

Maui Board of Ethics Strategic Plan

This strategic plan involved a review of current practices and procedures, and sets forth a blue print for the future.

This document creates a longer-term strategy and remains a work in progress, a flexible and directional touchstone for Ethics Board Members and Staff. It will be revisited periodically over the next several years and as key assumptions change or as internal or external conditions require. As needed, we will use it as source material to drive specific changes in direction, laws and rules, procedures and activities.

As part of our strategy, we will examine other jurisdictions including the Honolulu and State Ethics Commissions and determine best practices for ethics boards and commissions and ethics oversight. Similar jurisdictions may have similar ethics laws, oversight and enforcement responsibilities, population size, demographics, geographic size, among other factors.

Finally, we commit to properly balancing transparency and openness with necessary and legally warranted confidentiality. Critical to our success, however, is the need for appropriate resources, including adequate budget, number and type of staff, and board member capacity proportionate to the overall workload.

Mission Statement

To ensure that all employees, elected officials, and appointed officers demonstrate the highest standards of ethical conduct so that the public may have trust and confidence in the integrity of government.

“We hold the public’s trust.”

Stan Sturdevant

RECEIVED AT GRANT MEETING ON 6/3/2

I. Who We Are

Chartered by the Hawai'i State Constitution and Revised Charter of the County of Maui, the Maui Board of Ethics (BOE) is the County of Maui's ethics watchdog agency. Our job is to ensure that all of the County's approximately 2,500 elected leaders, appointed officials, and employees understand and follow the highest ethical standards of conduct governing their work for the public.

In Fiscal Year 2024, we began to review our policies and procedures to determine where we were and then plan for the future. The Hawaii House of Representatives passed House Resolution 8 (2023) urging counties to increase funding for their ethics boards or commissions to support them in meeting their Hawaii State Constitution mandates. The BOE appointed a Permitted Interactive Group (PIG) of three board members chartered to meet with Mayor Richard Bissen, one or more Council members and the Corporation Counsel to on:

1. Training of Maui public employees on ethics
2. Staffing and support of the Board of Ethics
3. Budgeting
4. Investigating and Prosecuting ethics complaints
5. Strategic Planning
6. Charter amendment authorizing full time staff for the Board of Ethics

Skills training for board members is also essential for success. While some orientation training has been accomplished, there is more to do if we are to function at the highest level.

II. What We Do

We have jurisdiction over education and enforcement of the following laws:

- Conflicts of interest, including gifts
- Disclosure of personal and financial conflicts of interest
- Preferential treatment and misuse of city resources
- Lobbyist regulation

To implement these laws, we address ethics concerns, requests for opinion, and receive several hundred financial disclosures and lobbyist registrations annually.

However, because we do not have full-time staff and only meet monthly, we are unable to adequately:

- Independently investigate and prosecute ethics complaints
- Respond promptly to requests for opinion or informal advice about ethics issues
- Carry out our core requirement to ensure that all Maui County elected officials, employees, and board and commission members are given regular ethics training
- Avoid the inherent conflict when our legal counsel, the Corporation Counsel, also represents other agencies and employees who might have business before the BOE
- Avoid ex parte communications with legal counsel regarding ethics complaints
- Provide adequate education and communication to the public about the BOE and its enforcement function

We also identified the following areas as necessary to fulfill our function:

- We must remain transparent and accountable to our constituents: both public employees and the public in general by publishing meeting minutes, press releases, and information about the BOE's activities.
- We are committed to clear guidelines and standards for ethical behavior that apply to public employees which needs to be updated on an ongoing basis.
- We must assume our responsibility to train public employees in ethics ruled.
- We must regularly reevaluate our effectiveness and identify areas needing improvement.

III. Why We Are Working on a Forward-Facing Strategy

We are giving intentional forethought to shape the BOE's future. We are asking the County Council to pass a Resolution calling for the appointment of full-time staff to support the BOE. We anticipate with such a full-time staff, we will see a rising volume of

work and cases of increasing complexity. With this document, we want to further position ourselves so that our work is conducted with the greatest possible efficiency and integrity.

We also foresee specific strategic issues that current and future BOEs will encounter:

1. Clarifying the BOE's Prosecutorial Function. Currently we manage a set of functions that should, to maintain the board's appearance as unbiased, be separated and have procedural walls between them: (1) investigation; (2) prosecution of contested matters; and (3) sitting as a quasi-judicial tribunal. Currently, without full-time staff, we are not well equipped to handle complex ethics complaints. That may even be a perception held by the community. One recent article pointed out that while we are "responsible for investigating wrongdoing by public officials, [we have] neither a dedicated budget nor the staff necessary to conduct investigations" despite the fact that "two county officials and two lawmakers from Maui who took bribes from [Milton] Choy have been sent to prison."¹

The BOE must have the discretion and resources to hire full-time staff, outside prosecutors and hearings officers when needed.

