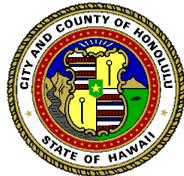


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: June 15, 2016
Standard Financial Plaza
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair
Michael Lilly, Esq., Vice Chair
Stephen Silva, Commissioner
Hon. Riki Amano (ret.), Commissioner
Hon. Allene Suemori (ret.), Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Geoffrey Kam, Deputy Corporation Counsel,
Department of the Corporation Counsel
Andrew Perreira, Information Officer, Mayor's Office
Chad Blair, Reporter, Civil Beat
Marcel Honore, Reporter, Star Advertiser
Marc Delorme, Independent Media Productions LLC
Pamela Young, Reporter, KHON 2 TV News
Terry Sagawa – Cameraman, KHON 2 TV News
Natalie Iwasa, Member of the Public
Timothy J. Garry, Member of the Public and Candidate for
Mayor, City and County of Honolulu

Absent: Stanford Yuen, P.E., Commissioner

Stenographer: Lisa P. Parker, Legal Clerk III
Kristine Bigornia, Legal Clerk I

MINUTES OF THE JUNE 15, 2016 OPEN SESSION MEETING

I. CALL TO ORDER

Chair Marks called the meeting to order at 11:34 a.m. and took a roll call vote of all Commissioners in attendance, as well as stated that Commissioner Yuen was unable to attend and Commissioner Suemori would be arriving late, but that they still had quorum.

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the May 18, 2016 Meeting.

Chair Marks asked for a motion to approve the minutes. After Commissioner Amano so moved and Commissioner Silva seconded, she then asked if there was any discussion, and since there were none, all were in favor and the motion carried unanimously.

Chair Marks asked the testifiers and other guests to introduce themselves: Marc Delorme from Independent Media, Marcel Honore from the Star Advertiser, Chad Blair of Civil Beat, Tim Garry and Natalie Iwasa, both members of the public, and Andrew Perreira of Communications, from the Mayor's Office.

Chair Marks asked Mr. Garry to testify. Mr. Garry stated that he was a candidate for Mayor for the City and County of Honolulu, in the upcoming election. Mr. Garry requested that the Commission expedite the investigation and set for hearing his complaint, as well as the complaint by another person, against Mayor Kirk Caldwell. Mr. Garry further informed the Commission that the appointments made by the Mayor, also involved personal relationships with his appointees, especially with the monetary contributions made to him for his political campaign.

Mr. Garry further stated that all members of the Honolulu Board of Ethics be compelled to disclose any monetary contributions to the Mayor's campaign and that they should be recused from the hearing. Mr. Garry filed his Complaint two (2) months ago and learned that the probability of it being investigated and brought before the Commission would not happen before the election on August 13, and therefore requested that the Commission expedite the investigation and that the matter be heard prior to the election.

Mr. Garry also stated that after he read the article on Civil Beat, he was concerned about the resources that were being provided to hear complaints in a timely manner, and that since there were no Ethics Staff to investigate and to bring the matters before the Commission, it would be a disservice to the citizens of the City and County of Honolulu.

Chair Marks responded by correcting the appointments of the Commission and that three (3) members were appointed by the Mayor, two (2) Commissioners were appointed by former Mayor, Peter Carlisle, and one (1) Commissioner member, Steve Silva, was originally appointed by former Mayor Mufi Hannemann and later reappointed by former Mayor, Peter Carlisle.

Mr. Garry responded by reconfirming that there were six (6) Commissioners and also asked about the status of confirmation of the newly appointed Commissioner, and Chair Marks responded that she could not confirm. Mr. Garry continued further and stated that if his complaint was brought before them, with six (6) Commissioners serving, and that if three (3) of the Commissioners recused themselves of past donations to Mayor Caldwell, they would not

have a quorum to even hear the complaint. Commissioner Silva informed Mr. Garry that a Commissioner could make contributions to a politician but could not campaign for them. Mr. Garry responded that a conflict would be present, and that it should be brought before the Charter Commission or City Council.

