

August 27, 2004

TO: ALL CITY AGENCIES

FROM: ROBIN D. LIU, CHAIR, AND MEMBERS OF THE HONOLULU ETHICS COMMISSION

SUBJECT: GUIDELINES FOR EMPLOYMENT AFTER LEAVING CITY SERVICE

All City officers and employees are reminded that the Standards of Conduct place restrictions on the type of work that may be performed for one year following the date you leave City employment. See, Section 11-105, Revised Charter of Honolulu (RCH),¹ and Section 3-8.3, Revised Ordinances of Honolulu.² These laws apply to former full-time or part-time officers and employees and to members of boards and commissions.

These laws create a one-year “cooling off” period intended to prevent conduct by former City personnel to profit from their potential influence with their former agency that could affect a decision-making process by the City. In addition, these laws help avoid private interests from using knowledge or information that is available to the former officer or employee, but not readily available to the public.

1. Restrictions on the use of confidential information acquired while in City employment or service

After you leave City employment, you may not disclose any confidential information that you acquired while working for or serving the City. Furthermore, you may not use this information for the benefit of anyone, including your new employer.*

This restriction applies as long as the information remains confidential.³

2. Restrictions on rendering service to a new employer or client on a matter that was or is before a City agency

For one year after your City employment ends, you may not receive compensation from a private interest for any services rendered* that involve a matter* in which you participated or to which you were given access to confidential information while working for or serving the City.*

There are two important exceptions: First, this restriction does not apply if you work on the matter on behalf of the City. Second the restriction does not apply for a strictly ministerial (non-discretionary) matter brought before an agency.

If in your private employment you will be paid to work on a matter within one year of leaving City employment or service, you may work on the matter only if: (1) you did not participate in the matter while you were employed with or served the City; (2)

* Underlined terms are defined below.

you did not have access to confidential information regarding the matter while you were with the City; and (3) you file an affidavit with the agency before working on the matter.

The affidavit must state that you: (1) were not actively concerned with, (2) did not actively consider, (3) did not participate in, and (4) were not given access to confidential information about the matter. A sample affidavit is attached to these Guidelines. It is a violation of the ethics laws for City personnel to participate in a prohibited matter with a former officer or employee unless the affidavit has been filed with the agency.

Example #1. In your City work, you review an application for a building permit for a high rise, including the required architectural and engineering plans submitted by ABC Company. You leave City service in July and in the next month ABC Company offers you employment. One of the tasks ABC will assign you is to ensure that City building codes are followed, including those for the high rise. May you accept the builder's job offer?

Answer: Yes, but you may not work on the high rise project. While working for the City you participated in the matter by reviewing an application and drawings for the high rise. Therefore, for one year, you may not be paid to consult on the same matter. Note that under the definition below, "matter" is broadly interpreted. In this case, although you reviewed the application and plans while with the City and the consultant wants you to ensure compliance with building codes, the "matter" includes the permitting, inspection and completion of the high rise.

You may, however, work on any projects for ABC Company in which you were not involved while at the City and for which you did not have access to confidential information. Should you appear before your former agency on any matter during the one-year period, you will need to file the appropriate affidavit.

Example #2. You supervise employees who inspect restaurant and food industry grease traps to ensure that the traps are in compliance with the applicable law. You do not conduct the inspections. After you leave City employment may you become a consultant to the food industry on grease trap compliance?

Answer: No. As a supervisor you are considered to have access to the same knowledge and information that is available to your subordinates. The information maintained by the City about which food industry businesses are not in compliance is not readily available to all grease trap consultants. Thus, you would have a significant business advantage over competing consultants in prospecting for clients.

The following definitions should be used when evaluating post-employment work:

"Agency" includes any office, department, board, commission or other governmental unit of the City, but excludes the Council.

“Confidential information” is knowledge or information that is not readily available to the public. A former City officer or employee is presumed to have had access to knowledge or information concerning all work performed by subordinate personnel.

“Compensation” includes any money, thing of value or economic benefit conferred on or received by a person in return for services rendered or to be rendered by that person or another.

