ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU
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MAYOR

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EXECUTIVE DIRECTOR
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ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: February 19, 2020

Kapālama Hale
Conference Room 153, 1st 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) 41st 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.