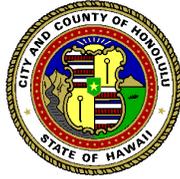


**ETHICS COMMISSION**  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

January 13, 2017

TO: CHAIR VICTORIA MARKS, VICE CHAIR MICHAEL LILLY, AND  
MEMBERS OF THE ETHICS COMMISSION

FROM: JAN K. YAMANE, EXECUTIVE DIRECTOR AND LEGAL COUNSEL

SUBJECT: AGENDA ITEMS FOR THE JANUARY 18, 2017 MEETING

---

- I. Call to Order, Public Notice, Quorum
- II. New Business
  - A. Chair's Report
    - 1. Announcements, Introductions, and Correspondence
    - 2. For Action: Approval of Open Session Minutes of December 21, 2016
    - 3. For Action: Approval of Executive Session Minutes of the December 21, 2016

The Commission may convene an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

- B. Executive Director and Legal Counsel's Report
  - 1. Staff Work Reports Summary

Kapālama Hale. Happy New Year and welcome to our first meeting of 2017. Welcome, also, to Kapālama Hale, the new office location for the Ethics Commission, Satellite City Hall, Driver Licensing Center, Equal Opportunity Office, and Neighborhood Commission. Other agencies scheduled to move to Kapālama Hale in 2017 include HPD Career Center and Psychologists Offices, Department of Community Services, Customer Services Department (Chinatown Gateway), and Emergency Services Department (Health Services at Iwilei).

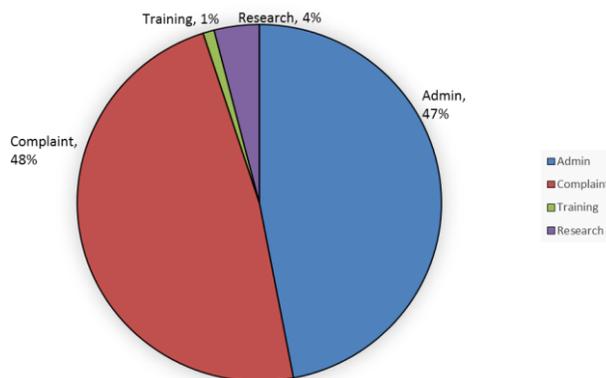
Po'okela Intern. Welcome Mr. Joseph Pagkalinawan, a 2017 Po'okela Fellow who has been assigned to the Ethics Commission. Mr. Pagkalinawan is a junior at the University of Hawai'i at Mānoa. A political science major, he aspires to attend law school after graduating from college. We look forward to working with him from January through July 2017 (part-time).

Legal Clerk III. Legal Clerk III Parker's responsibilities for lobbyist registration and annual report (due January 10, 2017) and financial disclosure (due January 31, 2017) increased as we entered the January filing period. She receives all such filings and responds to filer phone and email inquiries. She continues with her administrative responsibilities, including P-Card administration, mail, finalizing documents, meeting preparation and follow-up, and fiscal and personnel matters.

Legal Clerk I. Legal Clerk I Bigornia monitored Mindflash training in the Clerk's Office and worked to resolve issues with five of 29 staff. (More training information is provided under item 4., Ethics Training Program.) She continued to inventory office equipment and worked closely with me to review, revise, and upload all information, forms, emails, and lists for lobbyist registration, lobbyist annual reports, and financial disclosures for City officers and employees. She also supported Associate Legal Counsel Wong-Nowinski and Investigator III Yonamine by working on cases, conducting research, and providing general support.

Investigator III. Investigator III Yonamine split her time on investigating complaints (48 percent) and administrative responsibilities (47 percent on staff meetings, reviewing emails and current events, attending Ethics Commission meetings, and other). Investigator III Yonamine's time spent in these categories of work from December 16, 2016 through January 6, 2017 is reflected in Exhibit 1.

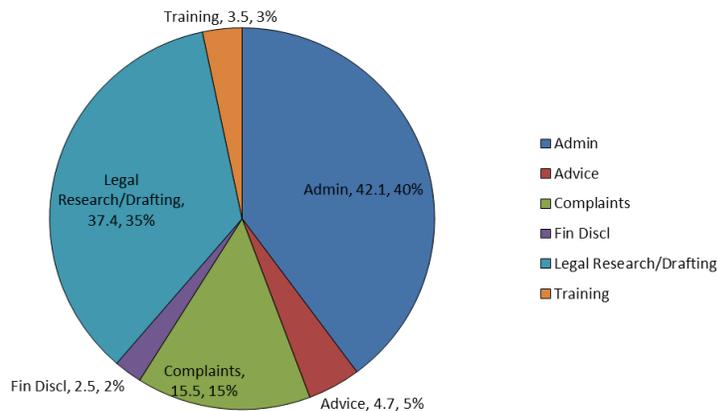
**Exhibit 1**  
**Investigator III – Summary of Hours, December 13, 2016**  
**Through January 6, 2017**



Source: Investigator III Yonamine time sheets for December 2016 (partial) and January 2017 (partial)

Associate Legal Counsel. ALC Wong-Nowinski performed administrative duties (42.2 percent), legal research and drafting (37.4 percent), and work on complaints (15.5 percent). ALC Wong-Nowinski’s time spent in these categories of work from December 13, 2016, to January 6, 2017 is reflected in Exhibit 2.

