

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

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JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL



ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: February 19, 2020

Kapālama Hale  
Conference Room 153, 1<sup>st</sup> Floor  
925 Dillingham Boulevard  
Honolulu, Hawai'i 96817

Present:

Hon. Victoria Marks (ret.), Chair  
David B. Monk, Vice Chair

Peter S. Adler, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Lynette Lo Kanda, Commissioner  
Michael A. Lilly, Esq., Commissioner

Jan K. Yamane, Executive Director and Legal Counsel (EDLC)  
Laurie Wong-Nowinski, Associate Legal Counsel (ALC)  
Janice K. Yonamine, Investigator (INV)  
Alyson N. Wong, Legal Clerk III (LCIII)  
Joanne O.N. Lim, Sr. Clerk (Sr. CLK)  
Kristie E.L. Kato, Sr. Clerk (Sr. CLK)

Moana Yost, Deputy Corporation Counsel,  
Department of the Corporation Counsel (COR)

Excused:

Hon. Allene R. Suemori (ret.), Commissioner

**MINUTES OF THE ETHICS COMMISSION MEETING**

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at approximately 11:35 a.m., declaring quorum with all Commissioners present, excepting for Commissioners Kanda and Suemori. Commissioner Suemori is excused.

## II. New Business

### A. Chair's Report

#### 1. Announcements, Introductions, Correspondence, and Additional Distribution

##### a. Announcements, Introductions, Correspondence, and Additional Distribution

1. Resolution 19-284 – Relating to the Reappointment of Victoria Marks to Serve on the Ethics Commission of the City and County of Honolulu

Chair Marks announced that she has been reappointed to the Ethics Commission.

2. Resolution 19-322 – Relating to the Reappointment of Allene Suemori to Serve on the Ethics Commission of the City and County of Honolulu

Chair Marks announced that Commissioner Suemori is pending reappointment. Resolution 19-322 is on City Council's meeting agenda and will be heard during today's Ethics Commission meeting.

##### 3. Staffing

- a. Senior Clerk (P/T) – Joanne Lim
- b. Senior Clerk (P/T) – Kristie Kato
- c. Private Secretary II (Dept. of the Corporation Counsel) – Jill Yamashiro
- d. Legal Clerk III – Pending Approval

The EDLC announced new staffing: Senior Clerk (P/T) – Joanne Lim; Senior Clerk (P/T) – Kristie Kato; Private Secretary II (Dept. of the Corporation Counsel) – Jill Yamashiro; Legal Clerk III (FTE) – Alyson Wong.

Chair Marks welcomed new staff and thanked Jill Yamashiro, Corporation Counsel's Private Secretary, for assisting with the Commission's work training new staff. Chair Marks also thanked Acting Corporation Counsel Paul Aoki for allowing Ms. Yamashiro to assist at the Commission during transition.

2. For Action: Approval of Open Session Minutes of November 13, 2019

Commissioner Adler made and Commissioner Amano seconded a motion to approve the open session minutes of November 13, 2019, with a suggested revision by Commissioner Monk. On page 3, item 4.a.i., paragraph 3, insert “with.” As amended, the third sentence should read: “Maui County Board of Ethics initiates complaints with restrictions.” The motion carried unanimously.

At 11:37 a.m., Commissioner Lynette Lo Kanda arrived.

B. Executive Director and Legal Counsel’s Report

1. Staff Work Reports Summary

After months of staffing challenges, the EDLC welcomed aboard two new Sr. CLKs and one LCIII to the team.

The EDLC reported that Sr. CLKs are assisting with lobbyists, financial disclosures, and filing inquiries. They are uploading documents to the Ethics Commission website and handling phone calls and emails.

The EDLC reported that COR’s Private Secretary drafts correspondence, coordinates and conforms ethics procedures with the administration’s, is compiling a new list of board and commission members and liaisons, and standardizes protocols, among other responsibilities.

The INV’s pie chart shows more work on administrative duties than complaints and education and outreach. Professional staff is assisting with clerical duties. This condition will persist until clerical staff has been fully trained and assumes all clerical responsibilities. The INV continues to manage her case load.

The ALC is handling requests for advice and conducting legal research. She has also been working with the Department of Information Technology to finalize both internal (domain user with “honolulu.gov” email address) and public (non-domain user with outside email address) IT applications for this biennium’s ethics training program. In addition, she has been orienting new staff and working with INV to investigate and prosecute cases.

