

COUNCIL OF THE COUNTY OF MAUI

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

May 28, 2019

**Committee
Report No.** _____

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

Chair and Members:

Your Governance, Ethics, and Transparency Committee, having met on May 2, 2019, makes reference to County Communication 19-1, from Council Chair Mike White, relating to the appointment and removal of administrative heads of departments.

By correspondence dated April 10, 2019, and received on April 11, 2019, the Mayor transmitted a proposed resolution entitled "APPROVING THE MAYOR'S APPOINTMENT OF MOANA M. LUTEY AS THE CORPORATION COUNSEL." The purpose of the proposed resolution is to approve the Mayor's appointment of Moana M. Lutey as the Corporation Counsel, pursuant to Sections 6-2(5) and 8-2.2 of the Revised Charter of the County of Maui (1983), as amended ("Charter").

Your Committee notes by Resolution 16-96, the Council proposed an amendment to the Charter be placed on the General Election ballot to require Council approval of the Mayor's appointment of administrative heads of departments and allow additional qualifications for administrative heads appointed by the Mayor to be established by ordinance. The proposed Charter amendment was approved at the 2016 General Election.

Your Committee further notes Ordinance 4848 (2018) established additional qualifications for the Corporation Counsel in Chapter 2.14, Maui County Code. The effective date of the ordinance was January 2, 2019.

COUNCIL OF THE COUNTY OF MAUI
GOVERNANCE, ETHICS, AND
TRANSPARENCY COMMITTEE

Page 2

Committee
Report No. _____

Your Committee also notes Charter Section 8-2.2 provides that the Corporation Counsel shall be appointed by the Mayor with the approval of the Council. In addition, Charter Section 6-2(5) provides that the Council shall confirm or deny the confirmation within 60 days after receiving notice of the appointment by the Mayor, or the appointment shall be deemed confirmed. Accordingly, the deadline for the Council to confirm or deny the appointment of Ms. Lutey as the Corporation Counsel is June 10, 2019.

Your Committee notes it previously reported on this matter through Committee Report 19-6, which recommended adoption of the proposed resolution disapproving the Mayor's appointment of Patrick K. Wong for Corporation Counsel and filing of the proposed resolution approving the appointment. At its meeting of February 15, 2019, reconvened on February 22, 2019, the Council declined to adopt the recommendations in Committee Report 19-6, and instead recommended adoption of the proposed resolution approving the appointment (Resolution 19-28) and filing of the proposed resolution disapproving the appointment.

Your Committee further notes Patrick K. Wong resigned from the position on April 9, 2019.

Your Committee notes pursuant to Charter Section 6-2(5), within 60 days after a vacancy is created, the Mayor shall appoint the Corporation Counsel, and the Council shall confirm or deny the appointment within 60 days after receiving notice of the appointment by the Mayor.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a proposed resolution entitled "DISAPPROVING THE MAYOR'S APPOINTMENT OF MOANA M. LUTEY FOR CORPORATION COUNSEL." The purpose of the proposed resolution is to disapprove the appointment. The Department also transmitted a revised proposed resolution entitled "APPROVING THE MAYOR'S APPOINTMENT OF MOANA M. LUTEY FOR CORPORATION COUNSEL," incorporating nonsubstantive revisions.

COUNCIL OF THE COUNTY OF MAUI

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Page 3

**Committee
Report No.** _____

By correspondence dated April 10, 2019, the Mayor transmitted the following: (1) County of Maui Job Description for the Corporation Counsel; and (2) Ordinance 4848 (2018), relating to the minimum qualifications of the Corporation Counsel. By correspondence dated April 12, 2019, the Mayor transmitted Moana M. Lutey's resume.

As noted in her resume, Ms. Lutey served as a Deputy Corporation Counsel for the County of Maui from January 11, 1999 to February 2000, and again from February 2002 until the Mayor's April 2019 appointment of Ms. Lutey as Acting Corporation Counsel. Ms. Lutey also served as a Deputy Prosecuting Attorney for the County of Maui from August 1994 to January 1999. Ms. Lutey received her juris doctor degree in 1994 from the William S. Richardson School of Law at the University of Hawaii at Manoa.

Your Committee received written testimony in support and in opposition to the appointment.

At its meeting, your Committee received public testimony from eight people in support of Ms. Lutey's appointment and no testimony in opposition. All eight testifiers are attorneys in the community, with six serving as Deputy Corporation Counsel. They spoke of Ms. Lutey's excellent litigation skills; her integrity, institutional knowledge, and sound judgment; her reputation for honesty, diligence, and competence; her mentorship; and her quality of character.

The Mayor said Ms. Lutey is fair, open minded, and respectful of others' opinions. He said she would bring expertise and professionalism to the position and would work on behalf of the entire County. The Mayor emphasized that Ms. Lutey would be the first woman appointed for the position of Corporation Counsel in the County.

Your Committee met with Ms. Lutey. Ms. Lutey emphasized the importance of communication and collaboration. She noted her support for deputies attending Native Hawaiian law training and her openness to considering applicants with expertise in the subject, should an opening

COUNCIL OF THE COUNTY OF MAUI

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Page 4

**Committee
Report No.** _____

become available in the Department. Ms. Lutey fielded questions concerning leadership style, transitioning to the head of the Department, and potential conflicts between the Mayor and the Council, and said her goal is to give her clients the best legal advice possible.