**Exhibit 2**  
**Associate Legal Counsel – Summary of Hours, December 13, 2016**  
**Through January 6, 2017**



Source: Associate Legal Counsel Wong-Nowinski time sheets for December 2016 (partial) and January 2017 (partial)

Staff meets weekly to update status on the Commission’s Program of Work. A sample agenda and calendar for Commission meeting preparation is attached for your reference. **OPEN – 1, Agenda Item II.B.1., Page 3 [EC Staff-Program of Work-FY16-17, etc. & Jan 2017 Cal-Deadlines]**

2. Statistics – Complaints, Requests for Advice

As of January 2017, there are 66 pending complaints, as shown in Exhibit 3. Five cases were closed last month.

**Exhibit 3**  
**Outstanding Complaints as of**  
**January 9, 2017**

FY2017	No. Complaints
Outstanding	66

Source: Ethics Commission

In the first quarter of FY2017, we received 40 requests for advice, as shown in Exhibit 4. Three of those requests are still pending.

**Exhibit 4  
Requests for Advice Received, FY2017  
(1<sup>st</sup> Quarter)**

<b>FY2017</b>	<b>No. Requests</b>	<b>No. Pending</b>
Qtr. 1	40	3
Qtr. 2		
Qtr. 3		
Qtr. 4		
<b>TOTAL</b>	<b>40</b>	<b>3</b>

Source: Ethics Commission

3. Budget

- a. FY2017 Operating Budget – None.
- b. FY2018 Operating Budget Request – None.

4. Ethics Training Program

Mindflash ethics training was deployed to 29 employees in the Office of the City Clerk in December 2016. Employees were given one month to complete training. By the end of December 2016, 25 of 29 employees successfully completed training, as shown in Exhibit 5. Reasons for non-completion by four employees included extended vacation (1), medical leave (2), and retirement (1).

**Exhibit 5  
Office of the City Clerk – Mindflash Training  
Completed as of December 29, 2016**

<b>Progress</b>	<b>No. Employees</b>
Completed	25
Pending	3
N/A	1
<b>TOTAL</b>	<b>29</b>

Source: Data from Mindflash ethics training

We intend to deploy Mindflash ethics training to the Office of Council Services in January and February 2017. This office has approximately 65 employees.

5. Charter Amendment Question No. 2

Passage of Charter Amendment Question No. 2 amends Revised Charter Section 11-107, which causes misalignment of Revised Ordinances of Honolulu Section 3-6.4. The Ethics Commission should introduce a bill to conform the Charter and Revised Ordinances, which we are currently drafting. After administration's review and approval, we will look for a sponsor to introduce the legislation.

6. Audit – None.

C. Rule-Making – None.

D. For Discussion and Adoption: DRAFT Advisory Opinion 2017-01, Do “Independent Expenditures” Made by Super PACs for the Benefit of a City Officer Create a Conflict of Interest Under Revised Charter of Honolulu (RCH) Section 11-102.1(a)?  
**OPEN – 2, Agenda Item II.D., Page 5 [AO 2017-01]**

The Commission may convene an executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

E. For Discussion: Are the Conclusions in Advisory Opinion No. 76 (December 21, 1977) Still Correct Under Current Laws?

The Commission may convene an executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

F. For Discussion and Adoption: DRAFT Advisory Opinion 2017-02, Does the Honolulu Ethics Commission Have Jurisdiction to Decide:

1. Whether a Councilmember's Receipt of 40 Percent or More of Campaign Contributions by a Special Interest Group Creates a Conflict of Interest When the Councilmember Has to Make Official Decisions Affecting the Special Interest Group; and
2. If Question 1 is Answered in the Positive, Were the City Council's Five Votes Approving the Ho`opili Project (Bill 3, 2015) Invalid?

