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June 17, 2022

Andria Tupola, Chair
Committee on Executive Matters
& Legal Affairs and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, HI 96813

Dear Chair Tupola and Committee Members:

SUBJECT: Resolution 22-99 INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973 (Amended 2017 Edition), As Amended Relating to the Office of Council Service.

The Department of Corporation Counsel ("Corporation Counsel") supports the current version of Resolution 22-99, however the proposed CD1 raises both legal and practical issues relating to the representation of the City, its agencies, City Council, officers and employees.

The current version of Resolution 22-99 would amend the Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition) to establish an Office of Council Services ("OCS") within the Legislative Branch of the City, while at the same time recognizing Corporation Counsel as the chief legal advisor and legal representative of all City agencies, the Council and all officers and employees relating to their official powers and duties. RCH §5-203. Currently, OCS is recognized and established by Revised Ordinances of the City and County of Honolulu ("ROH"), Section 4-3.1. Corporation Counsel acknowledges the important role and services that OCS provides to City Council including legal research, review and drafting of legislation, and providing legal advice.

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However, Corporation Counsel opposes the proposed CD1. The proposed CD1 would create the same issues and problems that were present in Resolution 22-46. See Corporation Counsel's written testimony to Resolution 22-46 dated May 2, 2022.

The proposed CD1 would require OCS to provide advice to Council on settlement of claims against the City. OCS advising Council about settlement of claims presumes OCS is fully informed of the facts and applicable law of each case at the time that COR presents settlement recommendations to Council. The proposed CD1 does not provide the mechanism by which OCS would gain such information to so advise Council on proposed settlements. Even assuming OCS could become fully apprised of the facts and applicable law, if OCS advises, contrary to COR, to reject the settlement and proceed to litigate the matter, COR may be disqualified from the case due to a conflict of interest, especially if COR has already engaged with witnesses. OCS or special counsel retained by Councill would then need to be appointed to represent the City and take over the case.

As mentioned in our May 2, 2022 letter, issues such as these would create unwelcome confusion with the Courts and opposing counsel, and would require OCS to become involved in every claim and lawsuit against the City, including having to attend Court required settlement conferences, arbitrations, and mediation sessions.

The proposed CD1 also adds the following paragraphs:

> 2. The council may, by adoption of a resolution by the affirmative vote of two-thirds of its entire membership, appoint staff attorneys in the office to serve as special counsel to represent the council, in lieu of, or as co-counsel to, the corporation counsel, in court litigation or administrative proceedings in which the council is, or seeks to become a party.
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> 3. The office may assist the council in the procurement and supervision of private attorneys to serve as special counsel for the council to represent the council in lieu of, or as co-counsel to, the corporation counsel, in court litigation or administrative proceedings in which the council is, or seeks to become a party.

Currently, when the City, Council, an officer or employee is served with a lawsuit or receives notice of an administrative proceeding, COR would be responsible for gathering information and to respond accordingly. The provisions in the CD1 would require that all lawsuits and notices of administrative proceedings first go to City Council to determine whether Council would like OCS or special counsel to represent the City. This would take up valuable time and would likely compromise the City's, Council's and/or the officer's or employee's defenses. Court rules require the City to respond to

complaints within 20 days of service and within 30 days or less for administrative proceedings. Having to comply with the Sunshine law and to go before Council prior to the City filing its response would likely place the City in default in many if not all cases.

Our office would be glad to discuss this proposal with Council and/or OCS to clarify the intent of the proposed CD1.

Sincerely,

Digitally signed by Viola, Dana M O
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Dana M.O. Viola
Corporation Counsel