Commissioner Amano responded that normally complaints get filed in the office and the Commission is never informed and also asked if it was appropriate to ask about the status of Mr. Garry's complaint. Chair Marks responded that nothing had been brought before the Commission regarding his complaint. Mr. Garry reiterated again about his complaint not being heard until after the election, as well as the lack of resources of the Ethics Commission to investigate.

Commissioner Amano asked Mr. Garry when he submitted his complaint and to confirm the day, and he responded that it was filed, in-person, the day after Mayor Caldwell made his announcement that he was running for re-election, about two (2) months ago, and that another person filed a complaint, as well, ten (10) minutes after the Mayor made his announcement. Mr. Garry could not confirm the exact date of the Mayor's re-election announcement, but did ask Andrew Perreira of the Mayor's office, who responded that he would look it up. Mr. Garry stated that after Mayor Caldwell made his re-election announcement on the grounds of Honolulu Hale, with City and County employees present, he decided to file a complaint.

Mr. Garry informed the Commission that his complaint had not been investigated and that it would not be investigated until after the primary election. Commissioner Amano asked Mr. Garry who informed him, and the EDLC responded that he had informed Mr. Garry.

Mr. Garry further informed the Commission that he had a personal stake regarding his complaint, since he is a mayoral candidate, and reiterated again about the lack of resources and lack of staff of the Ethics Commission, and that it would be a disservice for him and the community.

Chair Marks asked Ms. Natalie Iwasa to testify, and Ms. Iwasa responded that she would give her testimony after there was discussion on several upcoming items, and Chair Marks agreed.

B. Executive Director and Legal Counsel's Administrative Report.

Chair Marks asked the EDLC to report, and the EDLC responded that he did not have anything to add.

Chair Marks asked if there were any other questions about the EDLC's report and asked if Ms. Iwasa wanted to testify.

1. Work Reports from Staff Members.

No discussion.

2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice, Ethics Training, Website Hits).

Chair Marks asked the EDLC to clarify his report on closing twelve (12) cases and the number of cases that were still open for review and closing, as well as to confirm that he was not able to review and close those cases, and the EDLC confirmed. Chair Marks asked the EDLC to further comment, and the EDLC responded that he hadn't had a chance to review and close those cases and that frankly he was concerned about the recommendations to close, generally from one of the past staff members, and believed that it would be more prudent to have someone sit down and take a very thorough look at those cases being recommended for closure and that he could not inform the Commission further in open session. Chair Marks understood and agreed. Chair Marks also asked the EDLC if the 37 cases awaiting review and closure included the cases assigned to the EDLC, and the EDLC confirmed. Chair Marks asked if there were any questions for the EDLC, and Commissioner Amano informed the Commission that since the EDLC's report included the status of the move to Kapalama Hale, asked for an update.

3. FY 2016 Budget Report.

Ms. Iwasa testified about the \$18,000 for the current year and that she would like to see the Ethics Commission become more independent and would also keep it in mind for next year's budget.

4. FY 2017 Budget Report.

Chair Marks reported that the City Council added \$6,000 to the budget, which would be for the Mindflash ethics training program and survey monkey software. The EDLC responded that the \$6,000 may or not cover the survey monkey, but it was relatively inexpensive. Chair Marks responded that she thought it was all inclusive, and the EDLC informed her that the difficulty was that the Mindflash might increase in price.

5. Move to Kapalama Hale.

The EDLC informed the Commission that the target date for the EC to move would be in August and that issues were raised, as well as directed the Commission to view the three (3) floor plan diagrams, which showed that there would be less square footage. The EDLC further stated that the Legal Clerk III had some concerns about fitting-in all of the office equipment and that the concerns were given to Mr. Dennis Kodama of DDC (Department of Design and Construction) and that no response was received to date. The EDLC also informed the Commission that there was no site visit by staff, since the partitions had not been constructed. Commissioner Amano asked about the wall construction, and the EDLC responded that there were no walls since his last communication with Mr. Kodama. Chair Marks added that there are to be two (2) walls to block-off the hallway and that the three (3) offices that were depicted, including the storage room, were existing spaces.

Commissioner Silva asked if the existing parking problem was still unresolved, and the EDLC confirmed.