The Commission may convene an executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. **OPEN – 3, Agenda Item II.F., Page 5 [AO 2017-02]**

- G. For Discussion and Action: Request for Reconsideration of Material Submitted in support of Agenda Items II.D, E, and F, at the December 21, 2016 Ethics Commission Meeting and for Further Analysis Under RCH Section 11-104. **OPEN – 4, Agenda Item II.G., Page 6 [Dr. Kioni Dudley's Request for Reconsideration]**

The Commission may convene an executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

### III. Executive Session

- A. For Discussion: Kealoha v. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawaii

Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

- B. For Discussion: Independent Ethics Investigator Retained Due to Conflict of Interest

Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

- IV. For Discussion: Strategic Planning  
**OPEN – 5, Agenda Item IV., Page 6 [Peter Adler's "Soul Search" Model]**

### V. Adjournment

## **SPEAKER REGISTRATION**

Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or by calling 768-7787 or 768-7791.

On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the

oral testimonies of the registered speakers.  
Each speaker is limited to a three-minute presentation on each item.

## **WRITTEN TESTIMONY**

Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.

On the Day of the Meeting: Submit 10 copies of written testimony to Commission staff.

Individuals who require special needs accommodations are invited to contact the Honolulu Ethics Commission at 768-7787, via facsimile at 768-7768, or email [ethics@honolulu.gov](mailto:ethics@honolulu.gov) at least **4 working days** in advance of the meeting.

All handouts will be posted at [www.honolulu.gov/ethics/meetings.html](http://www.honolulu.gov/ethics/meetings.html)

# **OPEN – 1**

**Agenda Item II.B.,**

**Page 3**

**[EC Staff –Program of Work-  
FY16-17, etc. & Jan 2017 Cal-  
Deadlines]**

HONOLULU ETHICS COMMISSION

PROGRAM OF WORK – FY2016-2017

Staff Meeting – Week of 26 Dec 2016

Complaint Intake/Evaluation (on-going)

- Ethics2 mailbox – Draft SOP circulating, open/review/sort (LC III)
- Complaints statistics visuals, see “EC Statistics, Data” (LC I)

Ethics Commission (on-going)

- EC Commissioners Resource Guide – rev/update pending receipt of binders fr commrs (LC I)
- Target timeframes – EC mtg calendar updated for Jan 2017; suggest no staff meeting the week of agenda filing and meeting materials prep (week of Jan 16, 2017) (EDLC, LC I)
- Requested mtg w/ Chair re mtg mgmt, pending scheduling (EDLC)

Strategic Planning

- Operating Plan (former EDLC updated 6 Oct 2014) for FYs 2014 – 2016 (pending strategic plan)
- Strategic Plan (new) – Send Dec 21 mtg notes to Commr Adler (LC III); data charts to Commr Adler (LC I)

Rulemaking – Art. 6, Sect. 3-6.3(i) via Ch. 91 (HAPA), HRS

- a. Substantive Rules
  - Prelim rsch/drafting (MPA Intern); working on text and justification
  - Laws and Rules Subcommittee – EC react to rules draft before establishing committee
- b. Procedural Rules
  - Rsch binder (Law Intern) provided to Chair Marks (LC III/LC I) (pending)

Request for Advice (RFA)

- Log – refinements, p&ps needed (all)

Education and Outreach

- Web-based training for City emp’ees (Mindflash), annual cost estimate \$14,388 (\$1199 x 12 mos)
- DIT dev’g training platform (delivery target end-Feb 2017), customize Moodle later
- Mindflash
  - Clerks – Mindflash sent 1<sup>st</sup> week Dec 2016 (29 emp’ees; 22 completed); pending training completion, feedback
  - OCS, OCA next
- Training mandate – emp’ee; mgr/supervisor; bd/comm; Council; dept-specific; Cabinet refresher – send Mindflash, then conduct specific training (EDLC/ALC)
- Newsletter – quarterly (ALC)

- Annual Report (new – pending)

#### Interns (see Rules for MPA Intern)

- Po`okela Intern – EDLC attend Po`okela Orientation Day 2 on Jan 5; schedule intern's office workdays; Jan – July 2017 (EDLC, ALC)

#### Financial and Other Disclosures

- June/July – reassess financial disclosure and lobbyist processes (all)
- August – review all financial disclosure and lobbyist docs (all)
- December – reminders for annual filings (LC III rec'd printout of names):
  - Financial disclosure filing – candidates to office (w/i 10 working days after deadline for filing as candidate for office); exec/leg branch officers (w/i 20 working days of taking oath of office or before 31 Jan each year); employees (w/i 20 working days of eff date of sect. or before 31 Jan each year)
  - Lobbyist Registration – w/i 5 days of engagement (w/i 10 days, ETH issues certificate of registration); annual report by 10 Jan (w/i 10 days, ETH issues renewal of certificate of registration)
  - LCI updating forms; EDLC editing; pending final review (EDLC, ALC)
- Disclosure of Interest (CC-8) – w/i 5 working days of entering employment, promotion, transfer, new non-city employment, other circumstances

#### 92F UIPA Requests

- 1 request → COR (JY)
- Use UIPA forms to respond; RSS handled by LCI
- Draft SOP

