

Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as amended 12/20/19

Board/Commission:	BOARD OF ETHICS	Meeting Date	November 15, 2019
Location	Mo'ikeha Building, Liquor Conference Room 3	Start of Meeting: 1:05 p.m.	End of Meeting: 3:28 p.m.
Present	Chair Dean Toyofuku, Vice Chair Mia Shiraishi, Secretary Susan Burriss. Members: Ryan de la Pena, Maureen Tabura, Mary Tudela Also: Deputy County Attorney Todd Jenson. Boards & Commissions Office Staff: Administrator Ellen Ching and Administrative Specialist Anela Segreti.		
Excused			
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Toyofuku called the meeting to order at 1:05 p.m. with six members present which constituted a quorum.
Approval of Minutes	<u>Open Session Minutes of October 18, 2019</u>	Mr. de la Pena moved to approve the minutes of October 18, 2019 as circulated. Ms. Burriss seconded. Motion carried 6:0.
Communication	None	

SUBJECT	DISCUSSION	ACTION
<p>Request for Advisory Opinion</p>	<p><u>RAO 2019-07 Request for an Advisory Opinion from Julie Simonton dated October 10, 2019 relating to a possible conflict of ethics to her nomination for appointment to the Board of Water.</u></p>	<p>Request Withdrawn by requester.</p>
<p>Business</p>	<p><u>BOE 2018-17 Discussion and possible action by the Board of Ethics to provide explicit recommendation(s) on how to improve the existing countywide disclosure requirement and to discuss and propose a fine schedule for non-compliance. Review and discuss HRS section 46-1.5(24), County of Honolulu Chapter 6 Ethics Board Sec. 3-8.5, Chapter 14 Ethics Board of Appeals.</u></p> <p>Ellen Ching, Administrator, explained that the Board received a brief with recommendations from former Deputy County Attorney. Chair and Vice Chair attended the State Ethics Conference and realized that the Board needed to comply with State law. Requested that current Deputy County Attorney look at the brief along with the information from the State Conference.</p> <p>Todd Jenson, Deputy County Attorney, shared materials (on file) on different fine schedules collected from the different counties.</p> <p>Chair Toyofuku stated that greatest question was regarding an Ethics Board of Appeals to be in compliance with HRS. What would be required, how would Board handle appeals.</p> <p>Ms. Ching recommended the Contested Case Hearing process similar to the Planning Commission as an appeal process.</p> <p>Chair Toyofuku asked to clarify that if a fine schedule is imposed or enforce what is currently in the rules and regulations in areas that a fine could be imposed according to the HRS there would be a violation if an appeal process is not provided for.</p> <p>Mr. Jenson discussed that currently the current Board of Ethics Rules & Regulations has a limited procedure for what looks like an appeal. For a contested case under Rule 8.4 it sets forth a hearing format and after a decision is made, they can make a request for reconsideration. So there is a due process, but it is heard by the same body. The County</p>	

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	<p>Code does set forth some penalties and specifically the Board of Ethics ability to assess administrative penalties. In subsection 3, it limits to \$1000, between \$1-\$1000 it should be fine. He gave them an example from the Liquor Commission.</p> <p>Ms. Tudela discussed having a standard that had categories for a range of fine amount to be consistent. Alternative would be to track them all.</p> <p>Ms. Ching asked if the article only relate to a Lobbyist as there is mention of revoking the registration of a Lobbyist.</p> <p>Chair Toyofuku stated that it is similarly stated under the Disclosure Statement.</p> <p>Ms. Shiraishi reminded the Board that they had previously decided on a fine schedule and table</p>	
	<p><u>BOE 2019-22 Discussion and possible action by the Board to provide notice to County employees regarding ethics requirements for former employees.</u></p> <p>Ms. Ching requested a deferral.</p>	<p>Ms. Burriss moved to defer BOE 2019-22. Mr. de la Pena seconded. Motion carried 4:0</p>
	<p><u>BOE 2019-29 Discussion and possible action by the Board of Ethics to draft language to Amend Charter Section 20.04 A. Disclosure to submit to Charter Review Commission for review.</u></p> <p>Chair Toyofuku clarified that this was to amend the section on who is required to file a disclosure. Chair went over his memo (on file) of his appearance before the Charter Review Commission he submitted to the Board and research done by staff comparing counties. Informed Board that they must come up with the proposed language for the Charter amendment.</p>	

