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A Plain Language Guide to the City Ethics Laws

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INTRODUCTION

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The Guide explains the city ethics laws. The ethics laws must be followed by all employees and officers, so reading the Guide will help you avoid ethics mistakes. You will also find that some ethics laws protect you from unfair actions by other officers or employees. Please keep in mind that this guide is a summary and does not cover every aspect of the ethics laws. Therefore, to be sure about an issue, contact the Ethics Commission, for advice.

Who do the ethics laws apply to?

Generally, the ethics laws apply to each elected or appointed officer and appointed or civil service employee. This includes full-time, part-time or contract employees, members of boards and commissions and elected officials. The city ethics laws do not apply to Neighborhood Board members or independent contractors working for the city.

Why do we have ethics laws?

Ethics laws exist to avoid bias or private interests from influencing government decisions.

Today, government creates laws and regulates the conduct of people and business, deeply affecting each of us. We need a government that does not unfairly favor some people and disadvantage others. Therefore, each government officer and employee is required to be fair and impartial when carrying out his or her duties to the public. Furthermore, a government officer's or employee's private interest, at times, may be affected by the proper performance of their public duties. The ethics laws attempt to ensure that government action will not be influenced by an officer's or employee's private financial, business or personal interest. Simply put, you may not serve two masters -- your duty to the public must take priority over your private interest.

The declaration of policy for the ethics laws requires officers and employees to set the highest ethical standards by their conduct at work. § 11-101, Revised Charter of the City and County of Honolulu (RCH). Bias or private interests must not affect how you do your job. If they do, you will undermine the public's trust in government and you may be subject to discipline, including dismissal.

Where can I find the ethics laws?

The ethics laws are stated in the revised Charter and ordinances and the written opinions of the Honolulu Ethics Commission (Commission). The Commission also provides guidelines for employees on several common topics such as the gifts, campaign activities, employment after working for the city, real estate licenses and advertising . All of these are available on the Commission's website at www.co.honolulu.hi.us/ethics or from the Commission's office.

May departments have ethics rules or policies for their employees and officers that are more strict than the city's ethics laws?

Yes. Because of this, your departmental standards of conduct should always be reviewed in determining whether an action is proper.

Where can I get ethics advice?

From the Ethics Commission and its staff. You may call us at 527-5573 or email us at ethics@co.honolulu.hi.us. We are ready to help resolve your concerns. Communications with the Commission staff are confidential.

FAIR AND EQUAL TREATMENT

What is the Fair and Equal Treatment Policy in the ethics laws?

The Fair and Equal Treatment Policy prohibits an officer or employee from using his or her city position to give favors, advantages or other unwarranted treatment to himself or herself or any other person. RCH § 11-104.

What activities are limited under the Fair and Equal Treatment Policy?

You may not:

1. Seek contracts or employment through your government position;
2. Use city time, equipment, facilities, titles or other public resources for non-city activities;
3. Engage in a financial or business transaction with a subordinate or involving a business you help regulate; or
4. Hire, promote, supervise or otherwise participate in the employment of a relative, unless the relative is on a list of eligible civil service employees.

How can I tell if someone is giving or receiving unwarranted treatment?

As a rule of thumb, if the officer or employee uses a city resource, but not for purposes of doing a city project, the use is unwarranted. If a city officer requires his staff to seek donations to support his church, for example, the city officer is granting himself and his church an unwarranted advantage and violating the ethics law.

1. Campaign Assistance and Political Activities

There are several restrictions on officers and employees relating to campaign contributions and campaign assistance conducted on city time or with city resources. The restrictions on civil service officers and employees are stated in RCH §§ 11-102(2) and (3) and are incorporated into the ethics laws by § 3-8.2(f), Revised Ordinances of Honolulu (ROH). Exempt officers and employees are covered by ROH § 3-8.6.

What types of campaign assistance or political activities are prohibited?

RCH § 11-104 prohibits an officer or employee from using city resources, such as time, position or title, equipment, material, city seal or facilities, for campaign assistance or political activities. To do so is to give an unwarranted advantage to the candidate or political party benefitting from the activities at the taxpayers' expense. The Revised Guidelines on Campaign Activities is available at the Commission's office or our website.

What do "campaign assistance" and "political activities" mean?