Vice Chair Lilly asked the EDLC if the size of the office space was still the same from last month and if it was restrictive of space, and the EDLC confirmed. The EDLC further stated that the departments that are moving were told not to bring office furniture, only filing cabinets and electronic equipment and that there were a lot of unresolved questions, but he hoped to get someone from DDC to help resolve questions and issues.

Commissioner Silva asked if the date for the move would be pushed back, and the EDLC could not confirm. Chair Marks asked if the DMV (Department of Motor Vehicles), the main tenant, would be moving in June, and the EDLC responded that it was the targeted date.

Ms. Iwasa testified that she was really concerned about the EC's move to Kapalama Hale, because the layout looked like the lunch room was going to be accessible, via the conference room or from outside and that confidentiality would be compromised since the Commission meetings are held during the lunch hour, and that it would also be difficult for an investigator to conduct his interviews.

Ms. Iwasa further stated that during the morning City Council meeting, Bill 38 regarding the parking area was discussed, and that DMV would be utilizing a large area of public parking, with no other parking available in the area for the public. Ms. Iwasa informed the Commission that not all staff would be provided parking, and that it would be essential when hiring the new legal staff, and that parking should be provided for them, as well as the existing staff. Ms. Iwasa's other concern was limited parking for the public and the additional travel time and the distance for the public to attend the EC meetings and that public participation in the meetings were very important. Ms. Iwasa asked that the Commission do everything they could to request that the move by the EC be cancelled, since there would be no room for growth and that it would be crucial and important to hire another investigator, considering the number of complaint cases and requests for advice.

Chair Marks requested that the record reflect Commissioner Suemori's attendance at 11:53 a.m.

Chair Marks asked if there were any questions for Ms. Iwasa, and the EDLC commented that he sent an email to former Managing Director, Ember Shinn, regarding the reasons for staying essentially close to City Hall, as well as other supportive reasons. The EDLC's reasons included interviewing 500 people per year and that it was necessary to be close to the police department, Board of Water Supply, Honolulu Hale, and the Fasi Building, etc. The EDLC continued that being in the same vicinity of those departments would make it a lot easier for the EC to conduct its teaching, and also to be able to testify on bills at City Council and to be able to offer them quick advice. The EDLC informed the Commission that he could forward the email he sent to Ms. Shinn, if requested.

Commissioner Silva asked if the Neighborhood Board Commission (NCO) was moving to Kapalama Hale and whether their office space was available at City Hall, and the EDLC responded that it was his understanding that Budget and Fiscal Services, Internal Control, would be taking over their office space. The EDLC further informed the Commission that the EEO (Employees Equal Opportunity) office, as well as an undercover group from HPD and

DMV would be sharing the same first floor of Kapalama Hale. The EDLC continued that there were no other office spaces available, and that he had also inquired with HART, since they had more office space than needed. The EDLC also stated that the HART budget had been recently cut so their office space would not be available as well. The EDLC also informed the Commission that the Oahu Workforce Investment Board (OWIB) would be moving into the EC's present office space.

Chair Marks asked if there were any other questions or comments, and since there were none, moved the discussion to the Charter Commission.

6. Charter Amendments Report Regarding Ethics Laws.

The EDLC responded that there was nothing to add except that he submitted the agency response to the Charter Proposal to amend the gift law in the Charter and that as far as he knew, it was moving along. The EDLC also believed that the staff salary issues were also moving along.

C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.

Vice Chair Lilly informed the Commission that they had a final draft and that the Commission should look it over and to inform him of any edits or revisions, as well as whether they were agreeable. Chair Marks asked the Vice Chair whether it was an Excel document, and he confirmed and that it could also calculate.

Chair Marks asked if there were any other questions for the Vice Chair.

Vice Chair Lilly commented about a recent article by Civil Beat which insinuated that three (3) of the members of the Commission, the three (3) judges, might have been put on the Commission for an ulterior motive and that categorically it was false. Vice Chair Lilly continued that he had known the three (3) judges for more than 30 years and worked with Judge Amano, 40 years ago, and that they had the highest reputation for integrity and morals of anyone he's known and that they would not be a party to anything other than to do the right thing. Vice Chair Lilly continued and stated that whatever decisions they made were based on their own personal judgment and not because of any other reason. Chair Marks thanked the Vice Chair.

