

**HAWAI‘I COUNTY BOARD OF ETHICS
MINUTES – REGULAR SESSION**

Wednesday, March 16, 2022

10:01 a.m. to 12:53 p.m.

Hawai‘i County Building

25 Aupuni Street

County Council Chambers

Hilo, Hawai‘i 96720

Members and Staff Present:

Larry Heintz, Chair

Amy Self, Vice Chair

Denise Nakanishi, Member

Kelly Valenzuela, Member

Erick Allende, Member

Malia Kekai, Deputy Corporation Counsel

Liza Osorio, Secretary

1. CALL TO ORDER (10:01 a.m.)

Mr. Heintz called the meeting to order at 10:01 a.m.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:02 a.m.)

There were no statements from the public.

**3. APPROVAL OF THE REGULAR SESSION MINUTES OF DECEMBER 6, 2021
(10:04 a.m.)**

Motion and Vote: Ms. Self moved to approve the minutes, subject to corrections. Ms. Valenzuela second the motion. All members voted aye. (10:06 a.m.)

4. NEW BUSINESS (10:07 a.m.)

- a. **Petition 2022-02: Review of a Petition from a County employee requesting to volunteer on a County of Hawaii Board or Commission.**

*** Petitioner was not yet present, Board moved on to Petition 2022-03 ***

*** The board returned to item 4a at (10:25 a.m.) ***

Mr. Andoh: Aloha Board of Ethics commission members, I’m John Ando, I am the Mass Transit Administrator for the Mass Transit Agency here at the County. The question I’m posing is, is there an opinion in relation to County employees, County directors serving on County boards and commissions? In previous roles as transit director in

other jurisdictions where I've worked at, I have served on various boards and commissions as a private citizen and also as the employee of the entity on County boards and commissions. There's some County boards and commissions I'm interested in applying for, for my, on a personal level, not as a representative of the County so that's what I'm here to see.

Mr. Heintz: Member Self you had a question I believe?

Ms. Self: Yes, which boards or commissions are you proposing to apply?

Mr. Andoh: I believe it's Committee on Aging, Liquor Commission, those are the two that come out on my mind...I was looking at the available vacancies on the website for boards and commissions and I was just looking at ones that just seemed interesting that I would like to provide community service on.

Ms. Self: Do any of those that you're applying for even remotely have anything to do with Mass Transit?

Mr. Andoh: Not necessarily.

Ms. Self: Not even aging?

Mr. Andoh: Aging, we don't have any contracts with the office on Aging nor do we do any direct services with them. That's normally done through the department of Parks and Recreation. So we may interact with them as it relates to seniors using Hele On, but beyond that...we don't have any direct contracts. I can tell you from my previous experiences in other jurisdictions where this has occurred, like if there was an issue where the transit system was on their agenda, I would normally recuse myself from voting on those issues.

Ms. Self: Okay, thank you.

Mr. Heintz: Other members of the board have questions for Mr. Andoh?

Ms. Valenzuela: I have a question. So Mr. Andoh, so when you served on other boards which I think is commendable, did you have to take personal leave?

Mr. Andoh: No, I did this during, on my off times and if I, if the meetings were held – normally these meetings were held in the evening time, after my employment with whichever agency I was working for, but if they were during the day then yes I would take personal leave like

either vacation time off so that it did not affect my work for that entity. Cause I'd be doing this as a private citizen. Not as a employee of the County.

Mr. Heintz: Other questions? I have a couple comments to make. With regard to whether the County or whether there's any conflict with a County employee being members of these commissions. The Charter, Chapter 13-4 talks about boards and commission and memberships and I see nothing in that section that bars County employees from serving on boards and commissions. There is, I'm not familiar with all the boards and commissions but I started looking at them in the Charter and some of them have more specific requirements that are laid out in Chapter 13.4...I'm talking about page 53, section 13-4 Boards and Commissions. There's a article 13 of the County Charter, provides general provisions. And under that General Provisions section is 13-4, Boards and Commissions. So that's what I'm talking about. I find nothing in that, that would bar a County employee from serving. I just wanna let you know that some boards and commissions have residency requirements so the membership is distributed by the 9 districts but not of them have that. Another thing I just wanna bring to your attention is this board and I'm not familiar with most of the boards but the planning commissions, specifically the leeward planning commission sometimes have meetings that go for 6 hours or more. And this board, the meeting is during the day so you may have to realize that you should look into that to make sure that this may not just be a matter of a couple of hours in off duty times. And then finally you say you're gonna do this in your free time, but if there were questions about compensation may be raised, that is addressed in the section on boards. So you just be aware of those, there may be some issues that you may not have anticipated unless you look at that. Okay?

Mr. Andoh: Yeah, I previously, I agree with you. I previously served on a Planning Commission for a city once before and sometimes those meetings went 4 or 5 hours, but they were generally in the evening time.

Mr. Heintz: I know ours, the leeward planning commission is also during the day, at least some of the meetings are. But maybe either of our corporation counsels have experience with that...

Ms. Kekai: All boards and commissions meet during the day, except for, with the exception of the Games Management Advisory Commission. But everybody else is.

Ms. Nanakishi: I know the Liquor Commission and (?) back and forth, you know Kona, Hilo, and I think they pay mileage right? So...It's pretty long.

Mr. Andoh: I did wanna answer that I found my list that I have pursued. It's Committee on Aging, Salary Commission and Leeward Planning Commission, and Liquor Commission, were the 4 that I expressed interest, for the Council district that I live in.

Ms. Self: All those take place during the day time. I would foresee a problem with you working as a director of a department and then taking off to go to a board or commission meeting and also see the opposite if you cannot leave if something is going on at mass transit that you've got to be involved in, then the board or commission is gonna suffer because a lot of times you have a problem with quorum when people can't attend. We've had that problem a lot, with boards and commissions not having quorum. So you may want to think about that because I just don't see any way that a director of a department could take that much time off during the day to go to a board or commission meeting.

Mr. Andoh: And to be honest when I was looking at this, just because of my experiences on the mainland, a lot of these meetings occurred after hours. So to hear that these are happening during the day time, yeah I definitely would have to look into each of the commissions. Like how much time commitment, maybe talk with those commissions to understand, to see cause if it's like, let's say it's an hour meeting, I'm just talking hypothetically saying for like the smaller commissions, and it's like during the lunch hour, that's not a challenge. But I do agree with you like if these are 4, 5, 6 hours meetings like twice a month, during the day time then yeah, I can't be requesting County time off or, dealing with, acting as a private citizen on these commissions. I just wouldn't have the time.

Ms. Self: Yeah I don't ever recall any board or commission getting their meeting done in an hour. There could be one occasionally I guess.

Mr. Andoh: I could tell you our transportation commission we do in an hour...

Ms. Self: Oh really? Wow, goodness.

Mr. Allende: The only thing I have a question of is, I understand you're saying you would get the time off but I'm just, it brings to mind who would be approving the time off and then is it becoming a situation that now is it yourself that's able as a director to schedule yourself off for these meetings or and it may look like it to another

employee that it's being taken advantage of in that position to get that time off for a personal matter.

Mr. Andoh: My understand is that generally directors get time off approvals from the managing director. So that the managing director is aware if the director is out or not. So if I was to do that, I would get managing director's approval. And I would also disclose that, let's say I was appointed, I would disclose that in advance to the managing director so that he or she is aware.

Mr. Heintz: Okay are there any further questions for Mr. Andoh. Hearing none, thank you very much for coming and speaking with us.

Mr. Andoh: Thank you for having me.

Mr. Heintz: Welcome. Any further discussion, well maybe we should have a motion before we move to any further discussion of this. Is there any member who would like to make a motion. The chairman is prepared to make a motion...

Ms. Self: I don't think we can give a blanket opinion because if we say it's okay for him to do this and then he does it and then it becomes a conflict, I don't know...

