

Mia Shiraishi
Chair

Susan Burriss
Vice Chair

Mary Tudela
Secretary

Members:
Ryan de la Pena
Maureen Tabura
Dean Toyofuku
John Latkiewicz

**COUNTY OF KAUA'I BOARD OF ETHICS
NOTICE OF MEETING AND AGENDA**

Friday, February 21, 2020
1:00 p.m. or shortly thereafter
Mo'ikeha Building, Liquor Conference Room 3
4444 Rice Street, Līhu'e, HI 96766

OATH OF OFFICE FOR BOARD OF ETHICS MEMBER JOHN LATKIEWICZ TERM ENDING
ON DECEMBER 31, 2022

CALL TO ORDER

APPROVAL OF MINUTES

Open Session Minutes of January 17, 2020

COMMUNICATION

BOE 2020-03

Letter from County Clerk, Jade Fountain-Tanigawa, dated January 31, 2020 regarding the 2019 County of Kaua'i Lobbyist Registration.

BOE 2020-04

Letter from County Attorney, Matthew Bracken, dated February 6, 2020 regarding request for a response to Ken Taylor's Communication dated January 17, 2020.

REQUEST FOR AN ADVISORY OPINION

None

BUSINESS

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.

BOE 2019-22	Discussion and possible action by the Board to provide notice to County employees regarding ethics requirements for former employees.
BOE 2019-33	Discussion and possible action by the Board of Ethics to provide ethics training for County employees.
BOE 2019-29	Update on presentation to the Charter Review Commission meeting on the proposed language to Amend Charter Section 20.04 A. Disclosure.
BOE 2019-31	Update on presentation to the Charter Review Commission meeting on the proposed language to amend Charter 20.05.D.2.
BOE 2020-02	Permitted Interaction Group recommendations on an ordinance to require annual gift disclosures.

DISCLOSURES

Employees:

1. Teresa Tumbaga, Deputy County Attorney
2. Ernest Barreira, Assistant Chief Procurement Officer
3. Michelle Lizama, Deputy Director of Finance
4. Jenna Tatsey, Deputy County Attorney
5. Arthur Brun, Councilmember
6. Felicia Cowden, Councilmember
7. Todd Raybuck, Police Chief
8. Todd Jenson, Deputy County Attorney

Volunteers:

9. Elizabeth Hahn, Civil Service Commission
10. Jan TenBruggencate, Charter Review Commission
11. Lori Otsuka, Planning Commission
12. Patrick Ono, Salary Commission
13. Randall Nishimura, Liquor Control Commission
14. John Latkiewicz, Board of Ethics
15. Carolyn Larson, Kaua'i, Historic Preservation Commission
16. Melvin Chiba, Planning Commission

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), §92-6 (a) (b), the purpose of this Executive Session is to consult with the Board's legal counsel on issues pertaining to Resolution 2019-1 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; 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.

ES-011 Executive Session Minutes of January 17, 2020

ES-012: BOE 2020-05 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 20.05(B), the Office of the County Attorney, requests an Executive Session with the Board, to provide the Board with a briefing on the process for administrative rulemaking. This briefing and consultation involves providing legal advice and discussion on the rulemaking process and documents as they relate to this agenda item

ES-013: BOE 2020-06 Update on Resolution 2019-1 for an investigation under Rule 6.2 into an allegation that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua'i County Charter section 20.02 A and E, the Kaua'i County Code 1987, as amended by June 2019 Code Supplement, Article 1, Section 3-1.4 and 3-1.6.

No officer or employee of the county shall:

- a. Solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the officer or employee in the performance of the officer or employee's official duties or is intended as a reward for any official action on the officer or employee's part.
- b. Use county property for other than public activity or purpose.

RETURN TO OPEN SESSION

Ratify on Board actions taken in Executive Session.

