

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

925 DILLINGHAM BOULEVARD, SUITE 190 • HONOLULU, HAWAII 96817
PHONE: (808) 768-9242 • FAX: (808) 768-7768 • EMAIL: ethics@honolulu.gov • INTERNET: www.honolulu.gov/ethics



KIRK CALDWELL
MAYOR

JAN K. YAMANE
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: November 13, 2019

Kapalama Hale
Conference Room 153, 15th Floor
925 Dillingham Boulevard
Honolulu, Hawai'i 96817

Present: Hon. Victoria Marks (ret.), Chair
Peter S. Adler, Commissioner
Hon. Riki Amano (ret.), Commissioner
Lynette Lo Kanda, Commissioner
David B. Monk, Commissioner
Hon. Allene Suemori (ret.), Commissioner
Jan K. Yamane, Executive Director and Legal Counsel (EDLC)
Laurie Wong-Nowinski, Associate Legal Counsel (ALC)
Janice K. Yonamine, Investigator (INV)
Moana Yost, Deputy Corporation Counsel,
Department of the Corporation Counsel (COR)
2 Members of the Public (media)

Excused: Michael Lilly, Esq., Vice Chair

MINUTES OF THE ETHICS COMMISSION MEETING

Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:36 a.m., declaring quorum with all commissioners present with the exception of Vice Chair Lilly.

II. New Business

A. Chair's Report

1. Announcements, Introductions, Correspondence, and Additional Distribution

Chair Marks announced that today was Legal Clerk III (Temporarily Assigned) Kristine Bigornia's last day. Unfortunately, Ms. Bigornia was unable to attend the meeting due to personal matters. She thanked Ms. Bigornia for being a teamplayer and for her good work. Chair Marks further announced that the Legal Clerk III position is now vacant and that the Commission is recruiting.

2. For Action: Approval of Open Session Minutes of October 16, 2019
Commissioner Amano made and Commissioner Suemori seconded a motion to approve the open session minutes of October 16, 2019. The motion carried unanimously.
3. For Action: Approval of Executive Session Minutes of October 16, 2019
Commissioner Kanda made and Commissioner Monk seconded a motion to approve the executive session minutes of October 16, 2019. The motion carried unanimously.
4. For Action: Nomination, Vote for Chair, Vice Chair — Calendar Year 2020 (taken out of order)
After discussion, Commissioner Suemori made and Commissioner Amano seconded a motion for Victoria Marks to continue to serve as Chair and David Monk to serve as Vice Chair. The motion passed unanimously with the exceptions of Commissioner Monk who abstained, and Chair Marks, who voted no.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary
EDLC announced that today is the Legal Clerk III's last day. Staff spent the last reporting period preparing for her departure, after which professional staff will perform clerical duties as there is no clerical staff. Department of the Corporation Counsel (COR) has offered to assist, which we will accept. The Investigator's work pie chart shows more administration than investigations and will continue to look that way until clerical staff is hired. ALC has been primarily working to push out ethics training. No work pie chart for ALC is available for this reporting period.
2. Statistics
 - a. Website Sessions — October 2019 (431)
3. Education and Outreach
 - a. Ethics Training Program (FY19—FY20)
EDLC stated that personnel issues at DIT (Department of Information and Technology) and our office, have delayed the launch of online ethics training. The goal is to administer the training by Thanksgiving. We are also waiting on DIT to complete the out of network platform for board and commission members to take training. In the meantime we will revert to the old method of burning DVDs and asking board and commission liaisons to manually track member training.
 - b. E-Newsletter — November 2019
EDLC stated staff intends to develop a one-page gift flyer in time for the holidays, pending this meeting's gifts discussion.
 - c. Integrity Hotline for City & County of Honolulu Employees

Legal Clerk III was to provide the update, but she is absent today.

4. Legislation

a. For Discussion: City Ethics Laws

i. Clarify Who Can Initiate a Complaint

EDLC recapped the discussion on this item from the October 16, 2019 Commission meeting. Chair Marks acknowledged written testimony by Sandy Ma (Common Cause).

Chair Marks asked ALC for her research on this matter. ALC responded that she researched the Rules of Procedure from the Hawaii State Ethics Commission (State Commission) and the County Commissions of Kauai, Maui, and Hawaii Island. The State Commission requires that after receipt of anonymous information, staff performs a limited preliminary investigation (reviewing public documents to verify allegations and contacting state officers and employees) unless the State Commission initiates an investigation to determine whether a charge should be issued. The State Commission defines the nature and scope of the investigation via a resolution passed by a majority.