Mr. Heintz: I agree with you, I think there are concerns. If I were to make a motion, I would make the motion that there's nothing in that chapter that I referred to 13-4, that bars a County employee from being on a board or commission but so that would be the motion but part of the motion would also go on to say that the Board of Ethics, members of the Board of Ethics raised several concerns that raised questions about whether or not one could perform ones responsibilities, both as a employee and as a commissioner. Because our experience is that they're often meetings that go on for many hours and I also have piles of paper, and almost all of them in the experience of the members of this commission would happen during the day time. The ethics committee is usually 2-4 hours and we've had meetings that have gone 6 hours. And the Leeward Planning Commission goes on and on...so we would be concerned. So if I made a motion, that's the kind of motion I would make. In other words though the charter does not bar this, we see this is fraught with difficulties for being able to perform these functions. Something like that. Amy is that, I mean I don't know how else to do this. The only thing I have in writing in terms of what we would look at is nothing bars a member or employee from serving on a board or commission except the existential

reality is that time and one of the concerns that board member Self has raised is possible conflict in your role as a manager in the transportation, mass transit area. We're just having a discussion amongst ourselves about the motion we're debating on making.

Ms. Valenzuela: Can I say something?

Mr. Heintz: Yes, yes please.

Ms. Valenzuela: I was just gonna say I think it's commendable what you're trying to do. My only caution to you is that you're a director so your responsibility is so much more than an average employee. And I know for myself, who does real estate, who works part time in my husbands office, who lives on the other side of the island, this asks for a lot of my time, it's not just the meeting. It's the 4 hours of driving, it's getting all the paper work, it's studying the case, it's understanding the background. And then I'll put a whole day, this is a whole day so I can't do anything else really on that day and I don't know, I'm not in your place with Mass Transit but I can't imagine as a director, already I'm sure it's so much of your time that though it's so commendable to wanna serve on the board, I think that's so amazing, it would be a challenge. And not only this commission, the Leeward Planning Commission, goodness, I mean that's the one, you know it's very complex and they have a lot of stuff so that's all I would say. I'm honored and so thankful that you would want to. But If I was your friend, I'd be like whoa dude, that's like a lot.

Mr. Heintz: Member Self you have a further comment or question?

Ms. Self: I just thought of something else, often times we have emergency situations like tsunamis and lava flows and hurricanes. We have the gambit of everything on this island as far as natural disasters go. And the Mayor will all of a sudden, call for a meeting, for an emergency meeting over at Civil Defense. You as a director will be required to be in that meeting. So what if you're in a board meeting at that time, you know? You just have to leave. So I see that as another problem too – it may be a little different if it was just an employee but you're the director of the department and that's a real large responsibility.

Ms. Nakanishi: I think our...we just have to just weigh in on the ethical part and it's up to the Mayor whether he wants to appoint him once he applies and those would be considerations that would come under that, at the point, I think...

Mr. Heintz: Mr. Andoh go ahead.

Mr. Andoh: All I just wanna add is I don't disagree with you on that. I guess when I'm looking at it from the time point, as the end of the day since I'm doing this as a private citizen and I recognize that I'm in a high level official position, it's all about how I elect to do my time management. So if I feel I'm able to manage the (?) of a agency as well as do these other ancillary activities on the side if it doesn't conflict with my roll as a director. I guess I would just leave that to myself and the reason why I say that is, I've done this before in other jurisdictions where I've served on Planning Commissions, Airport Commissions, Transit Commissions, Transit Board of Directors, as a director of an agency of similar size, and I was able to manage that effectively, so that's all I'm saying.

Ms. Self: And those meetings were held at night right?

Mr. Andoh: Those meetings were held at night, but they did have 3-4 hours, they did require in depth review of documentation, but I was able to balance it so, that's all I'm saying. The ones, the commissions that I would pursue, I would do some additional research to see when do they meet, how in depth are they and then I can assess at that point if it makes sense for me to even pursue but at the end of the day it would be if the Mayor to elects to even appoint me and recommend me to Council. So I think I need to do some more research on some of these commissions now that I know most of em are during the day to understand how...and I recognize County of Hawai'i is different than other jurisdictions on the mainland. To even see if I have the capacity. But I just really wanted to understand if I can legally do it or not.

Mr. Heintz: Mr. Andoh, maybe you can help the board. The only motion I'm comfortable with making...

Mr. Allende: Well I was just gonna – in regards to Mr. Andoh's petition, so the only thing you really need from the Board of Ethics is the clarification of whether or not a County employee or managing director or director would be able to hold a position on a commission.

Mr. Andoh: That is correct.

Mr. Allende: I think he's helping us out by giving us some clarification of what type of motion we would need to be making.

Mr. Heintz: Well yeah, legal counsel has a comment to make..

- Ms. Kekai: Sorry just a clarification again, what were the commissions that you said and boards sorry, Aging, Liquor, Salary and there was one more? Oh Leeward Planning Commission
- Ms. Andoh: But I looked at these just based on the high level fact sheet. I haven't like gone into the weeds to understand the level intent, which I can do before I formally submit an application to the Mayor's office.
- Ms. Kekai: Yes, just my suggestion to the board would be to simplify and look at each board and commission, because like Salary for instance, Salary Commission I don't think that he would be affecting his own salary but that's something that would be a conflict. So it might be a simpler break down to do each board or commission.
- Mr. Heintz: Okay, thank you. Mr. Andoh where I was going is I was about to say that maybe you could help the Board by withdrawing your petition. And doing your research and seeing whether or not you need to ask a question again. Or we can go ahead and make a motion, the only motion that I can see making is that there is nothing in Chapter 13-4 that bars a County employee from being on a board and commission. And we could make that as a motion and 2nd it, but I would add all these caveats that we do have reservations about it but those are just advice and practical questions I guess like Denise is suggestion that the Mayor and those who would look at your...so you could either withdraw the petition or we'll make a motion.
- Mr. Andoh: I actually like your approach, cause your approach answers the question that I'm asking. I can make it a 2nd tier and I could come back after I go back cause the list is constantly changing so when I started investigating this, this was late last year so those commissions may not even be available. So now once I get your answer today I can go back to the list and then I can see which ones I'm truly interested in and then I can come back to the Board and say these are the ones I'd like to pursue. Does the board have any concerns with relation to conflict of interest as a Director, me serving on those commissions. But I really wanna get the big question answered, can County employee or director serve on board or commission, and I know it's a broad question.
- Ms. Self: It would depend on which board or commission because like for Instance, Malia brought up the Salary Commission, well under section 2-84 of our Code of Ethics, a person who serves on a board cannot have a substantial financial interest. That Salary Commission is who determines the salaries of the department

heads, so that would definitely be out, Salary Commission. So that's why we're having trouble cause we don't know exactly which board we're looking at...

Mr. Heintz: So I guess to rephrase it, what I'm asking is that you might consider withdrawing this petition and if you want to petition for information, specify the particular boards or commissions you're interested in and - upon further assessment or realistic for you.

Mr. Andoh: I'm still comfortable with your original approach cause I just really want to know the answer if a County employee can just serve on one. And if there's reservations I can respect the reservations but I'll still come back from a conflict standpoint.

Mr. Heintz: And as Denise pointed out, the charter I'm talking about, Chapter 13-4 lays out the requirements for all boards and commissions and there's nothing in there that bars a County employee to do that. But that's not really an ethics question. So, I guess...

Mr. Andoh: (to Ms. Bartolome) Since you're the boards and commissions person, does that answer the question, at least the first part?

Ms. Bartolome: Yes.

Mr. Heintz: Yeah so just a point of information and I don't see any need...so I'm gonna move that we dismiss this petition. Do we have a second?

Ms. Self: Second.

Motion and Vote: Ms Heintz moved to dismiss the petition. Ms. Self seconded the motion. All members voted aye (10:49 a.m.)

*** * The Board took a 10 minute break. * ***

*** The Board returned to item 4c (11:00 a.m.) ***

b. Petition 2022-03: Review of a Petition from a County employee seeking guidance and clearance on the Mayor' s office accepting donations for disbursement into the local community for two separate events, (1) towards children of Child and Family Services, and (2) vulnerable elderly through Hope Services Hawai'i. (10:09 a.m.)

