertaining to charges against the chief of police, states, in relevant part:

- (a) It is the intent of this rule that the chief be disciplined or dismissed only for cause and not arbitrarily or capriciously. Grounds for discipline or dismissal of the chief shall include, but not be limited to, the following:

- (1) Malfeasance, misfeasance or nonfeasance in office;

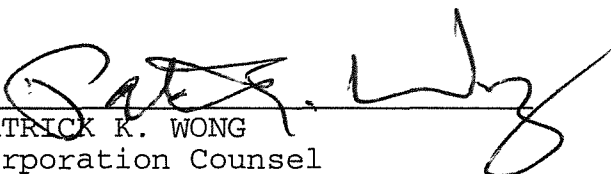
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- (c) The commission may sustain the allegations of any charge against the chief by a majority vote and may take any of the following actions:
 - (1) Reprimand the chief;
 - (2) Suspend the chief for a period of time determined by the commission;
 - (3) Dismiss the chief.

The Charter authorizes the Commission to oversee the Chief and the Rules set forth the framework for the Commission's oversight of the Chief. However, it is important to note, that Section 7-5 of the Charter gives the Mayor, of the County of Maui the authority to, "[e]xercise supervision directly or through the managing director over all departments enumerated in Article 8 of this charter and other agencies as provided by law." The Department of Police is recognized in Chapter 12 of Article 8 of the Charter, therefore, it could be argued that the Mayor has the authority to supervise the Department of Police. An amendment to the Charter or a declaratory ruling of a court of law would be required to further clarify this delineation of authority.

At this time, no specific facts relating to a situation warranting a disciplinary action against the Chief have been presented to our office, therefore, we are unable to comment any further.

APPROVED FOR TRANSMITTAL:



PATRICK K. WONG
Corporation Counsel

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