

*Overview of Ethics for County Officers
and Employees*

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County of Hawai`i

Overview of Ethics

**Purpose of Training/Desired
Outcomes**

- ▶ To provide County officers and employees a general overview of the County Code of Ethics.
- ▶ To highlight important provisions of the County Code of Ethics that County officers and employee should be aware of.

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Purpose of Government Ethics Laws

- ▶ Promote both the reality *and the perception of integrity in government*;
 - ▶ HCC 2-79 Purpose
 - ▶ 1. Prescribe standards of conduct for the guidance of County officers and employees;
 - ▶ 2. Prohibit certain conduct involving County officers and employees;
 - ▶ 3. Set forth the procedure for the interpretation of ethics problems of County officers and employees.
 - ▶ HCC Section 2-80. Interpretation of article

This article shall be liberally construed to promote high standards of ethical conduct in County government.

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Hawai`i County Charter

- ▶ Directs council to adopt by ordinance a code of ethics;
- ▶ Standards are minimum standards; directs that more stringent provisions may be enacted;
- ▶ Applies to all elected and appointed County officers and employees
- ▶ All officers and employees presumed to know the requirements of the Charter
- ▶ Establishes the Board of Ethics

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Hawai'i County Code of Ethics

- ▶ Ordinance created by the Council
- ▶ Applies to all elected and appointed County officers and employees
- ▶ All employees presumed to know the requirements of the Code
- ▶ Code interpreted by the Board of Ethics
- ▶ Any person may file a petition

Overview of Ethics

Our Board of Ethics

- ▶ 5 members -
- ▶ Chair vacant
- ▶ Vice-Chair David Wiseman, term expires on 12/31/21
- ▶ Lawrence Heintz, term expires on 12/31/23
- ▶ Denise Nakanishi, term expires on 12/31/24
- ▶ Amy Self, term expires on 12/31/25
- ▶ Kelly Valenzuela, term expires on 12/31/25
- ▶ 5 year term, appointed by the Mayor and confirmed by the Hawai'i County Council

Overview of Ethics

The Ethics Code

Main Areas

- ❖ *Fair Treatment*
- ❖ *Conflict of Interest*
- ❖ *Contracts*
- ❖ *Financial Disclosure*
- ❖ *Lobbyist*
- ❖ *Gifts*
- ❖ *Confidentiality*
- ❖ *Post employment*

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Fair Treatment Provision of the Hawai`i County Code

HCC Section 2-83



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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Section 2-83(a)

“(1) All public property and equipment are to be treated as a public trust and are not to be used in a proprietary manner or for personal purposes without proper consent.”

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

- ▶ “Public property” includes your time while being compensated by the County
- ▶ “Personal purposes” includes non-County business purposes
- ▶ “Proper consent” may be granted by the Board of Ethics or the department/agency head, subject to non-arbitrary criteria

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Q. My daughter is participating in a school activity that requires her to fundraise by selling sweetbread. May I email my friends and co-workers about this fundraiser using my county computer?

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Section 2-83(a)

“(2) No person in a supervisory capacity shall engage in personal or business relationships with subordinates, which might intimidate said subordinates in the discharge of their official duties.”

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

- ▶ Note that it covers *both* personal and business relationships
- ▶ For business relationships, there is no need for the private business to have any nexus to the nature of the County employment

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Section 2-83(a)

“(3) All persons shall be treated in a courteous, fair and impartial manner.”

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Section 2-83(b)

“No officer or employee shall use or attempt to use the officer’s or employee’s official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the officer’s or employee’s office or position.”

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Section 2-83(b)

“(2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the officer’s or employee’s official duties or responsibilities except as provided by law.”

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Section 2-83(b)

“(3) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the officer or employee inspects or supervises in the officer’s or employee’s official capacity.”

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Section 2-83(b)

“(4) Using County property, facilities, equipment, time, or personnel for private business, campaign purposes, or for any purpose other than for a public purpose.”

