

**COST OF GOVERNMENT COMMISSION
MINUTES
Via BlueJeans Videoconference
Thursday, May 14, 2020**

PRESENT: Michael Williams, Chair
Michelle Del Rosario, Vice Chair
Noemi Barbadillo, Member
Lu Ann Lankford-Faborito, Member
Paula Heiskell, Member
Barbara Mattson, Member
Patrick O'Neil, Member
Sarah Simmons, Member
Hannah Werth, Member

EXCUSED: None

STAFF: Gary Murai, Deputy Corporation Counsel
Shelley Pellegrino, Technical Writer for the Commission

ADMIN. Lance Taguchi, County Auditor, Office of the County Auditor
Gladys Baisa, Ex-Officio Member, Office of the Mayor

OTHERS: Madge Schaefer

DOCUMENTS RECEIVED:

Minutes

- Draft April 9, 2020 Minutes

Correspondence

- April 23, 2020 email from Rod Antone, Executive Director, Maui Hotel and Lodging Association, requesting information regarding the Commission's Report on the Maui Visitors Bureau Grant
- May 5, 2020 email from Madge Schaefer regarding trash service for residential properties

Count of Maui's Grant to the Maui Visitors Bureau

- Cost of Government Commission Final Report on the County of Maui's Grant to the Maui Visitors Bureau

Annual Report 2019 – 2020

- Cost of Government Commission Draft 2019 – 2020 Annual Report

Cost of Government Commission Attendance

- Ordinance No. 5070, amending Chapter 2.41, Maui County Code, Relating to Attendance at Board, Commission, and Committee Meetings by Appointed Members (March 20, 2020), located at https://library.municode.com/hi/county_of_maui/ordinances/code_of_ordinances?nodeId=1011268

Cost of Government Communication Procedures

- Draft Investigation Guidelines

Investigation into Wildfire Costs and Responsibility of Private Landowners

- Proposed Parameters and Scope of Investigation into the Threat of Wildfires for Maui County, Wildfire Costs, and Responsibility of Private Landowners

Informational Documents Related to COVID-19 and Open Meetings

- Governor's COVID-19 7th Supplemental Proclamation (May 5, 2020)

I. CALL MEETING TO ORDER

Chair Williams called the meeting to order at 10:00 a.m.

II. ROLL CALL

Chair Williams took roll. Commissioners Barbadillo, Heiskell, Lankford-Faborito, Mattson, O'Neil, Simmons, Werth, Vice-Chair Del Rosario, and Chair Williams were present.

III. PUBLIC TESTIMONY

Madge Schaefer

Madge Schaefer offered testimony regarding an email that she transmitted to the Commission regarding trash service for residential properties. She provided an update regarding some of the figures she cited in her email. Specifically, she stated that she obtained the 26,700 solid waste account figure from the County's website, but that she had since requested and received a breakdown of that number as follows: 25,360 accounts for Maui, 460 for Moloka'i, and 800 for Lana'i. Ms. Schaefer also stated that she had talked with Councilmember Yuki Lei Sugimura, who is the Chair of the Water, Infrastructure, and Transportation Committee, and that Councilmember Sugimura might be interested in reviewing the issue in Committee. Consequently, Ms. Schaefer stated that perhaps the Commission might defer considering whether to add this issue to its list of investigations.

IV. REVIEW AND APPROVE APRIL 9, 2020 MEETING MINUTES

Vice-Chair Del Rosario moved to approve the April 9, 2020 meeting minutes, and Commissioner Heiskell seconded the motion. The motion was approved unanimously.

V. REVIEW AND DISCUSS CORRESPONDENCE RECEIVED

- April 23, 2020 email from Rod Antone, Executive Director, Maui Hotel and Lodging Association, requesting information regarding the Commission's Report on the Maui Visitors Bureau Grant

Technical Writer Shelley Pellegrino stated that she had communicated with Mr. Antone, provided an answer to his question, and offered to refer him to Commissioner Mattson. Mr. Antone stated that the information he received from Ms. Pellegrino answered his question.

- May 5, 2020 email from Madge Schaefer regarding trash service for residential properties

Chair Williams noted that Ms. Schaefer's testimony and email would be discussed later in the meeting.

VI. COUNTY AUDITOR'S UPDATE

The County Auditor had no update.

VII. DISCUSS EXTENSION OF CONTRACT FOR TECHNICAL WRITER FOR FISCAL YEAR 2021

County Auditor Lance Taguchi stated that contract can be extended for up to 36 months without rebidding upon mutual agreement in writing between the Council Chair and the contractor. Mr. Taguchi stated that rebidding the position would take some time, and past efforts to bid the proposal resulted in only one or two bidders. Mr. Taguchi stated that if there is no technical writer on contract by July 31, the Commission's work will be hampered. Chair Williams agreed with Mr. Taguchi's recommendation.