ANNOUNCEMENTS

Next Meeting: Friday, March 20, 2020 – 1:00 p.m., Mo'ikeha Building, Liquor Conference Room 3

ADJOURNMENT

NOTICE OF EXECUTIVE SESSION

Pursuant to Hawaii Revised Statutes §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was

not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a). Discussions held in Executive Session are closed to the public.

cc: Office of the County Attorney

PUBLIC COMMENTS and TESTIMONY

Persons wishing to offer comments are encouraged to submit written testimony at least 24 hours prior to the meeting indicating:

1. Your name and if applicable, your position/title and organization you are representing;
2. The agenda item that you are providing comments on; and
3. Whether you will be testifying in person or submitting written comments only.
4. If you are unable to submit your testimony at least 24 hours prior to the meeting, please provide 10 copies of your written testimony at the meeting clearly indicating the name of the testifier; and

While every effort will be made to copy, organize and collate all testimony received, materials received on the day of the meeting or improperly identified may be distributed to the members after the meeting is concluded.

The length of time allocated to persons wishing to present verbal testimony may be limited at the discretion of the chairperson or presiding member.

Send written testimony to:

Board of Ethics

Office of Boards & Commissions

4444 Rice Street, Suite 150

Līhu‘e, HI 96766

Phone: (808) 241-4917 Fax: (808) 241-5127

SPECIAL ASSISTANCE

IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR ASEGRETI@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.



COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission:	BOARD OF ETHICS	Meeting Date	January 17, 2020
Location	Mo‘ikeha Building, Liquor Conference Room 3	Start of Meeting: 1:00 p.m.	End of Meeting: 2:59 p.m.
Present	Chair Mia Shiraishi, Vice Chair Susan Burriss, Secretary Mary Tudela. Members: Ryan de la Pena, Maureen Tabura, Dean Toyofuku. Also: Deputy County Attorney Todd Jenson. Boards & Commissions Office Staff: Administrator Ellen Ching and Administrative Specialist Anela Segreti. Testifier: Ken Taylor		
Excused			
Absent			
SUBJECT	DISCUSSION	ACTION	
Call To Order		Chair Shiraishi 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 December 20, 2019</u> Ms. Tudela had a correction to page 3, second sentence, They amendment should be The amendment.	Mr. de la Pena moved to approve the minutes as of December 20, 2019 as amended. Ms. Tabura seconded. Motion carried 6:0.	
Communication	<u>BOE 2020-01 Email from Ken Taylor dated 12/15/19 regarding Bill 2745 and a potential conflict of interest for Mayor Kawakami.</u> Ken Taylor stated he sent the email documenting a complaint not a communication. He was surprised to see it as a communication and reminded the board that when the Mayor was on the Council he excused self from voting on these issues, which indicated to him that the Mayor had a potential conflict of interest and should be addressed at this level. He was not sure whether the bill had been signed but feels that if it has or has been allowed to become law without his signature that it is wrong and should be revoked and dealt with properly. Feels the Board has an obligation to review the situation and make	Ms. Tudela moved to receive BOE 2020-01. Mr. de la Pena seconded. Motion carried 6:0	

SUBJECT	DISCUSSION	ACTION
	<p>a determination. He believes that there will be other similar situations. He restated that he strongly believed that the Board has an obligation to address the issue raised in his email and not just accept it as a communication.</p> <p>Chair Shiraishi requested that the Board go into executive session to consult with their attorney.</p> <p>Pursuant to Hawai'i Revised Statutes, ("H.R.S.") §92-7 (a), the Board deemed necessary, to hold an Executive Session on a communication dated 12/15/19 from Ken Taylor without the written public notice if the Executive Session was not anticipated in advance. Any such Executive Session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a). Discussions held in Executive Session are closed to the public.</p> <p style="text-align: center;"><i>Board moved into executive session at 1:05pm.</i></p> <p style="text-align: center;"><i>Board resumed in open session at 1:26pm.</i></p> <p>Todd Jenson, Deputy County Attorney, addressed Mr. Taylor thanking him for taking time to come in. He explained that Mr. Taylor's email was received in December and that the agenda had already been posted and therefore it was too late to put the email on that agenda and was therefore placed on this agenda.</p> <p>Mr. Taylor stated that he understood.</p> <p>Mr. Jenson recognized the value of his concerns and the importance of being a community watch dog. He further stated that the concern in the email is now in front of the Board of Ethics and explained that they look at complaints, and allegation that a County official or employee has done something wrong, a violation of the code of ethics</p>	