2. Statistics

- a. Website Sessions

November 2019 (365), December 2019 (391), January 2020 (858)

- b. Financial Disclosures Filing – Update

The EDLC estimated completion of disclosures review by the end of February 2020. The next step is to notify Council Chair and Managing Director of non-filers. So far, staff has processed approximately 100 confidential board and commission member filings and over 374

confidential employee filings. Staff is also reviewing public disclosures filed with the City Clerk's Office.

c. Lobbyist Registrations, Annual Reports – Update

2020 registrations (211), 2019 annual reports (175)

The EDLC estimated completion of lobbyist form processing by the end of February 2020. Forms will be posted to the Commission's website.

d. City and County of Honolulu Department and Agency Reports for Fiscal Year July 1, 2018 – June 30, 2019 – Published

The EDLC reported that the City published its FY19 Annual Report. The Commission's website was updated with a link to the report. The reported data will be used to support the Commission's FY 2021 budget request.

e. 2019 Service Efforts and Accomplishments Report (Office of the City Auditor) – Draft

The EDLC reported that the final report is pending publication.

3. Budget

a. FY2021 Operating Budget Request – Update

The EDLC stated that the Commission's budget request includes three new positions: 1) Administrative Specialist, 2) Training Specialist, and 3) Investigator. These positions have been included in the Executive Budget bill, which must be approved by the City Council. Chair Marks, Vice Chair Monk, and Commissioner Adler plan to attend budget briefings on March 12, 2020.

4. Education and Outreach

a. Ethics Training Program (FY19–FY20) – Update

The EDLC stated that DIT and the Commission's personnel issues have delayed launch of the biennial ethics training program until the end of February 2020. Staff will reissue memos extending the completion deadline from June 30, 2020, to December 31, 2020, in consideration of departments that assemble employees to deliver in-person training.

b. E-Newsletter, Twitter, Website – Update

The EDLC announced that the holiday gifts newsletter edition was distributed in November 2019. Campaign activities and post-city employment editions are planned for February and May 2020, respectively.

The EDLC stated that staff continues to find creative ways to engage the public by tweeting current news and updates and has received both positive and negative feedback. The EDLC also reported that ALC participated on a social media panel at the Council on Governmental Ethics Laws conference in December 2019.

The website has been updated with a "What We Do/What We Don't Do" section, as requested by Vice Chair Monk.

c. Brochure – Ethics Guidance for City Board Members (v. 1 Draft)  
The EDLC reported that staff is working with the City’s Design and Print Center to develop a series of ethics brochures on various ethics topics. Version 1 of the city board members brochure was included in the meeting materials.

d. University of Hawai‘i at Mānoa, Richardson School of Law – Panel Discussion on Government (March 2020)  
The EDLC stated that ALC has been invited to participate on a public sector law panel discussion at the law school in March 2020. The UH Law School Career Center Director hopes to expose students to the opportunity to extern/intern at the Ethics Commission. Chair Marks offered to share information regarding public relations with the ALC prior to the panel engagement.

5. Legislation

- a. For Discussion: City Ethics Law
- i. Clarify Who Can Initiate a Complaint
  - ii. Clarify Definition of “Confidential”

Chair Marks stated concern on whether delegating complaint-initiating authority to staff would contravene Hawai‘i Revised Statutes Chapter 91, the Hawai‘i Administrative Procedures Act. After discussion, the Commission decided that this matter will be discussed at the Permitted Interaction Group (PIG) meeting in March 2020.

- iii. Evaluation of Ethics Board of Appeals, Ordinance 17-44 (ROH 1990 Chapter 3, Article 15), Committee Report No. 218 – Update

COR Deputy Yost updated the Commission, stating that the ordinances include a sunset provision that requires the City Council to review boards and commissions for repeal every five years. Upon review, COR determined that the Ethics Board of Appeals is needed if the Commission wants to levy fines for standards of conduct violations. COR will recommend to Executive Matters and Legal Affairs Committee Chair Menor that the ordinance and the Ethics Board of Appeals should not be repealed.

- b. For Discussion: Resolution 19-331 Initiating Amendments to the Revised Charter of the City and County of Honolulu 1973 (2017 Edition), Relating to the Honolulu Ethics Commission.

The Commissioners discussed whether to support this resolution for more budget freedom. After discussion, Commissioner Lilly made and Vice Chair Monk seconded a motion to support Resolution 19-331 and issue testimony. The motion carried unanimously.

- c. For Discussion: Hawai‘i State Legislature (2020)
  - i. HB 361, HD1, SD1 Relating to Emoluments
  - ii. HB 1927 Relating to Emoluments
  - iii. Honolulu Star-Advertiser Articles on Legislative Bills

The EDLC referenced three Honolulu Star-Advertiser articles relating to ethics legislation and summarized measures being heard this year by the Legislature.

