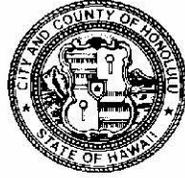


**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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

ADVISORY OPINION NO. 2020-1

I. SUMMARY

The Honolulu Ethics Commission (“Commission”) received an inquiry as to whether city officers and employees who enforce the law should be allowed to accept tokens of aloha and acts of kindness during a global pandemic (COVID-19).

The Commission met on May 1, 2020, and decided to allow first responders to accept tokens of aloha and acts of kindness during a state of emergency or disaster as proclaimed by the Governor of the State of Hawai‘i and/or Mayor of the City and County of Honolulu.

II. BACKGROUND

On April 21 and 22, 2020, Honolulu Police Department (HPD) personnel requested advice on whether police officers and civilian employees can accept tokens of aloha and acts of kindness during the COVID-19 pandemic.

Honolulu police officers and civilian employees have been offered free food, drinks, and discounts by community members and businesses.

HPD *Standards of Conduct* for police officers state that officers and civilian employees may not solicit or accept any gift from persons or businesses against whom such personnel may be required to enforce the law. HPD personnel are trained to this standard.

Ethics Commission *Guidelines on Gifts (April 21, 2004)* (Guidelines) provide that City officers and employees who have authority to enforce the law (such as police officers) must follow a higher standard of conduct regarding gifts. Moreover, police officers may not accept offers of drinks, food, or other items free of charge or at a discount from an individual or business over which the personnel have enforcement power, even if they are offered on non-city time. *Guidelines on Gifts (April 21, 2004)*.

When asked, the police chief stated that police officers should not accept gifts, but asked for Commission clarification during these uncertain times of global pandemic.

III. ISSUE AND SHORT ANSWER

Whether city officers and employees who enforce the law should be allowed to accept tokens of aloha and acts of kindness during a global pandemic (COVID-19)?

Yes. City officer and employee first responders are allowed to accept tokens of aloha and acts of kindness during a state of emergency or disaster as proclaimed by the Governor of the State of Hawai‘i and/or Mayor of the City and County of Honolulu.

IV. ANALYSIS

In making its decision, the Commission weighed global, national, and local events, governor and mayor proclamations of emergency and disaster, and city ethics laws and HPD standards. The Commission's emergency and disaster policy analyzes and balances these factors.

A. State of Hawai'i and City and County of Honolulu Are Shut Down Due to the COVID-19 Pandemic

The impacts of the COVID-19 pandemic are unprecedented and the State of Hawai'i and City and County of Honolulu have been shut down.

Gov. David Ige, by proclamation dated March 4, 2020, declared a state emergency or disaster and proclaimed that a disaster emergency relief period would begin immediately and continue through April 29, 2020. The governor later extended the proclamation through May 31, 2020. On March 24, 2020, Gov. Ige shut down all non-essential businesses and ordered a statewide lockdown in response to the COVID-19 pandemic.

Mayor Kirk Caldwell, also by proclamation dated March 4, 2020, declared imminent danger or threat of a state of emergency or disaster in the City and County of Honolulu. Extreme social distancing, stay at home, and work from home orders followed. To date, the City remains largely shut down, although plans for a phased opening are being developed.

B. Local and National Offers of Food and Beverages, Discounts, Other Goods and Services for First Responders under COVID-19

As the pandemic spread and infection burgeoned, first responders and other front line workers continued to report to work at essential businesses. U.S. communities began to recognize personal sacrifices made by such workers, including hospital personnel, firefighters, emergency medical technicians, police officers, among other front line workers in food production, grocery stores, trucking companies, and drug stores and pharmacies. Some citizens and businesses expressed their appreciation by offering first responders and other essential workers free food and beverages, hotel rooms for respite,¹ personal protective equipment (PPE), and other goods and services. The number and variety of offers increase daily.

Some donations generate news coverage by broadcast news outlets, resulting in free advertising for involved companies. The public might think that free lunches and other offers are intended to influence police officers when performing their official duties, resulting in preferential treatment of neighborhood businesses by neighborhood police officers. Other neighborhood businesses might not be able to offer free food, goods, and services.

