



DEPARTMENT OF THE CORPORATION COUNSEL

Donna Y.L. Leong, Corporation Counsel

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POWERS, DUTIES, AND FUNCTIONS

The Department of the Corporation Counsel (COR) serves as the chief legal adviser and legal representative of all city agencies, the City Council, and all officers and employees of the city in matters relating to their official powers and duties. The department represents the city in all legal proceedings and performs all other legal services required by the Charter or other laws.

The department has two divisions:

1. Counseling and Drafting Division (C&D), including Real Property Tax
2. Litigation Division (LIT)

Under the Charter, the Ethics Commission is attached to the Department of the Corporation Counsel for administrative purposes only.

MISSION

The mission of the department is to meet the diverse legal needs of its clients by providing proactive advice, and effectively representing and litigating, while maintaining the highest standards of professionalism and ethics.

ACCOMPLISHMENTS

Given the supportive role of this department within the city's organizational structure, many of the department's accomplishments are reflected in the accomplishments of the Mayor, the City Council, and the various city agencies. This department's key accomplishments reflect the diversity of its legal practice.

- **Equal Employment Opportunity (EEO).** The department supports the citywide EEO effort to comply with applicable federal, state, and city laws and regulations relating to non-discrimination in employment, programs, and activities. COR assisted in the training of the city's human resource professionals, administrative staff, and managers and supervisors with regard to providing reasonable accommodations to qualified individuals with disabilities under the Americans with Disabilities Act.
- **Honolulu Authority for Rapid Transportation (HART).** The department provides legal counsel and representation to HART, which is responsible for the

largest public capital project in state history. COR provided legal advice regarding agreements with utilities and third parties; contract administration; land use, environmental and construction permitting; state and city legislation; project financing; the development of a multimodal fare collection system; broadband connectivity; real estate acquisitions; and numerous public record requests. COR represents HART in procurement protests and eminent domain proceedings.

- **Kapaa-Kalaheo Landfill Consent Decree.** On behalf of the city's Department of Environmental Services, COR negotiated a consent decree with the U.S. Environmental Protection Agency, thus resolving claims relating to the city's closure of the Kapaa and Kalaheo landfills in the 1990s. Under the consent decree, the city has agreed to install a large scale photovoltaic (PV) system at the city's H-POWER waste-to-energy facility, which will generate renewable energy that replaces fossil fuels and reduces greenhouse gas emissions and the operational energy costs of H-POWER.
- **Procurement Protests.** COR continued to defend against numerous bid protests and appeals filed under the state Procurement Code. COR obtained a favorable ruling in a challenge to the city's solicitation for upgrades to the Honouliuli Wastewater Treatment Plant and favorably resolved bid protests regarding solicitations for the Kailua Regional Wastewater Treatment Plant, the city's Joint Traffic Management Center, road rehabilitation projects, and water main projects.
- **Public Access to Public Places.** COR provided legal counsel to the city administration and City Council on various initiatives to ensure that public places remain accessible to the general public. For example, COR assisted with the crafting of various legislation (bills for ordinances regarding park closures, sidewalk nuisances, stored property in public spaces, and sit/lie restrictions on public sidewalks) and the implementation and enforcement of those measures.

COUNSELING AND DRAFTING DIVISION

As of the end of Fiscal Year 2015, the Counseling and Drafting Division (C&D) comprised six sections: 1) Finance; 2) Infrastructure and Community Services; 3) Real Estate and Land Use; 4) Personnel and Parks; 5) Labor Litigation, Public Safety and Service; and 6) HART.

C&D provides legal advice to the Mayor, the city departments and agencies, the City Council and its committees, and the city boards and commissions. In this advisory capacity, C&D:

- Renders oral and written opinions;
- Drafts and reviews bills and resolutions for submission to, or being considered by, the City Council or the state legislature, and advances and presents testimony on the city's position on legal issues presented in state legislation;
- Reviews and approves as to form and legality legal documents to which the city is a signatory;
- Attends meetings of the City Council, the Council committees, and the city boards and commissions;
- Provides legal representation on behalf of the city in city and state administrative proceedings and in selected court proceedings, such as real property tax appeals, eminent domain proceedings, quiet title proceedings, partitions of land court property, administrative appeals, foreclosures, bankruptcy actions, interpleader actions for the return of seized property, certain specialized litigation and other matters as may be assigned.

Statistics

The requests addressed by C&D are categorized in Chart A below by the nature of the requests and assignments, namely: opinion requests, drafting requests, requests for review and approval of legal documents, pre-lawsuit cases, and certain cases filed in the state and federal courts in the State of Hawaii.