"Campaign assistance" means any service or donation of time or anything of value to a candidate for elected office or for a question on a ballot, the recall of an officer or the activities of a political party or a campaign committee. These include (1) selling, purchasing

or distributing campaign fundraiser tickets; (2) conducting political meetings; (3) distributing campaign literature or materials; (4) soliciting campaign contributions, support or assistance; or (5) producing campaign literature or materials. "Political activities" include being a party or campaign committee member, soliciting members, performing duties, fundraising and campaigning. ROH § 3-8.6(b). These are examples and not the only activities that fit the definitions.

What if someone at my city job wants me to carry out campaign assistance or political activities -- am I protected against the co-worker or supervisor?

You may not do any campaign or political activities at work. And while at work you may not ask anyone to do any such activities. RCH § 11-104. Furthermore, it is a crime to strong-arm any officer or employee into contributing to or assisting a campaign. ROH § 3-8.6(c) states that an officer or employee may not:

1. Coerce, demand or threaten any officer or employee to make contributions, give assistance or refrain from reporting the violation to the Ethics Commission or other agency;
2. Deny employment to or discharge, demote or punish anyone who refuses to contribute, assist or who reports the violation;
3. Promise employment benefits to anyone who contributes to or assists a campaign or refrains from reporting the violation; or
4. Solicit or receive any contribution from anyone in a city facility during its use for official business.

What can I do if am asked to contribute or assist a campaign during work hours or using city resources?

It is unlawful for the person asking you to make the request. You must not contribute or assist in response to the request. You should inform the requestor that you are prohibited from contributing or assisting on city time or with city resources. If you feel awkward in doing so, call the Ethics Commission to handle the matter.

What political activities may city officers and employees engage in?

On your own personal time and without the use of city resources, you may vote, express a political opinion, serve as a member of a political party organization or campaign committee, make a campaign contribution or give campaign assistance and request contributions and assistance, as long as it does not violate the ethics laws..

Are there any conditions regarding lobbyists and campaign assistance and contributions?

Yes. The most important restrictions under ROH § 3-8.9 protect a lobbyist similar to how city personnel are protected.

CONFLICTS OF INTEREST

What is a conflict of interest?

A conflict of interest occurs when a reasonable person could conclude that your personal, business or financial interests may interfere with carrying out your duty to the public. The ethics laws are designed to prevent people who influence or make decisions from being involved if their personal, business or financial interests are also at stake.

Whether you are an honest person is not the standard by which a conflict of interest is determined. Instead, the law looks at whether an impartial observer could conclude that a conflict exists. For example, if Bob owns a business in an industry that he also helps to regulate, his interest in the business would be in conflict with his duty to regulate the industry. Under the ethics laws described below, Bob's ownership interest prevents him from regulating the industry, even though Bob would never try to protect his business from the regulators.

Conflicts of interest occur now and then, especially for officers or employees who have discretionary authority. The point to remember is that there are steps you must take to avoid violating the law.

What are considered private interests?

A private interest is one that is not governmental. It includes business, non-profit, charitable and religious interests.

1. Gifts

What restrictions apply to gifts on the job?

You may not ask for or accept a gift directly or indirectly, if a reasonable person would think that the gift was made:

1. To influence your work (RCH § 11-102(a));
2. As a reward for any discretionary action taken by the officer or employee (ROH § 3-8.7 and 3-8.8); or
3. Conditioned upon your agency taking action ROH § 3-8.2(d).

This means that your actions or intent do not matter, even if you know you will not be influenced by a gift you receive. The key here is whether a third party would reasonably think that the gift was given to affect your work. If so, the gift is prohibited.

What are some typical examples of gifts that are subject to the ethics laws?

Examples of gifts subject to the ethics laws include drinks and meals, travel expenses, entertainment expenses, conference fees, complimentary or discounted tickets (even to charity events), and the like. ROH § 3-8.7(a).

What should I do if I am offered a prohibited gift?

You may refuse it or return it. In some cases, you may donate the prohibited gift to a non-profit or charitable organization, as long as you do not take the tax write-off. To discuss other options, contact the Commission.

What if a company that does business with my agency sends us a box of manapua?

Generally, small gifts or tokens of aloha are not considered to violate the ethics laws.

Are there factors used in determining whether a gift would be one that violates the ethics laws?