- Ms. Bartolome: Aloha. For the record, Pomaika'i Bartolome, Executive Assistant with the Office of the Mayor. I am here this morning to gain clarity and clarification on a, just potential, possible conflicts of interest. There are a couple of donation drives that I want to have and you have that in front of you, the information...and it's to ensure, mostly safeguarding our employees. I know as a community oriented person myself, being involved in community and knowing the needs. That it's important to give back. But again, I wanna be sure that when our employees see these opportunities, that they know that it's okay. So I'm here morning again, oh and, really important to know. I did have my first Board of Ethics training, hence the reason that I'm here this morning. So, again you know, as an administration we talk about accountability, we talk about responsibility, transparency, and so again, I am here just to provide that to our County as we hopefully continue to give back to community in this way.
- Mr. Heintz: Okay are there any questions from the members of the board about the proposal or did you wanna say anything more about the proposal?
- Ms. Bartolome: Unless you, would you like me to share about the events that I have? Or general questions pertaining to...
- Mr. Heintz: Well let's see, where this goes with questions from the Board.
- Ms. Valenzuela: Just for clarification, so we can understand, the donations are coming in to where? And then who would be the people facilitating, I think it's amazing with the community. Giving back is always amazing, I'm 100% for that. But just so we know the trail.
- Ms. Bartolome: Okay, so again, I work, I'm an executive assistant to the Mayor so this would be coming from the administration, out of the Mayor's office. Unless putting it out there, somebody else wants to take care of this kuleana. But it's coming from the Mayor's office and the first event that we have is the pre-filled easter baskets. And we're just asking if employees want to donate a pre-filled easter basket, I've identified Child and Family Service, which is a private, non-profit organization that's been around for many, many years that services families and the development of children and I've identified that because, well not just because of their mission and purpose but I have a personal story. When my older brother who's a veteran, he retired, well actually my oldest brother retired from the Marine Corp, but my youngest brother did 4 years. But he did 4 years and he went it, he went in during...he went in back in

the early 90s, so Desert Storm was happening during that time. And when he got out he suffered and still does from PTSD and has been incarcerated. And the first time he was incarcerated I became a foster parent to my nephew, his son. So when I was trying to identify the needs and especially our youth, our children, as an administration, the Mayor's philosophy is to provide a place and space, an island where our children can raise their children and treating with respect and dignity, and how we want our family members to be treated and so, that's the reason why I identified child and family service. And we're just asking our County employees if they want to, they don't need to, go ahead and donate a pre-filled easter basket and we would deliver those Child and Family Service.

Mr. Heintz: Are there any other questions from the board?

Ms. Self: And it's also, like you're sending out a flier the employees right to say that, you indicate that it is voluntary, right, to the employees?

Ms. Bartolome: I'm not sure that I have that verbiage on here.

Ms. Self: I would just make sure that you indicate to the employees that it's on a voluntary basis, so they don't feel pressured to do it.

Ms. Bartolome: Okay. Yeah, that's a fix.

Mr. Heintz: I just have a couple of questions, or maybe one. The question that you're raising is, might there be a conflict of interest. Can you identify who you're concerned about that might have a conflict of interest?

Ms. Bartolome: No. Just nowadays you never know, and so that's the reason why I wanted to come in front of our Board of Ethics, so that if you could identify or think of any possible conflict of interest. I just wanted to avoid that and then also again, just point out that, as an employee myself, I anticipate doing more of these. I would like to and I know that there's a potential that, you know, other employees might want to step so I wanted to provide them that safeguard.

Mr. Heintz: Maybe I can follow a bit. So I'm imagining, these baskets are being filled and they're being delivered to the Mayor's office or your office...

Ms. Bartolome: Yup, in both east and west Hawai'i...

Mr. Heintz: And then you distribute them to needy children? Is that right?

Ms. Self: No they aren't the distributors...

Mr. Heintz: ...no, they're not the distributors...

Ms. Self: Family Services are...

Mr. Heintz: Family Services...

Ms. Bartolome: They will come and pick em up and they will distribute.

Mr. Heintz: They will come and pick them up?

Ms. Bartolome: Yes.

Mr. Heintz: Okay so...I mean since it's an election year. I'm just wondering if any elected officials will be involved in that...Okay they're not, good. Okay. That answers it. So I can't think of anyone who would have a conflict of interest, who's a County employee or officer of the County.

Ms. Self: The only thing that could've been a conflict I just clarified with her is that, there could be a conflict if it wasn't made clear to the employees that it's voluntary. That would be a conflict. So she's gonna take care of that.

Mr. Heintz: And there are two different programs here that we're talking about right? This one and then there's one to do with housing...

Ms. Bartolome: Yes. So the other one is design contest through HOPE services. There were, HOPE services and Sacred Hearts Catholic Church in Pāhoa. They erected several homes, I'm not sure exactly how many during 2018 Lava Recovery Period and they've cleared out another portion on that same property for 12 micro-units to provide permanent housing to vulnerable Kupuna. And so I thought it would be a great opportunity for County to get involved, or County employees to get involved, again, if they choose to, to donate items. These units are really tiny, so I mean honestly, one person could provide what's needed in the one unit. But again I thought that it would be a great opportunity for us to be able to step up and just kokua and help in this area. And there's a list, I believe you got a list of some of the items. And really it doesn't need to be brand new items, it could be lightly used items that we're asking to donate.

Mr. Heintz: Any other questions about this?

Ms. Valenzuela: I just have one more question, just cause I thought, you know, you think of potential that might come through. So I'm familiar with CFS, Child Family Services, so if you guys have a whole bunch of baskets, would you guys allow, let's say HOPE services came forward or Catholic charities, I mean there's tons of other organizations as well, the Women's shelter, right? I know it's not turning point for families anymore. I think they're under CFS as well. But would that also be allowed, would you guys also allow if another group came forward and said 'hey we have underprivileged children as well', you know if you have extra or whatever.

Ms. Bartolome: Yeah sure, I mean I don't see why not.

Ms. Valenzuela: Okay, cause I just thought it my mind...

Ms. Bartolome: If I could provide everybody, I definitely would. But absolutely, where the need is, we wanna try to fill that gap as best as we possibly can.

Ms. Self: I really don't see that this is any different from United Way drive that the County does every year. They send out the stuff to the employees, the employees know it's voluntary, you don't have to give if you don't want to. So that's what I would correlate it with.

Mr. Heintz: Yeah the section of the ethics code is more concerned about employees and officers of the County receiving gifts inappropriately, and this is giving gifts. So, any other questions or can we move on?

Ms. Kekai: Pomai, these house goods are given to HOPE services, will they stay with the person or would they stay with the unit? Do you guys know if it will be going to the organization or the person.

Ms. Bartolome: No, so the organization would identify someone to come and pick up all of the baskets...

Ms. Kekai: Sorry I'm talking about the housing one...

Ms. Bartolome: Oh the Kupuna units?

Ms. Kekai: Yes.

Ms. Bartolome: What was the question again? I'm sorry...

Ms. Kekai: So people are providing household goods or decorations or whatever it maybe, is that going to HOPE and then they would keep it...

Ms. Bartolome: No, so we would actually physically have to go there and design the whole unit. So it's like our design that we're providing to this Kupuna.

Ms. Kekai: Okay, got it.

Ms. Heintz: Okay is there a member who'd like to make a motion?

Ms. Nakanishi: I'd personally like to support both efforts so I'd just call you or do I need to call them separately?

Ms. Bartolome: Yes, please, you can give me a call, thank you. And again, for the record, I just want our County employees to be held to the highest ethical standards. That's the reason that I'm here this morning and

to know that, especially when we have drives and efforts like this, yes we want them to get involved, however I understand that we have procedures and I just want them to feel – because I know, everyone sees needs every where and I think that it’s important that our County employees have the opportunity to help in this area. And you know what, it feels good to be able to give back. And I believe productivity when you give back you produce more. And you also add to the quality of life and again thank you for this opportunity, thank you for clarification.

Mr. Heintz: Okay, thank you. So does anyone have a motion they’d like to make?...I can make the motion if...The motion is that the Board of Ethics sees no violation or problem with a possible conflict of interest, section 2-84, nor do we see a problem with section 2-91.4 (gifts). And that’s the end.

