

**WELCOME TO THE
ETHICS COMMISSION MEETING**

*As a courtesy and to avoid excessive
noise/feedback, please mute your microphone
except to testify.*



Date: September 16, 2020
Time: 11:30 a.m.
Webex: Meeting No. 268 451 616
Meeting Password: none
(268 451 616 from phones, video
systems or join by phone
1-408-418-9388)

ORDER OF BUSINESS

I. Call to Order, Public Notice, Quorum



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II.A. NEW BUSINESS - CHAIR'S REPORT

1. For Action: Approval of Open Session Minutes of August 19, 2020
2. For Action: Approval of Executive Session Minutes of August 19, 2020



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II.B. EXECUTIVE DIRECTOR AND LEGAL COUNSEL'S (EDLC) REPORT

1. CARES Act Funds – Protective and Office Equipment – Update
2. Education and Outreach
 - a. University of Hawai'i at Mānoa, Richardson School of Law – Fall 2020 Pro Bono Interns – Update



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III. EXECUTIVE SESSION DETERMINATION

A. For Discussion and Action:

Should the EC Exercise Its Discretion to Consider
in Executive Session a Motion to Adopt Advisory
Opinion No. 21-1



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IV. EXECUTIVE SESSION

A. For Action:

Motion to Adopt Advisory Opinion No. 21-1

[pursuant to HRS §§ 92-5(a)(2), 92-5(a)(4)]



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V. ADJOURNMENT

Next Meeting: October 21, 2020

Website: www.honolulu.gov/ethics Email: ethics@honolulu.gov

 Twitter: @HonEthicsComm



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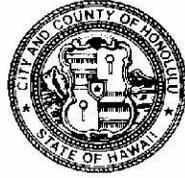
Agenda Item II.A.1.

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[Open Session Minutes of
August 19, 2020]

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR

JAN K. YAMANE
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: August 19, 2020
Webex Video Conferencing
Meeting Number (Access Code): 146 722 3732
Meeting Password: bwXuSXpP356 (29987977 from phones and video systems) or join by phone 1-408-418-9388

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

Jan K. Yamane, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong-Nowinski, Associate Legal Counsel (ALC)
Janice K. Yonamine, Investigator (INV)
Alyson Wong, Legal Clerk III (LC III)
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)

Sandy Ma, member of the public
Choon James, member of the public
Doug Pasnik, member of the public
Sonny, member of the public
Royce Takara, member of the public

MINUTES OF THE ETHICS COMMISSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at approximately 11:33 a.m., declaring quorum with all Commissioners present via Webex.

II. New Business

A. Chair's Report

1. For Action: Approval of Open Session Minutes of June 24, 2020

Commissioner Amano made and Vice Chair Monk seconded a motion to approve the open session minutes of June 24, 2020. The motion carried unanimously.

2. For Action: Approval of Executive Session Minutes of June 24, 2020

Commissioner Suemori made and Commissioner Amano seconded a motion to approve the executive open session minutes of June 24, 2020. The motion carried unanimously.

Chair Marks stated that the Commission would take agenda items III. and IV. out of order as there was someone present in regard to those matters.

Sandy Ma asked for a short explanation as to why the Commission was going into executive session for those two matters.

Chair Marks read the specific descriptions for agenda items III.A. and B.

Choon James asked to testify on matters III.A. and B. on the agenda. Ms. James asked if a city council member may use a staff member for campaign purposes and if a councilmember should disclose that a staff member is campaigning for city council using social media.

Vice Chair Monk asked Chair Marks and staff if Ms. James' issues could be placed on a future meeting agenda.

The EDLC stated that Ms. James submitted a concern form and that staff would typically keep it confidential from the Commission unless it is brought before them to determine probable cause of an ethics violation. However, the issue regarding a social media policy could be placed on a future agenda. Further, the city administration has a draft social media policy that has not been finalized.

Commissioner Adler asked if the issue should be reviewed by the permitted interaction group (PIG).

The EDLC stated that it could be done since the PIG is working on law amendments.

Ms. James suggested to put some boundaries on the use of social media.

Vice Chair Monk suggested that if any member of the public wanted to submit a complaint to the Commission, the more detailed the better.

Ms. James stated that she submitted a complaint and provided a few examples. However, she could provide more information, if needed.

The ALC stated that staff is in the preliminary stages of investigation and doesn't share any information with the Commission until it's ready to proceed to avoid tainting the Commissioners on future decisions. Ms. James thanked the Commission.

Doug Pasnik stated that he was being treated unfairly because the COVID-19 shutdowns stopped his military veteran outreach program. Mr. Pasnik stated that his program is an essential service to promote emotional health and well-being for the military veteran population. He asked what the Commission could do for him.