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	<p>Ms. Tudela presumes that the process for approving procurement varies by department.</p> <p>Ms. Ching explained the procurement process.</p> <p>Board had a lengthy discussion whether required filers should be stated more in generic terms with guidance as to what type of duties of an employee would require them to file a disclosure rather than specific job titles. They reviewed requirements of other counties.</p> <p>Chair Toyofuku reminded the members that the Charter Review Commission will consider this and that they need to convince the Commission to add the amendment to the ballot. The Board will also need to write the language and submit.</p> <p>Ms. Tudela stated that the language is in legal terms and she is uncomfortable in drafting the language. She suggested that the Board should agree on what they want to accomplish and ask legal counsel to draft something that they would review.</p> <p>Mr. Jenson explained that Board would decide on direction, come up with proposed language and then the Office of the County Attorney would review for legality and make sure it complies.</p> <p>Ms. Burriss asked if they could put it on the department heads to identify the employees in their departments that should file disclosure statements.</p> <p>Ms. Tudela asked if each department could come in to talk to the Board.</p> <p>Board discussed to send an email or survey to each department that would say, “we’re looking to expand the people who are required to fill out a disclosure without putting a burden on each department, do you have suggestions for how we should be proceeding for your department.</p> <p>Mr. Jenson suggested that Ernie Barreira may be able to identify who in each department will be making the final call on procurement.</p>	

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	<p>Chair Toyofuku asked if there was any language from the other counties that stood out as one they could possibly use for guidance.</p> <p>The Board discussed the County of Hawaii’s language. Looking at the term “regulatory employees” and possibly introducing and defining it.</p> <p>Ms. Ching recommended that with a Charter amendment the Board should go broad and keep changes minimal. When there are too many changes and too much to language it is too complicated and people forget it. The initial proposal started off with, with the suggestion of the Charter Review Commission to add Managing Director and Agency Heads. In addition if want to expand further like County of Hawaii, could add “regulatory employees” and leave it at that. On the education side define “regulatory employees”.</p> <p>Board discussed possibly forming a PIG (Permitted Interaction Group) to work on the proposed Charter amendment.</p> <p>Board discussed using current language, all Department Heads, and adding Agency, Division and regulatory employees, that it would broaden it quite a bit and not forming a PIG.</p>	<p>Ms. Tudela moved that the Boards and Commissions Administrator draft Charter language that adds to existing language Agency Heads, Division Heads, Regulatory Employees and Managing Director. Ms. Burriss seconded. Motion carried 6:0</p>
	<p><u>BOE 2019-30 Discussion and possible action by the Board of Ethics to require annual gift disclosures.</u></p> <p>Ms. Ching explained that this would be an amendment to the ordinance and suggested that they form a PIG to look at this.</p> <p>Board discussed that they would like to look at this requirement for the County.</p>	<p>Ms. Tudela moved to add a decision for a PIG for BOE 2019-30 to the next meeting agenda. Mr. de la Pena seconded. Motion carried 6:0</p>

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	<p><u>BOE 2019-31 Discussion and possible action by the Board of Ethics to revise the ethics rule to state that the Board of Ethics should render an advisory opinion within 45 days of receipt of the request, but delete the provision that failure to do so within 45 days is deemed a finding of no breach of the Code of Ethics.</u></p> <p>Ms. Ching explained that this would be a Charter Amendment.</p> <p>Chair Toyofuku explained that this was brought to his attention from the City & County of Honolulu’s Ethics Board Staff Attorney.</p> <p>Board discussed the current language and what needs to be amended to remove the provision of failure to so within 45 days is deemed a finding of a no breach of the Code of Ethics.</p>	<p>Ms. Tudela moved to defer BOE 2019-31 and ask that Administrator draft for the next meeting proposed language to amend Charter 20.05.D.2 and delete “an opinion rendered by lapse of 45 days”. Ms.Tabura seconded. Motion carried 6:0</p>
	<p><u>BOE 2019-32 Discussion and possible action by the Board of Ethics to delete from the ethics rules the requirement that disclosure forms must be notarized.</u></p> <p>Chair Toyofuku explained that Kauai is the only County with this requirement. Staff and Deputy County Attorney Jenson stated that they could not find this in the rules, it is only on the form.</p> <p>Board discussed removing this from the form.</p> <p>Ms. Burriss suggested adding a sworn statement under penalty of perjury.</p> <p>Mr. Jenson explained statements are treated differently under the law. With a sworn statement there is penalty associated with it.</p> <p>Vice Chair Shiraishi suggested also adding the date of the signature.</p>	<p>Mr. de la Pena moved to remove the notary requirement from disclosure statements. Ms. Tabura seconded. Motion withdrawn by Mr. de la Pena and Ms. Tabura.</p> <p>Mr. de la Pena moved to remove the notary requirement from disclosure statements form and add a sworn statement under penalty of perjury and date of signature. Ms. Tabura seconded. Motion carried 6:0</p>