Ms. Self: Second.

Motion and Vote: Mr. Heintz moved that the Board of Ethics sees no violation or problem with a possible conflict of interest, section 2-84, or section 2-91.4 regarding gifts. Ms. Self seconded the motion. All members voted aye (10:24 a.m.)

Ms. Kekai: Sorry Chair, just for clarification for my own sake, will your opinion be specific to just these petitions and not go broader to all donations or...?

Mr. Heintz: No just these, because we don’t know the details of any other...

Ms. Kekai: Sounds good, thank you. Just wanted to make sure.

*** The board returned to item 4a***

c. Review letter from Council Member Sue Lee Loy to the Board of Ethics regarding a request to expand their membership.

Mr. Heintz: This is, what it says it is, a discussion of a proposition and Council member Lee Loy is with us and she is, everyone has her letter and I would just suggest we have an open discussion after she presents and then we’ll mull this over and thank you for coming, and the floor is yours.

Ms. Lee Loy: Thank you Chair, member of the Board. Sue Lee Loy, Council member and thank you for agendizing my letter of March 4th. As outlined, I heard a board member mention about all the work that has to go into all of our jobs on boards and commissions and I just feel like today is actually boards and commissions. I did wanna share, as a member of the Council, we advance the names that sit on the boards and commissions so we get to screen a lot of the applicants and often times we do ask the question, how committed

are they to serving on a board and commission and they always respond yes I will make the time and then we watch the agendas and for whatever reason, life happens, and there's inability to make quorum and this board has had their challenges too. And so as I began to dig in a little bit and find out, how these boards and commissions were set up. I found rather interesting that this particular board only has 5 members and it was actually framed up back in 1968 and we are now here, in 2022. So as I advanced this letter and its found in my letter, I didn't wanna advance something without giving it some thought, and just did some census information which is found in my letter and also what other boards and commissions on other island do. So City & County of Honolulu, Kaua'i and Maui, who actually started just like us with the 1968 framing of their Board of Ethics, have expanded their membership so I just thought it would be a worth while conversation for the board, as a side note I do wanna share, this would require a charter amendment to expand your membership. Ms. Self knows this, when I advanced a charter amendment for another board and commission it wasn't well received at first. And so I thought this was better to ask for permission and allow you folks to kind of advance what you folks need. I also have available to you folks, a letter from our County clerk dated December 10th, 2021 which talks about the ballot deadlines and submission if this board chooses to make that charter amendment. And the timing and the back mapping that would need to be considered. So if it's okay with you chair, I will share this with your corporation counsel and you guys can have this. And if you have any questions, I'm here to answer what I can.

- Mr. Heintz: You're going to stay with us and we're gonna have a conversation with her, I think. Did you wanna continue or are you...? Okay.
- Ms. Lee Loy: Yeah thank you for your time.
- Mr. Heintz: Okay, so I would just, we'll have a fairly open discussion of this proposal or suggestion and just whatever the board members, what their thoughts are I have some that I'll share as well, but Amy it looks like you're ready for..
- Ms. Self: How many members do all the other islands have?
- Ms. Lee Loy: Either 7 or 9. And my letter notes that its City and County of Honolulu and Kaua'i that currently have 7 members and Maui sits 9 members. How they got to that number I did not do that research. I based my research on some of the existing information when the Charter was framed up, what the census data was and what other

counties were doing.

Mr. Heintz: Other comments, Erick?

Mr. Allende: Did you have a particular that you would like to see?

Ms. Lee Loy: I did not, I really wanted to have you folks have this discussion.

Ms. Valenzuela: Thank you for saying, I totally agree, even I myself this past year having covid then I got sick I had pneumonia, kinda crazy. But the chances of us not having a quorum with just the amount of members we have right now are so high. So I think it would be a really good idea to have 7 or 9. I mean I know that sometimes people feel the more, the more pilikia, maybe headaches and you know trying to work it out but at the same time trying to serve the public and to be able to hear what they're saying and to be able to vote and have a quorum, the bigger the number, I think that that's a really good thing. And I know when I first came on I was like 'wow there's not a lot of us' cause I was used to the Board of Appeals where there's kind of you know, several of us, but...yeah.

Mr. Heintz: Yes, back to Amy?

Ms. Self: I think I would go for 7 just because I know how difficult it is to get people to volunteer coming from the administration side. I know the Mayor's office always has problems, has a hard time getting people to volunteer so I would actually go for 7 rather than 9 members.

Mr. Heintz: Okay I have several things I wanna share. I've now been on the board for three years, in those three years we've had one meeting, in fact it was just recent meeting in which we only had 3 members present. The rest of the time we've always had 4 or today is actually unusual we actually have 5. So we've never failed to have a quorum in the last 3 years. The other thing I'd like to mention is that we have a for at least half of time, only had 4 members. For whatever reason, when Mr. Goodenow left the board it took a while to get his replacement and people basically are going off the board every year so you have a new person added every year so we've never really filled...only recently have we made it to 5. I can share another, going on a different tact, we have dealt with a few heated and exciting topics like the Mauna Kea access road when this room had 60 people many of whom were shouting at the same time and it would've been more comfortable to have 7 or 9 instead of 4. And then of course the other is the idea of dealing with 9 or 7 cats rather than 5, these are enjoyable people, but I'm

ambivalent about this, I would be happy if we always had 5 people present and maybe a way to get that is to have 7 members. I don't know how. But you know, it's double edged I think...like for instance in May I will not be here because of travel, people often go, and the old amongst us go for a long time at a go. And I'll be gone for 5 weeks. So other thoughts? Those are just some of my thoughts and you can join in. You've been on council, so you know what committees are like.

Ms. Lee Loy: First of all it's an honor to sit here and walk you folks just have this conversation, I will refrain from what number I think. But whatever number you folks do choose, I also...charter amendment will also require what's known as a fiscal impact statement and so we would have to evaluate what that would mean. If you added 2 more members or 4 more members and what the cost would look like, with that charter amendment. That information would need to be provided as if this body does so choose, be advanced for further input by the public along with that fiscal impact statement so there is a comprehensive understanding as to what this change would affect.

Mr. Heintz: Council member Lee Loy, so this body would be the one recommending the charter amendment? If we again tried to get you to carry the water, to throw it right back to you and say we're open to this change but we don't wanna go through and nor do we have the resources to put together a study and gather this information. So it'll all fall on our corporation counsel or somebody like that. So that's just, I'm asking. But I have on a different point, another question. One of the difficulties that I have found since I've been on this board is with the Sunshine Law. I'm an advocate of the sunshine law but it has some I think maybe unintended consequences but this board with only five members. We are unable to talk to one another about any topic that comes before this board in private. If we expanded this board to 7 then I take it we could, is it correct there's an approved, I know it's a bit controversial because of the district election assignment. They had a sub-group of 4 people who met and drafted, and I know that the County Council, since it has a larger number can meet in smaller groups and then do some of their homework and get their stuff together and propose to the whole board. We have to do everything, right out front. I mean I've been told by...pardon me?

Ms. Self: Any board or commission can create committees that are less than the number of people under Sunshine Law. It has to be a fewer number than the quorum. So here our quorum would be 3 right? So you can have a committee of two. Depending on what you wanna

do you have to describe what you're gonna do...

Mr. Heintz: I mean, I have had this discussion with Mr. Yoshimoto about trying to have a sub-group to kind of talk stuff through to make proposals and stuff and it was pretty much always shot down. But with 7 we would be able to have like a group then of 3. Is that right?

Ms. Lee Loy: I see your corporation counsel nodding. And so, yeah a permitted interaction group, all of that definitely would be something I would be more than happy to help sponsor for you folks for this board, however that's just definitely some heavy lifting that would have to be done amongst the members and your legal counsel, as it relates to the charter amendment. It would be an honor to sponsor if you choose to expand the membership I would be more than happy to sponsor that for this body at the council level and advance that.

Ms. Nakanishi: Quorum aside, five members is based on the population, that's pretty low, very low. 7 is low, 9 is low...5 is really low.