2. Building Stronger Community Understanding of the BOE. The BOE occasionally receives requests for opinions or inquiries which fall outside its responsibility. We take our mission of safeguarding the public's trust and confidence in County government very seriously and recognize the need to improve the community's understanding of what the BOE can and can't do. We welcome specific ideas to improve our laws, rules, and procedures, including methods of educating the community.

3. Further Strengthening the Prevention of Ethics Violations. With full-time staff, the BOE will, for the first time, be able to undertake what should be one of its major roles which is the training and education for County elected officials, employees and board and commission members. We seek to ensure that scrupulous adherence to all relevant laws governing ethical conduct is embraced and embedded in a firm foundation of the County's culture.

4. Making Sure the BOE's Work is Right-Sized. Depending on how the above (and other) long-term issues are shaped, the BOE's actual working resources need to be at the appropriate scale. This comes down to adequate staff, adequate budget, and an adequate number of board members.

¹ Blaze Lovell, "Hawaii Bribery Scandal Casts a Shadow Over Lahaina's Ruins", Civil Beat, October 25, 2023.

At present, the BOE has no staff and is supported only by one part-time deputy corporation counsel and one part-time secretary. For a start, we need at a minimum one combination Executive Director and Legal Counsel, one secretary and one investigator. If the history of the Honolulu Ethics Commission is considered, as we increase education, training and prosecution, more people will be willing to come forward with ethics complaints which will require additional staff.

Yet, even after those positions are filled, the BOE's staffing resources will be inadequate to meet ethics program requirements as set forth in the Hawai'i State Constitution, and the Revised Ordinances of Maui. If such program mandates are to be fulfilled, the BOE must make increasing staff and enhancing resources to contract independent prosecutors and hearings officers a budget priority for the next decade.

IV. Dashboard

The following are the metrics and vital signs we expect to use in the future to monitor ourselves. Wherever possible, we will apply "aging" reports to evaluate our workload and stay alert for backlogs, gaps, and case-handling delays. This dashboard is meant to be a management and decision support tool for board members and future staff.

Trailing Indicators *(Looking Back)*

1. Requests for training
2. Requests for advice
3. Advisory opinions – formal and informal
4. Preliminary determinations (reevaluate and address via future rule-making or policy adoption)
5. Investigations
6. Complaints filed
7. Requests for information via the Uniform Information Practices Act (UIPA), Hawaii Revised Statutes Chapter 92F
8. Age of backlogs

9. Hearings
10. Ethics board meetings that comply with Hawaii open meetings law, also known as the sunshine law, Hawaii Revised Statutes Chapter 92

Leading Indicators (*Looking Ahead*)

11. Anticipated population growth/decline in the County of Maui
12. Anticipated number of County employees and elected and appointed officials
13. Anticipated number of new employees and elected and appointed officials
14. Anticipated BOE budget and staff positions required to handle anticipated needs

V. Our Key Values

1. **Independence.** We will dispassionately appraise every circumstance that comes before us against pertinent laws and specific facts. We will play no political favorites, and let the chips fall where they may.
2. **Transparency.** We will strive for the greatest possible openness while honoring the rights of privacy and confidentiality. We endeavor to balance a user-friendly guidance and approach with sound procedures to vet, triage, and bring actions to enforce the County's standards of conduct.
3. **Above Reproach.** We ourselves, as the BOE and as individuals, will continuously strive to exemplify the behaviors we enforce on others.

VI. The Current Situation

Here is how we evaluate ourselves at this moment:

Major Strengths	Major Weaknesses
<p>We have dedicated, competent and cohesive board members.</p> <p>Although our support staff in the Corporation Counsel are part-time, they are competent and have been forthcoming with help as needed.</p> <p>Our relationships with other agencies, the mayor, and some members positive.</p>	<p>Delays in issuing advisory opinions due to lack of full-time staff</p> <p>We lack full-time staff support.</p> <p>Our support in the Corporation Counsel is part-time.</p> <p>We may be perceived as unable to fully investigate and prosecute ethics complaints. That perception has some bases in fact.</p> <p>We are unable to train the County's employees.</p> <p>We have no coordinated monthly data collection and reporting systems.</p> <p>Our budget is insufficient to meet our core needs and rising demands.</p> <p>We need to update and clarify our rules, particularly those that require ex parte communications between the BOE and those responsible for prosecuting ethics violations.</p> <p>We need to update our policies and procedures.</p> <p>Board members lack sufficient opportunities for skills and ethics training and upward mobility and opportunities to interact with ethics commissions/boards of other jurisdictions.</p> <p>Paragraph 6 of Section 13-2 of the Revised Ordinances of Maui County requires that no board member may be reappointed after one term, requiring instead of being off the board for two years. This results in vacancies which impact quorums and the serious loss of corporate knowledge.</p>

