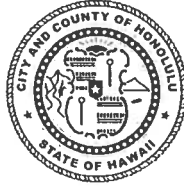


**ETHICS COMMISSION
KOMIKINA LAWENA HANA KŪPONO
CITY AND COUNTY OF HONOLULU**

925 DILLINGHAM BOULEVARD, SUITE 190 • HONOLULU, HAWAII 96817
PHONE: (808) 768-9242 • FAX: (808) 768-7768 • WEBSITE: honolulu.gov/ethics

RICK BLANGIARDI
MAYOR
MEIA



JAN K. YAMANE
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL
PO'O HO'OKŌ A ME KE A'OA'O LOIO

LAURIE WONG-NOWINSKI
ASSISTANT EXECUTIVE DIRECTOR
AND LEGAL COUNSEL
KŌKUA PO'O HO'OKŌ A ME KE A'OA'O LOIO

April 15, 2024

The Honorable Tommy Waters
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Waters and Councilmembers:

SUBJECT: Bill 23 (2024) – Support, with Amendments

Thank you for introducing Bill 23 (2024), which seeks to clarify and strengthen the city's gift laws. The Ethics Commission supports this measure, with amendments.

This bill is based on Bill 26 (2022), CD2, Proposed FD1 – TW1, Relating to Gifts to Mayor, Prosecuting Attorney, Councilmember, and Officer or Employee (OCS2024-0301/3/25/2024 6:55 AM), which expired on April 12, 2024. The Proposed FD1 – TW1 version was to have been considered at the City Council meeting on March 27, 2024.

After reviewing Bill 23 (2024), the Commission respectfully requests Council's consideration of the following amendments in SECTION 2 of the bill:

1. Amend the definition of "Financial Relationship with the City" to read: "Financial Relationship with the Recipient's City Agency. A financial relationship with the recipient's city agency in which the person with the financial relationship receives or may receive funds from the recipient's city agency, including via current city contracts, commercial leases within the city, and city concessions, or receives or may receive income from third parties as a result of the financial relationship. The term includes lobbying, but does not include the employer and employee relationship of a city officer or employee with the city, nor does it include financial transactions with the city such as the receipt of a refund or rebate; the paying of a city tax, parking meter fee, or parking lot fee; obtaining a driver's license or identification card; personal automobile registration; the purchasing of a ride or pass for travel on the city's transit bus, paratransit, or rail transit system; or a similar minimal contact with the city."

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2. Amend the definition of "Prohibited Source" to read: "Any lobbyist or any person with a financial relationship with or who seeks official action from the recipient's city agency to whom subsection (b) applies."
3. Amend subsection (c) to read: "A city officer or employee may not solicit, and unless exempted by subsection (d), a city officer or employee may not accept or receive, either directly or indirectly through a third party, any gift if the city officer or employee knows or has reason to know that it is from a prohibited source. A city officer or employee is deemed to have reason to know that a gift is from a prohibited source if the gift is given, directly or indirectly, from:
 - (1) Any person registered as a lobbyist under Chapter 3, Article 13;
 - (2) Any person with a financial relationship with the recipient's city agency; or
 - (3) Any person seeking official action from the recipient's city agency;

provided that the person has appeared before the city officer or employee or a body of which the city officer or employee is a member in connection with the person's lobbying activities, financial relationship with the recipient's city agency, or official action from the recipient's city agency."

4. Amend subsection (d)(7) to read "[t]ypical beverages or snacks given when attending a conference or a meeting in an office;".

In Items 1. and 2., the Commission has concerns that the definitions of "Financial Relationship with the City" and "Prohibited Source" are overly broad and would conflict with each other. As drafted, subsection (b) enables certain gift givers to give a gift, but subsection (c) prevents recipients from accepting the gift.

To illustrate this conflict, suppose someone is awarded grant money from the Department of Community Services (DCS). That person may give a gift to a city Zoo employee—the Zoo is part of the City's Department of Enterprise Services (DES)—because no reasonable person would believe that a gift from a DCS grant recipient to a Zoo employee was intended to reward or influence the Zoo employee in performing their city job. However, under subsection (c), the Zoo employee could not accept the gift because the grant recipient is a person with a "financial relationship with the city" and, hence, a "prohibited source." According to this bill, a city officer may not accept a gift from a "prohibited source."

To fix this inconsistency, the Commission requests that the definition of "financial relationship with the city" be amended to limit such definition to the recipient's city agency; thus, "financial relationship with the recipient's city agency."

Further, in Items 2. and 3., the Commission requests that "seeks official action from the recipient's city agency" be added to further clarify "prohibited source."

The Honorable Tommy Waters
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Regarding Item 4., this bill encourages a pay-to-play culture by creating an exemption for city officers or employees to accept up to \$50 worth of beverages, meals, or snacks from anyone, including "prohibited sources." In an extreme example, a lobbyist or other "prohibited source" could offer a city officer a \$50 lunch daily to discuss client issues. The city officer may feel obligated to take official action such as issue a permit or approve an application.

Alternatively, a city officer could solicit daily \$50 meals from a "prohibited source" as frequently as desired. A "prohibited source" may feel obligated to provide such meals to gain influence and access, curry favor, and build rapport. The city should strive for a level playing field, not one that favors gift-givers over others.

Finally, the Commission knows that meetings may take place outside of an office during which a meal may be offered, but these situations should not be given a blanket exemption. In an abundance of caution, we invite inquiries to be vetted by the Commission on a case-by-case basis.

Thank you for the opportunity to testify in support of Bill 23 (2024), with amendments. We will be available for questions at the April 17, 2024, City Council Meeting.

Sincerely,



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Jan K. Yamane
Executive Director and Legal Counsel

cc: Rick Blangiardi, Mayor
Michael D. Formby, Managing Director