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FIRST DEPUTY  
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OFFICE OF THE PROSECUTING ATTORNEY

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August 14, 2009

Hawaii County Charter Commission Members  
c/o Karen Eoff, Secretary, Hawai'i County Charter Commission ✓  
75-5706 Hanama Place, Suite #109  
Kailua-Kona, Hawai'i 96740

Dear Commissioners,

Thank you for the opportunity to meet with you. I apologize for not being able to attend the last meeting but I was attending to my father's death on Maui.

The Charter provisions relating to the Prosecuting Attorney has served this County well to provide the framework on the role and function of the Office. However, there have been challenges to the role of the Prosecutor in the City and County of Honolulu and changes have been made to their Charter.

I am providing those changes for your information and consideration. I agree with these changes and would recommend their inclusion in proposed changes to the Charter.

I would also recommend deleting the last sentence of Section 6-2.3 relating to the representation of elected officials in impeachment proceedings if the conduct alleged was done in the performance of their duties. There are many situations where elected officials may act on legislation or programs as part of their jobs and others may view this as offensive and move for impeachment. While the outcome would be decided in a court, the official should be provided representation for performing an act within the scope and responsibilities of their job.

**COMM. 28**

Hawai'i County Charter Commission

August 14, 2009

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Thank you for your consideration in this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Jay T. Kimura", is written over a horizontal line.

JAY T. KIMURA  
Prosecuting Attorney

JTK:ph  
Encl.

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

RESOLUTION 07-223, CD1

Introduced: 07/16/07 By: ANN KOBAYASHI

Committee: EXECUTIVE  
MATTERS

Title: RESOLUTION INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND  
COUNTY OF HONOLULU 1973, AS AMENDED RELATING TO THE PROSECUTING ATTORNEY.

Links: [RES07-223](#)  
[RES07-223, CD1](#)  
[CR-313](#)  
[CR-355](#)

COUNCIL	08/15/07	RESOLUTION PASSED FIRST READING AND REFERRED TO THE COMMITTEE ON EXECUTIVE MATTERS.
	APO Y	CACHOLA E DELA Y DJOU E GARCIA Y CRUZ
	KOBAYASHI Y	MARSHALL Y OKINO Y TAM Y
EXECUTIVE MATTERS	09/05/07	CR-313 - RESOLUTION REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING AS AMENDED IN CD1 FORM.
PUBLISH	09/08/07	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.
COUNCIL/PUBLIC HEARING	09/19/07	CR-313 ADOPTED, RESOLUTION PASSED SECOND READING AS AMENDED (RES07-223, CD1), PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON EXECUTIVE MATTERS.
	APO Y	CACHOLA A DELA Y DJOU Y GARCIA Y CRUZ
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PUBLISH	09/24/07	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.
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COUNCIL	10/17/07	CR-355 ADOPTED AND RESOLUTION 07-223, CD1 PASSED THIRD READING.
	APO Y	CACHOLA Y DELA Y DJOU Y GARCIA Y CRUZ
	KOBAYASHI Y	MARSHALL Y OKINO Y TAM Y
MAYOR	10/18/07	RESOLUTION TRANSMITTED TO THE MAYOR FOR HIS APPROVAL OR OTHERWISE.
MAYOR	10/29/07	RESOLUTION RETURNED APPROVED BY THE MAYOR.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

DENISE C. DE COSTA, CITY CLERK

BARBARA MARSHALL, CHAIR AND PRESIDING OFFICER

Related Communications:

<u>No.</u>	<u>From</u>
<u>MM-130</u>	Mayor – Returning approved Res. 07-223, CD1.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 07-223, CD1

## RESOLUTION

INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973, AS AMENDED RELATING TO THE PROSECUTING ATTORNEY.

WHEREAS, Hawaii Revised Statutes ("HRS") section 28-10.6 authorizes the department of the attorney general of the State of Hawaii to initiate, develop and perform or coordinate programs, projects and activities, as determined by the attorney general, on the subject of crime, including but not limited to crime research, prevention, and education; and

WHEREAS, pursuant to HRS section 28-10.6, the attorney general is authorized to receive and expend financial grants and donations for crime research, prevention, and education; and

WHEREAS, in Rees v. Carlisle, 113 Haw. 446, 153 P.3rd 1131 (2007), the Hawaii Supreme Court ruled that the authorizations included in HRS Section 28-10.6 do not extend to the county prosecutors; and

WHEREAS, the council finds that the department of the prosecuting attorney of the City and County of Honolulu should have similar authority to develop programs on the subject of crime, including the authority to receive and expend financial grants, donations, and other funds for crime research, prevention, and education; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu:

1. That it propose, and it is hereby proposed, that the following question be placed on the 2008 general election ballot:

"Shall the Prosecuting Attorney be allowed to initiate, develop, and perform or coordinate programs, projects and activities, as determined by the prosecuting attorney, on the subject of crime, including but not limited to crime research, prevention, and education?"

2. That it propose and it is hereby proposed, that Section 8-104, Revised Charter of the City and County of Honolulu 1973, as amended, be amended to read as follows:

**"Section 8-104. Powers, Duties and Functions --**



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 07-223, CD1

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## RESOLUTION

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1. The prosecuting attorney shall:

(a) Attend all courts in the city and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the state and the ordinances and rules and regulations of the city.

(b) Prosecute offenses against the laws of the state under the authority of the attorney general of the state.

(c) Appear in every criminal case where there is a change of venue from the courts in the city and prosecute the same in any jurisdiction to which the same is changed or removed. The expense of such proceeding shall be paid by the city.