Yes, in the Revised Guidelines on Gifts, the Commission notes that eight factors should be evaluated in determining whether an officer or employee may solicit or accept a gift. The Guidelines on Gifts is available at <http://www.co.honolulu.hi.us/ethics/www.co.honolulu.hi.us/ethics> or from the Commission office. The Gift Guidelines also state some rules of thumb, the most important of which is that no one engaged in law enforcement should solicit or accept gifts from anyone against whom he or she may enforce the law. After reviewing the law and the factors above, you may be able to decide whether the gift is appropriate. However, feel free to call the staff of the Ethics Commission to seek our advice or an answer.

What if a private business offers to pay the travel or other expenses for me to attend a conference related to my work, is that a prohibited gift?

Whether this type of gift is prohibited will depend on the specific facts. Generally, if the funding is for a conference where the city officer or employee will be educated in his or her work area, the gift may be allowed. Here the benefit of the gift is to the city, not to the individual. Connection with Conferences, available on the Commission's website or from our office. However, should this issue come up, it is best to ask the Commission for a determination. You should also review the Revised Guidelines on Gifts of Travel, Lodging and Meals in Connection with Travel and the Guidelines on Gifts in Connection with Conferences, available from the Commission's office or on our website.

What about a gift to an officer or employee in gratitude for work that he or she is required to perform?

The ethics laws prohibit you from receiving anything of value, other than your city pay, for doing your job. RCH § 11-102(d). Similarly, you may not accept honoraria if the topic is related to your official duties.

If I receive a gift, do I have to report it?

Each officer and employee is required to annually report any gifts that total more than \$200 in the aggregate from one source and where the source of the gift has an interest that may be affected by the official actions of the recipient or the recipient's family. ROH §§ 3-8.7(c) and 3-8.8(b). Exceptions to gifts that must be disclosed are listed in ROH § 3-8.7(f). Gift reporting forms are available from the City Clerk.

2. Confidential information

May I use the confidential information that I acquire through my city employment?

No. "Confidential information" is any information that is not readily available to the public at the same time it is available to you. It is an ethics violation to disclose or use confidential information for anyone's benefit. RCH § 11-102(b). This rule also applies to disclosure or use of confidential information any time after you leave city employment. ROH § 3-8.3(a).

3. Business activities and financial interests

Am I limited in the types of business activities in which I may engage or the financial interests I may have?

Yes, there are five general prohibitions, based on whether your private interests conflict with your job duties.

First, you may not engage in a business activity or have a financial interest that is incompatible with carrying out your duties or may tend to impair your work judgment. RCH § 11-102(c). For instance, it would be incompatible with the duties of a liquor commissioner to own a bar because the commissioner could not separate her duties as a commissioner from her duties to the bar.

Second, you may not engage in a business activity or have a financial interest that may tend to impair your independent judgment. RCH § 11-102(c). What might impair your work judgment generally is more difficult to describe. The answer will depend on such factors as the size of the financial interest, the extent of your discretionary authority and whether the matter raising the conflict is related directly to your work.

The third prohibition is that you are not permitted to participate in or take any discretionary action directly affecting a business or other matter, if you (1) have a substantial financial interest in the matter or (2) if you were a member of a firm which rendered services directly related to the matter. ROH § 3-8.2(a). Call the Commission staff to discuss what is a "substantial financial interest." An exception to this restriction is that a councilmember may vote after filing a written disclosure of the interest held or the services rendered. ROH § 3-8.2 (a).

Fourth, you may not acquire a financial interest in a business that may be directly involved in discretionary action you will likely take in the future. ROH § 3-8.2(b).

Fifth, an officer or employee may not have what is called "an appearance of a conflict of interest." RCH § 11-101. An appearance of a conflict of interest occurs when the officer or employee has a personal, business or financial interest that, under certain circumstances, could result in a conflict of interest. For instance, suppose that Susan works in the area of zoning and has access to confidential information about zoning changes. It would be improper for Susan to have an active real estate sales license because it would appear to a reasonable member of the public that Susan could use confidential zoning information to make money on real estate deals. The appearance of a conflict exists even though Susan is an honest employee and would not use the confidential information.

Do these restrictions apply to the financial interests and business activities of my spouse and others in my immediate family?

Yes, depending on what restriction is applicable.

Am I restricted from participating in official action involving competitors of my business or financial interests?

Whether you are restricted regarding competitors will depend on the facts. This is an issue where you should seek advice from the Commission.

What if a city officer or employee has a substantial interest in a business that would like to contract with the city - may the city enter into a contract with this business?

