

**COST OF GOVERNMENT COMMISSION
MINUTES**

**Kalana O Maui Building, 9th Floor, Mayor's Conference Room, Waihe'e Side
Thursday, May 9, 2019**

PRESENT: Sharron Courter, Chair
Noemi Barbadillo, Member
Michelle Del Rosario, Member
Sarah Simmons, Member
Hannah Werth, Member
Michael Williams, Member

EXCUSED: Bonnie DeRose, Member
Paula Heiskell, Member
Barbara Mattson, Member

STAFF: Jerrie Sheppard, Deputy Corporation Counsel
Shelley Pellegrino, Technical Writer for the Commission
Lance Taguchi, County Auditor

OTHER: Gladys Baisa, Ex-Officio Member, Office of the Mayor
Gary Murai, Deputy Corporation Counsel

DOCUMENTS RECEIVED:

None

I. CALL MEETING TO ORDER

Chair Courter called the meeting to order at 10:15 a.m.

II. PUBLIC TESTIMONY

There was no public testimony.

III. REVIEW AND APPROVE APRIL 11, 2019 MEETING MINUTES

The Commission reviewed the minutes. Deputy Corporation Counsel Jerrie Sheppard asked that Commissioner Paula Heiskell's name be corrected on the first page of the minutes. Commissioner Werth moved to approve the April 11, 2019 meeting minutes, and Commissioner Del Rosario seconded the motion. The minutes were approved by Commissioners Barbadillo, Del Rosario, Simmons, Werth, and Chair Courter. Commissioner Williams abstained.

IV. REVIEW AND DISCUSS CORRESPONDENCE RECEIVED

There was no correspondence received.

V. COUNTY AUDITOR'S UPDATE

County Auditor Lance Taguchi stated that he had no update from his office.

VI. SUNSHINE LAW AND ETHICS PRESENTATION (DEPUTY CORPORATION COUNSEL GARY MURAI)

Deputy Corporation Counsel Gary Murai appeared before the Commission and distributed the following documents:

1. Sunshine Law Training, prepared by the Department of the Corporation Counsel (2019)
2. Open Meetings: Guide to “The Sunshine Law” for State and County Boards, prepared by the Office of Information Practices (July 2018)
3. Maui County Code of Ethics, prepared by the Department of the Corporation Counsel (January 2019)
4. Article 10 Code of Ethics, Charter, County of Maui

Mr. Murai began with a discussion of the Maui County Code of Ethics, which applies to all County employees, elected officials, and officers of the County, including volunteer board and commission members. He added that the overarching principle is the integrity of County government. The Board of Ethics provides advisory opinions and hears complaints of ethics violations by County employees. He then discussed the following eight major prohibitions:

1. restrictions on solicitation or acceptance of gifts, including the “gifts of aloha” exception;
2. restrictions on disclosure or use of confidential information, including information received during an executive session or which is not available to the public;
3. restrictions on outside business activities and financial interests;
4. restrictions on use of County property and personnel;
5. financial disclosure requirements and voting restrictions — COGC commissioners are required to file financial disclosure statements annually because they are deemed to exercise significant discretionary or fiscal powers;
6. post-employment/service restrictions;
7. restrictions on representing others; and
8. restrictions regarding County contracts

Penalties for Code of Ethics violations include a \$1,000 fine per violation, voided contracts, and the requirement that gifts or other compensation be returned.

Mr. Murai then turned to the Sunshine Law, noting the general policy and intent is to open governmental processes to public scrutiny and that all government business be done in public. To that end, all meetings must be open to the public and anyone can speak on any agenda item. For a meeting to take place, a quorum — defined as a majority of members to which the board is entitled — is required. The nine-member Cost of Government Commission requires five members to conduct business.

Mr. Murai then discussed the types of permitted interactions that may take place outside of commission meetings. For example, two commissioners may discuss board business as long as they do not make any agreement on how they will vote or what action to take. The Sunshine Law prohibits three (or more) commissioners from speaking about board business outside of a Commission meeting, as well as serial communications between members. Two or more members of a board, but less than a quorum, are permitted to attend informational meetings or presentations, so long as the members report their attendance and the matters discussed at the next duly noticed meeting.

