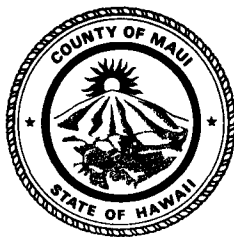


MICHAEL P. VICTORINO  
Mayor

MOANA M. LUTEY  
Corporation Counsel

EDWARD S. KUSHI, JR.  
First Deputy

LYDIA A. TODA  
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152

MEMO TO: Chair Kelly T. King, Maui County Council

ATTENTION: Wesley Crile, Office of Council Services

FROM: Edward Kushi, Jr.  
First Deputy Corporation Counsel

A handwritten signature in black ink, appearing to be "Edward Kushi, Jr.", written over the printed name in the "FROM:" field.

DATE: October 1, 2019

SUBJECT: **CHARTER AMENDMENT TO CHANGE THE START OF  
COUNCIL AND MAYORAL TERMS (PAF 19-288)**

We have reviewed your August 26, 2019 request (copy attached), and return the proposed Resolution for the following reasons:

- 1) Incumbent re-elected councilmembers and mayor.

The proposed resolution, if adopted, would amend the respective terms effective immediately. The existing charter provides for a two (2) year term for current councilmembers elected in 2018, said term beginning on January 2, 2019 and terminating on January 1, 2021. Therefore, if the resolution is adopted in the upcoming November 2020 general election, any incumbent councilmember re-elected would not serve a full two (2) year term, as his/her current term would end before January 1, 2021.

Likewise, the current Mayor's four (4) year term began on January 2, 2019 and terminates on January 1, 2023. If the subject Resolution is adopted in the upcoming November 2020 general election which states that a mayor's term will end before January 1, 2023, the current Mayor would not serve a full four (4) year term.

Both current charter provisions state that no councilmember will serve more than five consecutive full terms in office, and no mayor shall serve more than two consecutive full terms in office.

The unlikely or un-intended consequences of the proposed charter amendments may result in an incumbent re-elected councilmember or mayor not being able to serve out a full two (2) or four (4) year term, thereby breaking the prohibition of serving the five (5) or two (2) consecutive terms, which then would allow such councilmember or mayor being able to serve another five (5) or two (2) consecutive terms.

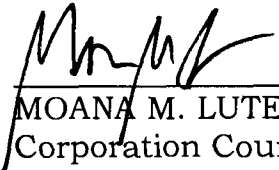
Based on the above, we advise to review and adjust the timing or effective date(s) when such amendments would take effect.

2) Certification of election results.

It is my understanding that the County Clerk's office certifies the results of all elections, and that such certification procedures are pursuant to State laws, rules and regulations. It is further my understanding that such certification procedures usually take some time, subsequent to the election, and that any protest or appeal may further delay the official certification.

Based on the above, it is herein suggested that the County Clerk be consulted and that confirmation be obtained whether any such certification can reasonably occur before the new, proposed beginning term of the first Monday in December.

APPROVED FOR TRANSMITTAL:

  
\_\_\_\_\_  
MOANA M. LUTEY  
Corporation Counsel  
LF2019-1439  
PAF 19-288 2019-10-01 Memo to Chair King

Attachment

cc: Josiah K. Nishita, County Clerk

# REQUEST FOR LEGAL SERVICES

Date: August 26, 2019  
From: Kelly T. King, Council Chair

**RECEIVED**

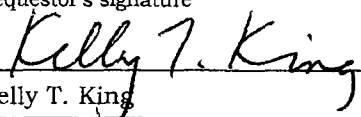
By Dept of the Corporation Counsel at 7:45 am, Aug 29, 2019

TRANSMITTAL  
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Edward S. Kushi, Jr., Esq.

Subject: **CHARTER AMENDMENT TO CHANGE THE START OF COUNCIL AND MAYORAL TERMS** (PAF 19-288)

Background Data: Please review and, if appropriate, approve as to form and legality the attached proposed resolution.

Work Requested:  FOR APPROVAL AS TO FORM AND LEGALITY  
 OTHER:

Requestor's signature  Kelly T. King	Contact Person <u>Wesley Crile</u> (Telephone Extension: <u>7663</u> )
---	--

ROUTINE (WITHIN 15 WORKING DAYS)       RUSH (WITHIN 5 WORKING DAYS)  
 PRIORITY (WITHIN 10 WORKING DAYS)       URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): \_\_\_\_\_  
REASON: \_\_\_\_\_

## FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>ESK</u>	ASSIGNMENT NO. <u>2019-1439</u>	BY: <u>jeo</u>
-------------------------	---------------------------------	----------------

TO REQUESTOR:  APPROVED  DISAPPROVED  OTHER (SEE COMMENTS BELOW)  
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date \_\_\_\_\_

By \_\_\_\_\_

(Rev. 7/03)

paf:wac:19-288b

Attachment

# Resolution

No. \_\_\_\_\_

PROPOSING AN AMENDMENT TO THE  
REVISED CHARTER OF THE COUNTY OF MAUI  
(1983), AS AMENDED, RELATING TO THE  
START OF COUNCIL AND MAYORAL TERMS

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

1. That, pursuant to Section 14-1(1), Revised Charter of the County of Maui (1983), as amended (“Charter”), it hereby proposes that Charter Section 3-2, “Election of Council and Term of Office,” be amended to read as follows:

“5. The term of office of council members shall be for two ~~[(2)]~~ years, beginning at twelve o’clock meridian on the ~~[second day]~~ first Monday of ~~[January]~~ December following their election. No member of the county council shall serve more than five consecutive full terms of office.”; and

2. That, pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 3-5, “Procedure; Meetings; Rules and Journal; Voting,” be amended to read as follows:

“1. The council shall meet in the council room at the county building for its organization at two o’clock p.m. on the ~~[second day]~~ first Monday of ~~[January]~~ December following its election, ~~[or on the following Monday if the second day be a Saturday or Sunday,]~~ at which time it shall elect one of its members as chair and presiding officer of the council. Until such time as the chair shall be elected, the mayor shall preside at such meeting, provided that the mayor shall not have a vote. The council shall also elect a vice-chair who shall act as the presiding officer in the event of the chair's absence or disability. The council shall appoint a presiding officer pro tempore from its own members in the event of the absence or disability of both the chair and vice-chair.”; and

3. That, pursuant to Charter Section 14-1(1), it hereby proposes that Charter Section 7-2, “Election of Mayor and Term of Office,” be amended to read as follows:

**Resolution No. \_\_\_\_\_**

“5. The voters of the county shall elect a mayor whose term of office shall be four [(4)] years beginning at twelve o'clock meridian on the [second day] first Monday of [January] December following the mayor's election. A mayor shall not serve more than two consecutive full terms of office.”; and

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

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

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

“Shall the Charter be amended, effective immediately, to require the terms of office for the Mayor and Councilmembers to begin on the first Monday after the general election in which they are elected, rather than the second day of January after the election?”; and

7. That, pursuant to Charter Section 14-2(2), the County Clerk shall publish the proposed amendment as set forth in this resolution in its entirety in a newspaper of general circulation; and

8. That, upon approval by the majority of the voters voting on the proposed amendment, the amendment proposed herein shall take effect immediately; and

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

APPROVED AS TO FORM AND LEGALITY

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Department of the Corporation Counsel  
County of Maui

paf:wac:19-288a