Yes, but only if the contract is awarded after a competitive bid process. ROH § 3-8.2(e). (Note that this section does not prevent an agency from hiring a former officer or employee on a personal services contract. These approaches are often used when an officer or employee retires and the city would like to continue the services of the worker.)

4. Personal relationships

May I have a conflict of interest even if the interest I have is personal and not financial?

Yes. The Ethics Commission has determined that a city employee or officer may not participate in a decision making process if it would directly affect someone with whom the officer or employee has a close personal tie, such as a relative or close friend.

5. Non-city employment

Is it a violation of the ethics laws for me to work for the city and also work for private interests?

No. You may have an outside job as long as you follow the rules against business activities and financial interests creating real or apparent conflicts of interest. Other restrictions are described in this section.

May a city officer or employee do outside work that brings them before other city agencies?

No, with a few exceptions. This issue arises when a city officer or employee performs outside work that will be presented to a city agency in the form of a permit application or representing a private interest at a city agency.

There are two prohibitions that apply here. First, an employee or officer may not represent anyone against the interests of the city. RCH § 11-102(e) and ROH § 3-8.2(c).

Second, the same sections prohibit an officer or employee from appearing on behalf of private interests before any city agency. This rule applies even if the service is free or is done on behalf of a charity, non-profit or church. A private interest is an interest that is not governmental.

There are four noteworthy exceptions to the prohibition against representing a private interest before a city agency. ROH § 3-8.2(c).

1. You may "assist" someone before a city agency, as long as you do not personally

make any written or oral contact with the agency. "Appearing" means making any direct written or oral communication with the agency and is not allowed.

2. You may appear before an agency to advance or protect your personal or property rights. So, for example, if you apply for a building permit for your own home, that is not a violation.

3. There is an exception for architects, engineers, landscape architects and surveyors who submit plans or permit applications on their own behalf or that of their immediate family.

4. If a board or commission has no adjudicative or legislative powers, its members are permitted to appear before other city agencies.

6. Mandatory reporting, restrictions and solutions

What should I do if I have a conflict of interest?

If you have a conflict of interest, you must immediately disclose it in writing to your appointing authority (usually your department head) and to the Ethics Commission. RCH § 11-103. Forms are available from your personnel office or the Commission office. Your department head and the Ethics Commission will discuss ways to resolve the conflict, such as removal from participating in any way in the decision making process and/or delegation of the issue to another qualified person.

You may not participate in any discussion or decision making regarding the conflicted matter, unless you are a councilmember. This means that you are prohibited from voting, deliberating, discussing or otherwise using your authority or influence, formally or informally, with regard to the conflicted matter. If you participate in the matter, you will violate the ethics laws, your decision may be reversed, and you may be liable for the costs to the city, as well as disciplinary action.

If you are a councilmember, you must make your written disclosure to the Council before you may vote on a matter relating to the conflict. RCH § 11-103. Disclosure of interest forms for councilmembers are available from City Clerk.

Remember, this disclosure and recusal process protects you from accusations of bias and safeguards the integrity of government.

MANDATORY DISCLOSURES OF INTEREST

What disclosures are required?

Above, we discussed reporting conflicts of interest.

In addition, financial disclosures are required from each candidate for office and each officer or employee who is exempt from civil service. These disclosures are to be filed upon entering city service and annually thereafter. Also, these officers and employees, when ending their employment with the city, must file a financial disclosure when leaving city work. There are

monetary penalties for failing to file the financial disclosure form. ROH § 3-8.4.

Furthermore, all officers and employees must disclose their outside employment when they begin their employment with the city and at various times thereafter, such as receiving a promotion or obtaining different outside employment.

Finally, officers and employees must annually report gifts in excess of \$200 in the aggregate from one source.

All necessary forms are available from the your personnel office, the City Clerk or the Commission.

Are the disclosures kept confidential?

The following disclosure forms are open to the public: (1) the financial disclosure statements of candidates, elected officers, directors and first deputies of all agencies; (2) the gift disclosures of all employees and officers; (3) the disclosure of outside employment for all officers and employees; and (4) the disclosure of conflicts of interest statements. All other disclosure forms are confidential. ROH § 3-8.4(e); RCH § 11-103.

EMPLOYMENT AFTER YOU LEAVE THE CITY

What type of restrictions apply to officers or employees who leave their city jobs, but want to work on city-related projects?

