CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAI'I

FILED
MAR 0 3 2022
PURSUANT TO ROH Sec. 1-2.5

No. 22-46

RESOLUTION

INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973 (AMENDED 2017 EDITION), AS AMENDED, TO ESTABLISH AN OFFICE OF LEGISLATIVE COUNSEL WITHIN THE LEGISLATIVE BRANCH.

WHEREAS, Article V, Chapter 2, of the Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition), as amended ("Charter"), provides for the Department of the Corporation Counsel headed by a Corporation Counsel who is appointed by the Mayor, with the approval of the City Council ("Council"), and who may be removed by the Mayor; and

WHEREAS, under Charter Section 5-203, the Corporation Counsel serves as the chief legal adviser and legal representative of both the Executive Branch and Legislative Branch of the City; and

WHEREAS, because the Corporation Counsel serves at the pleasure of the Mayor, there is inevitable pressure on the Corporation Counsel to favor the Mayor and the Administration over the City Council ("Council") in the event of disagreements between the Executive and Legislative Branches; and

WHEREAS, at the very least, this pressure raises the perception that the Corporation Counsel cannot effectively advocate for the Council's position in the event of such disagreements, even if the disagreements do not rise to the level of a conflict of interest that would disqualify the Corporation Counsel from representing both parties; and

WHEREAS, the Council therefore believes that it should have the ability to call upon its own attorneys to act as legal representative for the Council, in lieu of the Corporation Counsel, in legal and administrative proceedings in which the Council is a party, and to assist the Council in other litigation-related matters; and

WHEREAS, to accomplish this, the Council believes that there should be an Office of Legislative Counsel in the Legislative Branch; and

WHEREAS, this office would be distinct from the Office of Council Services ("OCS") established pursuant to Charter Section 3-107.7 because the primary duties of the OCS are legislative research and drafting, providing support in meetings of the Council and its committees, and maintaining and updating the Revised Ordinances of Honolulu. In contrast, the Office of Legislative Counsel would concentrate on legal

representation of and advocacy for the Council in legal and administrative proceedings involving the Council as a body; now, therefore,

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

1. That the following question be placed on the 2022 general election ballot:

"Shall the Revised City Charter be amended to establish an office of legislative counsel within the Legislative Branch to serve as the legal representative of the City Council, when so authorized by the Council, in lieu of the Corporation Counsel, in legal and administrative proceedings involving the Council; to represent the Council in court litigation against the Executive Branch; to advise the Council on settlements of claims; and to assist the Council in conducting investigations, or in proceedings involving the revocation of a Council-issued permit or approval, or in proceedings involving disciplinary action against a Councilmember or other Legislative Branch officer or employee?"

2. That Section 3-107 of the Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition), as amended ("Organization of Council; Officers; Rules; Meetings; Employees"), be amended by amending subsection 7 to read as follows:

"7. The council may establish an office of council services and create such positions therein as it deems necessary to assist it in the exercise of its legislative power. The council shall fix the salaries of such positions by ordinance. Funds appropriated for such salaries shall be allotted by, and the persons holding such positions shall be appointed by and serve under the direction of, the presiding officer of the council. Staff shall be appointed in a manner consonant with the merit principles set forth in Section 6-1102 of this charter, but shall not otherwise be subject to the provisions of Chapter 11 of Article VI of this charter, pursuant to Section 6-1104 of this charter.

~~[The council may authorize attorneys within the office of council services to represent it in court litigation where the dispute is with the Executive Branch and where the corporation counsel may represent the Mayor or officers of the Executive Branch. In the event that attorneys within the office of council services should be authorized to represent the city council, those staff attorneys shall be deemed to have the status of "special counsel."]~~"

RESOLUTION

3. That Section 3-107 of the Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition), as amended ("Organization of Council; Officers; Rules; Meetings; Employees"), be amended by adding a new subsection 10 to read as follows:

"10. Office of Legislative Counsel.