Remote attendance by a board member is permitted, as long as the remote site is available to the general public. Mr. Murai noted, however, that remote attendance is generally discouraged because if connection to the site is lost (e.g., lost internet connection or power outage), the meeting must be cancelled.

Mr. Murai then discussed permitted (or temporary) investigative groups (PIGs or TIGs). Mr. Murai explained that a TIG must be less than a quorum and could even be a single person. TIGs allow members to talk with each other, meet with other individuals, and form recommendations outside of a regular meeting. TIGs, however, must follow a multistep process. First, the formation of a TIG, including the scope of its investigation and duties, must be placed on a regular meeting agenda. Next, the TIG does its work and presents its findings at a regular board/commission meeting. Finally, any decision making or deliberation on the matter being investigated takes place at a subsequent meeting. Mr. Murai explained that in exchange for the freedom/ability to do board business outside of a meeting setting, there is a reporting requirement so the public has the opportunity to weigh in. Deputy Corporation Counsel Sheppard interjected that some boards she advises use the term subcommittees, but they function the same as a TIG.

For a meeting at which there is no quorum, a limited meeting can take place for the purpose of receiving testimony, but no action may be taken. At the next meeting, the gist of the testimony given must be reported.

Executive session meetings are permitted for limited reasons. For the Cost of Government Commission, an executive session might take place to discuss legal or personnel matters. A 2/3 vote is required to go into executive session.

Mr. Murai explained that a decision made in violation of the Sunshine Law could void that particular decision. Other penalties include removal of a commissioner.

VII. DISCUSS PROCUREMENT OF TECHNICAL WRITER

County Auditor Lance Taguchi distributed a draft document entitled, "Request for Proposals: Administrative Services to Support the Cost of Government Commission of the County of Maui for Fiscal Year 2020 (July 1, 2019 – June 30, 2020)." He explained that he incorporated into the proposal the information that was discussed at the Commission's April 2019 meeting.

Mr. Taguchi stated that he would first present the draft RFP to the Council Chair, who is the Chief Procurement Officer for the Office of the County Auditor. Once the Council Chair approves, the RFP would be posted for one month. An evaluation team would then recommend the top one or two candidates to the Council Chair and, once approved, the Technical Writer would begin.

Mr. Taguchi stated that the earliest the Technical Writer could begin would be mid- to late July, and the first meeting he or she would be available for is the August meeting. Mr. Taguchi added that his office would do his best to support the Commission through that time. If the Commission

needs more support than his office can provide during that time, he would ask the Office of Council Services (OCS) to provide staff support. If OCS is unavailable, then Mr. Taguchi would ask the Office of the Mayor for assistance.

Mr. Taguchi stated that his office administrator is extremely busy because his office is negotiating a new lease and will be moving into a new office space in July.

Chair Courter asked whether there was any precedent for amending the current contract with the Technical Writer for a 30- or 60-day period. Mr. Taguchi responded that he would prefer not to extend the contract, but that it would be the Council Chair's decision. He added that he had hoped to bring the draft RFP to the Commission earlier, but there was no quorum for the March meeting, which pushed the timeline back.

Commissioner Del Rosario asked when the Technical Writer's contract expires. Mr. Taguchi responded that the one-year contract with three one-year extensions expires on June 30, 2019. Deputy Corporation Counsel Sheppard opined that the current contract could not be extended, and a new procurement or purchase order month to month would be necessary. Commissioner Del Rosario asked whether a month-to-month purchase order could be done as a temporary solution, to which Ms. Sheppard replied that a County employee might be a less expensive alternative. Ms. Del Rosario then asked whether a County employee could perform the role permanently in lieu of a hired contractor. Ms. Sheppard explained that the employee then would be performing services that would be different from what they were hired to do, so it would be an imposition on that individual. She added that the annual report is a significant task that requires more than simply taking meeting minutes.