Mr. Heintz: Other comments by other members? Any other questions? We're gonna mull this over awhile, then the next meeting agendaize and see if we have a consensus or? Does anyone wanna express a strong view, one way or another on this? Or are you ambivalent about this they way I am, including this small interaction groups, I see plusses & negatives about this.

Mr. Allende: Well one thing, you know like County council member Lee Loy's letter points out that now it says, what the census bureau is saying we have 200,000 on this island. Just a quick look up and I don't know how reputable the website was, it just points out that Maui says, with the latest census, it's standing at 169,000 people. So now we're gonna have about 31,000 more people on this island with a Council that has only 5 people on it. So to try to figure out where we should expand and how we should expand because between Oahu and Kauai we know there's greater amount of the state's population on Oahu but they sit at 7 so if we sis something along that so do something along that matter I don't see a reason why the expansion is something that should be looked at or frowned upon but something that could be beneficial for us to continue doing what we need to do to help the County in any way that we've been set to do.

Ms. Valenzuela: Yeah I agree with what you're saying cause I think 1968 was a long time ago, I was 9. I'm gonna be 63. That's number one.

Number two, we have to go forward and grow. This island right here I think Denise would probably agree with me as a realtor, it's booming. We are the island that they're looking to move to, not Oahu, not Maui, it's big island of Hawai'i. I mean on the west side, as a local girl of course you're torn, we like to have our little group of our ohana, but unfortunately many people love Hawai'i. They see the beauty and they're moving. So with that being said, really if we wanna serve the public we need to advance I believe strongly in expanding the number that we have right now. This isn't the same little Hilo, this is not that any more, the big island has exploded and so as it explodes our services need to explode. I think, just myself, my opinion, I would definitely say 7 as a minimal, as a minimal number. I definitely, if I could push to 9 I would push to 9. But that's my opinion.

Mr. Heintz: Well as chairman, and my experience on how things move, this really have no impact on me so the younger members of the board are the ones where this is gonna matter, this would be not dealt with until 2024, in terms of the next election. Cause it won't make it til 2022 right?

Ms. Lee Loy: Based on the memo from our County Clerk, there is a timeline if we do advance it, it would be based on this 2022 ballot and be ratified at that time. Again its how you, as a body, decide to advance this and just thinking out loud, along with you, if there would be any need to amend your own board rules to reflect that, if you need time for that adjustment, those are the thoughts that would have to go advancing this charter amendment to give you guys one time to either get it on the ballot, have it ratified and then adjust internally. Those are the conversations you would need to have.

Mr. Heintz: Yeah I'm a little confused on which election we could make it by. But I did defer to others.

Ms. Self: Well I think we could make it for this election. But I'm not sure what's involved in an impact analysis. I don't know, what is that? I've never seen one before.

Ms. Kekai: The financial impact analysis? I think I mean it's pretty minimal for this board, mileage, how much mileage you guys would put in, where those seats would come from, would they be at large? If it's somebody out in Ka'u they're gonna cost more, that kind of thing for mileage, but other than that I mean, I don't know if you guys get your documents printed or sent to you electronically, those are the kind of costs that probably would be looked at. Other than that

I think, those are pretty much the boards and commissions I think, printing and mileage.

Ms. Self: Lunch.

Ms. Kekai: Oh yeah, lunch.

Ms. Self: So that would be minimal. I don't think it's gonna take us long to get ready for 2022.

Mr. Heintz: Any further airing? Or can we move on?

Ms. Self: Can we put it on the next agenda and make a motion?

Mr. Heintz: Yes.

Ms. Self: Cause this really isn't for a motion is it?

Mr. Heintz: No it's not now, it's just discussion. So Liza will you assure it'll be on the next agenda or do we, I don't think we need to make a motion. We'll just put this on the next agenda. Agendize this item and I just wanna make it clear that council member Lee Loy has graciously said that she would do all the work. Okay, thank you. Thank you very much, the discussion is closed

5. UNFINISHED BUSINESS (11:22 a.m.)

- a. **Petition No. 2021-18: Review draft Informal Advisory Opinion of a Petition regarding a potential conflict of interest for contractual uniform alteration work done by Sew & Go a the request of Mass Transit Agency; the owner of Sew & Go is a County of Hawai'i employee (not employed with the Mass Transit Agency)**

Mr. Heintz: This is Tiffany Kai's Mass Transit Program Manager's petition about the Sew & Go adjustment to clothing and you should all have the draft that we voted on last time and we just are voting to say that this does reflect what we did, or not. So what it amounted to is item 11 on page 3, 'Chair Heintz moved that the board find that there's no conflict of interest under Hawai'i County Code section 2.84 Hawai'i County Code 2.83(c)(1), and 2nd that further indicated the intent was not to bar contracts with County of Hawai'i so long as all applicable rules, codes and procedures are followed and disclosures are appropriately made. And that really is what we did. Does anyone have any amendments or changes on this? I think that it's – I'm happy with it.

Ms. Self: I make a motion that we approve the informal advisory opinion for regarding Petition No. 2021-18.

Ms. Nakanishi: I second.

Motion and Vote: Ms. Self moved to approve the informal advisory opinion. Ms. Nakanishi seconded the motion. All members voted aye (11:24 a.m.)

6. CONTINUED DISCUSSION REGARDING AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF ETHICS AND THE HAWAI‘I COUNTY CHARTER AND COUNTY CODE. (11:25 a.m.)

Mr. Heintz: For those of you who weren't here last time, Member Self and I requested that we have a legal opinion by the Deputy Corporation Counsel about my proposal on the Code of Ethics to add a section on failure to discharge ones duties and responsibilities. The 2nd change was the addition of the section on the appearance of fairness doctrine and the question was whether those 2 proposals, either of them are in consistent with the County charter or consistent with the County charter. And we have received a letter from the Corporation Counsel, Cody Frenz, who was unable to be here today. So I guess we need a motion to just accept the report?

Ms. Kekai: I don't think you need a motion, I think you guys can just go on to, you know you guys have her opinion and now you guys can rule on your amendments I guess, that was what you were discussing?

Mr. Heintz: It says we're reviewing her letter so we are accepting the letter, does anyone have any comments about the letter? I do have some comments, but I can wait or...

Ms. Nakanishi: My question when I go through it, it looks like if you're an elected official, you pretty much gotta go to court to remove em, is that what she's saying?

Ms. Self: That you gotta go to what?

Ms. Nakanishi: That you gotta go to the circuit court, like when that Ruggles girl stopped going to meetings, it would've taken...she's saying it would've had to go to circuit court to have her removed? Or some kinda recall? I'm not sure. She's saying that we don't have any direct jurisdiction to bring and ethical...but I remember when we were going through that as a County, that comment was made that there was no way to bring her before the board of ethics.

Ms. Self; That's because, you're talking about an elected official? That's because the Charter provides a method for removing elected officials but we don't have the authority to do, it's not an ethical consideration, the person's not doing their job. That's a decision of the people who elect that person to decide whether that person is doing their job or not. So...

Ms. Nakanishi: I wasn't real clear...

Mr. Heintz: Okay, so if, if we added the section that I'm proposing, failure to discharge, section 2.83 then we would have authorization to state an opinion that someone like Council member R was in violation of her responsibilities to act or to do something and she refrained in that particular case. So we would, in that case what would happen if this section were passed is you could imagine that in that case the Ethics board would have said, yes indeed, she is failing to discharge her duties and that's a violation of the code that one has a duty to execute okay? And that's a violation of that section and we would send the letter, in this case it would have been to the County Council and the County Council would have had a letter from the Board of Ethics saying that Council person Ruggles was in violation of the Code of Ethics, period. Or somebody might be more robust and wanna say that we should do more than simply point this out. In ethics, often times, that's all one need do is point this out. For instance in the case of Mayor Kim, the Board of Ethics said that Mayor Kim **didn't** violate the Code of Ethics, and that was that. And so, in that case what happened is that made front page news and so in some sense morally or ethically the cost to Mr. Kim, Mayor Kim was the disclosure that it was the opinion of the Board of Ethics, unanimous opinion of the Board of Ethics that he had problems with violating the Code of Ethics. It need not, it wouldn't, you see it kinda depends on how excited the Board of Ethics gets. My own view is to express that it is in our judgment, an employee has violated the Code of Ethics, could stop right there. Or it could go further with some people want penalties, the County Council has authorized us to do penalties but then there are kinds of procedures one must follow. But one needn't do that. One can simply give a formal advisory or advisory opinion that there's the problem that they have failed because the way they discharge their duties involved unfairness, or the way they discharge their duties involved the conflict of interest. Or, in this case what is being added, is they avoided or omitted or didn't act and thereby failed in their responsibility and that too is a failure. In fact one might say that to not keep one's oath or promise is almost a paradigm of moral failure. And all that needs to happen here is that need be pointed out. And that would be the end the end of the

matter, until others, the Board, I'm sorry the County Council, or the voters might pick it up and go. So...