	<p>We perceive we are not well understood by County elected officials, officers, employees, and the public at large.</p> <p>Administrative support duties are blurry and need to be clarified.</p> <p>How we interpret and best function with sunshine law requirements is an on-going effort.</p>
<p style="text-align: center;">Opportunities</p> <p>We can define, operationalize, and make public our best practices.</p> <p>Rotation of BOE members brings new perspectives and adds strength. Consider appointing retired judges.</p> <p>We can utilize skilled volunteers who understand the BOE's work.</p> <p>There are opportunities to impact ordinances and adopt rules.</p> <p>We can position ourselves for inevitable future administrations and councils.</p> <p>We can explore coordinating ethics trainings, for mutual benefit, with other departments and agencies.</p> <p>We can explore collaborating with state and county agencies to harmonize requirements and forms.</p>	<p style="text-align: center;">Challenges</p> <p>Turnover and rotation. Potential loss of board members after one term. Fill vacancies.</p> <p>Flat resources or budget cuts if the economy dips, which is expected.</p> <p>A small number of excessively time-consuming FDSs and lobbying reports pull us away from other required work.</p> <p>Perceptions that the BOE is unable to investigate and prosecute cases.</p>

VII. Assumptions About the Next 10 Years

- BOE's staffing needs will increase even as we gain efficiency.
- Our budget will always be determined by others.
- Our caseload will go up because:

- The more training and outreach we do, the more inquiries and cases are generated.
- As the social fabric in Hawaii changes because of demographic shifts and as Maui becomes more crowded and factionalized, we will receive more ethics inquiries and concerns. People are increasingly argumentative and litigious.
- When the economy dips and city services are diminished, we will receive more ethics inquiries, concerns, and requests for advice.
- As County employee ranks turn over, training will need to be continuously refreshed and delivered to new cohorts of employees.
- More employees will have electronic devices, enabling greater reach for ethics training. Computerized training delivery will become easier, faster, and cheaper.
- The “80/20” principle will continue to prevail; that is, 80 percent of our work and effort will tend to respond to 20 percent of our caseload. Some of that 20 percent will be hot potatoes with high media visibility. As social media expands, there may be increasing numbers of high profile, hot potato cases.
- We will always be in some kind of “stretch mode” and likely never have all the resources our demands require.
- Over the next 5-10 years, there is a potential that federal and state funding will decline.
- The process of board member appointments will stay the same.
- We will need to do more effective education and outreach to the Mayor and Council to ensure they understand what we do, what their unique ethical requirements are, and to secure the funds and positions we need to operate effectively.
- The BOE may on its own initiative initiate complaints.
- Use/abuse of AI by county employees – e.g., protection of confidentiality

VIII. Objectives

Objective 1: Strengthen the internal capabilities and procedures of the BOE.

- a. Ensure the BOE is adequately staffed and staff members are adequately and fairly compensated. The Honolulu Ethics Commission has 10 staff, but their workload is necessarily greater because of the size of the County and the City and County of Honolulu. Considering the legal mandates for the County ethics program, the BOE has determined that its ideal staff complement includes 3 full-time positions in the short term:
 1. Executive Director and Legal Counsel
 2. Executive Secretary/Assistant
 3. Investigator
- b. In the future, we may need to add additional staff such as:
 1. Assistant Executive Director and Legal Counsel
 2. Additional Investigator
 3. Training Specialist
 4. Administrative Specialist
 5. Legal Clerk
- c. Acquire and implement a case management data base to enable tracking, dashboard monitoring, and reporting.
- d. Acquire and implement a comprehensive compendium of BOE Advisory Opinions and BOE-related Corporation Counsel Opinions that are easy to use when conducting legal research.
- e. Develop and implement training and professional development activities for Staff and board members. Potential areas to be covered include sunshine law, information technologies, and data management. Although some training and development opportunities are free or at little cost, others require budget resources to pay for conference registration fees, as well as travel and other expenses. Mechanisms can include:
 - i. State Public Library's Gale Courses for computer application training (MS Word, Excel, Power Point, Access, others);
 - ii. Equal Opportunity Office Internal Investigation Training;

iii. Reid Investigator Interview Training; and

iv. Attendance at Council on Governmental Ethics Laws (COGEL) and/or the Society of Corporate Compliance and Ethics (SCCE) conferences.