6. Education Opportunities – Commissioners and Staff

- a. Council on Governmental Ethics Law (COGEL) 41<sup>st</sup> Annual Conference (December 15–18, 2019), Chicago Marriott Downtown, Chicago, IL – Report

The conference was held on December 15–18, 2019, in Chicago, Illinois. Chair Marks, Commissioner Amano, EDLC, and ALC attended. ALC participated in the innovations showcase and social media session. ALC shared the JeoPARODY game used by staff in small group training sessions and received positive feedback from other resource-strapped governmental ethics agencies. She later shared the template with interested attendees.

Commissioner Amano stated that she would like for Hawai‘i to have even more of a presence at the next COGEL conference. The Commission also requested staff to find out who in Hawai‘i is a certified compliance professional and to create a group with agencies and businesses with ethics departments. Chair Marks asked that staff focus more on the ethics portion and not so much compliance. The ALC stated that a former group included corporate compliance officers from HMSA, Hawai‘i Gas, and HECO. The EDLC stated that most financial institutions have a compliance department.

- b. Hawai‘i Tribune Herald Article – Board Asks If Ongoing Blockade of Maunakea Access Road Is Allowed under County Ethics Code, December 20, 2019

The EDLC stated that this article had been shared by Commissioner Lilly and is included in the meeting materials

- 7. For Discussion and Action: Request for Formal Advisory Opinion – Should the Gift Guidelines Be Amended to Prohibit City Officers and Employees from Accepting Gifts from Persons Doing Business with Their City Agency, Regardless of the Value of the Gift (i.e., Reconsider Current Exceptions that Allow Acceptance of Tokens of Aloha and Gifts of Relatively Small Value from Persons Doing Business with a City Agency).

The EDLC said this is a carry-over issue from September 2019 and urged the Commission to make a decision. Commissioner Kanda requested that the new guidelines be stated simply and in lay terms. The ALC passed out testimonies from prior meetings and newly received testimony from the United Public Workers, all requesting Option No. 2 – to allow Tokens of Aloha valued between

\$10 and \$50. This option, among others, had been discussed at the last Commission meeting. The ALC provided a handout of Commissioner Suemori's motion proposed at the last meeting. Commissioner Suemori was not present to make the motion.

**After much discussion, Commissioner Amano made and Commissioner Lilly seconded a motion to have a zero-tolerance, no gifts policy with the exception of flower lei valued at less than \$50. The motion carried. Ayes: Chair Marks and Commissioners Lilly, Adler, Amano, Kanda. Abstain: Vice Chair Monk.**

The Commission requested staff to draft a press release and memo to all city agencies regarding this policy change.

### III. Strategic Planning

#### A. Ethics Commission – 2027 (Amended)

1. For Discussion and Action: Delegation of Authority by the Ethics Commission to Ethics Commission Investigator to Self-Initiate Investigations on Behalf of the Commission
2. For Discussion and Action: Community Outreach Plan (Draft) and Whether the Ethics Commission May Create a Permitted Interaction Group (PIG) for Community Outreach and Media Response
3. For Discussion: May the Ethics Commission:
  - a. Create a PIG for Community Outreach and Media Response
  - b. Delegate One Commission to Speak on Behalf of the Ethics Commission

The EDLC stated that staff consulted with COR Deputy Yost and agreed that the Commission may not create a PIG for community outreach and media response. The Commission could establish a standing committee for this purpose, but such committee would be subject to sunshine law requirements (hold public meeting, file agenda, publish minutes, among others). In addition, the Commission may not delegate one Commissioner to speak on behalf of the Commission. Each Commissioner may share their own opinion, but no one member could speak for the Commission. At present, the media policy states that the Chair and EDLC shall respond to media inquiries.

4. PIG – Review Strategic Plan Top Priorities (Chair Marks, Vice Chair Monk, Commissioner Suemori) – Meeting No. 1, March 2020

The first PIG meeting has been scheduled for March 27, 2020, at Kāpalama Hale. In addition to Chair Marks, Vice Chair Monk, Commissioner Suemori, and Commission Staff (EDLC, ALC), COR Deputy Yost will attend as her schedule permits.

IV. Adjournment

The EDLC announced that the next scheduled meeting is April 15, 2020.