Ms. Nakanishi: But I have a question, in any event, somebody would need to bring a complaint to us?

Mr. Heintz: Yeah, in the case...well yes and no. Normally the normal course of events is that someone would, member or citizen or someone would, or a member of the County Council could've raised a question, is this a violation? Okay, and with this section it would be. Now the other option is the board itself can initiate an investigation, if no one comes forth with a petition the Board itself can initiate, okay. So that could happen. We have only in my time, initiated one complaint and one investigation, or tried to initiate an investigate but what happened was members of the community had a petition or complaint that was essentially the same and so we let them, we dealt with their petition instead of going forward with our own investigation. Because it was duplicative, unnecessary. So, there are many roads that can be traveled here. Now, I guess maybe I should add a little bit, these two proposals that I'm making, don't just come out of thin air, they come out of my experience on this board. The first one, the failure to discharge example, really arose out of...a couple of cases and situations. There is a difference of opinion by the last Board of Ethics and the Corporation Counsel's opinion about what is the jurisdiction, or scope on the role of this committee. And there's been a difference of opinion, and I think that difference of opinion remains til this day. So for example, in the case of Harry Kim, what the board was concerned about was 2 things: one was that he had a...was a question of unfairness because he was treating some members of the community different than others. The petitioners pointed out that he was involved with authorizing the paving of an area on the saddle where the protesters were and so they were being treated unfairly, were being treated special, they were getting special treatment. He was paving an area I think to get on their good side lets say in order to help with the negotiations, that's an admirable strategy. He also managed to make an agreement with them that he would notify them...

Ms. Kekai: Sorry, Chair point of order, we should really be focusing kind of on the amendments and their substance and their merit and not going too much into previous rulings and such...

Mr. Heintz: Council, that is exactly what I'm doing, I'm providing the background and this is right to the point. Thank you very much.

Ms. Self: Could you speed it up a little bit?

Mr. Heintz: No I will not speed it up. I don't recognize the objection. I've been waiting for two years to deal with this matter and one of the things that's happening, is there is only one person present today that was present when this issue came forward and that's Denise. Her first meeting on this ethics board dealt with this issue. And you know, it's like you're blindsided, you don't know, unless you get the background, so let me return to the background. So the problem was that there were objections, the basis of the complaint against the mayor, was that treating people differently and we had a section in the code that could address that. The other question and objection was that he was failing to do his duty to open the road. And these are arguable, these are complex issues but the point then was as County Council, Corporation Counsel Joe Kamelamela pointed out in a 10 page memo, that failure to discharge or omission or inaction is not a violation and the Ethics Board has no jurisdiction over someone who doesn't do their duty.

Ms. Self: That is correct.

Mr. Heintz: That's what he said in this thing. And so what was pointed out well, in other words, a employee or elected officer by omission or inaction could avoid an Ethics complaint. And so that seemed to be a void that should be fixed...

Ms. Self: May I point something out really quickly?

Mr. Heintz: Pardon me?

Ms. Self: May I point something out really quickly?

Mr. Heintz: Yes.

Ms. Self: The Charter, which is where we have our authority from Section 14-4 Conduct of Employees, the reason you guys are able to give an opinion for whether he was treating people fairly or not comes under part C. You have three things under conduct of employees that we can render a decision on whether or not there's an ethics violation. The first one is all public property and equipment are to be treated as a public trust and are not to be used in a proprietary manner or for personal purposes without proper consent. The next one is no person in supervisory capacity shall engage in personal or business relationships with subordinates which might intimidate said subordinates in the discharge of their official duties. Last one is all persons shall be treated in a courteous fair and impartial

manner.

Mr. Heintz: Right and so, what happened was the Board of Ethics came to a finding that the Mayor did not treat all people in a fair manner and on the other topic of his failure to discharge his duty all together, that there was no, provision for us to act on that and so the Board didn't act on that.

Ms. Self: Because the board didn't have the authority under the charter.

Mr. Heintz: That's right.

Ms. Self: Charter, not code.

Mr. Heintz: We are not in disagreement here, now what happened then is the Board unanimously held that the, a failure to discharge, or avoidance and omission or non-action is a violation of your oath .You took an oath to carry out your duties and responsibilities of the job. And you didn't do it and it turns out that's not an ethics violation. Now that seems odd because in other words, to violate your oath, not to keep your promises in not an ethics violation. Clearly those are paradigms of moral failures or ethics violations, they're just not in our code. So what we're asking in this is lets add that to our code. And the question is by adding that to our code do we, is that inconsistent, right? It's something that's not there. Now it is interesting that an official action is defined in the ethics code that includes inaction okay, so what this does is that it elaborates that. And the Corporation Counsel argued that it wasn't in the code so we didn't have jurisdiction. So we are now trying to shore up or fix something that isn't there. We need to add it.

Ms. Self: Which section of the code are you referring to? When you say that it's in the code. I want you to be very specific about the section I'm trying to follow you. Which section of the code says that we have the authority to determine whether somebody is doing their job or not?

Mr. Heintz: What section of the code that's relevant is can the Board of Ethics update or elaborate or improve on or add things to the Code of Ethics.

Ms. Self: Of course if it's within the Charter.

Mr. Heintz: Yes, as long as it's consistent. As long as it's not inconsistent. Is it inconsistent for us to add that it is now going to be a violation of Ethics code to fail to discharge by either omission or inaction or

non-performance. And so what we're doing is we're adding that. It's not there now, that's what we're doing.

Ms. Self: It's because it's inconsistent with the Charter.

Mr. Heintz: No it's inconsistent, she has not shown anywhere that it is inconsistent

Ms. Self: I just showed you where it's inconsistent.

Mr. Heintz: No. No no no, what you showed me was that under fairness, this isn't a question of fairness. It isn't a question of he discharged his duty in an unfair way or he discharged his duty in a conflict of interest. What he did is, didn't discharge his duty. And that too is the moral obligation. You took an oath or you promised you would do that. And so, what we see is our code doesn't address that. We now are gonna add that. And now what we're adding is not inconsistent with the Charter, the Charter is silent on that matter. So we are adding that. The problem is that Corporation Counsel, let me just continue my earlier thought and I would appreciate it if you not interrupt me any more so that I can complete my thought okay? Thank you.

Ms. Kekai: You have the floor.

Mr. Heintz: Okay thank you very much. So, what happened then is the Board of Ethics disagreed with Corporation Counsel Kamelamela's 10 page letter and you can go look at the 20 pages of his testimony and the letter and the Board disagreed with him all the way through. The board disagreed so vehemently that it voted to make the letter part of the public record against his advice. So I wanna make it clear that, and Corporation Counsel Yoshimoto, we've had several Corporation Counsel's come in, and if the Board disagrees with them, that's fine. They're giving us legal advice. We don't have to accept their advice, so now what we're doing is we're considering adding to the Code.

Mr. Allende: Excuse me Chair, I think that's, you know, something that when we talked with Council member Lee Loy about expanding the membership of this board, I think that's something that should be considered when we, what you're trying to talk about now, something that we should consider, under that expansion because if we expanded and still don't have something that you're looking at. That's I think a discussion for that time because if we expand the Board and then there's certain things that we aren't able to do...