SUBJECT	DISCUSSION	ACTION
	<p>or something illegal and that they can come in the form of an official complaint, signed and notarized; they may be asked to provide an advisory opinion. When Mr. Taylor's email was received, it was determined that it was a communication, an expression of his concern about something happening in the County government, and placed on the agenda as such. He explained that the Bill that Mr. Taylor referenced was already far through the process of being adopted as an ordinance and was adopted. He gave a copy of the ordinance (on file) to Mr. Taylor. Mr. Jenson further explained that given the timing of his email and where the ordinance was at the County Council as to why he may feel like it wasn't addressed timely in December.</p> <p>Mr. Taylor acknowledged that he understood the timing of the email being on the agenda. He didn't anticipate that it would be on the agenda until this month. In his email he asked for an opinion and seeing it as a communication surprised him, because he knows that decisions are not made on communications. He expressed that he felt that it was imperative that it be brought back and investigated, because if the Mayor does own property in the area it is a potential self-serving financial situation to up zone that land, and needs to be dealt with in a proper ethical process.</p> <p>Ms. Tudela asked Mr. Taylor if he had spoken with anyone else in the County about his concern.</p> <p>Mr. Taylor responded that he had not spoken to anyone else.</p> <p>Ms. Burris explained that when the Board gets a request for an advisory opinion it typically comes from the person with the potential conflict and with some background that enables the Board to make a ruling on the request. That is why it was not addressed as he may have seen in the past. She also explained that the Bill had been passed before the December Board meeting.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Taylor asked if it was adopted by the Council and Mr. Jenson confirmed that it had.</p> <p>Chair Shiraishi clarified that Request for Advisory Opinions can only come from an employee or an officer of the County. The reason that the email was not classified as a complaint was because it did not follow the formal requirements for a complaint, it was not notarized. She explained that he is free to file a complaint following the requirements that it be signed and notarized. She also stated that his communication could be forwarded to the Mayor if the Board decides to do that.</p> <p>Ms. Burris asked Mr. Jenson that given that it is now an ordinance does the Board have any teeth in the matter.</p> <p>Mr. Jenson replied, yes, ordinances get stricken down.</p> <p>Several amendments were made to the motion before the vote, the final motion was agreed upon by Ms. Tudela and Ms. Burris.</p> <p>Mr. Toyofuku requested to go into executive session to consult with Counsel.</p>	<p>Ms. Tudela moved to forward to the Mayor's office the email from Mr. Ken Taylor dated 12/15/19 regarding Bill 2745 and a potential conflict of interest and request a response to the Board of Ethics. Ms. Burris seconded.</p> <p>Mr. Toyofuku moved to go into executive session. Ms. Tudela seconded. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
	<p>Pursuant to Hawai'i Revised Statutes, ("H.R.S.") §92-7 (a), the Commission deemed necessary, to hold an Executive Session on a communication dated 12/15/19 from Ken Taylor without the written public notice if the Executive Session was not anticipated in advance. Any such Executive Session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a). Discussions held in Executive Session are closed to the public.</p> <p style="text-align: center;"><i>Board moved into Executive Session at 1:44pm.</i></p> <p style="text-align: center;"><i>Board returned to Open Session at 1:55pm.</i></p> <p>The Board voted on the motion made before the Executive Session.</p> <p>Mr. Taylor made a final comment that he is looking forward to the results.</p> <p>The Board thanked him for coming in.</p>	<p>Ms. Tudela moved to forward to the Mayor's office the email from Mr. Ken Taylor dated 12/15/19 regarding Bill 2745 and a potential conflict of interest and request a response to the Board of Ethics. Ms. Burris seconded. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
<p>Request for an Advisory Opinion</p>	<p>None</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 reported that more information will be provided to them at the next meeting and requested this item be deferred.</p>	<p>Ms. Tudela moved to defer BOE 2018-17. Mr. de la Pena 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 reported that the best way to do this would be to talk with HR and develop a form as part of employee departures and will work with HR on this. She requested a deferral of this item.</p>	<p>Ms. Tudela moved to defer BOE 2019-22. Ms. Tabura 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 reported that she is looking to have this scheduled for about April. She further explained that the past training was okay, but she would like to step it up. She will go through the basic information and then look at creating an improved training.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Board discussed trainings that they attended. She suggested that short videos on possible situations would be a good way to conduct trainings. She requested to defer this item.</p>	<p>Ms. Tabura moved to defer BOE 2019-33 to the second quarter of 2020. Ms. Tudela seconded. Motion carried 6:0</p>