**At approximately 1:26 p.m., Commissioner Lily made and Commissioner Monk seconded a motion to adjourn the Ethics Commission meeting. The motion carried unanimously.**

DRAFT

# **Agenda Item II.B.1,**

## **Page 1**

**[Reso 20-083 – Re Initiating  
Amendments to the Revised  
Charter of the City and  
County of Honolulu 1973  
(2017 Edition), As  
Amended, Relating to  
Ethics Commission Staff]**



## RESOLUTION

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**INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973 (2017 EDITION), AS AMENDED, RELATING TO ETHICS COMMISSION STAFF.**

**WHEREAS, the Hawaii State Constitution provides that each political subdivision of the state shall adopt a code of ethics, which shall apply to appointed and elected officers and employees of the political subdivision, including members of its boards and commissions and registered lobbyists; and**

**WHEREAS, the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) ("Charter"), Article XI, establishes standards of conduct that declare that elected and appointed officials 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, and registered lobbyists; and**

**WHEREAS, Charter Section 11-107 establishes within the Department of the Corporation Counsel of the City and County of Honolulu ("City"), for administrative purposes only, an Ethics Commission, which consists of seven members; and**

**WHEREAS, the Charter provides that the Ethics Commission may appoint such staff and engage consultants as is necessary to assist it in the performance of its duties, which includes among other tasks, educating City officers, employees, and agents of the Standards of Conduct under Charter Article XI and enforcing the City's policies regarding work-related conflicts of interest, gift reporting and acceptance, disclosure of personal and financial conflicts of interest, preferential treatment and misuse of city resources, and lobbyist registration; and**

**WHEREAS, the Charter provides that Ethics Commission staff shall be exempt from the provisions of Chapter 11 of Article VI of the Charter ("Department of Human Resources"), but such staff positions, except the position of executive director and staff attorneys, shall be included in the position classification plan; and**

**WHEREAS, the City Council ("Council") acknowledges that the Ethics Commission has undertaken a rigorous multi-year strategic planning effort and determined that a primary objective is to strengthen the internal capabilities and procedures of the Ethics Commission by ensuring adequate and fairly compensated staffing; and**

**WHEREAS, the Council supports the Ethics Commission's strategic staffing objective to increase specialized staffing to address identified deficiencies and**



**RESOLUTION**

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inefficiencies, and to fulfill State constitutional and Charter ethics program and lobbyist program mandates; and

WHEREAS, the Council believes that exempting Ethics Commission staffing from the position classification plan will assist the Ethics Commission in attracting and retaining specialized staffing to achieve its strategic objective; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu:

1. That the following question be placed on the 2020 general election ballot:  
  
"Shall the Revised Charter be amended to exempt all ethics commission staff from the civil service position classification plan?"
2. That Sections 6-1103 and 11-107 of the Revised Charter of the City and County of Honolulu 1973 (2017 Edition), as amended, be further amended to read as follows:

**"Section 6-1103. Civil Service and Executive Branch Exemptions –**

The provisions of this chapter of the charter shall apply to all positions in the service of the executive branch. This section shall apply to semi-autonomous agencies as though they are departments of the executive branch. The following positions shall be exempt from the provisions of this chapter of the charter:

- (a) Positions of officers elected by public vote; positions of heads of departments; the position of the band director of the Royal Hawaiian Band; the position of the executive for housing; the position of the manager and chief engineer of the board of water supply[-]; the executive for climate change, sustainability and resiliency[-]; and the manager of any semi-autonomous agency created by ordinance.
- (b) Positions in the office of the mayor, but such positions shall be included in the position classification plan. Employees of the civil defense agency and Royal Hawaiian Band, other than the band director, shall not be exempted from civil service.



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- (c) Positions of deputies of the corporation counsel, deputies and administrative or executive assistants of the prosecuting attorney and law clerks.
- (d) Positions of members of any board, commission or equivalent body.
- (e) Positions of a temporary nature filled by students.
- (f) Personal services obtained by contract where the director has certified that the service is special or unique, is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform such service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year.
- (g) Personal services of a temporary nature needed in the public interest where the need for the same does not exceed one year, but before any person may be employed to render such temporary service, the director of human resources shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable.
- (h) Personal services performed on a fee, contract or piecework basis by persons who may lawfully perform their duties concurrently with their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the city and when such fact is certified to by the director of human resources.
- (i) Positions of one first deputy; and for the [~~Honolulu Police Department~~] police department one additional deputy; private secretaries to heads of departments and their deputies and to the executive for housing; and the position of managing director, one first deputy and private secretaries to each; but private secretarial positions shall be included in the position classification plan. The first deputy in the department of human resources, however, shall not be exempt from civil service.