VIII. UPDATE ON RESPONSE TO THE COMMISSION'S APRIL 2020 REPORT ON COUNTY'S GRANT TO THE MAUI VISITORS BUREAU

Chair Williams stated that he watched the Economic Development and Budget (EDB) Committee discussion on the County's grant to the Maui Visitors Bureau, and several County Council members had the Commission's report in front of them and were quoting from it during their deliberations. He noted that not all Councilmembers agreed with the report, but he saw that it was a good sign that the Council listens to the Commission. Chair Williams, Vice-Chair Del Rosario, and Commissioner Heiskell thanked Commissioner Mattson for the work she put into the report. Chair Williams added that the EDB Committee voted to reduce the MVB grant to \$1.5 million.

IX. DISCUSS, POSSIBLY AMEND, AND VOTE ON 2019 – 2020 ANNUAL REPORT

Chair Williams stated that he, Vice-Chair Del Rosario, and Ms. Pellegrino had worked through several drafts of the Annual Report and presented it to the commissioners for their review.

Vice-Chair Del Rosario moved to approve the 2019 – 2020 Annual Report, and Commissioner Heiskell seconded the motion. The motion was approved unanimously.

X. DISCUSS COST OF GOVERNMENT COMMISSION ATTENDANCE

Deputy Corporation Counsel Gary Murai provided some background into the County Council's recent passage of an ordinance relating to board and commission attendance. He stated that the County Council was concerned that the County did not have a comprehensive attendance policy for board and commission members, though some boards and commissions did have their own attendance policy in their administrative rules. The new ordinance requires that commissions take attendance and report attendance. There is also a provision for removing members. Finally, if a commissioner misses a meeting and does not request to be excused, that absence is counted as unexcused.

Chair Williams stated that he was somewhat involved with the issue and that he testified before the County Council. He added that one of the changes to the original proposal was to put the onus on the Mayor's Office, rather than a commission chair, to report to the Council those individuals who are not meeting attendance requirements. Gladys Baisa, Ex-Officio Member and a Community Liaison with the Mayor's Office, also noted that there is a strict 50% attendance requirement. She added that the Planning Commission further strengthened its attendance requirements and removed the "excused absence" language from its rules, so any Planning Commissioner who does not meet the 50% attendance requirement can be removed.

XI. DISCUSS COST OF GOVERNMENT COMMISSION COMMUNICATION PROCEDURES

- Review and Possibly Approve Draft Investigation Guidelines (prepared by Vice-Chair Simmons and Commissioner Werth)

Commissioners Werth and Simmons stated that they had not made any changes to the draft since it was last discussed because it was their understanding that the original draft would be discussed. Ms. Pellegrino stated that she would recommend revising the language under #10 to not require Commission approval before sending a formal letter requesting information.

Vice-Chair Del Rosario proposed an amendment to provide the Chair with the authority to approve a formal letter on behalf of the Commission. Vice-Chair Del Rosario added that the Technical Writer could work with the Chair to ensure the letter is in the proper form. Commissioner O'Neil agreed.

Chair Williams stated that he has had some experience with this issue regarding one of his investigations. He sent an email to the Managing Director and Finance Director, but never received a response. After following up with a formal letter, he heard back immediately. Chair Williams added that other directors have been responsive, so there is not always a need for a formal letter.

The Commission voted in favor of the motion to amend the language of #10 of the draft guidelines.

Mr. Murai offered to respond to Chair Williams' comments in the draft guidelines regarding the reporting restrictions placed upon Temporary Investigative Groups (TIGs). Mr. Murai reviewed the Sunshine Law requirement that TIGs can report their findings in one meeting, but cannot act on them until a subsequent meeting. He explained that the Commission cannot act on a TIG report until a subsequent meeting because the public should be able to digest the report and testify. Mr. Murai also noted that the Commission's draft investigation guidelines contemplate progress reports. The Sunshine Law does not prohibit progress reports, but Mr. Murai cautioned that a progress report that calls for some type of board action would have to wait for a subsequent meeting to decide on the action. Mr. Murai stated that he understands the Sunshine Law is cumbersome, but it provides a balance when a TIG is permitted to operate outside of public view.

Chair Williams asked for clarification regarding whether the Commission can deliberate on a TIG report after it is presented at a meeting, even if it cannot take action on the report until a subsequent meeting.

Mr. Murai responded that there is a difference between discussion and deliberation. Mr. Murai stated that discussion would be okay, but that deliberation, which is more akin to decision making, would not. Chair Williams asked that this information be included in the communication guidelines.