Mr. Taguchi added that in the Fiscal Year 2020 Budget, his office requested the addition of a part-time employee to assist with certain administrative functions.

Commissioner Del Rosario asked about whether the evaluation criteria under Exhibit B, and whether it included writing samples or references. Mr. Taguchi responded that there is no writing sample requirement, but that experience listed on the applicant's resume is considered. He pointed to minimum qualifications, scope of work, and proposal requirements set forth in the RFP.

The Commission decided to recess to review the draft RFP.

The Commission recessed at 11:35 a.m. and reconvened at 11:40 a.m.

Commissioner Williams asked about the applicant review process. Mr. Taguchi explained that there would be an evaluation committee. In the past, the committee was comprised of the County Auditor and the chair and vice chair of the Commission. He stated that he is a member because he presents the information to the Council Chair. The Commission chair and vice chair were on the committee because they could override his decision. State procurement law requires three people on the evaluation committee.

Commissioner Del Rosario asked that the composition of the evaluation committee be defined in the RFP. Mr. Taguchi responded that there is no requirement that the RFP identify who is on the evaluation committee, but stated that he would be willing to add the information to the RFP. Commissioner Del Rosario stated that she agrees with the composition of the Committee, but would like to delineate the people involved.

Mr. Taguchi stated that he would post the RFP on the County Council's website and would be willing to send a link to commissioners for them to share.

Deputy Corporation Counsel Sheppard recommended that the Commission appoint the chair and vice chair to serve in a Temporary Investigative Group (TIG) capacity on the evaluation committee so they can make the decision and report back to the Commission. Mr. Taguchi asked for clarification. Ms. Sheppard explained that two board members can informally talk about board business, but they cannot formally conduct board business unless they are part of a TIG, which is a Sunshine Law requirement. She added that without a TIG, they could meet, but they could not make a decision without the Commission's approval. Mr. Taguchi then asked the Commission to consider replacing the third person with someone from his office, who is a County employee, leaving just the Commission Chair. Ms. Sheppard responded that a TIG would still be necessary, and the Commission should still approve authorizing the Chair as a member of the evaluation committee to conduct the evaluation and make the recommendation for selection. Ms. Sheppard added that then the TIG would report back to the Commission and would be required to disclose who it recommended, but the TIG would not have to report back and get approval of its recommendation prior to making it to the Council Chair. The TIG would report its final recommendation and reasoning, but they would not have to disclose all of the applicant's details.

Chair Courter explained that in her prior experience on the Commission, two commissioners were permitted to research an issue and present their findings to the Commission, at which time the entire body would vote on recommendations regarding the specific subject. Ms. Sheppard responded that in the evaluation committee TIG, two commissioners are actually making a decision about whom to recommend, as opposed to simply making an evaluation and bringing it back to the Commission.

Commissioner Williams moved that the Commission chair and vice chair form a TIG to serve on the Evaluation Committee and Commissioner Barbadillo seconded the motion. The Commission voted unanimously to approve the motion.

VIII. DISCUSS 2018 – 2019 ANNUAL REPORT

Ms. Pellegrino stated that she would provide more information at the June meeting.

IX. DISCUSS CURRENT TOPICS UNDER REVIEW

A. Office of Economic Development — Maui Visitors Bureau Grant (Commissioner Mattson)

Chair Courter stated that Commissioner Mattson, who was excused from the meeting, transmitted a document entitled, "Office of Economic Development Grant to the Maui Visitors Bureau Observations and Questions," and attached documents. Commissioner Del Rosario added that she provided Commissioner Mattson with a copy of the April 4, 2019 letter from the MVB to Budget Chair Keani Rawlins-Fernandez. She added that the Council recommended reducing MVB's budget from \$4 million to \$3 million based on some of the information in the April 4 letter.

Commissioner Williams opined that with the 25% reduction, the Commission's work is not as urgent because it would not affect the Fiscal Year 2020 budget. Chair Courter responded that perhaps the Commission might have suggestions on how to spend the \$1 million. Commissioner Del Rosario explained that the Councils' decision to reduce MVB's budget \$1 million was independent of a decision about where the \$1 million in savings would be allocated.