#### Relocation to Kapālama Hale

- Parking – 3 spaces confirmed; 2 wait-listed (LC III); per DFM, temp parking available for purchase on 1<sup>st</sup>-come-1<sup>st</sup>-served basis (\$50/mo)
- Coffee set-up in storage room when electrical plugs go live (coordinated with HPD move)
- No Kapālama Hale meetings weeks of 19 and 26 Dec 2016

#### Personnel

- Reassess/redescribe positions, ETH org structure (EDLC)

#### Budget

- 6-year expenditure estimates include 1) Mindflash (request reinstated given DIT delays); 2) on-going prof'l services/consultant; 3) travel/training costs; 4) parking fees
- Resources – LexisNexis with COR, Westlaw contract exp's Mar 2017, letter sent re non-renewal of service 30 Sep 2016
- CLEAR contract exp's Dec 2017
- EDLC set up mtg w/ BFS, ASO/COR, EDLC, LC III re budget, expenditures

#### General Records Schedule (GRS)

- ETH records schedule – review/revise, align with new resos (pending EDLC/ALC)
- Reso Nos. 16-249, 16-250 (14 Sep 2016) – authorizes disposal of vouchers, docs, and other records or papers; retention period stated in 2016 GRS shall control; “the agencies and boards will update their respective record retention schedules to conform to the GRS attached hereto as Exhibit A”
- EFile will be official record; shred hardcopy files

#### Litigation

- RNakamura (represents City and ETH) (EDLC and INV III; ALC admin only)

#### Office Procedures

- Standard Operating Procedures (SOP) (pending)

#### EC Statistics, Data

- Plan next round of visuals, target presentation @ 18 Jan 2017 meeting (pending – EDLC/LC I)

#### Audit

- Audit Request, Reso 16-164 – Auditor taking 3-part approach:
  - 1) EDLC - conduct control self-assessment, target completion Dec 2017, internal deadlines not yet established (EDLC drafting)
  - 2) City Auditor staff - conduct comparison with other jurisdictions and best practices, target completion Dec 2017, internal deadlines not yet established
  - 3) Outside auditor - management and performance audit (RFP-OCA-1600001; Addendum 1), closing date 30 Dec 2016; target completion 17 Dec 2017
- FY 2016 SEA Report – no pending requests from Auditors

# January 2017

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1 Friday, Dec. 30 ALC materials to EDLC for r/c	2 HOLIDAY	3 EDLC r/c to ALC (delayed 1 day b/c of holiday)	4 EDLC drafts agenda ALC mtg materials to EDLC for final r/c	5 EDLC agenda to LCII	6 LCII draft mins pau ALC rev minutes LCII formats agenda	7
8	9 LCII agenda to Chair for r/c ALC mins to EDLC ALC INV LCII AG rpts to EDLC	10 Chair apprvs agenda EDLC apprvs agenda LCII finalizes agenda EDLC mins to LCII EDLC drafts rpt	11 LCII files agenda midday LCII finalizes mins EDLC rpt to LCII LCII receives all mtg materials	12 LCII finalizes mtg materials	13 LCII finalizes mtg materials LCII uploads mtg materials to DocuShr	14
15	16 HOLIDAY	17 AG uploads mtg materials to Web	18 EC Meeting	19 LCII begins drafting minutes	20	21
22	23	24 ALC prepping materials for r/c EDLC	25	26	27 ALC prepping materials for r/c EDLC	28
29	30 EDLC r/c to ALC	31	Feb 1 EDLC drafts agenda ALC mtg materials to EDLC for final r/c	Feb 2 EDLC agenda to LCII	Feb 3 LCII draft mins pau ALC rev minutes LCII formats agenda	Feb 4 <b>Calendar reflects drop dead dates</b> (early submissions preferred)

**OPEN – 4**

**Agenda Item II.G.,**

**Page 6**

**[Dr. Kioni Dudley's Request  
for Reconsideration]**

**Request for Reconsideration**  
**of Part of E.C. 17-058**  
**Which was originally heard on December 21, 2016**  
**Dr. Kioni Dudley, Complainant**

**Reason for the Request:**

On December 21, 2016, the Honolulu Ethics Commission heard three issues which I had brought before it. I am grateful for the support given to my request to revisit and rewrite Advisory Opinion #76, and the obligation of Council members to *make full disclosure of such interests as might reasonably tend to create a conflict with the public interest.*(11.103) These matters were covered under Sections D: Issues Relating to Independent Expenditures Made by Super Political Action Committees (“Super PACs”) for the Benefit of a City Officer; Section E: Are the Conclusions in Advisory Opinion No. 76 (December 21, 1977) Still Correct Under Current Laws; and Part 2 of the “Argument” I presented for Section F: Issues Relating to a Councilmember’s Receipt of 40 Percent or More of Campaign Contributions by a Special Interest Group, which Part dealt with RCH 11-103.

