

Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as amended 1/17/2020

Board/Commission:	BOARD OF ETHICS	Meeting Date	December 20, 2019
Location	Mo'ikeha Building, Liquor Conference Room 3	Start of Meeting: 1:00 p.m.	End of Meeting: 2:03 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 1:00 p.m. with six members present which constituted a quorum.	
Approval of Minutes	<u>Open Session Minutes of November 15, 2019</u> Ms. Tudela had a correction to page 2, second to last paragraph, Chair Toyofuku asked to clarify, should be clarify and later in that sentence enforce should be enforced.	Ms. Tabura moved to approve the minutes of November 15, 2019 as amended. Mr. de la Pena seconded. Motion carried 6:0.	
Communication	None		
Request for Advisory Opinion	None		

SUBJECT	DISCUSSION	ACTION
<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, requested to defer this item.</p>	<p>Mr. de la Pena moved to defer BOE 2018-17. Ms. Tudela seconded. Motion carried 6:0</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. Tudela moved to defer BOE 2019-22. Mr. de la Pena seconded. Motion carried 6:0</p>
	<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. Ching requested to defer this item.</p>	<p>Mr. de la Pena moved to defer BOE 2019-33 to the second quarter of 2020. Ms. Tudela seconded. Motion carried 6:0</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>Board discussed proposed amendments, deletions and amendments. Concern was raised about the intention or definition of “regulatory employees” in the amended proposal.</p>	

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	<p>Ms. Ching explained that Hawaii Island’s definition of “regulatory employees” will be used as a template for Kauai. The amendment would be adopted in the Charter and then the definition would be adopted in the rules. She explained that the definition of “regulatory employees” would be part of the explanation on the ballot for the voters. The explanation will be drafted when the Charter Review Commission decides that this is an amendment they want to place on the ballot.</p> <p>Todd Jenson, Deputy County Attorney, explained that it would be great for the Chair and Vice Chair to be present at the Charter Review Commission meeting to persuade them to place the amendment on the ballot or they could also write an explanatory letter stating the purpose and intent behind the proposal.</p> <p>Chair Toyofuku explained that at the meeting he attended he got the impression that they felt this was a good move and it was their recommendation to expand department heads, etc. He feels they will be pretty receptive.</p> <p>Ms. Ching explained that the Charter Review Commission has a number of proposals that they are looking at maybe six (6) maximum to put on the ballot, they feel anything more is overwhelming. They are looking at things: 1. is it going to pass and 2. is it so important that it should go on the ballot. In the past in general ethics proposals have passed.</p>	<p>Ms. Tudela moved to accept BOE 2019-29. Ms. Tabura seconded. Motion carried 6:0</p>
	<p><u>BOE 2019-30 Discussion and decision-making on establishing a Permitted Interaction Group (PIG). The purpose of establishing a PIG would be to establishing an ordinance to require annual gift disclosures and that the Board will define the scope of the PIG and each individual’s authority to establish an ordinance requiring annual gift disclosures .</u></p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Ching explained that this is a follow-up from the State Conference and the realization that there is not an ordinance requiring annual gift disclosures. This is to form a sub-committee to look at drafting rules or proposals for an ordinance for annual gift disclosures and bringing it back to the Board for discussion and adoption by Board and on to Council to introduce and adopt it.</p> <p>Board discussed members of the PIG. Ms. Tudela, Chair Toyofuku and Vice Chair Shiraishi volunteered to be on the PIG.</p>	<p>Ms. Tudela moved to establish a PIG for BOE 2019-30 and to identify the members for the purpose of establishing a an ordinance for annual gift disclosures. Ms Tabura seconded. Motion carried 6:0</p> <p>Ms. Burriss moved that the PIG members be: Dean Toyofuku, Mia Shiraishi and Mary Tudela. Mr. de la Pena seconded. Motion carried 6:0</p> <p>Ms. Tudela moved that the Scope of this PIG is drafting an ordinance to require annual gift disclosures. Ms. Tabura seconded. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
	<p>BOE 2019-31 Discussion, review and possible action by the Board of Ethics on draft of proposed language to amend Charter 20.05.D.2 and delete “an opinion within 45 days is deemed a finding of no breach of the Code of Ethics.”</p> <p>Board reviewed the proposed language presented in their files.</p> <p>Ms. Tudela questioned how does the Board get around the 45 days.</p> <p>Ms. Ching suggested that they discuss if they can only put forward one amendment, which one would it be?</p> <p>Chair Toyofuku’s opinion that this is more important, it’s not so much the 45 days, it’s if they don’t have an opinion there’s no breach of the code.</p> <p>Board discussed concern of the 45 days and what if they get a request the day before a meeting or after the agenda has posted. Time factors and scheduling concerns.</p> <p>Ms. Burris expressed that the requestor deserves a decision and the 45 days may be there to make sure that it gets done.</p> <p>Ms. Ching expressed her concerns on the impact to staff and the Board to make a decision within 45 days or a finding of no breach of the Code of Ethics.</p> <p>The Board clarified that the 45 days starts from the date of filing.</p> <p>Chair Toyofuku shared that Honolulu has 30 days, but they have their own staff to investigate. As soon as a request is filed, staff begins to work on it and the Board receives a staff report that their staff attorney has reviewed for any legal issues. The days is not the only issue, could change it to 60 days, it’s the fact that it’s a done deal. No other County or the State has this clause.</p>	