C. City Gift Laws, Commission Guidelines, and HPD *Standards of Conduct* Strictly Prohibit Police Officers from Accepting Gifts and Discounts

City gift laws and Commission Guidelines. The general law is that a city employee cannot accept a gift if it appears that the gift is being used to influence or reward the employee in the

¹ By letter dated April 7, 2020, the Hawai'i State Ethics Commission advised Maj. Gen. Kenneth Hara that hotel rooms donated to the State for the *Hotels for Heroes* program become state property; accordingly, they may be distributed by the State without any ethics concerns. First responders may stay there without violating the [State] Ethics Code. Police Chief Ballard informed us that HPD opted out of this program.

employee's official city duties. A gift can be money, loan, gratuity, favor, service, thing, or promise. Revised Charter of Honolulu Sec. 11-102.1(a). City employees may accept small tokens of aloha, such as lei or food to be shared with co-workers.²

However, the Commission's Guidelines provide that city personnel who have authority to enforce the law, such as fire and building code inspectors, prosecutors, police officers, and liquor commissioners and employees, are held to a higher standard of conduct regarding gifts than other city employees. While other employees may accept small tokens of aloha, employees who enforce the law are strictly prohibited from accepting anything. Accepting offers of food, drinks, or other items free of charge or at a discount is strictly prohibited, even if offered on non-city time.

The Ethics Commission trains police officers on these laws and Guidelines. When asked, Commission staff routinely reminds police officers of the strict gift prohibition and advises such officers to refuse or return all gifts.

HPD Standards of Conduct. HPD *Standards of Conduct* Article V, *The Code of Ethics*, states, in part: "... [a police officer] will enforce the law courteously and appropriately without fear or favor ... and never accepting gratuities." Article VIII, *Standards*, provides that officers and civilian employees shall not solicit or accept any gifts, gratuities, loans, fees, or rewards where there are any direct or indirect connections between the solicitations or offerings and their departmental membership or employment. The police chief's written approval must be obtained prior to accepting a gift and unauthorized gifts must be forwarded to the chief's office with a written report of the circumstances which led to the gift.

D. As a Matter of Policy, the Commission Gives Weight to Global Events and Proclamations by Governor and Mayor

The Commission gives weight to the global pandemic and proclamations by the governor and mayor. The Commission also recognizes that the level of community support for first responders during the pandemic is unprecedented and that such support may be expressed in free and discounted food and beverages, personal protective equipment (PPE), among other goods and services.

In establishing its state of emergency and disaster policy, the Commission limits it to city officer and employee first responders. The policy does not include other city personnel strictly prohibited from accepting gifts, such as fire and building inspectors, prosecutors, and liquor commission members and employees. These city personnel are not first responders.

The Commission will activate and deactivate its state of emergency and disaster policy by the governor's and/or mayor's proclamations and declarations. For example, Mayor Caldwell's March 4, 2020, *Proclamation on COVID-19 [Novel Coronavirus]*, declares a state of emergency or disaster in the City that terminates on either the 60th day or upon issuance of a *Declaration of Termination of Emergency*, whichever first occurs. The Commission's state of emergency and disaster policy will expire upon termination of the governor's and/or mayor's proclamation or declaration of termination.

After deactivation of the state of emergency or disaster policy, the Commission will revert to its strict gifts prohibition policy for those who enforce the law.

² In February 2020, the Commission decided on a new zero-tolerance gifts policy that would render gifts of aloha to city officers and employees unacceptable. Because this change requires law amendments, however, implementation of this policy will be delayed.

V. CONCLUSION

For the reasons discussed above, the Commission decided to allow first responders to accept tokens of aloha and acts of kindness during a state of emergency or disaster as proclaimed by the Governor of the State of Hawai'i and/or Mayor of the City and County of Honolulu.

Upon termination of such proclamations, the Commission will revert to its strict gifts prohibition policy for city personnel who enforce the law.

/s/ Victoria S. Marks
VICTORIA S. MARKS, Chair
Honolulu Ethics Commission

DATED: May 8, 2020

APPROVED AS TO FORM AND LEGALITY:

/s/ Jan K. Yamane
JAN K. YAMANE
Executive Director Legal Counsel
Honolulu Ethics Commission

DATED: May 8, 2020