Chair Williams also asked whether a formal TIG would need to be formed if only two commissioners were investigating an issue together. Mr. Murai responded that the definition of a TIG is more than one, but less than a quorum. He added that two commissioners can discuss commission business with each other without violating the Sunshine Law, but that creating a TIG is better because it provides commissioners with more authority. Two commissioners who work together without forming a TIG would be limited in the scope of their work.

Commissioner Heiskell stated that not forming a TIG seems to be easier and expedites investigations. Commissioner O'Neil responded that even though there are constraints to TIGs, it seems that there is a higher probability that people will respond to formal TIG requests.

Mr. Murai also commented on the type of contact that commissioners should have outside of a meeting setting. He stated that although two commissioners may discuss commission business as long as they do not make any agreements how to vote, his office does not recommend doing so to avoid any potential impropriety and inadvertently violating the Sunshine Law. He recommended TIGs be formed for Commission investigations.

Chair Williams asked about individual investigations. Mr. Murai responded that it is permissible, but he would prefer to think about the issue more and discuss it further with Chair Williams. In response, Chair Williams pointed to Commissioner Mattson's investigation of the County's grant to the Maui Visitors Bureau, which was done without forming a TIG.

Chair Williams deferred the guidelines to the next meeting.

XII. UPDATE BY ENFORCEMENT OF SHORT-TERM RENTAL LAWS TIG (CHAIR WILLIAMS AND COMMISSIONER BARBADILLO)

Chair Williams stated that he and Commissioner Barbadillo put the issue on hold because the short-term rental issue has been in flux due to the COVID-19 pandemic restrictions. Chair Williams stated that he had drafted a list of remaining questions for Planning Director Michele McLean, who has been responsive. He hoped to have a draft TIG report to transmit to the Commission at its June meeting.

Chair Williams stated that there are several bills in the works related to short-term rentals. He explained that he hoped his report will include a list of changes that have been made or are under consideration.

XIII. UPDATE BY TIG INVESTIGATING CAPITAL IMPROVEMENT PROJECT BUDGETS OF DEPARTMENT OF WATER SUPPLY AND DEPARTMENT OF WASTE MANAGEMENT (CHAIR WILLIAMS, COMMISSIONER DEL ROSARIO, COMMISSIONER O'NEIL)

Chair Williams stated that the TIG sent letters to the Director of Water Supply and the Director of Environmental Management outlining the issues the TIG would like to discuss with each department.

Chair Williams asked whether the Auditor's Office would need to be copied on these and other letters. Mr. Taguchi responded that any communication the Auditor's Office receives for the Commission is forwarded to the Commission Chair and Technical Writer. The Chair or Technical Writer then tells the Auditor's Office whether to file the communication in a chronological binder that is kept in the Office and available to the public. Mr. Taguchi stated that this binder differs from the online Dropbox folder, which is currently maintained by the Technical Writer, and which is available to the public. The documents in the Dropbox are documents related to a particular meeting agenda.

10:50 a.m. — Vice-Chair Del Rosario departed

Chair Williams stated that he transmitted copies of his emails and formal letter to the County Auditor and asked whether this would be sufficient for Open Records Law. Mr. Murai asked Mr. Taguchi whether the County Auditor's Office is the repository for the Commission. Mr. Taguchi replied that his office maintains a chronological binder, but would not necessarily state that it is the repository for all records. Mr. Murai noted that he would be concerned with maintaining government records on private platforms, including those kept in the commissioners' homes. Mr. Murai stated that there needs to be the repository and that this issue should be reviewed further. He added that the County Auditor's Office is very small and does not have the support staff to take care of all documents.

Ms. Pellegrino pointed out that any work that is done by commissioners on their personal computers or phones could be considered public records. Mr. Taguchi stated that the Auditor's Office keeps only one binder. He added that he agrees with Ms. Pellegrino's statement, so if a commissioner works on a letter on his or her own personal computer, it is subject to an information request, and the same for the Dropbox folder that is set up for Commission meetings.

Chair Williams stated that he, Mr. Taguchi, Mr. Murai, and Ms. Pellegrino could discuss the issue further.

Mr. Murai added that the Commission does not want to lose its institutional knowledge as commissioners come and go, so records retention is important.

Chair Williams asked how the agendas and minutes are posted onto the County's website. Ms. Pellegrino stated that when she uploads and posts the agenda or uploads the minutes, those documents are automatically linked to the Commission's webpage. She explained that other changes to the website, such as a change in Commission membership, or the addition of the annual report, are done by the County Auditor's staff.

Commissioner Werth asked whether this and any future discussion regarding County communications would need to be added to the draft communication plan. Chair Williams responded that he thinks requests for information or meetings should be held as a public record and he has folders in his computer for each investigation. He is unclear as to whether copies of these letters should be held by the County Auditor's Office. He thought the Commission could continue the discussion at its next meeting.