“Matter” includes, but is not limited to, cases, applications, projects, contracts or proceedings that involve the use of discretionary authority by the City. In addition, “matter” is not limited to the specific case or application. Instead, it refers to the broader subject. For example, if a business wishes to develop a certain parcel of land and makes repeated applications for such development to City agencies, the “matter” is the development of the parcel of land and not the individual applications.

“Services rendered” includes acting as an agent, attorney or other representative of a person or business in any formal or informal City matter that involves the use of discretionary authority by City personnel. You may not appear before the City agency, such as making any oral or written communications, including letters or telephone calls, to any City agency or personnel with the intent to influence the agency personnel on behalf of any other person or business. Furthermore, you may not assist another in preparing a matter where you would not be permitted to appear or represent the client.

In summary, if you were not involved in the matter and did not have access to confidential information regarding the matter while with the City, you are free to work on the matter, as long as you file the required affidavit. If you were involved in the matter or you had access to confidential information involving the matter while with the City, you may work on the matter only if you are doing so on behalf of the City.

3. Negotiating employment with an entity that you review, manage, license, regulate or permit while at the City

City officers and employees may not participate in a decision-making process that may affect an interest of a person or business with whom the officer or employee is negotiating for employment.

City personnel should keep in mind that negotiating employment with a company or person with whom you deal in your City position may raise a real or apparent conflict of interest under RCH Section 11-102(c), which prohibits your involvement in business transactions or activities or having financial interests which are incompatible with or may tend to impair your judgment in performing your official duties.⁴ Your future employment is considered a financial interest. Therefore, City personnel should not participate in any review or decision-making process involving a potential employer with which the officer or employee intends to or has discussed the terms of future employment.

Example #3. A deputy Corporation Counsel manages and reviews how a private attorney carries out his contract to represent the City in a lawsuit. The private attorney asks the deputy if she would be interested in working for the private law firm. May the deputy discuss terms of employment with the private firm?

Answer: No. The deputy may not discuss terms of employment with the private attorney while she manages and reviews the private attorney's contract performance. Before she discusses terms of future employment with the private firm, the deputy must remove herself from any discretionary activities involving the private attorney.

4. Penalties for ethical violations

A violation of the City's ethics laws may result in disciplinary action such as reprimand, probation, demotion, suspension or discharge from employment. Elected City officers may be impeached for a violation. In addition, the violator may be required to reimburse the City for any benefit, fee, compensation or profit received by any one as a result of the violation.⁵

These Guidelines are provided for your general information, but should not be considered a substitute for specific advice from the Honolulu Ethics Commission. If you would like advice from the Ethics Commission concerning future employment or other issues, you may write a letter to or email the Commission or call 527-5573.

ROBIN DAVID LIU, Chairperson
Ethics Commission

APPROVED FOR DISTRIBUTION:

BENJAMIN B. LEE
MANAGING DIRECTOR

¹ Section 11-105. Future Employment --

No person who has served as an elected or appointed officer or employee of the city shall, within a period of one year after termination of such service or employment, appear for compensation before any agency of the city, or receive compensation for any services rendered in behalf of any private interests in relation to any case, proceeding or application with respect to which such person was directly concerned, or which was under such person's active consideration, or with respect to which knowledge or information was made available to such person during the period of said service or employment.

² Sec. 3-8.3 Restrictions relative to post employment.