(a) The council may establish an office of legislative counsel and create such positions therein as it deems necessary to accomplish the purposes of this subsection. The council shall fix the salaries of such positions by ordinance. Funds appropriated for such salaries shall be allotted by, and the persons holding such positions shall be appointed by and serve under the direction of, the presiding officer of the council. Staff shall be appointed in a manner consonant with the merit principles set forth in Section 6-1102 of this charter, but shall not otherwise be subject to the provisions of Chapter 11 of Article VI of this charter, pursuant to Section 6-1104 of this charter.

(b) The office of the legislative counsel shall:

(1) Upon authorization by the council by resolution, serve as the council's legal representative, in lieu of the corporation counsel, in legal and administrative proceedings in which the council is, or seeks to become, a party;

(2) Represent the council in court litigation where the dispute is with the Executive Branch and where the corporation counsel may represent the mayor or officers of the Executive Branch;

(3) Advise the council on settlements of claims for and against the city that are submitted to the council for approval;

(4) Assist the council, or any authorized committee thereof, in conducting investigations pursuant to Section 3-120 of this charter; and

(5) Assist or advise the council in:

(A) Council proceedings involving the revocation of a council-issued permit or approval; and

(B) Matters involving charges of breaches, by a councilmember, of order and decorum, or by a legislative branch officer or employee, of council, city, or State workplace policies."

4. That Section 5-203 of the Revised Charter of the City and County of Honolulu 1973 (2017 Amended Edition), as amended, be amended to read as follows:

"Section 5-203. Powers, Duties and Functions –

[~~The~~] Except as provided in Section 3-107.10, the corporation counsel shall serve as the chief legal adviser and legal representative of all agencies, the council and all officers and employees in matters relating to their official powers and duties. Except as otherwise provided by federal or state law, the determination whether a matter relates to official powers and duties shall be made by the corporation counsel and shall include, among other things, consideration of case law applicable to the concept of course and scope of employment. The corporation counsel shall represent the city in all legal proceedings, except as otherwise provided in this charter. The corporation counsel shall perform all other services incident to the office as may be required by this charter or by law."

5. That Section 6-1104 of the Revised Charter of the City and County of Honolulu 1973 (2017 Amended Edition), as amended, be amended to read as follows:

"Section 6-1104. Civil Service and Legislative Branch Exemptions –

The provisions of this chapter of the charter shall apply to all positions in the service of the legislative branch and shall embrace all personal services performed for the legislative branch, except the following:

(a) Positions of officers elected by public vote or appointed to office as provided in subsection 3-105(a) of this charter.

(b) The position of city clerk.

(c) Positions in the office of council services[-] and the office of legislative counsel.

(d) Positions of the first deputy and the private secretaries to the city clerk and the first deputy, but private secretarial positions shall be included in the position classification plan.

(e) Positions of temporary election clerks employed during election periods, but such positions shall be included in the position classification plan.

(f) Positions and services described by subsections (e), (f), (g) and (h) of Section 6-1103 of this charter, provided, however, that no certification by the director of human resources or approval by the civil service commission shall be required.

(g) Positions in the office of the city auditor, including positions on the audit committee which may be established by the council."

6. That in Sections 2 through 5, Charter material to be repealed is bracketed and stricken, and new Charter material is underscored. When revising, compiling, or printing these Charter provisions for inclusion in the Revised Charter of the City and County of Honolulu 1973, as amended, the Revisor of the Charter need not include the brackets, the material that has been bracketed and stricken, or the underscoring.

7. That if these Charter provisions are amended by any other Charter amendment(s) approved by the electors at the 2022 general election, the Revisor of the Charter, in revising, compiling, or printing the Charter:

a. May designate or redesignate articles, chapters, sections, or parts of sections and rearrange references thereto; and

b. Shall, 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.

8. That upon adoption of this resolution by the Council, the City Clerk is hereby directed:

RESOLUTION

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 2022 general election. The City Clerk may make technical and nonsubstantive 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 submission of the question to the electors at the 2022 election.

9. That upon approval of the Charter amendment question posed in this resolution by a majority of the electors voting thereon, as duly certified, the Charter amendments proposed in this resolution shall take effect on July 1, 2023.

INTRODUCED BY:

Tony Wa

DATE OF INTRODUCTION:

MAR 3 2022

Honolulu, Hawai'i

Councilmembers

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