Chair Marks asked if there would be any testimony on any of the executive session items.

Ms. Iwasa was not clear on the executive session items, however she commented about the investigation that was conducted late last year, by an independent person, and further stated that when dealing with ethics, a lot has to do with perception and that when you have an investigator who contributed to the Mayor, the perception is that the person is not independent. Ms. Iwasa further stated that after reading through the report, it was emphasized that it was a human resources issue, however when it was brought to the press, she felt that the manner in which it was done was unfair, especially since other people being investigated are usually put on paid leave.

Ms. Iwasa continued that when someone is being investigated, it is unknown who it is, so she felt that the way that the EDLC's issue had been handled had not been fair. Ms. Iwasa continued that the stress within the office was understandable considering the level of work, the investigations, the complaints and requests for advice, and that the statistics month after month show that they are not being addressed. Ms. Iwasa informed the Commission that she personally felt that the rail issue should be investigated very aggressively, until it is known that there is no further options as far as trying to hold people accountable, considering it being an 8 billion dollar project. Ms. Iwasa informed the Commission that she appreciated the EDLC and to please consider her testimony during their executive session.

Former Mayor Peter Carlisle, on behalf of the EDLC, thanked Ms. Iwasa for her comments.

Chair Marks asked for a motion to move out of open session and to move into executive session. Commissioner Silva so moved, Commissioner Suemori seconded, all were in favor and the motion passed unanimously.

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the May 18, 2016 Meeting.

Chair Marks asked for a motion to approve the Minutes of the Executive Session of the May 18, 2016 meeting. Vice Chair Lilly so moved, Commissioner Suemori seconded, and the motion was carried unanimously.

B. For Discussion and Action: Pursuant to HRS Sec. 92-5(a)(4) Consultation with the Commission's attorney regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities with respect to resolution of Executive Director and Legal Counsel's possible civil claim against the Ethics Commission.

Chair Marks informed the Commission that a report by the PIG, consisting of Vice Chair Lilly and Commissioner Amano, regarding a matter that pertained to the Commission's powers, duties, privileges, immunities, and liabilities with respect to resolution of Executive Director and Legal Counsel's possible civil claim against the Ethics Commission, and that after the report was made to the Commissioners, a motion was made to approve a separation from an employment

agreement. Chair Marks further stated that the motion was made by Vice Chair Lilly, seconded by Commissioner Amano and approved unanimously. Chair Marks continued further that based on the approval, the Commission would be distributing a press release.

Chair Marks informed the Commission that there would be a special executive session meeting on June 23, 2016 at 11:00 a.m., in order to discuss the next steps with regard to filling vacant positions. Chair Marks reminded the Commission that the next regularly scheduled meeting was on July 20, 2016 at 11:30 a.m.

Chair Marks asked if there were any other comments. Commissioner Amano thanked Vice Chair Lilly, Peter Carlisle and Chuck for effectuating the agreement and that on her own behalf, wished the EDLC and his family well. She thanked the EDLC for everything that he had done for the City and expressed her sincere best wishes.

Vice Chair Lilly thanked Commissioner Amano for her hard work and for Peter Carlisle's hard work as well. Vice Chair Lilly informed the EDLC that he was sorry to see him go, and that he had learned a lot from him for over four years and that the EDLC had taught him a lot about ethics rules and enforcement, especially about education for the City employees, as well as for the community and that he had done a great job and congratulated him on all of his achievements and that he personally appreciated the hard work that he had done on behalf of the City and County of Honolulu. Vice Chair Lilly wished the EDLC all the best. The EDLC thanked Vice Chair Lilly.

Peter Carlisle informed the Commission that it was an unfortunate end to a career devoted to demanding ethics in City government. Mr. Carlisle further stated that in his opinion, as a friend, it was undeserving and shabby treatment for a devoted employee of the City.

IV. ADJOURNMENT

Commissioner Amano moved to adjourn the meeting. Vice Chair Lilly seconded, all were in favor and the motion carried unanimously.

The meeting adjourned at approximately 1:22 p.m.