The Commission did not, however, deal directly with Part 1, the most important part of my Argument, and the whole reason for my coming before the Commission. Part 1 was a study of corruption on the City Council, and the fact that all Council members had offended against RCH Section 11 101, 102(c), and 104. The 43% to 91% of their campaign support from entities that would profit directly from their Yes vote on Ho’opili, resulted in a compelling obligation to, and future dependence on, this development community. This constituted a *financial interest, direct or indirect, which is incompatible with the proper discharge of such person’s official duties or*

*which may tend to impair the independence of judgment in the performance of their official duties.(11.102c). Because of this “interest,” they used their official positions to secure or grant special treatment, advantage, and privilege to themselves or other persons which was beyond that which is available to every other person, the public.(11.104) They did this by voting for Bill 3 (2015), approving the Ho’opili project, which directly profited this segment of their contributors. In doing this they, as agents of public purpose, flaunted their obligation to hold their offices or positions for the benefit of the public, recognizing that the public interest is their primary concern, and faithfully discharging the duties of their offices regardless of personal considerations.(11-101) They, further, failed to demonstrate by their example the highest standards of ethical conduct, to the end that the public might justifiably have trust and confidence in the integrity of government.(11.101)*

In the “Evidence” section below, I will discuss this and the *quid pro quo* which they engaged in with this segment of their contributors.

I formally request that the Ethics Commission consider all of the points in the above paragraph, but that they make a decision particularly on 11:104, the specific question being, “In voting Yes for Bill 3 (2015) approving the Ho’opili project, which directly profited a segment of their contributors, did all members of the Honolulu City Council *use their official positions to secure or grant special treatment, advantage, and privilege to themselves or other persons which was beyond that which is available to every other person?”(11.104)*

**Evidence, allegation, and offer of proof  
not considered by the commission**

With this Request, I am submitting the "Argument" I earlier submitted (51 pages), and the 175 pages of Exhibits which support it. In this Request for Reconsideration, I will briefly review the material in those documents in relation to RCH 11-101, 102c, 104 and to the matter of *quid pro quo*.

**Financial interests incompatible with  
the proper discharge of official duties (11.102c).**

Establishing the Contribution Percentage

We have offered 83 pages of exhibits showing all of the donations received by all council members in the period from January 1, 2012 to December 31, 2014, with the donations from entities that would profit directly from a Yes vote on Ho'opili highlighted in yellow. We then showed additional support received from superPACs. Then we produced a chart showing percentage of *all* campaign support from entities that would profit directly from a Yes vote on Ho'opili for each Council Member. This is that list.

Brandon Elefante	91%
Kymerly Pine	82%
Ron Menor	72%
J. Ikaika Anderson	72%
C Ernest Martin	59%
Trevor Ozawa	57%
Carol Fukunaga	56%

Joey Manahan	46%
Ann Kobayashi	43%

Again, these are percentages received from entities that would profit directly from a Yes vote on Ho'opili.

Exhibit 13 shows just those contributors who would directly profit a Yes vote. The second column shows the direct connection of each to the project.

### Establishing Obligation and Dependence

In the "Argument," we also talked of the great difficulty of raising campaign funds in Hawai'i. We have no tradition of ordinary people giving to candidates, and life is such a financial struggle for most that they don't give, or give very little if they do. That's why candidates who have union support win. But unions pick candidates who will vote their way.

Union support and support from the development community bring with it enough money for multiple mailings, radio and TV ads, sign-wavers, door to door canvassers, telephone banks, and the people to watch the polls, checking on those who haven't voted, and calling them to offer rides.

The huge percentage of campaign money and all of these additional benefits create an obligation and a dependence. Law articles discussing this matter, call it "obligation corruption" and "dependence corruption."

Knowing the great difficulty of raising money from friends and neighbors, no candidate is fool enough to vote the wrong way and see 43 to 91 per cent of their campaign funds and all

of this help go to an opponent in the next election. They vote as the unions and development community want.

There is, then, no question that all Council members have *Financial interests incompatible with the proper discharge of official duties (11.102c)*.

**Financial Interests which may tend to impair independence of judgment in performance of official duties.(11.102c)**

It is our contention, at this point, that the average fair minded individual would also conclude that because of this huge percentage of campaign support, and the obligation and dependence arising from it, in their votes on Bill 3, no city council member had the “independence of judgement in the performance of their duties” that is required in RCH 11.102c. They no longer had the objectivity, the unrestricted, unobligated thought, and freedom to choose all options, that are basic requisites to fair, ethical, and valid decision making and voting. The record shows that some asked piercing questions during the hearings. Some took adamant stands--insisting on more truly affordable housing, for instance--but this was grandstanding for constituents. All eventually caved in to the wants of the developer and in the end voted Yes. During the five hearings, some on occasion voted “Yes with reservations.” But it was a secret to no one that “Yes with reservations” is counted as a “Yes” vote.