	<p><u>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.”</u></p> <p>Chair Shiraishi reminded Board that this item was deferred for more research which is in their packets. The Board reviewed the documents and discussed how other Counties’ Charters address advisory opinions.</p> <p>Board looked at proposed language as previously discussed and worked on language to propose to amend the Charter.</p> <p>Ms. Tudela questioned the language in the motion, feeling it was redundant.</p> <p>Ms. Ching pointed out that “person” was added to list of county employee or an officer.</p> <p>They discussed the language in the motion and worked on revising the language.</p> <p>Mr. Jenson suggested that the language about “or deemed rendered” is not needed, because that section is being eliminated.</p>	<p>Mr. Toyofuku moved to amend the proposal to amend the Charter to read, All requests for advisory opinions shall be rendered pursuant to a written request of any elected or appointed officer or employee concern and may be rendered pursuant to the request of any person.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Board discussed and came up with this language: To render All requests for advisory opinions shall be rendered pursuant to a written request of any elected or appointed officer or employee. Opinions rendered shall be binding on the board in any subsequent charges concerning the officer or employee of the county until said opinion is amended or revoked by the board.</p> <p>Ms. Burriss asked for the definition of charges.</p> <p>Mr. Jenson doesn't believe that there is a definition of charges in the Charter and would default to the dictionary and common use of the definition.</p> <p>Ms. Burriss stated charges as opposed to the word matters.</p> <p>Board discussed charges versus matters versus complaints.</p> <p>Ms. Ching discussed with Board about changing the word "charges" and suggested staying with the main issue for the change in the Charter.</p> <p>Ms. Tabura left the meeting at 2:29pm before vote and returned at 2:30pm after vote.</p>	<p>Mr. Toyofuku moved to amend his motion to amend the Charter to read, "To render advisory opinion or interpretations with respect to application of the code on request. All requests for advisory opinions shall be rendered pursuant to a written request of any elected or appointed officer or employee. Opinions rendered shall be binding on the board in any subsequent charges concerning the officer or employee of the county until said opinion is amended or revoked by the board." Mr. de la Pena seconded. Motion carried 5:0, 1 absent.</p> <p>Ms. Tudela moved to submit the proposed Charter amendment of 20.05.D2 to the Charter Review Commission. Mr. de la Pena seconded. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
	<p><u>BOE 2020-02 Permitted Interaction Group recommendations on an ordinance to require annual gift disclosures.</u></p> <p>Mr. Toyofuku gave an initial update on the first meeting of the Permitted Interaction Group (PIG) meeting. Group met and reviewed the language from the other counties and have narrowed it down to a direction of what they are looking at.</p>	<p>Mr. Toyofuku moved to defer BOE 2020-02. Ms. Tudela seconded. Motion carried 6:0</p>
<p>Disclosures</p>	<p style="text-align: center;"><u>Employees:</u></p> <ol style="list-style-type: none"> 1. Charles Foster, Deputy County Attorney 2. Gerald Rapozo, Liquor Control Director 3. Todd Raybuck, Police Chief 4. Nicholas Courson, First Deputy County Attorney 5. Robert Westerman, TA Fire Chief <p style="text-align: center;"><u>Volunteers:</u></p> <ol style="list-style-type: none"> 1. Mia Shiraishi, Board of Ethics 2. Maureen Tabura, Board of Ethics 3. Victoria Wichman, Kaua'i Historic Preservation Commission 4. Craig DeCosta, Board of Review 5. Stella Fujita, Board of Review 6. Karen Ono, Open Space Preservation Commission 7. Julie Simonton, Board of Water Supply 8. Sean Mahoney, Planning Commission 	<p>Ms. Burriss moved to accept disclosures of Employees 1-5. Mr. Toyofuku seconded. Motion carried 6:0.</p> <p>Ms. Burriss moved to accept disclosure of Volunteer 1. Ms. Tabura seconded. Chair Shiraishi recused herself. Motion carried 5:0</p> <p>Ms. Burriss moved to accept disclosure of Volunteer 2. Ms. Tudela seconded. Ms. Tabura recused herself. Motion carried 5:0</p> <p>Ms. Burriss moved to accept disclosures of Volunteers 3-8. Ms. Tabura seconded. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
Executive Session	<p>Chair Shiraishi entertained a motion.</p> <p>Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), §92-6 (a) (b), the purpose of this Executive Session is to consult with the Board's legal counsel on issues pertaining to Resolution 2019-1 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; 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 2:55pm.</p>	<p>Mr. Toyofuku 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 2:59pm</p> <p>Ms. Tudela moved to ratify decisions made in Executive Session. Ms. Tabura seconded. Motion carried 6:0</p>
Announcements	<p>Next Meeting: Friday, February 21, 2020 – 1:00 p.m., Mo'ikeha Building, Liquor Conference Room 3.</p>	
Adjournment		<p>Mr. Toyofuku moved to adjourn the meeting, Mr. de la Pena seconded. Chair Shiraishi adjourned the meeting at 2:59pm</p>

