

**ETHICS COMPLAINT AGAINST  
THE CORPORATION COUNSEL MOANA LUTEY,  
DEPUTY CORPORATION COUNSEL JENNIFER OANA,  
DEPUTY CORPORATION COUNSEL JOHN HOLIONA,  
FORMER DIRECTOR PUBLIC WORKS DAVID GOODE  
and COUNCIL MEMBERS:  
ALICE LEE, YUKI SUGIMURA, TASHA KAMA, MIKE MOLINA,  
and RICKI HOKAMA**

**(pertaining to Upcountry Water Bill Ordinance 4255)**

**MAUI COUNTY CHARTER**

**ARTICLE 10 CODE OF ETHICS**

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CORPORATION COUNSEL  
2019 AUG 28 PM 2:11

**Section 10-1. Declaration of Policy.** Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government.

**Section 10-4. Prohibitions.**

**1. No officer or employee of the county shall:**

- c. Engage in any business transaction or activity... which is incompatible with the proper discharge of the officer's or employee's official duties**

On August 23rd, 2019 during a public hearing, The Maui County Council acknowledged that County Ordinance 4225 "erroneously" amended Title 18 of the Maui County Code for Subdivisions in 2015. Title 18 was deceptively amended by Department of the Corporation Counsel Attorney(s) at the direction of Former Public Works Director David Goode and without any public notice. This will result in millions of dollars of exemptions for roadway infrastructure improvements (which may include environmental mitigations) for commercial developers, investment properties, and businesses which will end up costing millions of dollars at the County Taxpayer's expense.

Then Council members Mike Victorino, Mike White, Don Guzman and Elle Cochran stated they were all unaware that Title 18 had been amended to give exemptions to commercial developments and investment properties county wide.

Despite this and the County Council acknowledging the violation of the original intent of the Ordinance, in discussions concerning CR 19-100; and, with the full

understanding that commercial developers and investment properties *could continue* to apply for and receive the above unethical "freebie" exemptions, perpetuating ongoing harm to County taxpaying residents in the millions of dollars;

Nevertheless, the above named Council Members refused and failed to take action during the Public Counsel Hearing on Friday August 23rd, 2019 **to stop the continuing harm being caused by allowing Ordinance 4225 to remain in effect, as written, which has already harmed County Taxpayer's. These named Council members are perpetuating Ordinance 4225 which was deceptively amended by Director David Goode of the Department of Public Works and Deputy Jennifer Oana of The Department of the Corporation Counsel to enrich private business interests countywide.**

**The original intent of Ordinance 4255 was intended only to help qualified Upcountry Residents on the Water Meter list, as explicitly set forth in public testimony during the public hearings before the Water Committee.**

Deputy Corporation Counsel Jennifer Oana had firsthand knowledge of the illegality of the language of Ordinance 4225 which she helped to write and to approve. Deputy Oana gave public testimony before the Water Committee, advising and assuring Council members, and the public, that Ordinance 4225 would not be used for *any* commercial or business use and was only for qualified individuals on the Upcountry Water Meter List who had been waiting for a long period of time for a water meter. Deputy Corporation Counsel Ed Kushi also advised the same committee during the same public hearing, that this Ordinance could not be implemented island wide without a change in policy. Such would require discussion and public hearing(s), before the Maui County Council.

Deputy Corporation Counsel Jennifer Oana, a defendant and party to litigation regarding the above legislation, then advised Council Member Alice Lee, and her committee during the pending litigation. Ms. Oana advised the Committee and once again approved the new legislation to legality and form, **to repeal the language of Ordinance 4225, she originally co-wrote and approved unethically, to return the Ordinance to its "original intent" *four years later* after over 27 / 2 Lot subdivisions had been approved with exemptions for commercial developers, and investment properties countywide.**

The Department of the Corporation Counsel and Deputy Corporation Counsel Jennifer Oana, since being noticed in 2016 of the erroneous and unlawful nature of Ordinance, 4225 failed to retract or reconcile this "erroneous" legislation as required by the Hawaii

Rules of Professional Conduct for licensed attorneys.