It needs to be mentioned that Council Members’ independence of judgement was compromised in an additional way by the construction community which was also always present, pushing and pushing their wants. They sent lobbyists to visit. They wrote testimony

for each hearing. Union leaders, developers, and contractors showed up at every hearing telling the Council they must vote for the project. Unions brought huge numbers of on-the-bench laborers to every hearing. They dressed them in pro-Ho’opili tee shirts and had them fill the seats and line the walls. When added to the Council Members’ awareness that campaign support that would only continue if they voted Yes, all of this was just too much to even think of going against the project. Council Members had *allowed* their independence of judgement in the performance of their duties to become impaired.

The reality of donors in collusion  
creating the obligating financial interest

One might question whether all of the donors highlighted in the campaign contribution listings found in Exhibits 2-10 might not just be individuals and corporations who happened to donate to Council Members, people who don’t exist as a real segment of contributors, people who expected nothing back from their donations.

To answer this, in the “Argument”(pp. 14-15), we showed how four large companies that would profit directly from the Yes vote had large numbers of employees and relatives give to various Council Members. We also showed charts of donation patterns for these companies and all of the unions that contributed (pp. 14-17), which demonstrated such repeated patterns of similarity that it would be difficult to deny that there was extremely widespread interconnected sharing of information and well-organized giving, and that the effort was focused on buying control of decision-making on all construction issues.

The numerous written testimonies, the presence and testifying of so many at the hearings, the bringing of unemployed union workers to the hearings, feeding them, dressing them in shirts, and so forth show an organized effort among those who made the campaign contributions. They were an organized body with demands. A “No” vote would be met with a unified response. All knew that a Council Member voting “No” would not survive the next election. This body of contributors had colluded to intentionally create a financial interest for Council Members which was *incompatible with their proper discharge of official duties and which tended to impair their independence of judgment in performance of official duties* (11.102c).

**Council Members use of official positions to secure or grant special treatment, advantage, or privilege to themselves or other persons which was beyond that which is available to every other person** (11.104)

Quid Pro Quo

The actions the construction community and of all Council Members demonstrated that all understood, and agreed to, a perhaps unspoken, but very real, *quid pro quo*. The *quid* was that the construction community would put them in office and keep them in office. The *pro quo* was that the Council Members would use their official positions to grant special advantage to the construction community beyond that which was available to every other person, that is vote for their projects despite the problems for the public good.

Council Members unwilling to  
consider and look after the Public Good

In our “Argument,” we showed that the Council Members were not willing to hear the problems, weigh the merits of the project, and decide fairly whether it would benefit the public at large. They refused to be confronted with serious, substantiated problems that would give them problems in voting to approve the project. Let me detail how they refused.

Their non-concern first showed with a very important letter I sent each, informing them that developer D.R. Horton was non-compliant in filing its application for *zoning*, and they were about to take up Bill 3 (2015) which would grant *zoning* for the project. Any open-minded and clear-thinking Council Member would have realized that that problem needed to be solved before the measure could be passed by the Council, because if the charges were true and could be proved in court, the Council would be putting the city in jeopardy by not looking into them. I received no response whatsoever from any City Council member.

Once the Council hearings began, at the first Zoning Committee meeting on Ho’opili, even though I had requested equal time more than once, the chair gave the developer forty minutes to extol the glories of the project, while giving me, the recognized leader of the opposition, only three minutes to speak of the great problems.

I mistakenly thought that if they knew enough facts, the Council Members would vote against the project. Over the three months of the hearings, I sent them seven, long, fact-filled e-mails.(Exhibits 23, 28, 31, 32, 33, 35, 39) I received one, one-line response to those seven e-mails. Other than that, I have no indication that they even read them.

While the hearings were proceeding, doing more in-depth study, I discovered that the critical Traffic Impact Analysis Report (TIAR) had actually been falsified, that it was based on grossly distorted population numbers and numbers of vehicles and had thus come to completely false conclusions. Less than half the houses to be built on the West side, and their cars, had been included! Time in rush-hour traffic for many tens of thousands of West-side commuters would double. Fearing they would not read my material, I had 31 community leaders co-sign the letter. There was not one single response from anyone.

There was no doubt among any of the Council Members that I was the leader of the opposition to Ho'opili. Time and again, they themselves used my name when referring to the opposition. Public testifiers also used my name repeatedly. Even the opposition, again and again, used my name in their public testimony. Members knew that I had been the Intervenor against the project at the Land Use Commission. They knew that I was an expert on the project. And they also knew that the problems I detailed in the seven letters were very real, substantial, and worthy of serious consideration. But they were unwilling to address any of the problems. They knew and fully understood their obligation to their donors. They simply wanted to get through the process as quickly as possible, and get their obligated final vote over with.