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- (a) No former officer or employee of the city shall disclose any information which by law or practice is not available to the public and which the former officer or employee acquired in the course of his or her official duties or use the information for his or her personal gain or the benefit of anyone.
 - (b) No former officer or employee of the city shall within a period of one year after termination of city service or employment and for compensation appear before any city agency in relation to any case, proceeding or application with respect to which such person was directly concerned or which was under the person's active consideration while employed or in the service of the city.
 - (c) A former officer or employee of the city may, within a period of one year after termination of city service or employment and for compensation: (1) appear before any city agency in any case, proceeding or application, with respect to which knowledge or information in relation to such case, proceeding or application, was made available to the former officer or employee during the term of employment or service; or (2) assist another person or business, including but not limited to one in which such person is an officer or employee, in any official act or action by the city; provided, that in either instance the former city officer or employee shall first file an affidavit as provided below. Such former officer or employee of the city shall file a sworn affidavit with the city agency involved stating that the former officer or employee (1) was not directly concerned with, (2) did not actively consider, (3) did not participate in, and (4) was not given access to knowledge or information not readily available to the public during the period of said active service or employment, with respect to such case, proceeding or application or other matter before the city agency. All city agencies that receive such an affidavit shall forward a copy to the ethics commission.
 - (d) For the purposes of this section, the term "appear before any city agency" includes acting as an agent or attorney for, or otherwise representing, any other person or business in any formal or informal appearance. "Appear" also includes making any oral or written communications, including letters or telephone calls, to any city agency or personnel with the intent to influence on behalf of any other person or business. The date of termination of city service or employment shall be defined as the date upon which a person's resignation, dismissal or retirement takes effect.
 - (e) No officer or employee of the city shall do business with any former officer or employee who falls within the scope of this section unless such former officer or employee first files a sworn affidavit as provided herein.
 - (f) Any former officer or employee who falls within the scope of this section and who makes a false statement in the person's sworn affidavit or files a false affidavit shall be deemed to have committed perjury and thereby subject to the provisions of Section 710-1060 of HRS Chapter 710 (Penal Code), and be punished as provided in said Chapter 710.
 - (g) This section shall not prohibit any city agency from contracting with a former officer or employee to act on a matter on behalf of the city within the period of limitation stated herein and shall not prevent such officer or employee from appearing before any city agency in relation to such employment.

³ Section 11-102. Conflicts of Interest --

No elected or appointed officer or employee shall:

- (b) Disclose confidential information gained by reason of such person's office or position or use such information for the personal gain or benefit of anyone.

⁴ Section 11-102. Conflicts of Interest --

No elected or appointed officer or employee shall:

- (c) Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties.

⁵ Sec. 3-8.5 Violation--Penalty.

- (a) The failure to comply with or any violation of the standards of conduct of this article or of Article XI of the revised charter shall be grounds for impeachment of elected officers and for the removal from office or from employment of all other officers and employees. The appointing authority may, upon the recommendation of the ethics commission, reprimand, put on probation, demote, suspend or

discharge an employee found to have violated the standards of conduct established by this article. Nothing contained herein shall preclude any other remedy available against such officer or employee.

- (b) In addition to any other penalty provided by law, any contract entered into by the city in violation of Sections 11-101 through 11-105 of the revised charter or of this article is voidable on behalf of the city; provided, that in any action to void a contract pursuant to this article the interest of third parties who may be damaged thereby shall be taken into account, and the action to void the official act or action is initiated within six months after the matter is determined by the ethics commission.
- (c) The city, by the corporation counsel, may recover any fee, compensation, gift or profit received by any person as a result of a violation of the standards in this article or in Article XI of the revised charter by an officer or employee or former officer or employee. Action to recover under this subsection shall be brought within four years of such violation.

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

AFFIDAVIT

_____ (name), being first duly sworn on oath deposes and says as follows:

1. That he/she is a former officer/employee of _____ (City agency) of the City and County of Honolulu and was a part of that agency as a _____ (position) from _____ (date) until the date of his/her termination, which was effective at the close of business on _____ (date).

2. That he/she is now (or will be) employed by _____ (name of firm), whose principal place of business is _____ (street and city address), Hawaii _____ (zip code), and is appearing before _____ (City agency) on _____ (date) regarding _____ (describe the matter).

3. That during the one-year period prior to the date of this affidavit, while an officer/employee of _____ (City agency) of the City and County of Honolulu:

- a. He/she was not directly concerned with the above-described matter;
- b. The above-described matter was not under his/her active consideration;
- c. He/she did not participate in the matter; and

d. No knowledge or information was made available to him/her that was not readily available to the public during said period.

4. That he/she has read and is aware of the restrictions relative to future employment embodied in Section 11-105, Revised Charter of the City and County of Honolulu, and Section 3-8.3 of the Revised Ordinances of Honolulu, and the Ethics Commission's Guidelines on Employment after Leaving City Service.

Further affiant sayeth naught.

(signature)

Subscribed and sworn to before me
this ____ day of _____ 20__.

Notary Public, state of Hawaii

cc: Ethics Commission of the City & County of Honolulu