Submitted by: _____ Reviewed and Approved by: _____
 Anela Segreti, Administrative Specialist Mia Shiraishi, Chair

- () Approved as circulated.
- () Approved with amendments. See minutes of _____ meeting.

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Ross Kagawa, Vice Chair
Arthur Brun
Mason K. Chock
Felicia Cowden
Luke A. Evslin
KipuKai Kualii



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
E-mail: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

January 31, 2020

Mia Shiraishi, Chair
and Members of the Board of Ethics
c/o Office of Boards & Commissions
4444 Rice Street, Suite 150
Lihu'e, Hawai'i 96766

Dear Chair Shiraishi and Members of the Board of Ethics:

RE: 2019 COUNTY OF KAUA'I LOBBYIST REGISTRATION

Ordinance No. 999, Relating to the Registration of Lobbyists was adopted by the Council of the County of Kaua'i on second and final reading on March 23, 2016 and approved by the Mayor on March 30, 2016. Pursuant to Ordinance No. 999, all lobbyists must file a Lobbyist Registration Statement with the Office of the County Clerk, as early as possible, but no later than five (5) days after engaging in lobbying. Lobbyists must also file a Lobbyist Contributions & Expenditures Statement on or before January 31st of each year, which shall cover the period from January 1st through December 31st of the previous year.

This letter is to notify you that as of December 31, 2019, the following lobbyists have submitted their Lobbyist Registration Statement and remain active:

1. ARAKAWA, David (Land Use Research Foundation of Hawai'i)
2. BELLES, Michael J. (Hawai'i Electrician's Market Enhancement Program)
3. BELLES, Michael J. (Island School)
4. BELLES, Michael J. (PRW Princeville Development Company LLC)
5. BELLES, Michael J. (CIRI Land Development Company)
6. BRODY, Bev (Get Fit Kaua'i / Hawai'i Public Health Institute)
7. BUKOSKI, Kika G. (Plumber and Fitters UA Local 675)
8. CLAY, Murray Richard (Ulupono Initiative)
9. COOKE, Jesse K. (Ulupono Initiative)
10. DELAUNAY, Christopher M. (Pacific Resource Partnership)
11. FREDERICK, Anne C. (Hawai'i Alliance for Progressive Action (H.A.P.A.))
12. GAUG, Kevan Greg (Ulupono Initiative)
13. GOLD, Joy (KYD, Inc.)