Hawaii County requires complaints to be in writing and signed by the complainant. The Hawaii County Board of Ethics does not have the authority to initiate complaints. Maui County Board of Ethics initiates complaints with restrictions. Kauai County Board of Ethics initiates complaints which must be in writing and signed by one or more board members.

Commissioner Suemori commented that she liked the checks and balances and that she would like to see the legislative history behind Revised Ordinances of Honolulu Sec. 3-6.7.

ALC reminded the Commission that during the October meeting, Chair Marks made and Vice Chair Lilly seconded a motion that the Commission delegate to Commission staff the ability to initiate complaints and that the Commission would take steps to amend ROH 3-6.7. Chair Marks stated that as a matter of process, a copy of the minutes regarding the motion should be attached to a case file whenever staff initiates a complaint.

Chair Marks expressed concern that the Commission's Rules of Procedure (ECRP) expand the scope of legal authority beyond ROH Sec. 3-6.7 which only provides for the Commission to initiate a complaint. However, the Commission ECRP allows for both the Commission and EDLC to initiate a complaint.

COR Deputy Yost suggested that the Commission amend ROH Sec. 3-6.7 to include the EDLC as being able to initiate a complaint.

Commissioner Amano stated that the Office of Disciplinary Council (ODC), has 20 commissioners on their board. They

designate a commissioner to work with the staff; thereafter, the commissioner is recused from the matter. Commissioner Amano suggested this method to address the current situation. There was further discussion regarding this matter.

The Commission discussed revision of the law and the ECRP based on priorities in the Commission's Strategic Plan. Commissioner Adler asked how the State Ethics Commission initiates complaints. Chair Marks cited Hawaii Revised Statutes (HRS) Sec. 84-31, "any charge initiated by the commission shall be signed by three or more members of the commission."

Commissioner Adler asked whether staff has a list of top five (5) specific laws that need to be revised. EDLC answered in the negative, that there were only general categories of gifts, financial disclosures, and lobbying laws. COR Deputy Yost stated that usually when you revise one law, more are affected and also need to be amended because they are interdependent.

Commissioner Amano asked the EDLC what she needs and EDLC replied that she would like to designate Commission members for a Permitted interaction group (PIG) to develop a list of laws that need to be revised.

After considering staff shortages and the upcoming filing period for financial disclosures and lobbyists, the Commission decided that no PIG could be established until the clerical staff positions are filled, possibly until March. The EDLC asked for Commission members to volunteer for the PIG: Commissioners Suemori and Monk, and Chair Marks volunteered.

Commissioner Adler made and Commissioner Amano seconded a motion to establish a PIG in the new year (2020) to review the top priorities of the Strategic Plan including but not limited to gifts, lobbying, and financial disclosure laws. The motion passed unanimously.

- ii. Clarify Definition of "Confidential"

This item was deferred to the next meeting.

5. Education Opportunities — Commissioners and Staff

- a. COGEL 41' Annual Conference (December 15-18, 2019), Chicago Marriott Downtown, Chicago, IL — Update

This item was deferred to the next meeting.

6. 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)

****AGENDA ITEM TAKEN OUT OF ORDER****

Chair Marks requested that this item be discussed out of order due to its importance. EDLC explained that this is a carry-over item from the October 13, 2019 Commission meeting. The Commission received testimony from Nicole Velasco, former Neighborhood Commission Office Executive Director; Keala O'Sullivan and Walter Billingsley, employees from the Department of Design and Construction; and Sandy Ma (Common Cause).

Chair Marks explained the Commission's options: (1) Leave the gift policy as is; (2) clarify the definition of tokens of aloha (e.g., set a dollar amount); (3) prohibit all gifts.

Commissioner Kanda stated that she would like option (2) with clarifications that the gift must be shared with the office and also a set dollar amount.

Commissioner Suemori commented that lei cannot be shared.

Chair Marks asked for an example of questions the Commission receives regarding tokens of aloha. EDLC stated that someone who does business with the city agency wanted to provide a chili and rice lunch during the holidays for an entire city office of approximately 75 people; cost would be approximately \$10 per person. The gift is usually offered and accepted by the director; office staff often are unaware who provided the food.

ALC stated that if it is analyzed as a personal gift, it would fall below the current dollar amount of \$50 per person and would be acceptable. ALC stated that in the alternative, this situation could be analyzed as a gift to the city and accepted by the City Council via resolution.