In resolving appeals before the State Tax Appeal Court in FY 2015, the Finance Section (Real Property Tax) retained approximately \$3.4 million in total taxes and approximately \$1.6 million above the tax amounts claimed by the appellant taxpayers.

LITIGATION DIVISION

The Litigation Division (LIT) provides certain legal representation of the city in state and federal courts in the State of Hawaii, including the trial and appellate courts. LIT processes and, if necessary, litigates certain claims by or against the city, including tort, contract, civil rights, employment, and collection claims. LIT prosecutes liquor law violations before the Liquor Commission and advises and represents the Honolulu Police Department with regard to subpoenas duces tecum.

Statistics

The number of pre-lawsuit claims, lawsuits, and subpoena duces tecum requests addressed by LIT are set forth in Chart B.

CHART A	Outstanding C&D Requests as of 7/1/2014	New Requests Received FY 2015	Total Request Workload FY 2015	Requests Completed and Closed FY 2015	Outstanding C&D Requests as of 6/30/2015 ³
Requests for Legal Services	3731	1414	5326	696	4450
Drafting Requests ¹	102	154	256	149	107
Requests for Review and Approval of Legal Documents	1229	6275	7504	6075	1429
Pre-lawsuit Cases ²	223	65	288	27	261
State and Federal Court Cases	1106	468	1574	226	1348

¹ Drafting requests are requests to draft or review bills, resolutions, leases, easements, contracts, affidavits, etc.

² Adversarial proceedings before city or state administrative bodies.

³ Gross amount due to backlog of cases that are ready to be closed that have not yet been closed. (i.e. approximately 777 requests for legal services yet to be closed)

CHART B	Outstanding LIT Requests as of 7/1/2014	New Requests Received FY 2015	Total Request Workload FY 2015	Requests Completed and Closed FY 2015	Outstanding LIT Requests as of 6/30/2015
Pre-lawsuit Cases ⁴	1949	499	2448	1698 ⁵	750 ⁶
State and Federal Court Cases	263	52	315	181	134
Subpoena Duces Tecum Requests	146	60	206	57	149

⁴ Claims filed with and handled by the COR claims investigators.

⁵ Amount includes backlog from previous fiscal years.

⁶ Gross amount includes backlog of cases that are ready to be closed that have not yet been closed. (Approximately 570 claims yet to be closed)

HONOLULU ETHICS COMMISSION⁷

Charles W. Totto, Executive Director and Legal Counsel
Laurie A. Wong, Associate Legal Counsel

POWERS, DUTIES, AND FUNCTIONS

The purpose of the Ethics Commission (Commission) is to ensure that city officers and employees understand and follow the standards of conduct governing their work for the public. The Commission's main focus is to deter conflicts of interest and the misuse of government resources or positions by city personnel. The Commission implements its objectives through a balance of training programs, advisory opinions, enforcement actions and legislation.

The seven Commission members are appointed by the Mayor and confirmed by the City Council. Commissioners serve staggered five-year terms.

ACCOMPLISHMENTS

Ethics Training

The Commission staff continued the mandatory ethics training program for all elected officials, managers, supervisors, and board and commission members. Honolulu's mandatory ethics training and retraining program is one of the most ambitious in the United States. More than 18,000 public servants have been trained since the law was enacted in 2001. In FY 2016, the Commission plans to conduct its second round of ethics training for all 8,500 city officers and employees.

Advice and Enforcement

The Commission handled the requests for advice and complaint investigations as reflected in Chart C.

The Commission rendered four formal advisory opinions and recovered civil fines totaling \$58,100 against two former councilmembers. In both cases, the Commission approved the civil fine under a stipulated settlement agreement with each councilmember for allegedly accepting prohibited gifts from lobbyists and for allegedly failing to publicly disclose conflicts of interests resulting from the acceptance of the prohibited gifts before voting on bills in which the lobbyists had an interest. In one case, the councilmember also allegedly reimbursed himself from his city vehicle allowance for car expenses that were already being paid by his campaign fund.

Additionally, the Commission expanded its investigative abilities by working with the Hawaii State Department of the Attorney General's Investigation Division.

CHART C	Outstanding Matters as of 7/1/2014	New Matters Received FY 2015	Total Workload FY 2015	Matters Completed and Closed FY 2015	Outstanding Matters as of 6/30/2015
Requests to the Ethics Commission/ Staff for Ethics Advice	19	307	326	319	7
Investigations into Misconduct Complaints	39	93	132	75	57

⁷ The Commission is attached to the Department of the Corporation Counsel for administrative purposes only.