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	<p>Ms. Shiraishi expressed that the “shall” in the sentence prior to the change should be changed to “should”. Discussion on using “may” or “should” and not a mandatory “shall”.</p> <p>Mr. Jenson stated that he will need to look up how the Hawaii State Supreme Court interprets “should”. He’s not sure how it falls, more mandatory or permissive.</p> <p>Ms. Shiraishi and Ms. Burriss stated that they felt it was more permissive.</p> <p>Ms. Burriss suggested that instead of, “All requests for advisory opinions shall be answered within ... change it to “shall be presented to the Board of Ethics, then there is no 45 days.</p> <p>Ms. Tudela suggested adding “without delay”. She felt that people want to know that it’s going to the next agenda.</p> <p>Chair Toyofuku suggested that staff research what other counties say for reference.</p> <p>Ms. Tudela suggested perhaps some language that gives it a parameter.</p>	<p>Ms. Burriss moved to adopt BOE 2019-31, proposed language to Charter 20.05.D.2. Ms. Tudela seconded. Motion withdrawn by Ms. Burriss and Ms. Tudela.</p> <p>Ms. Burriss moved to defer BOE 2019-31 and have staff research other Counties and present to Board at next meeting. Ms. Tudela seconded. Motion carried</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>Board reviewed the changes to the Disclosure Form.</p> <p>Ms. Tudela clarified that the sworn statement language is appropriate to this type of request.</p> <p>Mr. Jenson confirmed that he provided the language for the statement.</p>	<p>Ms. Burriss moved to approve the revised Disclosure Form. Mr. del la Pena seconded. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
Disclosures	<p style="text-align: center;"><u>Volunteer</u></p> <p style="text-align: center;">1. Katherine Otsuji, Board of Review</p>	<p>Ms. Tabura moved to accept Disclosure #1. Mr. de la Pena seconded. Motion carried 6:0</p>
Executive Session	<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 style="text-align: center;">The Board moved into Executive Session at 1:55pm.</p>	<p>Mr. de la Pena moved to go into executive session. Ms. Tudela seconded. Motion carried 6:0.</p>
Return to Open Session	<p>Ratify Board actions taken in Executive Session.</p>	<p>The board resumed in Open Session at 2:02pm</p> <p>Ms. Tudela moved to ratify decisions made in Executive Session. Mr. de la Pena seconded. Motion carried 6:0</p>
Announcements	<p>Next Meeting: Friday, January 17, 2020 – 1:00 p.m., Mo’ikeha Building, Liquor Conference Room 3.</p>	
Adjournment		<p>Mr. de la Pena moved to adjourn the meeting, Ms. Tabura seconded. Chair Toyofuku adjourned the meeting at 2:03pm</p>

Submitted by: _____
Anela Segreti, Administrative Specialist

Reviewed and Approved by: _____
Mia Shiraishi, Chair Elect

- Approved as circulated.
- Approved with amendments. See minutes of 1/17/2020 meeting.