Chair asked if lunch for an office is considered a token of aloha. Commissioner Suemori stated that a chili and rice lunch should be considered a token of aloha whereas foie gras and champagne should not be considered a token of aloha. Commissioner Kanda stated that she believed that there was a \$50 maximum. ALC confirmed this is the status quo. The testimonies received requested that the Commission allow tokens of aloha. One testimony suggested that the dollar amount be reduced to \$24.99. Commissioner Suemori stated that she likes having a framework and likes \$24.99, instead of \$10, as you can't buy anything for \$10 anymore. She further stated that Hawaii has a culture of aloha and she does not want the Commission to suppress it, although she doesn't want people to abuse it. She wants to create language to clarify what is acceptable.

Commissioner Adler stated that he was still undecided on this matter, but suggested adding language limiting tokens of aloha to items that are edible, wearable, and grow-able.

Commissioner Amano asked what's the harm in saying "no gifts" except for lei valued under \$50? She further stated that having a "no gifts" rule will make it clear and simple for everyone. Commissioners Kanda stated that she likes the idea that people can show aloha; therefore, it should be clarified as to what is acceptable. Commissioner Suemori agreed.

Commissioner Monk asked if other jurisdictions that have a "no gifts" policy and if so, how well they are working? ALC responded that based on her research of nine (9) other jurisdictions including the U.S. Office of Government Ethics (U.S. OGE), most allowed for some token of appreciation ranging between \$10 - \$50. Commissioner Monk commented that it is not just Hawai'i that has these types of customs and issues regarding tokens of appreciation.

Chair Marks referred to the ALC's research and commented that she likes the idea of a dollar limit and clarifications as defined by the U.S. OGE. She suggested that we define what is acceptable, such as: lei, plants, modest food items such as soft drinks, coffee and donuts. She further stated that we could add in baked goods, for example, manapua; items must be shareable, except for a lei or plant; and then clarify what's not allowed, such as alcoholic beverages, cash, gift cards, vouchers or anything that could be traded in for cash.

Commissioners Kanda and Suemori both liked following the national standard and clarify dos and don'ts.

Chair Marks reiterated the Commission's options: (1) keep the status quo; (2) include a new dollar limit and clarify what's acceptable; or (3) have a zero-tolerance policy except for lei.

Commissioner Suemori suggested language for a motion that sets a dollar limit to \$24.99 and includes acceptable and not acceptable items per what Chair previously mentioned from U.S. OGE. Chair Marks added that she would not allow parceling gift lunches to the departments to make them personal gifts.

Commissioner Amano reminded everyone that she had a motion on the table from the Commission's October 16, 2019 meeting. ALC referred to the minutes and stated that Commissioner Amano made and Commissioner Adler seconded a motion to adopt a zero-tolerance rule except for lei.

Commissioner Suemori called for the question. The motion failed. Ayes: Commissioners Amano, Adler; Nays: Commissioners Monk, Kanda, and Suemori, and Chair Marks.

Commissioner Monk proposed that the Commission retain the status quo and defer Commissioner Suemori's motion to the next meeting in February 2020 so that staff could draft proposed language that includes the items from the discussion.

Chair Marks confirmed that we should retain the status quo for purposes of issuing this year's gifts newsletter in a timely manner; she also suggested that the Commission refer to the research (10.13.2019 Exhibit B meeting materials) for the next meeting to possibly use language from other jurisdictions, including a suggestion to include golf and cart fees as prohibited gifts. She requested that the EDLC put this matter on the agenda for next meeting.

Commissioner Adler asked ALC if we have had a long history of complaints regarding tokens of aloha? ALC responded that historically there was a large issue about gifts in general, but not tokens of aloha. Chair Marks stated that with the increased training, employees have become more aware of these issues.

III. Strategic Planning

A. *Ethics Commission-2027 (Amended)*

1. For Discussion and Action: Delegation of Authority by 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:
 - i. Create a PIG for Community Outreach and Media Response
 - ii. Delegate One Commissioner to Speak on Behalf of the Ethics Commission

This matter was deferred to the next meeting.

VI. Adjournment

- A. For Discussion: Reconsider Proposed Scheduled Meeting Date: June 17, 2020

The meeting date was rescheduled for June 24, 2020.

- B. Next Scheduled Meeting Date: February 19, 2020

Vice Chair Monk will run the meeting as Chair Marks is unavailable.

At approximately 1:01 p.m., Commissioner Suemori made and Commissioner Monk seconded a motion to adjourn the Ethics Commission meeting. The motion carried unanimously.