It needs to be noted that lack of time to read and answer cannot be claimed by Council Members. The Council as a whole only meets one day a month. Committees only meet once a month over three days. Council Members certainly had an obligation to read and to look into the problems with the project.

Other instances where Council Members demonstrated their acceptance of quid pro quo

In my personal view, the lack of Council reaction to three articles in the *Pacific Business News*, and to my letters to them about the articles, establishes conclusively that they were completely immobilized by their obligation to the construction community. These articles and my letters are found in the "Argument," pages 25-33.

All three articles told how developer D.R. Horton was moving ahead, selling or giving away property for purposes strictly forbidden under current zoning. The first article was published before the Council even met to hear the Ho'opili case. Only the final council vote months later could change the zoning to allow the sale for development of a shopping center. But like the other two articles which told of Horton land giveaways that were also specifically forbidden on land with the current Ag-1 zoning, this article essentially told the world that Horton controlled this Council and the Bill 3 decision was absolutely assured. I wrote to the Council after each article came out, pointing out how Horton was basically telling the world that the Council is irrelevant, that it had no choice in the matter, and that the vote was in the bag. No council member ever made any response to my e-mails. No Council Member ever made any effort to speak up for the independence of the Council or to scold Horton for their repeated public humiliation of the Council. The Council was so deeply obligated, that they could make no move in their own defense.

These were extremely embarrassing instances for the council which showed conclusively that the complete Council showed they had been bought, and that they were willing to be repeatedly insulted rather than do anything to endanger their relationship with

D.R. Horton specifically, and the construction community in general. They were going along with the *quid pro quo*.

Was the Council aware that they were voting against the people?

Issues at City Council hearings usually get little written testimony and few testifiers. Large numbers from both sides come out for the Ho’opili hearings. When those supporting the project testified, it was clear from their self-introductions that they were active members of the development community, and that many, if not most, of them or their employers would directly profit from the development of Ho’opili. It was clear from the self-introductions and testimony of those in opposition that they, like myself, were concerned members of the public who will not personally profit from not building of Ho’opili, but rather were concerned for the people in general and about true food sustainability for the future, and about the disastrous affects future traffic would bring upon family life for tens of thousands of our Central and West-side people. There is no possibility that the Council did not know that almost all of those speaking in favor of the project would profit monetarily from a Yes vote, and that those speaking in opposition had nothing to gain, but rather were expressing concerns for the people and for future generations. Those testifying for and against the project were just about balanced.

As far as written testimony was concerned, aside from those connected to the Humane Society, almost all of the written testimony by those supporting for the project came with a

letterhead. Just by that, the direct profit line of almost all submitters would have been obvious to Council Members.

The conclusion that any fair minded individual would come to, then, is that Council Members, being bright people and very much aware of how people try to manipulate them, would certainly have been discerning enough to penetrate through the material presented to them in written and verbal testimony and to determine that almost all of those who were testifying for the project were testifying for self-profit or profit to their employer, and those who were testifying against it would not profit personally, but were there testifying for the good of the people.

#### **Specific Offense against RCH 11-104**

RCH 11-104 is about Fair and Equal Treatment. It reads: "Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

#### Securing Special Advantage for Themselves

The Yes vote on Bill 3 (2015) approving the Ho'opili project both fulfilled the obligation of the Council Members and at the same time obligated the construction community to keep funding and otherwise supporting the Council Members' elections at least to the extent that they would win future elections and stay in office. As the chart in the "Argument" shows, their past funding was between 43 and 91 percent of their campaign support and ranged between

\$24,000 and \$268,000, with six members receiving more than \$100,000. Clearly by voting Yes, all members of the Council secured monetary advantage for themselves and secured their continued paid positions. This was a major offense against 11-104.

#### Securing Special Advantage for Others

By their vote, Council Members also secured hundreds of millions--perhaps billions--of dollars for the many construction community members listed in Exhibit 13 who were contributors that would profit directly from the vote. These included the owner and developer of the property, D.R. Horton, a Texas based company incorporated in Delaware for tax advantage, along with unions, building contractors, earth moving companies, cement companies, banks, real estate companies, and others who had contributed with the expectation of sharing the monetary benefit that would come from the vote. Voting for the direct financial benefit of these people was another major offense against 11-104 by all Council Members.

Both the financial advantages for themselves and the financial advantages for these contributors were advantages secured for certain people which were beyond those available to all.