Mr. Heintz:

Okay I see, I think I follow your point but, what this is, is an expansion of the Code of Ethics, not the Charter. This is not a charter change, this is code of ethics change. If we vote to approve these two sections, what we're doing is adding them to the existing code and that addition is a recommendation that the Board of Ethics would be making that would go to the County Council and then the County Council will approve or not approve these additions to our Code of Ethics. Ours is the County's code of Ethics. The Charter changes have to be approved by the voters so this is not a Charter change. Okay so, the, I mean, I don't mean to be combative here but of course this isn't in the Charter, these are additions. I'm sorry not the Charter, in the code, these are two additions to the code that we're recommending because we saw a need to make them. Let me move to the second one. The appearance of fairness doctrine. That issue came up when Mitch Roth brought that issue up. When Mitch Roth was the County Prosecutor, 31 cases were charged against the protestors on the mountain. He was subjected to criticism by law school professors both at Manoa and University of Washington. And they had two objections, one was that they had a conflict of interest and the other was that he had an appearance of a conflict of interest. And those were different and it turns out our code of ethics addresses conflict of interest. But there's no language about appearance of impropriety or appearance of unfairness or appearance of fairness. And what happened? He got nailed and crucified in the press because he had a conflict of interest and an appearance of conflict of interest. And then when push came to shove, they backed off on the conflict of interest. His wife worked for the UH Astronomy, his son worked for NASA, JPL. They backed off and so when the board of ethics dealt with this, we absolved him of the conflict of interest, he didn't have a conflict of interest. We didn't think he had that. But the critics were saying but he has an appearance of a conflict. And the Board said we are silent on the topic of whether he has an appearance of conflict of interest. And, I dissented, and the board said the only reason we're backing off and not going to judge that is that it's not in our code. And it needs to be there. And then two years pass and we have all new members and the issue goes away and so what we're doing shore up or improve or elaborate on our existing code to make it better to adjust it these two pukas. That's all that's being proposed here and if the County Council decides that we don't like this, we don't want to be given the tool where the Ethics Board could've complained about Ms. Ruggles, I'm sorry strike that name. The council member who wouldn't act, failure to discharge would address that. Appearance of fairness doctrine would address the situation with Roth, and that situation with Roth came up again with the situation with Mr.

Richards and his, there was a problem of did he have, was his unfair or biased or not? And what it amounted to is he came in and testified and he wasn't but it sure had an appearance of it. It looked like his vote was tainted, it looked like he was prejudged, it looked like he was biased but as Amy pointed out there's nothing in there about appearance of impropriety or appearance of unfairness. So that's all we're doing here. Again, most of Cody's letter just, look there are other ways to deal with this and they are heavy duty. And what I'm saying is, we're not affecting that, what we're doing is we would simply make a judgment that this person not performing up to par morally and either the voters can deal with this or the Council can deal with this or the Mayor can deal with this. Or the civil service people can deal with this or the heads of the appropriate department can look at his employee and say you're not performing properly.

Ms. Nakanishi: Mr. Chair, I wasn't here with the Mitch Roth issue but I was here with the Harry Kim issue and it took us as a recall at least months to get where we could even make a motion and you know, it's not there, it should be there. Cause we should not have to sit through the same stuff for 6 months. That's all the point I wanted to make historically.

Mr. Heintz: Any other board members like to speak?

Ms. Self: Okay I would like to speak.

Mr. Heintz: Thank you Amy.

Ms. Self: Number 1, the charter does not give this particular board the authority to determine whether somebody is or is not doing their job, period. No, the Charter, if you wanna change that, you can put in a charter amendment. The reason it's not in the charter I can guarantee you are for these reasons. Number 1, the public determines whether their elected officials are doing their job or not. Okay? And there's things in the Code to take care of that. You can have somebody removed, an elected official. Number 2, we have this whole statewide civil service for employees who are not doing their job, the unions will get involved. There's a whole procedure under state law for getting rid of an employee whos their job okay? It's not up to us to determine whether somebody is doing their job or not, that's up to the state law. Cause let me tell you what, you're proposing something here, you say you don't wanna be involved in hearings. Well I guarantee you if you're gonna make it public that the board of ethics doesn't think that somebody is doing their job, you don't thjnk there's gonna be a hearing and

you're saying you're gonna recuse yourself if it comes to a hearing before this board. So you gotta determine if you're gonna do this, are you willing to have an official hearing? And be present and not recuse yourself for a hearing?

Mr. Heintz: The only thing that this board would be determining is, is this person avoiding or not acting? And that's the question. And is avoiding and not acting a violation of the Code of Ethics.

Ms. Self: It's not that simple when you're telling somebody they're not doing their job. It's not that simple.

Mr. Heintz: Well we'll have to see I suppose.

Ms. Self: No you don't have to see.

Mr. Heintz: Excuse me...

Ms. Self: Listen, if somebody was threatening your job, would you not be upset? I mean who's to determine, what somebody is doing, is whether it's their job or not. Just like Harry Kim. I'm not protecting Harry Kim, believe me but Harry Kim, it may have fell under all persons shall be treated in a courteous, fair & impartial manner, which is under the charter but who's to determine whether Harry Kim is doing his job or not? Not this board.

Ms. Valenzuela: Okay so I'm just gonna interject here. I'm not an attorney, let me just make it really clear. And I'm trying to understand what is being said and I kinda think I do but I wanna know the difference of, I served on the Board of Appeals, twice. And on the Board of Appeals when a case came before us, we either voted on behalf of the County or not. Our decision that was rendered, those people walked out and they had a decision. On the Board of Ethics are we just here, first of all I just think it's, in my opinion, so silly to even just have a Board of Ethics, it's very sad that we're in a society that doesn't understand what ethical things are. However, we're here, so with us being here, is our role just to render an opinion or is our role to render an opinion that comes with some what of a consequence? And I'm thinking that which you're suggesting, gives us more to give somewhat of a consequence, or spank on the hand. To me I don't see the difference of me voting against the County in the Board of Appeals and the client walking out saying we won, we're not gonna have to pay these fees that the County is imposing on us, blah blah blah, whatever. What's the difference between that versus this? I don't understand that.

Ms. Self: Okay. Once we change our rules to impose fines, yes if we find an ethics violation, that person can be ordered to pay a fine by this board. And it also can, our opinion will go to whichever the appointing agency is, if it's a person under the administration, we go to the Mayor, recommendation to the Mayor about what to do with this person. Or the Council, let's do this person. But what I'm saying is that's what an ethical violation is. Ethics does not include whether somebody is doing their job or not. That's determined by other bodies of law.

Mr. Heintz: But ethics does include whether or not you're keeping your promise or you're following your oath to carry out your duties and responsibilities that you affirmed. And so, if you're not doing that the Ethics board -- and the Ethics board says that, the Ethics board then can just say that and it can go in the newspaper or it can go to your boss or it can go to you and that's it. Or there maybe some members of the board that also wanna fine or punish people. But in morality in ethics, shame or just pointing out that you know, you're not acting up to par, you're not acting like a good member of the community and that's it. And then we'll let the community deal with it. If the community wants to re-elect you anyway, they can. The board of ethics pointed out that 'you know, not quite doing his job'. That's all. And in a sense of, that's all this is saying. It is not getting involved and it's not supplanting any of the existing methods to deal with people who are doing their job poorly. And notice it's only failure to discharge, just completely saying not doing it, as was the case with that council member.

Ms. Self: Please find the section in the Charter that you're referring to which includes discharge of duty. I'm telling you it has to be in the charter, we don't have the authority.

Mr. Heintz: No, what the charter says is that the board of ethics can revise the code of Ethics as long as it's not inconsistent with the charter. And there's nothing inconsistent in, there's nothing in the charter that says that you can't make a rule in the Code of Ethics that it's a ethic violation to avoid or inaction or non-performance. And that's what we're going to, so we're going to add it. It's with the Code of Ethics. And the County council is gonna have the say on whether or not to do that. We're just recommending that we shore up, fill 2 pukas in our existing code. Incidentally the appearance of fairness doctrine is well established in many states in the Union. And the last time I brought that point up, I was said you know, we're not talking about other states and unions. But it's recommended language to improve the quality of governance. Which is part of our responsibility. So that the people of the County can have confidence in the highest

standards of performance. And all I'm trying to do, is fix 2 holes that we experienced...these are not hypothetical. We've spend months dealing with this, and that's all. I think I've said my piece a couple times.