Chair Marks asked him if he is a city employee or assists city employees. Mr. Pasnik responded in the negative. Vice Chair Monk explained that the Commission can only address issues within its jurisdiction. Mr. Pasnik referred to the Commission's newsletter stating that the Commission resolves issues of unfair treatment. Commissioner Suemori suggested that he talk to the State Department of Health and explain that his outreach is "essential," then go to State Ethics, if needed. Mr. Pasnik thanked the Commission.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

a. CARES Act Funds – Protective and Office Equipment

The EDLC stated that staff applied for and used the CARES Act Funds for protective and office equipment, including sneeze guards, HEPA filters, thermometers, laptops and software, and webcams.

The EDLC recognized Sr. CLK Lim and Jill Yamashiro, COR private secretary, for submitting the CARES Act paperwork. Sr. CLK Lim procured the approved items.

The EDLC reported Sr. CLK Kato continues to update the website, social media, and provide other support. The EDLC thanked the Sr. CLKs for covering the office when the LCIII is absent.

The EDLC reported that the LCIII continues to keep up with the UIPA log, compile the board/commission member liaison list, and handle front office daily responsibilities.

The EDLC reported that the INV continues to handle her caseload and that her last day with the Ethics Commission is August 28, 2020. The INV thanked the Commission and staff for their support.

The Commission thanked the INV for her work.

The EDLC stated that the INV's cases will be transferred to the ALC and that staff will try to fill the INV position as soon as possible.

Sandy Ma asked how many cases are being transferred to the ALC.

Chair Marks replied that the Commission will discuss that later in the meeting.

The EDLC reported that the ALC has been focusing on administration and that she will report on other items later in the meeting.

2. Statistics

a. Website Sessions – June (710 sessions), July (629 sessions) 2020

b. Financial Disclosure Filings – Update

The EDLC reported that staff is cross-referencing board and commission member financial disclosure for compliance. Also, staff is working with the Departments of Human Resources and Information Technology to fix errors in the program.

c. Lobbyist Registrations, Annual Reports – Update

The EDLC reported that staff is following up with filers for notary certifications.

d. Department and Agency Reports for Fiscal Year July 1, 2019 – June 30, 2020 – Update

The EDLC referred to slide 14 in the meeting materials and discussed FY2020 statistics.

She further stated that on average, there are 28 investigations closed and 6 remaining open per year.

She explained that no board and commissioners were trained during FY2020 due to IT issues and COVID-19.

The EDLC thanked the Sr. CLKs and LCIII for compiling these reports.

Sandy Ma asked how many current cases will be transferred from the INV to the ALC.

The EDLC replied that staff doesn't have the number of cases that will be transferred. Staff is hoping to recruit a new INV as soon as possible.

3. Budget

- a. FY2021 Operating Budget – None
- b. FY2022 Operating Budget Request – Update

The EDLC expressed concern about COVID-19's impact on the City's FY2021 and FY2022 budgets.

Chair Marks asked if the Commission's new positions were funded.

The EDLC replied in the affirmative and stated that she is in the process of creating the positions.

4. Education and Outreach

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

The deadline to finish the online training is December 31, 2020. The EDLC stated that, to date, the Department of Design and Construction is the only department that finished training its employees.

The ALC stated that she has been in contact with the Department of Information and Technology (DIT) and they plan to start testing the board and commission online training on August 21, 2020. Further, DIT is putting Ethics' new employee orientation video, quiz, and survey on the internal learning management system. The ALC stated that if we can start testing in August, hopefully by September we can administer online board and commissioner training.

The ALC stated that she represented the Commission at the Webex leaving office training for cabinet members and other political appointees. She reminded appointees of highlights from the Commission's newsletter regarding future employment. Both the newsletter and leaving office guidelines were distributed to attendees.

Chair Marks asked when the Commission should inform candidates about Dos and Don'ts for post-election and transitional events.

Commissioner Kanda recommended that the Commission inform candidates now so they know what to do.

Vice Chair Monk stated that he is also in favor of reaching out to candidates before the election because notifying them after may be too late.

The EDLC confirmed that staff will reach out to all candidates.

b. E-Newsletter, Twitter, Website – Update

Sr. CLK Kato reported the following Twitter reports from June 2020 to date: Total Tweets (53), Profile Visits (144), Tweet Impressions (17, 992) and Followers (252).

Sr. CLK Kato stated that she got the Twitter reports from the Twitter Analytics website.

The EDLC shared that in June, we had 217 people on the Webmaster subscription list, in August we have 255.

Commissioner Amano asked that analytics be included in future reporting because it is interesting and gives the Commission a baseline measure of what's effective. Additionally, she believes that the newsletters are concise and very reader-friendly.

c. Poster – Update

The EDLC stated that the ALC and INV came up with the idea for a warning poster. They worked with Emergency Services Department administration to post at Ocean Safety substations and other locations island wide. Additionally, they took Vice Chair Monk's suggestion to laminate the posters for posting in outdoor locations. The department really liked the idea and attached poster content to pay stubs for all employees. This approach conforms to the Commission's objective to develop a more proactive training approach rather than rely on reactive enforcement.