Mia Shiraishi, Chair
and Members of the Board of Ethics
Re: 2019 County of Kaua'i Lobbyist Registration
January 31, 2020
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14. GRAHAM JR., Max W.J. (Lorence H. Leight and Brit Momaday-Leight, Trustees)
15. GRAHAM JR., Max W.J. (PRW Princeville Development Company LLC)
16. HENNESSEY, Amy Melinda (Ulupono Initiative)
17. HOLLAND, Fern Anuenue (Hawai'i Alliance for Progressive Action (H.A.P.A.))
18. JUNG, Ian Kawika (Hawai'i Electrician's Market Enhancement Program)
19. JUNG, Ian Kawika (PRW Princeville Development Company LLC)
20. KINNEY, Nathaniel Keoki (Hawai'i Construction Alliance)
21. KOBAYASHI, Ryan (Hawai'i Laborers' Union)
22. MIDDLEBROOK, Matthew (Airbnb, Inc.)
23. PERRIELLO, Mark L. (Kaua'i Chamber of Commerce)
24. PRATT, David W. (Island School)
25. RIETOW, Allan S. (The Nature Conservancy)
26. ROONEY, Kathleen King (Ulupono Initiative)
27. SAIKI, Valerie Kei (Hawai'i Public Health Institute)
28. SHIGEMOTO, Tom H. (Alexander and Baldwin, Inc.)
29. SOQUENO, Eugene Paul (Hawai'i Building & Construction Trades Council)
30. THONGSAVAT, Adam (Airbnb, Inc.)
31. TOKIOKA, Beth (Kaua'i Island Utility Cooperative)
32. YAMANE, Michael (Kaua'i Island Utility Cooperative)

As of the date of this letter, the following lobbyist has **not** submitted their 2018 Lobbyist Contributions & Expenditures Statement:

1. ARAKAWA, David (Land Use Research Foundation of Hawai'i)

As of the date of this letter, the following lobbyists have **not** submitted their 2019 Lobbyist Contributions & Expenditures Statement:

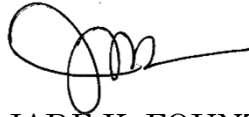
1. ARAKAWA, David (Land Use Research Foundation of Hawai'i)
2. RIETOW, Allan S. (The Nature Conservancy)

All Statements are considered public record and are posted on the Council's website at www.kauai.gov/Council/LobbyistRegistration.

Mia Shiraishi, Chair
and Members of the Board of Ethics
Re: 2019 County of Kaua'i Lobbyist Registration
January 31, 2020
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Should you have any questions, please feel free to contact the Office of the County Clerk, Council Services Division at 241-4188.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by several loops and a long horizontal stroke extending to the right.

JADE K. FOUNTAIN-TANIGAWA
County Clerk, County of Kaua'i

cc: Ellen Ching, Boards & Commissions Administrator



OFFICE OF THE COUNTY ATTORNEY
THE COUNTY OF KAUA'I

DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHILIG, MANAGING DIRECTOR

MATTHEW M. BRACKEN
COUNTY ATTORNEY

NICHOLAS R. COURSON
FIRST DEPUTY

February 6, 2020

Mia Shiraishi
Chair, County of Kaua'i Board of Ethics
c/o Office of Boards & Commission
4444 Rice Street, Suite 150
Līhu'e, Hawai'i 96766

RE: REQUEST FOR A RESPONSE TO KEN TAYLOR'S COMMUNICATION DATED
JANUARY 17, 2020

Dear Ms. Shiraishi,

On December 23, 2019, Mayor Derek S.K. Kawakami signed Bill Number 2745 (Bill) into law.¹ The Bill amended Kaua'i County Code Section 10-5A.7(a)(20) by removing a prohibition on additional rental units (ARUs) within the Rice Street Neighborhood Design District.