(d) Institute proceedings before the district judges for the arrest of persons charged with or reasonably suspected of public offenses, when the prosecuting attorney has information that any such offenses have been committed, and for that purpose, take charge of criminal cases before the district judges either in person or by a deputy or by such other prosecuting officer or in such other manner as the prosecuting attorney shall designate with approval of the district court or in accordance with statute; draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration; and investigate all matters which may properly come before the prosecuting attorney. Nothing herein contained shall prevent the conduct of proceedings by private counsel before courts of record under the direction of the prosecuting attorney.

2. The prosecuting attorney may:

(a) Research, evaluate, and make recommendations regarding crime, crime prevention, and the criminal justice system to the governor, the legislature, the judiciary, the council, the mayor, the Honolulu police department and other criminal justice agencies, or the general public, as the prosecuting attorney deems appropriate.

(b) Provide crime prevention training programs for law enforcement agencies, citizens, businesses, and civic groups; and

(c) Develop public education programs through various broadcast or print media, to provide the general public information that will



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
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No. 07-223, CD1

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assist citizens in developing the knowledge and confidence to prevent crime and to avoid being victims of crime.

(d) Receive and expend financial grants, donations and other funds as permitted by the provisions of the revised charter, city ordinances and applicable city, state, and federal financial and budget policies for crime research, prevention, and education."

3. New charter material is underscored. When revising, compiling, or printing these charter provisions for inclusion the Revised Charter of the City and County of Honolulu 1973 as amended, the revisor of the charter need not include the underscoring.
4. That if these Charter provisions are amended by any other Charter amendment approved by the electors in the 2008 general election, the revisor of the charter, in revising, compiling or printing the Charter: (1) may designate or redesignate articles, chapters, sections or parts of sections, and rearrange references thereto; and (2) shall, except as otherwise expressly provided in this resolution or in the other resolution(s) amending these Charter provisions, give effect, to the extent possible, to all of the amendments approved. The revisor of the charter may also change capitalization or the form of numbers and monetary sums for the sake of uniformity.
5. That the City Clerk be and is hereby directed:
  - A. To prepare the necessary ballots with the question contained in this resolution and with spaces for "yes" and "no" votes on the question for presentation to the electors at the 2008 general election. The City Clerk may make technical and non-substantive changes to the form of the question presented in order to conform it to the form of other charter amendment questions presented to the electors at the same election; and
  - B. To publish the above-proposed Charter amendments at length in a daily newspaper of general circulation in the City and County of Honolulu at least 45 days prior to their submission to the electors at the 2008 general election.



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**RESOLUTION**

- 6. That upon approval of the charter amendment question posed in this resolution by a majority of electors voting thereon, as duly certified, the charter amendments proposed in this resolution shall take effect on January 2, 2009.

INTRODUCED BY:

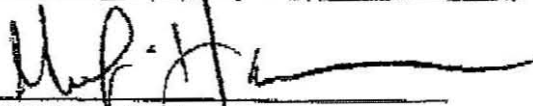
Ann Kobayashi  
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DATE OF INTRODUCTION:

July 16, 2007  
Honolulu, Hawaii

Councilmembers

APPROVED this 29<sup>th</sup> day of October, 2007.

  
 \_\_\_\_\_  
 MUFU HANNEMANN, Mayor  
 City and County of Honolulu

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
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*Denise C. De Costa*  
DENISE C. DE COSTA, CITY CLERK

*Barbara Marshall*  
BARBARA MARSHALL, CHAIR AND PRESIDING OFFICER

- (d) Evaluate the management and performance of each executive agency, and make reports to the mayor and the council on the findings and recommendations of such evaluation. A report shall be made to the responsible commission whenever an evaluation is performed on a department or agency under a commission.
- (e) Prescribe standards of administrative practice to be followed by all agencies under the managing director's supervision.
- (f) Attend meetings of the council or of any board or committee, when requested by the mayor.
- (g) Attend meetings of the council and its committees upon request and make available such information as they may require.
- (h) Perform all other duties as required by this charter or assigned by the mayor.

*(Ed. note: Amended 2000 Charter Amend. 2)*

## CHAPTER 2 CORPORATION COUNSEL

*(Ed. note: This chapter was previously Article V, Chapter 2. The original Article VI Chapter 2, "Department of Public Works," is now Article VI, Chapter 7)*

### **Section 6-2.1. Organization.**

There shall be a department of the corporation counsel consisting of the corporation counsel, assistant corporation counsel and the necessary staff.

*(Ed. note: Moved and renumbered pursuant to 2000 Charter Amend. 2)*

### **Section 6-2.2. Appointment and Removal.**

The corporation counsel shall be appointed by the mayor, confirmed by the council and may be removed by the mayor with the approval of the council. The corporation counsel shall be an attorney licensed to practice and in good standing before the Supreme Court of the State of Hawaii.

*(Ed. note: Amended Gen. Elec. 1980, moved and renumbered pursuant to 2000 Charter Amend. 2)*

### **Section 6-2.3. Powers, Duties and Functions.**

The corporation counsel shall be the chief legal advisor and legal representative of all county agencies, the council and all officers and employees in matters related to their official powers and duties. The corporation counsel shall represent the county in all civil legal proceedings and shall perform all other services incident to the office as may be required by law. The corporation counsel shall, however, be prohibited from representing any elected officer in impeachment proceedings.

*(Ed. note: Amended Gen. Elec. 1980, moved and renumbered pursuant to 2000 Charter Amend. 2)*

### **Section 6-2.4. Assistant Corporation Counsel.**

The assistant corporation counsel shall be appointed by the corporation counsel and may be removed by the counsel. The assistant corporation counsel shall be an attorney licensed to practice and in good standing before the Supreme Court of the State of Hawaii.

*(Ed. note: Moved and renumbered pursuant to 2000 Charter Amend. 2)*