Ms. Lutey said the three qualities that make her a highly qualified candidate for the position of Corporation Counsel are her commitment to the County, her strong supervisory skills, and her strong litigation skills. She said her short-term goal for the Department is to ensure that all attorneys are current on their continuing legal education in their areas of expertise. Her long-term goal is to find a method to provide public education on topics of interest handled by the Department.

After reviewing Ms. Lutey's experience and capabilities and giving due consideration to public testimony, your Committee was satisfied Ms. Lutey met the minimum qualifications for the Corporation Counsel position and recommended her appointment be approved. Your Committee was particularly impressed with her direct experience with the Department and her commitment to the County, her openness, and her willingness to collaborate.

Your Committee voted 8-0 to recommend adoption of the proposed resolution to approve the appointment and filing of the proposed resolution to disapprove the appointment. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye." Committee member Hokama was excused.

Your Governance, Ethics, and Transparency Committee **RECOMMENDS** the following:

1. That Resolution _____, attached hereto, entitled "APPROVING THE MAYOR'S APPOINTMENT OF MOANA M. LUTEY FOR CORPORATION COUNSEL," be ADOPTED; and

COUNCIL OF THE COUNTY OF MAUI
**GOVERNANCE, ETHICS, AND
TRANSPARENCY COMMITTEE**

Page 5

**Committee
Report No.** _____

2. That the proposed resolution, attached hereto, entitled "DISAPPROVING THE MAYOR'S APPOINTMENT OF MOANA M. LUTEY FOR CORPORATION COUNSEL," be FILED.

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



MICHAEL J. MOLINA, Chair

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Resolution

No. _____

APPROVING THE MAYOR'S APPOINTMENT OF MOANA M. LUTEY FOR CORPORATION COUNSEL

WHEREAS, by letter dated April 10, 2019, Mayor Michael P. Victorino notified the Council he appointed Moana M. Lutey as the Corporation Counsel, pursuant to Sections 6-2(5) and 8-2.2 of the Revised Charter of the County of Maui (1983), as amended ("Charter"); and

WHEREAS, Charter Section 6-4 authorized the Council to establish specific qualifications for administrative heads appointed by the Mayor in addition to any set forth in the Charter; and

WHEREAS, Section 2.14.100, Maui County Code, attached hereto as Exhibit "A," establishes additional qualifications for the Corporation Counsel effective January 2, 2019; and

WHEREAS, Charter Section 6-2(5) requires the Council to confirm or deny the appointment within sixty days after receiving notice of the appointment by the Mayor; and

WHEREAS, Charter Section 8-2.2 states: "The corporation counsel shall be appointed by the mayor with the approval of the council;" now, therefore,

Resolution No. _____

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

1. That it deems Moana M. Lutey to have satisfied the minimum qualifications for the position of Corporation Counsel;
2. That it hereby approves the appointment of Moana M. Lutey as the Corporation Counsel; and
3. That a certified copy of this resolution be transmitted to the Mayor.

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, appearing to be 'M. Lutey', is written over a horizontal line.

Department of the Corporation Counsel
County of Maui

2019-1911
2019-0065

2019-04-10 Corp Counsel Approval Reso (Lutey)

2.14.100 – Corporation counsel.

The corporation counsel shall have the following minimum qualifications:

1. As set forth in the charter, the corporation counsel shall be an attorney licensed to practice and in good standing before the Hawaii supreme court.
2. As set forth in the charter, the corporation counsel shall have engaged in the practice of law for five years.
3. As a part of or in addition to the five years of experience in the practice of law, three years of civil litigation experience.
4. As a part of or in addition to the five years of experience in the practice of law, three years of responsible managerial and budgetary experience.
5. As a part of or in addition to the five years of experience in the practice of law, three years of experience in one or more of the following functions:
 - a. Serving as chief legal advisor or legal representative of a municipality or other governmental entity, its departments, boards and commissions, or officers and employees in matters relating to their official duties.
 - b. Representing a public or private entity in legal proceedings., designing, building, operating, or maintaining sewer treatment plants, pump stations, sewer lines, reclaimed water distribution systems, and related programs.

Resolution

No. _____

DISAPPROVING THE MAYOR'S APPOINTMENT OF MOANA M. LUTEY FOR CORPORATION COUNSEL

WHEREAS, by letter dated April 10, 2019, received by the Council on April 11, 2019, Mayor Michael P. Victorino notified the Council he appointed Moana M. Lutey as the Corporation Counsel, pursuant to Sections 6-2(5) and 8-2.2 of the Revised Charter of the County of Maui (1983), as amended ("Charter"); and

WHEREAS, Charter Section 6-2(5) requires the Council to confirm or deny the appointment within sixty days after receiving notice of the appointment by the Mayor; and

WHEREAS, Charter Section 8-2.2 states: "The corporation counsel shall be appointed by the mayor with the approval of the council"; now, therefore,

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

1. That it hereby disapproves the appointment of Moana M. Lutey as the Corporation Counsel; and

Resolution No. _____

2. That a certified copy of this resolution be transmitted to the Mayor.

APPROVED AS TO FORM AND LEGALITY



Department of the Corporation Counsel
County of Maui

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