Returning to the discussion of the CIP projects, Chair Williams stated that he invited a former NASA engineer to the June meeting to discuss his proposed pilot project for eliminating wastewater using algae.

XIV. DISCUSS SCOPE OF INVESTIGATION INTO WILDFIRE COSTS AND RESPONSIBILITY OF PRIVATE LANDOWNERS (COMMISSIONER HEISKELL, COMMISSIONER O'NEIL)

Commissioners O'Neil and Heiskell distributed a draft scope of investigation. Commissioner O'Neil stated that the TIG would like to review the threat assessment and what can be done to reduce the risk of wildfires. He explained that the investigation was broken down into three sections: (1) an historical analysis of wildfire frequency and damage; (2) an analysis of current firefighting response capacity and what changes might need to be made; and (3) an identification of best land management practices for wildfire prevention and cost reduction should a fire occur.

Commissioner Heiskell thanked Commissioner O'Neil for his work and noted that the summer of 2020 is projected to be extremely hot and the fire risk is great.

Commissioner O'Neil moved to approve the proposed parameters and scope of investigation, and Commissioner Mattson seconded the motion. The motion was approved unanimously.

XV. UPDATE ON INVESTIGATION INTO PRIVATE FINANCING OF THE WAILUKU PARKING GARAGE VIA OPPORTUNITY ZONES (CHAIR WILLIAMS)

Chair Williams stated that he had not received a response to an earlier email to the Managing Director and Budget Director, and that he had followed up via formal letter. Managing Director Sandy Baz responded and stated he would send a response within two weeks. Chair Williams thought the investigation would be short because private financing either will or will not be allowed.

XVI. UPDATE INVESTIGATION OF INFORMATION TECHNOLOGY ISSUES (COMMISSIONER SIMMONS)

Commissioner Simmons stated that a silver lining of the pandemic is that the County has the ability to step away from some of its rigidity with respect to technology. She stated that she would like to create a list of areas where going online has led the County to be more efficient. She is waiting for the pandemic to slow down a little first.

XVII. DISCUSS TOPICS TO REVIEW AND ESTABLISHMENT OF TEMPORARY INVESTIGATIVE GROUPS (TIGS)

Discussion and possible action regarding the establishment of Temporary Investigative Groups (TIGs) to review and investigate the below listed subjects, appointment of members, and setting of the parameters and scope of the investigation and review.

- Residential Trash Service in Maui County

Chair Williams stated that Commissioner Barbadillo was willing to review the issue.

Madge Schaefer reiterated her earlier testimony that the County Council might be reviewing the issue immediately with a broader scope, including automating all County billing. She thought the Commission might want to hold off on initiating an investigation to avoid a duplication of efforts.

The Commission deferred discussion until its June meeting.

- Homelessness Issues in Maui County

Chair Williams stated that she and Commissioner Werth are interested in reviewing the issue to see if they can get their hands around it. Commissioner Werth added that she would like to start looking at what the scope of investigation might be, and anticipated that the process of defining the scope would take time.

Commissioner Mattson moved to approve homelessness in Maui County as an investigative topic. Commissioner Heiskell seconded the motion. The motion was approved unanimously.

Commissioner Lankford-Faborito volunteered to assist Commissioner Werth and Chair Williams with the investigation.

Chair Williams stated the Commission could decide at its next meeting whether to create a TIG for the investigation.

- Other Potential Topics

Chair Williams requested approval to review the issue of a proposed Charter amendment to have a professional manager to manage most County departments and relieve the Mayor of many direct administrative responsibilities for operations. Chair Williams pointed out that the Commission previously reviewed the issue and issued a report, but it was on a different form of the ballot measure. He added that a number of

community members have asked the Commission to review the matter and provide an estimate of additional costs, as well as any potential advantages or disadvantages to the County should the measure pass.

Commissioner O'Neil moved to approve the investigation into the professional County manager Charter amendment, and Commissioner Mattson seconded the motion. Commissioners Barbadillo, Heiskell, Mattson, O'Neil, Simmons, Werth, and Chair Williams approved the motion. Commissioner Lankford-Faborito abstained. Vice-Chair Del Rosario was excused.

XVIII. DETERMINE NEXT MEETING DATE AND AGENDA

Commissioner Mattson stated that she would be resigning from the Commission because she will not be able to attend meetings once she is called back to work. She expressed her appreciation to the Commission.

The Commission's normally scheduled meeting date is Kamehameha Day. Consequently, the next meeting is scheduled for Friday, June 12, 2020, at 11:00 a.m. via BlueJeans teleconference.

XIX. ADJOURNMENT

The meeting adjourned at 11:25 a.m.