## RESOLUTION

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- (j) Positions or personal services in demonstration programs and joint participation and special projects which serve the community; provided that such exemptions are required by federal law or rules and regulations and then in accordance with procedures established by ordinance.
- (k) The following positions of the public transit authority:
  - (1) The executive director, deputy director(s), private secretaries to the executive director and deputy director(s); and
  - (2) Positions certified by the director of human resources that require specialized knowledge and experience in fixed guideway system planning, development, operations, maintenance, and management, or transit-oriented development; provided that, except for private secretarial positions, such positions shall not be included in the position classification plan and salaries for such positions shall be set by the public transit authority.
- (l) Positions in the liquor commission of the liquor administrator and the deputy liquor administrator, but such positions shall be included in the position classification plan.
- (m) Positions in the ethics commission.

The director of human resources shall determine the applicability of this section of the charter to specific employment or services in the executive branch."

**"Section 11-107. Ethics Commission –**

There shall be within the department of the corporation counsel for administrative purposes only an ethics commission which shall consist of seven members. The commission shall be governed by the provisions of Section 13-103 of this charter. In accordance with the prohibition in Article XIV of the Constitution of the State of Hawaii, the members of the ethics commission shall be prohibited from taking an active part in political management or in political campaigns.



## RESOLUTION

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The commission may appoint such staff and engage consultants as is necessary to assist it in the performance of its duties. Such staff and consultants may include attorneys who may advise the commission independently of the department of the corporation counsel. All staff positions shall be exempt from the provisions of Chapter 11 of Article VI of this charter [~~but such staff positions, except the position of executive director and staff attorneys, shall be included in position classification plan~~]. The executive director shall be an attorney qualified to practice law in the State of Hawaii. The salaries of [~~the executive director and any~~] all staff [attorneys] positions of the ethics commission shall be set by the ethics commission. The salary of the executive director shall not exceed the salary of the first deputy corporation counsel and the salaries of any other staff attorney shall not exceed the salary of the executive director.

The commission is authorized to hold hearings and to conduct investigations concerning the application of this article of the charter and shall have the powers provided in Section 13-114 of this charter.

The commission may, on its own initiative, render advisory opinions with respect to this article of the charter. An advisory opinion shall be rendered pursuant to a written request of any elected or appointed officer or employee concerned and may be rendered pursuant to the request of any person. The commission shall publish its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of the persons involved.

The commission may impose civil fines established by ordinance against elected and appointed officers and employees of the city with significant discretionary or fiscal power as determined by ordinance, found by the commission to have violated the standards of conduct established by this article of the charter or by ordinance. The commission shall recommend appropriate disciplinary action against officers and employees found to have violated the standards of conduct established by this article of the charter or by ordinance. The appointing authority shall promptly notify the commission of the action taken on the recommendation."



## RESOLUTION

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3. That in Section 2, Charter material to be repealed is bracketed and stricken and new material is underscored. When revising, compiling, or printing these charter provisions for inclusion in the Revised Charter of the City and County of Honolulu 1973 (2017 Edition), as amended, the Revisor of the Charter need not include the brackets, the bracketed and stricken material, or the underscoring.
4. That if these Charter provisions are amended by any other Charter amendment approved by the electors at the 2020 general election, the Revisor of the Charter, in revising, compiling, or printing the Charter:
  - a. May designate or redesignate articles, chapters, sections, or parts of sections, and rearrange references thereto; and
  - b. Shall, except as otherwise expressly provided in this resolution or in the other resolution(s) amending these Charter provisions, give effect, to the extent possible, to all of the amendments approved.

The Revisor of the Charter may also change the capitalization or the forms of numbers and monetary sums for the sake of uniformity.

5. That upon adoption of this resolution by the Council, the City Clerk be and is hereby directed:
  - a. To prepare the necessary ballots with the question contained in this resolution and with spaces of "yes" and "no" votes on the question for presentation to the electors at the 2020 general election. The City Clerk may make technical and nonsubstantive changes to the form of the question presented in order to conform it to the form of other Charter amendment questions presented to the electors at the same election; and
  - b. To publish the above-proposed Charter amendments at length in a daily newspaper of general circulation in the City and County of Honolulu at least 45 days prior to their submission to the electors at the 2020 general election.



**RESOLUTION**

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- 6. That upon approval of the Charter amendment question posed in this resolution by a majority of the voters voting thereon, as duly certified, the Charter amendments proposed in this resolution shall take effect on January 1, 2021.

INTRODUCED BY:

*Travis* (BR)

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DATE OF INTRODUCTION:

**APR 7 2020**

Honolulu, Hawaii

Councilmembers