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	<p><u>BOE 2019-33 Discussion and possible action by the Board of Ethics to provide ethics training for County employees.</u></p>	<p>Ms. Tudela moved to defer BOE 2019-33 to the second quarter of 2020. Ms. Burriss seconded. Motion carried 6:0</p>
	<p><u>BOE 2019-34 Discussion and possible action by the Board of Ethics to build a database of ALL previous opinions and consider reviewing old opinions which may be in violation of any laws, rules, regulations that may have changed.</u></p> <p>Board discussed with staff what's in place now and staff's work towards consolidating files and building a data base.</p>	<p>Ms. Tudela moved to approve. Ms. Burriss seconded. Motion carried 6:0</p>
	<p><u>BOE 2019-35 Discussion and approval to add a December 2019 meeting.</u></p> <p>Board discussed date in December.</p>	<p>Ms. Tabura moved to meet Dec. 20, 2019. Ms. Burriss seconded. Motion carried 6:0</p>
	<p><u>BOE 2019-36 Review and Possible Approval of Meeting Schedule for 2020.</u></p> <p>Board reviewed calendar.</p>	<p>Ms. Tabura moved to accept the 2020 Meeting Schedule. Ms. Burriss seconded. Motion carried 6:0</p>
	<p><u>BOE 2019-37 Election of Chair, Vice Chair and Secretary for Calendar Year 2020.</u></p> <p>Ms. Tudela nominated Ms. Shiraishi for the position of Chair for 2020, Ms. Burriss for the position of Vice Chair for 2020, and Ms. Tudela for Secretary for 2020.</p>	<p>Mr. de la Pena moved to close the nominations. Ms. Burriss seconded. Motion carried 6:0</p> <p>Mr. de la Pena moved to elect Ms. Shiraishi as Chair, Ms. Burriss as Vice Chair, and Ms. Tudela as Secretary. Ms. Tabura seconded. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
	<p>Board took a break at 3:08pm Meeting resumed at 3:11pm</p>	
<p>Disclosures</p>	<p><u>Volunteer</u> 1. Katherine Otsuji, Board of Review</p> <p>Under employment, she listed self-employed, but in Section IV, she did not state her business interest.</p>	<p>Ms. Tabura moved to return Ms. Otsuji's Disclosure form to clarify item IV, Business Interest. Ms. Burriss seconded. Motion carried 6:0</p>
<p>Executive Session</p>	<p>Chair Toyofuku entertained a motion to enter into Executive Session pursuant to HRS §92-4, §92-5 (a) (2) and (4), §92-6 (a) (b), the purpose of this Executive Session is to consider the evaluation, dismissal or discipline of an employee or officer of the County in which charges have been alleged against an employee or officer where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with the Board's legal counsel on issues pertaining to the Board's and the County's powers, duties, privileges, immunities, and /or liabilities as they may relate to this item, deliberate and take such action as appropriate.</p> <p>The Board moved into Executive Session at 3:19pm.</p>	<p>Mr. de la Pena moved to go into executive session. Ms. Tudela seconded. Motion carried 6:0.</p>
<p>Return to Open Session</p>	<p>Ratify Board actions taken in Executive Session.</p>	<p>The board resumed in Open Session at 3:26pm</p> <p>Ms. Burriss moved to ratify decisions made in Executive Session. Ms Tabura seconded. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
Announcements	Next Meeting: Friday, December 20, 2019 – 1:00 p.m., Mo‘ikeha Building, Liquor Conference Room 3.	
Adjournment		Mr de la Pena moved to adjourn the meeting, Vice Chair Shiraishi seconded. Chair Toyofuku adjourned the meeting at 3:28pm

Submitted by: _____
 Anela Segreti, Administrative Specialist

Reviewed and Approved by: _____
 Dean Toyofuku, Chair

- () Approved as circulated.
- (X) Approved with amendments. See minutes of 12/20/19 meeting.