First, you may never disclose confidential information you obtained while working for the city that would result in the gain or benefit of anyone. ROH § 3-8.3(a).

Second, for one year after your city employment ends, you may not receive payment from a private interest:

- a. For any work involving city projects in which you participated or were given access to confidential information while at the city, RCH § 11-105; or
- b. To appear on behalf of or assist the private interest before any city agency on a matter in which you were directly involved or was under consideration by you while at the city, ROH § 3-8.3(b).

However, during the one year period, you may receive compensation:

- a. To appear on behalf of or assist the private interest before a city agency as long as you have filed an affidavit stating that you were not actively concerned with, did not actively consider, did not participate in, and was not given access to confidential information about, the matter, ROH § 3-8.3(c); or
- b. As a result of contracting with a city agency on any matter, ROH § 3-8.3(g).

In other words, if you were not involved in the matter, you are free to work on it. If you were

involved in the matter, you may work on it only if you are doing so on behalf of the city.

Some definitions will be helpful in understanding these points. "Confidential information" is information that is not readily available to the public at the same time it is available to the city officer or employee. "Appear" means to have any oral or written communication with the agency. "Assist" in this situation means aiding another to produce the work product that goes before the city agency, but you do not personally "appear" before the agency.

For more information, the Guidelines on Future Employment are available from the Commission's office and web site. The Guidelines include a form affidavit.

Could you give an example of how the future employment restrictions work?

Assume that Donna is a division chief ready to retire and would like to use her expertise as a private consultant. Donna's division makes recommendations on development plans. She reviews and approves the recommendations before they are sent to the director for final approval. In her city job, Donna regularly reviews confidential information. Once she begins her consulting work, Donna will not be able to appear on behalf of or assist any client before any agency with a development matter in which she was directly involved or she considered, participated in decision making, or had access to confidential information. On the other hand, any city agency could contract with her regardless of her past involvement with the development issues.

Why are there such tight restrictions on city workers moving to the private sector?

The purpose of the restrictions is to prevent the disclosure of confidential information and limit the influence of former city officers and employees on city agencies or personnel that might affect an agency's decision.

PENALTIES AND DISCIPLINARY ACTION FOR VIOLATIONS

What are the consequences of violating an ethics law?

If the Ethics Commission finds a violation, it will make recommendations to the officer's or employee's appointing authority (the Council in the case of a councilmember). These recommendations may include reprimand, probation, demotion, suspension or discharge, depending on the seriousness of the violation. Furthermore, a violation by an elected official is grounds for impeachment. RCH § 11-106; ROH § 3-8.5(a).

In addition, any contract that was entered into as a result of an ethics breach may be voided by the city. Any compensation, gift or benefit received in violation of the ethics laws may be recovered from the violator. ROH § 3-8.5(b) and (c).

The Commission does not have the power to fine, directly penalize or discipline an officer or employee.

THE HONOLULU ETHICS COMMISSION

How does the Ethics Commission work?

The Commission is made up of seven volunteer members appointed by the Mayor and confirmed by the Council. The Commission has the power and duty to investigate, subpoena witnesses, hold hearings and make recommendations on requests from officers, employees and members of the public. ROH § 3-6.3.

The Commission receives two different types of requests: (1) those for advice before an officer or employee acts and (2) complaints regarding the past actions of an officer or employee.

Most requests for advice are answered over the telephone. Those requests presenting complex facts or requiring considerable research, however, may require a written opinion from staff or the Commission.

Upon receiving an oral or written complaint, the Commission staff investigates the facts. The person whose actions are in question is always given the opportunity to present his or her side of the issue to the Commission. ROH § 3-6.7.

For cases that go to the Commission members for a decision, an advisory opinion is rendered to the requestor and the subject of the inquiry detailing the Commission's findings. A public version of the advisory opinion, edited to avoid disclosing the identities of the persons involved, is available to the public. The staff and Commission are required to keep confidential all information obtained in an investigation. ROH § 3-6.3(g) and § 3-6.5(c).

Finally, when the Commission makes its recommendation to the appointing authority, that authority must promptly tell the Commission what action was taken on the recommendation. ROH § 3-6.5(e).

For more information about the types of cases, information required by the Commission when filing a request for advice, processes, etc., review our Frequently Asked Questions at our website or call the Commission office.

(As of February 27, 2002)

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