Our elected officials work hard to pass general laws that apply uniformly across the County. A law is considered a general law, so long as it "applies uniformly to a particular class."² The class needs to be reasonable, genuine, and not illusory.³ The Bill equally affects all properties within the Rice Street Neighborhood Design District, which is the heart of the Līhu'e Town Core. The change is also supported by the Kaua'i County General Plan, which encourages new growth around the existing town cores. Additionally, the Special Planning Areas were introduced to focus growth within existing town cores to protect Kaua'i's rural character. The Bills' removal of the prohibition on ARUs, brings the Rice Street Neighborhood Design District into conformity with every other residential district on the island.⁴ The legislative process for this bill and the reasoning for the amendment was discussed in multiple forums open to the public.

Bill 2745 was introduced by Councilmembers Luke Evslin and Mason Chock. As it was a zoning bill, it was referred and reviewed by the Kaua'i County Planning Commission. Each meeting was publicly noticed providing members of the community with an opportunity to testify and comment on the proposed change. After the Planning Commissions' review, the Bill proceeded through Council with a first reading, further review at a committee meeting, a scheduled public hearing, and the final reading. The legislative process for this general law was in strict conformity with the Charter.⁵

¹ The signing ceremony is also available on facebook: <https://www.facebook.com/watch/?v=702122127273463>

² *Sierra Club v. Dep't of Transportation of State of Hawai'i*, 120 Haw. 181, 214, 202 P.3d 1226, 1259 (2009), as amended (May 13, 2009).

³ Id.

⁴ See. K.C.C. § 8-30.1.

⁵ See Kaua'i County Charter Section 4.02.



Furthermore, courts “are generally reluctant to interfere with legislative zoning decisions based on conflict of interest grounds.”⁶ The rationale “for this reluctance is that legislative action is highly visible and widely felt.”⁷ A Pennsylvania court found that when a zoning board official was “as acting in a legislative capacity, the fact that the official owned affected property did not necessarily disqualify the official.”⁸ The passage of Bill 2745 was widely visible to the citizens of the County of Kaua'i. After receiving primarily over-whelming community support, property owners within the Rice Street Neighborhood Design District can now construct ARUs in conformity with every other property owner within a residential district.

Even though this Bill is a general law and it is highly unlikely that a court would invalidate this legislation, it is paramount to note that no actual conflict of interest exists. A conflict of interest is defined as “any official action directly affecting [a] business or other undertaking in which he or she has a substantial financial interest...”⁹ A financial interest is defined as “an interest held by an individual, his or her spouse or his or her minor children.”¹⁰ Neither the Mayor, his spouse, nor his children hold a direct financial interest in a property impacted by Bill 2745. Mayor Kawakami, while serving as a councilmember recused himself from Bill 2678, a bill that increased density within the Rice Street Neighborhood Design District, because a relative's interest in a property within the district. The relation does not create a conflict of interest as defined by the Kaua'i County Code.

Kaua'i is a small island and many members of our community have far reaching familial ties. Our elected officials often pass laws that affect friends and family. Depending on the generality of the law and code of ethics implications, our elected officials often seek guidance from the Board of Ethics. The Mayor is grateful to every member of the Board of Ethics for the willingness to volunteer and sacrifice their time for the benefit of our community.

Please contact me if you have any questions or concerns.

Sincerely,



Matthew M. Bracken
County Attorney

⁶ § 25:234.Conflicts of interest and undue influence, 8A McQuillin Mun. Corp. § 25:234 (3d ed.)

⁷ Id.

⁸ Id.

⁹ K.C.C. § 3-1.7.

¹⁰ K.C.C. § 3-1.3.