

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov  
Internet: www.honolulu.gov/ethics

MUFI HANNEMANN  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

Advisory Opinion No. 2008-3

I. Summary

A city supervisor who (1) allowed a friend to park his car in a parking lot restricted to city employees, and (2) used his city-assigned vehicle to transport himself and his friend for potluck lunches contrary to city policy and the ethics laws and state law should receive between three and five days suspension without pay.

II. Procedural background

On May 27, 2008, the Honolulu Ethics Commission (“Commission”) received a complaint that Alvin Pacheco, Painting Supervisor, Department of Facilities Maintenance (“DFM”), had violated certain standards of conduct by using his city position to allow Donald Yoshimura, a friend and former DFM employee, to park his personal vehicle at DFM’s Kokea Street base yard. Mr. Pacheco would then drive Mr. Yoshimura to the Pearl City base yard in the city vehicle assigned to Mr. Pacheco, where they would have potluck lunches with another DFM employee, Sharon Isobe.

The Commission staff conducted an investigation regarding possible violations of the standards of conduct. At its regular meeting on September 9, 2008, the Commission found probable cause that Mr. Pacheco had violated the standards of conduct by using his City position and his City-assigned vehicle for his personal benefit and the benefit of two of his friends. On September 16, 2008 the Commission issued a Notice of Possible Violation to Mr. Pacheco informing him of the allegations that he engaged in conduct that violated Section 11-104, Revised Charter of Honolulu (“RCH”).

The Commission and Mr. Pacheco reached an Agreement Regarding Notice of Possible Violation of the Standards of Conduct (“Agreement”) in this matter, which was filed with the Commission on October 16, 2008. A copy of the Agreement is attached hereto.

### III. Facts

Mr. Pacheco has worked for the city for 23 years and has been the Painting Supervisor at the Kokea Street base yard for 12 years. During the period approximately from June 2007 through June 2008, about 2 or 3 times each month, the following occurred. Mr. Pacheco permitted his friend and former city employee, Donald Yoshimura, to park his car in the city employee parking lot at the Kokea Street base yard. This parking lot was not open for public parking and ample public parking was available on Kokea Street. Mr. Pacheco would then drive to DFM's Pearl City base yard in the city-owned SUV assigned to him, allowing Mr. Yoshimura to ride in the vehicle. Mr. Pacheco and Mr. Yoshimura made the trip to meet another DFM employee, Sharon Isobe, for potluck lunches. The round trip to the Pearl City base yard and the potluck took about 45 to 60 minutes. Mr. Pacheco stopped the practice described above in May or June of 2008 after he overheard another employee mention that his conduct was improper.

Before the misconduct occurred, Mr. Pacheco had received and read a copy of the February 25, 2005 memorandum entitled "Use of City Vehicles" from the director of DFM to all DFM employees. Also, he was aware that the memorandum had been posted on the Kokea Street base yard bulletin board since its transmission to employees. The memorandum states the DFM policy prohibiting the use of city vehicles for other than work related purposes, including personal errands (such as picking up meals unless authorized) and allowing anyone other than a city employee to ride in a city vehicle. The memorandum closes with a notice that use of city vehicles for other than work related purposes will be investigated and appropriate disciplinary action taken. The Commission notes that Section 105-1(a), Hawaii Revised Statutes, prohibits the use of a county vehicle for anyone's personal pleasure or use in contrast to official use.<sup>1</sup>

Mr. Pacheco did not ask for or have authority to allow someone who did not have official business with the city to park his car in the Kokea Street base yard parking lot. Mr. Pacheco did not ask for or have authority to permit any person other than a City employee on official business to ride in the city-assigned SUV. Mr. Pacheco did not ask for or have permission to use his city-assigned vehicle to travel for the potlucks.

Mr. Pacheco states that he did not think about whether his conduct was contrary to the ethics laws or to the DFM memorandum regarding the proper use of city vehicles. Mr. Pacheco states he does not know whether other DFM employees used the Kokea Street parking lot or a city-assigned vehicle in a manner similar to the way he did.

### IV. Analysis

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<sup>1</sup> **§105-1 Government motor vehicles; certain uses prohibited.** Except as provided in section 105-2, it shall be unlawful for any person to use, operate, or drive any motor vehicle owned or controlled by the State, or by any county thereof, for personal pleasure or personal use (as distinguished from official or governmental service or use) including, without limitation to the generality of the foregoing, travel by or conveyance of any officer or employee of the State, or of any county thereof, directly or indirectly, from his place of service or from his work to or near his place of abode, or, directly or indirectly, from such place of abode to his place of service or to his work.

From these facts the Commission concludes that Mr. Pacheco misused his city position, the city-owned parking lot and the city-owned vehicle to obtain special treatment, advantage or privilege for him, Mr. Yoshimura and Ms. Isobe, in violation of RCH Section 11-104<sup>2</sup> and contrary to the February 25, 2005 memorandum. Simply stated, the use of his city position, parking lot and vehicle was for the personal benefit of Mr. Pacheco and his friends. Based on the information that the trips were made 2 or 3 times each month for about one year, each violation occurred between 24 and 36 times.

V. Recommended discipline

When the Commission finds violations of the ethics laws, it is required to inform the appointing authority what disciplinary or corrective action should be taken by the appointing authority. Before doing so, the Commission reviews the mitigating and exacerbating factors surrounding the violations.

Mr. Pacheco ceased his misconduct upon hearing that it was improper. We recognize that Mr. Pacheco has been truthful and cooperative in the Commission's investigation and the resolution of this matter. This has reduced the amount of time and staff resources needed to pursue the case. He understands what was wrong with his conduct, is willing to face the consequences and not repeat the misconduct. The dollar value of the ethics violations may be relatively small.

However, the Commission cannot overlook that the misconduct directly contradicted the February 25, 2005 memorandum, state law and the basic standard of conduct that prohibits the personal use of a city vehicle and restricted parking lot for personal pleasure and benefit. Mr. Pacheco was put on notice by the memorandum that his conduct was a violation of policy. Even without specific notice, a supervisor is presumed to know that he may not use city resources for his personal benefit and that of his friends. Mr. Pacheco did not seek permission to use the parking lot or vehicle as he intended. If he had, we assume he would have been informed that such conduct was restricted. Finally, the violations occurred repeatedly over a nearly 12-month period. Each trip to the Pearl City base yard created three violations – one for the misuse of the parking lot, one for the misusing the city vehicle and one for letting Mr. Yoshimura ride along.

Balancing the factors above, the Commission recommends that Mr. Pacheco be suspended without pay for a period of between three to five days. The director of DFM has 15 days from the date of this opinion to inform the Commission of the actual discipline the director believes is appropriate under the circumstances.

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<sup>2</sup> **Section 11-104. Fair and Equal Treatment --**

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

DATED: October 16, 2008

BY: /S/ \_\_\_\_\_  
Lex R. Smith, Chair  
Honolulu Ethics Commission