The ALC stated that she and the INV spent a significant amount of time investigating issues on the poster. Even though they were unable to get enough evidence to prove ethics violations, they thought that this poster would be a good way to take proactive and corrective action to warn everyone of illegal behavior. They are currently working on another poster for a different department that will hopefully be finalized next month.

d. University of Hawai'i at Mānoa, Richardson School of Law – Posting for Summer Interns – Update

The ALC thanked Chair Marks for moving the process along with the law school. She stated that she will interview applicants and hopes that they can assist with the advisory opinion compendium, legislative history, and jurisdictional research, among other tasks.

5. Legislation

- a. 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 – Update

Resolution 19-331 passed and will be on the November 2020 ballot.

The EDLC stated that there has been a question as to whether the Commission can promote the ballot measure to the public.

The ALC stated that the Commission can inform the public about the proposed charter amendment; however, the Commission cannot advocate for passage.

Commissioner Kanda volunteered to help with the wording of a public service announcement and work with the ALC to get the word out.

- b. Resolution 20-83, FD1 Initiating Amendments to the Revised Charter of the City and County of Honolulu 1973, As Amended (2017 Edition), Relating to Honolulu Ethics Commission Staff – Update

Resolution 20-83 passed and will also be on the November 2020 ballot.

6. Education Opportunities – Commissioners and Staff

- a. Weinstein Ethics Conversation Series (July, August 2020) – Report

The EDLC stated that the Ethics Conversation Series is now virtual.

Commissioner Adler stated that he attended the first and part of the second series and felt they are worthwhile.

Chair Marks stated that she attended the legal ethics and politics conversations.

- b. Society of Corporate Compliance and Ethics (SCCE) 19th Annual Compliance & Ethics Institute (September 14–16, 2020), Virtual Conference (CDT) – Update

The SCCE conference will be virtual. The EDLC stated that she was invited to be on a government panel with Angelique Dorsey, Ethics Officer, Washington Suburban Sanitary Commission, and Jabu Sengova, Ethics Officer, City of Atlanta Ethics Office.

- c. Council on Governmental Ethics Laws (COGEL) 42nd Annual Conference (December 13–16, 2020), Virtual Meeting (Hosted by City of Atlanta) – Update

The COGEL conference will be virtual.

III. Executive Session Determination

- A. For Discussion and Action: Should the Ethics Commission Exercise Its Discretion to Consider In re Yamane v. City Employee – Hearing on Motion to Adopt Proposed Stipulated Findings of Fact and Conclusions of Law; Recommended Disciplinary Action

Vice Chair Monk made and Commissioner Amano seconded a motion that the Ethics Commission exercise its discretion to consider in Executive Session In re Yamane v. City Employee – Hearing on Motion to Adopt Proposed Stipulated Findings of Fact and Conclusions of Law; Recommended Disciplinary Action. The motion passed unanimously.

Vice Chair Monk made and Commissioner Amano seconded a motion to enter Executive Session. The motion passed unanimously.

- B. For Discussion and Action: Should the Ethics Commission Exercise Its Discretion to Consider Whether There Is Probable Cause to Believe That a City Employee Violated Revised Charter of Honolulu Section 11-104

Commissioner Kanda made and Commissioner Amano seconded a motion that the Commission Exercise Its Discretion to Consider in Executive Session Whether There Is Probable Cause to Believe That a City Employee Violated Revised Charter of Honolulu Section 11-104. The motion passed unanimously.

Commissioner Kanda made and Commissioner Amano seconded a motion to enter Executive Session. The motion passed unanimously.

- IV. Executive Session (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; or Section 92-5(a)(4), HRS, to consult with the Commission’s attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities and liabilities.)

- A. For Action: In re Yamane v. City Employee – Hearing on Motion to Adopt Proposed Stipulated Findings of Fact and Conclusions of Law; Recommended Disciplinary Action

Chair Marks reported that during executive session, the Commission unanimously adopted the proposed Findings of Facts and Conclusions of

Law and further unanimously decided that it would recommend an unpaid 6-day suspension to the employee's appointing authority for violating the ethics laws.

- B. For Decision: Whether There Is Probable Cause to Believe That a City Employee Violated Revised Charter of Honolulu Section 11-104

Chair Marks reported that during executive session, the Commission unanimously agreed that there was probable cause of an ethics violation.

V. Strategic Planning

A. *Ethics Commission–2027 (Amended)*

1. PIG – Review Strategic Plan Top Priorities (Chair Marks, Vice-Chair Monk, Commissioner Suemori) – Meeting #1 Report
 - a. For Action: Review and Approval of Draft Financial Disclosure Legislation (ROH Sec. 3-8.4).
 - b. For Action: Review and Approval of Draft Lobbyist Legislation (ROH Sec. 3-13.4).

Commissioner Amano moved and Commissioner Adler seconded a motion to approve the proposed legislation in agenda items V.A.1.a. and b. The motion carried unanimously.

VI. Adjournment

A. 2021 Ethics Commission Meeting Schedule

The EDLC referred to slide 30 for scheduled meeting dates and slide 31 for reserved meeting dates.

At approximately 2:13 p.m., Commissioner Lilly made and Commissioner Adler seconded a motion to adjourn the meeting. The motion carried unanimously.