#### Unfair and Unequal Treatment for the People

What did the public get from the vote? Eleven thousand, seven hundred and fifty new homes will be built. But a large percentage will be bought by *malihini* who are yet to come to Hawaii. None are intended for our first time home buyers, and certainly none are intended as affordable by locals at the average median income level or below. The costs for Ho'opili homes

will be hundreds of thousands of dollars beyond the reach of our people who need “affordable” or “working class” housing.

Further, none of these homes is needed. Last year, the State DLNR published figures stating that 25,000 houses would be needed on all of O’ahu over the next 20 years. We already have more than twice that number zoned and ready to build on the West side alone, without Ho’opili.

We don’t need the jobs either. We are at full employment and bringing in construction workers to fill jobs.

The 11,750 homes of Ho’opili will also greatly compound the twice daily misery of ever worsening traffic. The City Department of Planning and Permitting estimates that over next thirty years, even with West-side jobs that will come with the growth of downtown Kapolei, more than half of the workers living in Central and West O’ahu will travel into Honolulu for work. That’s more than 70,000 more people. New lanes on the freeway can accommodate only 12,000. The rail, packed absolutely full, can accommodate only 28,000. That will leave 30,000 workers without a way into the city, most of them cramming onto our freeways, bringing traffic to standstill. We already have some of the worst traffic in the nation. People on the west side today spend 1 ½ to 2 ½ hours each way in traffic. This will double. It will be an impact felt by tens of thousands of our people daily for generations to come.

How could the City Council do this to our people?

Just as bad is the loss of our farmland. The 1,225 acres of Ho’opili is 31% of the land on O’ahu currently producing food for our local market. The plan espoused by the developer was

to replace this with acreage near Wahiawa. But that land is rainy and wet, and often cloud covered. When people buy plants at Home Depot, they find that some need shade and some need sun. The Council was told time and again that the plants grown at Ho'opili—many of which are dietary staples--need full sun and will not grow in the cloudy and wet area around Wahiawa. (This has since been proven by experience.) Ho'opili is the last piece of full-sun farmland on this island. When it is gone, we will never again be able to produce a full diet of food for our million people. We import 90% of our food. As the world continues to heat up, crops will fail in many crucial places around the globe. The United Nations Panel of Global Warming in 2014 predicted mass starvation in many places, mass movements of people, and wars over food. If and when that happens, there will be no food to import. None. Future generations will need this Ho'opili farmland in order to survive. Further, sacrificing 31% of the O'ahu land currently producing crops for the local market is the wrong way to go under any circumstances. For food sustainability, we need to double our food production, then double it again, and again—not give away one third of the farmland currently producing food for the local market, in the face of recent experience telling us that the crops growing there will not grow elsewhere on O'ahu.

Clearly, then, although the Council's Yes vote on Bill 3 (2015) secured monetary and career advantages for themselves, and secured great monetary advantages for the contributors from the construction community that are listed in Exhibit 13, there were no equal advantages for the public. Instead, the general public was gravely hurt, and will suffer greatly for years to come because of the vote.

## Conclusion

In light of all of the above, we ask the Honolulu Ethics Commission to offer a formal opinion that in the Ho’opili hearings and vote, the Council has acted completely at variance with what is called for in the Revised Charter of Honolulu, that is, completely in non-compliance with the law. That law required them to *hold their positions for the benefit of the public, recognizing that the public interest is their primary concern, and faithfully discharging the duties of their offices regardless of personal considerations.*(11.101) It required them to not have any *financial interest, direct or indirect, which is incompatible with the proper discharge of such person’s official duties or which may tend to impair the independence of judgment in the performance of their official duties.*(11.102c). It required them to *not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.*(11-104) Instead of embracing and complying with these laws, *as agents of public purpose, they flaunted their obligation to hold their offices or positions for the benefit of the public, recognizing that the public interest is their primary concern, and faithfully discharging the duties of their offices regardless of personal considerations.*(11-101) They, further, *failed to demonstrate by their example the highest standards of ethical conduct, to the end that the public might justifiably have trust and confidence in the integrity of government.*(11.101)

We have shown that there was a, perhaps unspoken, but nevertheless fully understood, fully agreed to, and very real *quid pro quo* between the Council Members and a body of contributors. This group put them in office and would keep them there and, in turn

Council Members would vote for the group's projects. In accepting and cooperating in this arrangement, Council Members acquired a financial interest contrary to 11-102c.

But the worst consequences for the public came with the violation by all Members of 11-104 when the Council voted for their own advantage and the advantage of these contributors, not only in a way that was not available to all people, but which was gravely injurious to the current public and to future generations.

We ask the Ethics Commission to agree with this assessment in a formal Advisory Opinion.

Thank you for your consideration.

Dr. Kioni Dudley  
President, Friends of Makakilo

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**Agenda Item IV.,**

**Page 6**

**[Peter Adler’s “Soul Search”  
Model]**

## II. In a Nutshell: An Enterprise “Soul Search” Model