Objective 2: Review, update, and realign ethics programs for compliance, effectiveness, and efficiency:

Areas to be Reviewed for Changes and Priorities	Charter/ Ordinance	Substantive Admin Rules	Procedural Admin Rules	SOPs	Training/ Education
Financial Disclosures	x	x			
Lobbyist Regulations	x	x			
Separation of Duties (intake, investigation, prosecution, adjudication)	x				
Gifts	x	x			
Fair & Equal Treatment	x	x			
Conflict of Interest Disclosures	x	x			

In conjunction with the above:

- a. Examine procedures from: Hawaii Office of Disciplinary Counsel (ODC); Regulated Industries Complaints Office (RICO), Hawaii Department of Commerce and Consumer Affairs (DCCA); and other ethics commissions, e.g., Austin, TX (population ~947,890); City and County of San Francisco, CA (population ~870,887); San Jose, CA (population ~1,025,350); Jacksonville, FL (population ~880,619); among others; and also review their staff-to-workload ratios.
- b. Review and revise, as needed, the definition of “complaint” and consider disallowing anonymous complaints to proceed to investigation without named complainant. Prior to that, it would be a “contact.”
- c. Provide opportunity to review proposed changes and offer comments and concerns.
- d. Analyze and determine whether to have in-house prosecutors or contract a prosecutorial function.

- e. To ensure uniformity of practice and continuity to the future, develop an updatable set of policies and procedures available to the BOE, future staff, and the public. Collate existing BOE policies and procedures and develop new ones in conjunction with future changes to the ordinances and rules described above.
- f. Consider adopting as a policy that the BOE may not initiate or proceed with its own investigation if official investigations are being conducted by other agencies or tribunals with sufficient resources and enforcement powers. Any such policy must recognize that the BOE enforces ethics laws, which may be very different from and at a lower standard of proof (preponderance of the evidence vs. beyond a reasonable doubt) than those of other agencies or tribunals.

Objective 3: Further strengthen and expand the education and training of the County's board and commission members, officers, employees, and elected officials.

- a. Develop and deliver improved outreach materials (brochures, FAQs, newsletters, etc.) that describe the BOE's work and provide offers of assistance.
- b. Conduct additional outreach to all elected and appointed officials and to all agency employees to make them fully aware of the BOE's capabilities and to provide regular or specialized trainings.
- c. Continue to refine, track, and regularly evaluate the use of training software as a core-training tool.
- d. Offer an annual training for lobbyists, possibly with the State Ethics Commission to avoid duplication of efforts.
- e. Work with the County Information Technology Services Division to develop an in-house ethics training application for both domain users (mauicounty.gov) and non-domain users (e.g., board and commission members).

Objective 4: Above and beyond our management "dashboard," develop, implement, and use a simple set of overall effectiveness measures that will describe quantitatively the core efficacy of the BOE. The measures should reflect both inputs and outputs and the quantity and quality of both.

IX. Actions in Process: * completed

* 10/2023: Created PIG tasked to meet with the Corporation Counsel, Mayor and one or more council members on:

1. Training of Maui public employees on ethics
2. Staffing and support of the Board of Ethics
3. Budgeting
4. Investigating and Prosecuting ethics complaints
5. Strategic Planning
6. Charter amendment authorizing full time staff for the Board of Ethics

* 11/2023: PIG meet with Corporation Counsel and Councilwoman Paltin regarding foregoing.

* 12/2023: BOE passed memo and resolution recommending charter amendment for full-time staff.

* 12/2023: BOE passed memo recommending Mayor order an audit of non-bid contracts awarded to Milton Choi controlled companies.

* 12/2023: BOE recommended that Corporation Counsel include funding in the budget for membership and attendance of at least one member at Council on Governmental Ethics Laws (COGEL) annual meetings.

* 12/2023: BOE passed resolution requesting the mayor recruit retired judges to fill some board vacancies.

* 12/2023: BOE adopted test for evaluating FDSs and lobbyist filings to ignore issues which are manini or non-substantive.

* 12/2023: Draft Strategic Plan

* 12/2023: BOE passed a memo and resolution recommending a charter amendment to allow reappointment of BOE members to a second term without a hiatus

IX. Actions Completed:

1/16/2024: BOE transmitted memo recommending Mayor order an audit of non-bid contracts awarded to Milton Choi controlled companies.

1/16/2024: BOE transmitted memo and resolution recommending charter amendment for full-time staff.

1/16/2024: BOE transmitted recommendation that Corporation Counsel include funding in the budget for membership and attendance of at least one member at

1/16/2024: BOE transmitted resolution requesting the mayor recruit retired judges to fill some board vacancies.

1/16/2024: BOE transmitted a memorandum and resolution to the County Council recommending a charter amendment to allow reappointment of BOE members to a second term without a hiatus

2/14/2024: Adopted procedural test for evaluating FDSs and lobbyist filings to ignore issues which are manini or non-substantive and also for acknowledging compliant filings as batches instead of individually.