As stated in CR- 19-100 which was heard before the Council on August 23rd, 2019:

*"It is the council's desire to eliminate obstacles for upcountry residents to receive water service.*

*"The purpose of the proposed bill is to reverse Code changes made in 2015 and require improvements to existing streets for a subdivision creating two developable lots. "*

*"The Deputy Corporation Counsel further explained Ordinance 4255 included a countywide exemption for all two-lot subdivisions from improvements to existing streets, such as curbs, gutters, and sidewalks.*

***The Chair of your Committee stated the revised proposed bill would remove the countywide exemption and only allow an exemption for an applicant on the priority list for the Upcountry water system who qualifies for the exemption from fire protection mainline infrastructure improvements.***

***Your Committee notes this will align the Code with Ordinance 4255's stated purpose." (bold emphasis Fishkin)***

Former Director David Goode and Deputy Corporation Counsel Jennifer Oana knowingly and willfully wrote the erroneous language of Ordinance 4225 in contravention of the stated purpose and intent of the Upcountry Water Bill; and, with the intent to deceive the Maui County Council into approving an unlawful change to Title 18 of the Maui County Code to allow exemptions for roadway frontage infrastructure improvements for 2 lot or less subdivisions, for commercial and business use countywide.

Maui resident and citizen Eric Poulsen sued the County Pro-se along with then Director of Public Works David Goode, Deputy Corporation Counsel Jennifer Oana, Deputy Corporation Counsel Ed Kushi, and then Council Member Elle Cochran for unlawfully approving and implementing Ordinance 4225 with language that violated the stated purpose and intent of the Upcountry Water Bill and failing and refusing to correct the ongoing harm.

Deputy Corp Counsel John Holiona, under The Corporation Counsel Moana Lutey, and David Goode, mislead Council members and the public into falsely believing Mr. Poulsen's case was over and misrepresented judicial records.

Further, Ms. Lutey and her Deputy John Holiona have refused to provide Mr. Poulsen's Settlement Proposal to their client, the County Council, as is required by the Hawaii Rules of Professional Conduct, and refer the proposed resolution to the Litigation Committee for scheduling a public hearing in accordance with County procedure.

Moreover, Deputy Holiona and Ms. Lutey intentionally violated the same Rules by refusing and failing to file a judgment and entry of judgment in Mr. Poulsen's case, until August 22nd, 2019, and only after public testimony by the author of this Ethics Complaint exposing their unethical activity. They obstructed Mr. Poulsen's legal right to an appeal while, simultaneously, making it falsely appear to the Council and the public that the case was over and closed in the Circuit Court.


This Ethics Complaint asserts that The Department of the Corporation Counsel, under Moana Lutey, has been obstructing Mr. Poulsen's settlement proposal because it seeks to hold the responsible parties accountable, which includes, but is not limited to Defendants' David Goode, and Ms. Lutey's deputies; Jennifer Oana and Ed Kushi.

#### Sought Relief:

- 1) The Maui County Council Members must immediately stop the ongoing harm to the County Taxpayers that is being incurred by allowing unintended and unethical exemptions which are enriching commercial developers, investment properties and properties for business use countywide, in contravention of the intent of Ordinance 4225.
- 2) The County initiate an investigation into racketeering by County Official(s) in the Department of Public Works and County government attorney(s) in the Department of the Corporation Counsel.
- 3) County Government Attorneys' Jennifer Oana, John Holiona, and Moana Lutey must be disciplined appropriately as regards their unethical acts as set forth in this Complaint.
- 4) David Goode and Jennifer Oana have incurred financial obligations on the County

and must be held accountable pursuant to Section 9-12 of the Maui County Charter, and any additional 2 lot or less subdivisions, receiving these exemptions, who are not qualified residents on the Upcountry Water Meter list are also, now, the responsibility of the Council Members so-named in this Complaint pursuant to Section 9-12.

I, Christopher P. Fishkin, the Complainant, declare that the the above mentioned statements and information presented in this Complaint are true and correct, to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'C. P. Fishkin', with a long horizontal flourish extending to the right.

Christopher P. Fishkin

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