Ms. Self:

I would would want, every, each member of this board to review section 14-4 of the Charter, and then also review the current code and if you read section 2-83 of the code and section 2-84, you understand what ethics is. Ethics is about protecting the public trust. The public trust is tax payers money right that's the public trust, you're protecting the taxpayer's money. Well that's why you have all these things in the code about how an employee is supposed to discharge their duty, so it's not getting, they're not financially benefiting from it right? That's against the public trust that's why we have to determine whether that's an ethical violation. So if you read all of this, this is all having to do with ethics. Not discharging your duty, I mean that's comes in, you can't – that would be unbelievable about how to determine whether somebody is or is not doing their job. That's why we've got state law to determine it for employees. We've got the Charter to determine it for elected officials.

Mr. Heintz:

And all I'm saying is that there's a puka here. And the example of the Councilmember for instance who got on the council was accepting a council salary and declared that she didn't recognize the government and the jurisdiction of the County over...right? And so what did she do? She kept taking her salary, public funds, for months and refused to vote, refused to do thing and the County council was in a fit for 6 months. And what difference, if we'd had this, what would've happened is the Board of Ethics would've said, yup this person is not performing the way they should, that is to say they are not doing their – they said when they got elected that they would carry out the responsibilities, which meant meeting quorums, voting, the works. They're not doing that and we just point out that you know that's not, that's subpar moral behavior. They're failing a promise and County Council that, that's all. And if you guys wanna do something that requires all kinds of things, civil service and or it might just be in the paper and the voters will deal with it, cause the voters will throw them out of office, if it's exposed. If it's not exposed, and the ethics board is just part of the exposure, by saying, you know, this is sub-par, this is unethical behavior. That's all. And the County Council is gonna look at these things, and they may agree with Amy, they may agree with me that you know what, there are 2 voids here and I can show them model codes, where the appearance of fairness needs to be added and the failure to discharge. Thank you.

Ms. Nakanishi: Are these (?) in the other County Codes?

Ms. Self: Not failure to discharge.

Mr. Heintz: I don't know.

Ms. Self: It's not.

Mr. Heintz: I mean, I haven't done a study of the codes. I'm not an attorney but...

Ms. Self: Well I am, and I cant...

Mr. Heintz: But, what I am is I'm a emeritus professor of philosophy, who's taught ethics for 38 years at universities across this world. Okay? By across this world, I mean the Netherlands, I mean Oxford University in England and Auckland University and not only do that. I taught philosophy of law, professional ethics...

Ms. Self: I'm not doubting your ability, I'm saying that this charter does not give us the authority. Now appearance of impropriety or appearance of whatever, I don't have a problem with that. I have a huge problem with discharge.

Mr. Heintz: Well okay, and so we can vote and Amy can vote against failure to discharge, I assure I will vote for failure to discharge, and if failure of discharge passes then the County Council can look at it and decide that Amy is right and that we don't wanna get into this. Or they can say, you know what yes, this is something that should be added. And in the appearance of fairness doctrine, the same way. That's all. Thank you. Would it be appropriate to have a recess. Because we're just having a general discussion and I just realized there's an over sight. County Council member can you tell me, advisor, Corporation Counsel, I don't think it's on the agenda. It was on the agenda last meeting. But like for instance, my failure to Discharge and appearance of failure doctrine. What's on the agenda is the discussions of Cody's letter but not...so 6b should be ok we review her letter and then we go back to looking at my two additions, failure to discharge and appearance of fairness doctrine. So that's not on..

Ms. Kekai: That would be included in item 6. So 6 is it's own. Then 6 is another.

Mr. Heintz: So in other words we could vote on this and pass it to the Council,

County Council, let them deal with it. And we could deal with it. If Amy wants to split the question so that it's failure to discharge is one motion and the appearance of fairness is the other, or we can do it as a single motion. They're both gonna go the same place, or one of em may go. But not the other. But there we are. So I would like to move forward. I made these proposals in December of 2020.

Mr. Allende: Chair, while you would wanna vote on this. I've just under, for a better voting ability and stance on it, I would ask if you would be willing to forward this til next month so I could review some of the other islands or other County's wording in their codes and is that the correct verbiage, or is it the Charter.

Ms. Self: Well you might wanna look at their Charter and also their codes.

Mr. Allende: Because if like you said we wanted to look at the other States of the Union on the verbiage and the words that they have I think we may be able to either come up with something that may be more fitting for our County and plus I'm new to the game.

Mr. Heintz: You're new to the board, this has been...

Mr. Allende: And I totally understand what you're saying, that you've started this 2 years ago and I'm sure that, that's a long time coming to get it on this agenda and I don't want to create a situation down the road that with my newness to this board that can create a problem later on for me to try to untangle.

Ms. Kekai: Also one more, point of order, sorry. Number 6 talks about amending the rules and the charter and the code which, I think would be 3 separate motions and 3 separate things so I guess there should be clarification if you decide to continue that there should be clarification what you're trying to amend and this motion is gonna be. So basically if the next commission or board meeting would be a motion to recommend to the Council, blah blah blah...And that's what the action item would be. Cause this is a little broad.

Mr. Heintz: Well first to deal with Erick's concern. There's two ways I think on it's face I could deal with and that is as a new member, I don't know how familiar you are with this proposal you had all this time. We could, you could either abstain, or we could delay it for one month, it's been delayed for going on 2 ½ years.

Mr. Allende: Well I think our next meeting is April 7, so it'd be about 2.5

weeks. So if you know it's sooner rather than later.

Mr. Heintz: Is that the pleasure of the other members of the board?

Ms. Valenzuela: Yeah, I agree with Erick, cause I think in fairness to him, even though he's new and I'm fairly new myself Erick, we wanna be comfortable and I totally understand your frustration of things being delayed but I could make a motion to move it to next month to our agenda.

Mr. Heintz: I can provide you with, I mean, these proposals I mean are not just made up out of my head, I'll provide you with the references to the model law, the State of Washington, Idaho, Montana, New Jersey..

Mr. Allende: Right. I don't wanna sound like I'm discounting what you've brought before this board. It's just that my lack of understanding and the information that's been brought to light by Vice Chair Self, I wanna make sure that I'm able to make an informed decision rather than one that's based off a motion and the discussion at hand.

Mr. Heintz: Okay, I sense that the body would like to wait til next month or next meeting...is that.

Ms. Kekai: Chair, there's a motion on the floor, did we get a second?

Ms. Valenzuela: I'll make a motion to table it to our next month meeting for the vote?

Ms. Nakanishi: I'll second.

Mr. Heintz: Okay it's been moved and seconded. All those in favor in continuing this item of the two proposals, failure to discharge and appearance of fairness doctrine be agendized for the next meeting.

Motion and Vote: Ms. Valenzuela. moved to agendize these items to the next meeting. Ms. Nakanishi seconded the motion. All members voted aye (12:14 p.m.)

Motion and Vote: Ms. Self. moved to enter executive session. Ms. Nakanishi seconded the motion. All members voted aye (12:15 p.m.)

7. EXECUTIVE SESSION (12:15 p.m.)

- a. Review of the Executive Session minutes of February 16, 2022
- b. Review of *Confidential Financial Disclosure Forms* filed pursuant to Section 2-

91.1(d), Hawai'i County Code, by County board and commission members and designated County employees, where personal matters will be reviewed.

8. ANNOUNCEMENTS (12:52 p.m.)

Mr. Heintz announced that the next meeting will be held on Wednesday, April 7, 2022, at 10:00 a.m. at the Hawai'i County Building, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i 96720.

9. ADJOURNMENT (12:53 p.m.)

Mr. Heintz adjourned the meeting at 12:53 p.m.

Respectfully submitted:

Liza Osorio, Secretary