X. CONSIDER POTENTIAL NEW TOPICS TO REVIEW

Chair Courter continued the discussion of the \$1 million reduction in MVB funding. She noted that at the Commission's April meeting, Parks Director Karla Peters stated that parks cleanup is challenging because of the homeless situation on Maui. Chair Courter stated that the Commission might be able to quantify the real cost to the County of the increased numbers of homeless, as well as how much the cost had risen over the last five years. She thought the Commission might be able to offer suggestions to help reduce the amount of money the County expends to address the homeless situation. Chair Courter added that the safety concerns associated with increased homelessness is linked to tourism.

Commissioner Del Rosario stated that she supports the Chair's intent to combat homelessness, but that the two issues (homelessness and reduction in MVB funding) are unrelated. Chair Courter responded that the Commission's goal is to assist the County with using its money more efficiently, and was unclear about whether the \$1 million reduction was intended to reduce certain MVB programs. Commissioner Del Rosario explained that the County does not direct MVB to use its grant funds in a particular way. Chair Courter reiterated that she would like to quantify the costs associated with the homeless in Maui County.

Chair Courter asked commissioners to offer other potential topics to investigate. Commissioner Del Rosario stated that she would like to review the Department of Water Supply (DWS), specifically a County Council appropriation in Fiscal Year 2018 for a fire protection and water storage project that DWS neither completed nor transferred the funds to another account. Commissioner Del Rosario noted that she was concerned about other DWS projects to improve infrastructure that also went undone. Chair Courter asked where the money had been transferred, and Commissioner Del Rosario indicated that she could provide the information to the Technical Writer or bring it to the next meeting. Commissioner Del Rosario clarified that she would like to review the status of funding for DWS capital improvement projects and how the Council-appropriated funds were spent or reallocated. Commissioner Williams offered to work with Commissioner Del Rosario.

Commissioner Williams offered another topic for the Commission's consideration. Specifically, he raised the issue of the County's affordable housing plan coupled with short-term rental laws. Mr. Williams added that Faith Action Community Engagement (FACE) Maui is morphing into a 501(c)(3), and that he is working with that organization and the director and deputy director of the Department of Housing and Human Concerns on the affordable housing plan, which is expected to be released on June 30. Commissioner Barbadillo indicated that she would be interested in working with Commissioner Williams.

Chair Courter stated that she would like to quantify the costs of the homelessness in Maui County and how it has changed over the last five years. Commissioner Del Rosario noted that demographic data should be readily available from the DHHC or a related State agency. The next step would be evaluating how these costs impact the County. Chair Courter indicated that she would ask Vice-Chair Heiskell if she would be willing to assist. Commissioner Werth also offered to assist.

Commissioner Williams asked whether TIGs would need to be created. Chair Courter responded that TIGs do not need to be formed in the information-gathering stage. Technical Writer Pellegrino added that the Commission had created TIGS in years past, but had chosen not to over the past couple of years. She explained that it was the Commission's understanding if no more than two commissioners investigated a topic and brought the information back to the

Commission meeting for decision making, then a TIG would not be necessary. She added that the Commission was welcome to create TIGs, but had not formally done so in recent years.

Commissioner Del Rosario asked whether three commissioners could investigate the homelessness issue raised by Chair Courter. Ms. Pellegrino responded that a TIG would need to be created.

Commissioner Simmons stated that she would be interested in working with the Information Technology Department to develop ways to save the County time and money. She noted, for example, the fact that not all departments use the same version of a particular word processing program.

Chair Courter expressed her appreciation to all the commissioners for their willingness to brainstorm and investigate new topics.

XI. DETERMINE NEXT MEETING DATE AND AGENDA

The next meeting is scheduled for Thursday, June 13, 2019, at 10:15 a.m.

XII. ADJOURNMENT

The meeting adjourned at 12:25 p.m.