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

- ▶ Note that this entire section requires a showing of “use or (an) attempt to use the officer’s or employee’s official position”
- ▶ Note that some positions are so prominent, there can be no meaningful differentiation between the person and position (Mayor, Council Member, e.g.)

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Q. When I check into a hotel while on vacation, the front desk clerk notices I work for the County, and gives me a free upgrade to a bigger room. Does accepting this violate the Code of Ethics?

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Q. I am volunteering to help in a campaign for a County officer for reelection. We are going to use the office kitchen to stuff envelopes with other volunteers, after hours. Is this alright?

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Q. I have agreed to help a County officer out at her upcoming fundraiser. A colleague of mine who is also helping asks that we go out into the parking lot so he can give me some tickets to distribute. Does this violate the Code of Ethics?

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Q. You are pulled over by the Police for speeding. When you produce your license, the officer asks, “Do you work for the County?” and you respond, “Yes.” He then lets you off with a warning. Is this a Code of Ethics violation?

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Fair treatment provision”

Q. A member of the public brings you a candy basket, and thanks you for the good service you provided him yesterday. Does accepting this gift violate the Code?

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HCC Section 2-84 Conflict of Interest Provision



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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Conflict of Interest provision”

Section 2-84(a)

“No officer or employee shall take any
official action directly affecting:

- (1) A business or other undertaking in which that officer or employee has a substantial financial interest”

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Conflict of Interest provision”

Section 2-84(a)

“(2) A private undertaking in which the officer or employee is engaged as legal counsel, advisor, consultant, or representative, or other agency capacity”

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Conflict of Interest provision”

Section 2-84(a)

“(3) A business or undertaking in which the employee knows or has reason to know that a brother, a sister, a parent, an emancipated child, or a household member has a substantial financial interest, provided that the financial interests of these individuals shall not include those of any spouse or child.”

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Conflict of Interest provision”

Q. I am a County employee in the building department and co-owner of a construction company that does side jobs on the weekends. My company was hired to remodel a residential property and a building permit is needed. Since I work in the building department, I ask my business partner to get the permit. The permit comes across my desk for review. May I approve the permit?

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Conflict of Interest provision”

Q. A company submits their building plans to my department for a building permit. My father is part owner of that company. May I review the plans and approve them?

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HCC Section 2-91.4 and 2-91.5 Gifts provisions



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Gifts & tokens of Aloha

In a July 2008 article, then State Ethics Commission executive director and general counsel said:

“Gifts are the hardest issue to deal with in the ethics area,” The law currently has no “bright line” test, or way to definitively decide what constitutes as a gift.

“Many gifts that go beyond what might be called tokens of aloha may raise issues, but you don’t know if there’s an actual problem until you go out and ask questions,” Mollway says. “What was the occasion? What was the gift? Who was the source? What was the purpose? An agency like ours would have to spend an awful lot of time and thousands of dollars asking these questions, and even then people will debate whether our conclusions are correct.”

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3 relevant HCC provisions regarding gifts

- ▶ HCC 2-91.4 Gifts law
- ▶ HCC 2-83(b) Fair treatment provision
- ▶ HCC 2-91.5 Gifts disclosure

Overview of Ethics

Hawai`i County Code of Ethics (Chapter 2, Article 15, HCC) “Gift provision”

- ▶ Section 2-91.4. Gifts.
- ▶ No officer or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise or in any other form, under circumstances in which it can **reasonably be inferred** that the gift is **intended to influence** the officer or employee in the performance of the officer’s or employee’s official duties or is **intended as a reward** for any official action on the officer’s or employee’s part.

Overview of Ethics

Hawai`i County Code of Ethics (Chapter 2, Article 15, HCC) “Gift provision”

- ▶ Section 2-91.5. Reporting of gifts. (a) Every officer and employee shall file a gifts disclosure statement with the County board of ethics on June 30 of each year if all the following conditions are met:
- ▶ (1) The officer or employee, or spouse or dependent child of an officer or employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of \$100, whether the gift is in the form of money, service, goods, or in any other form;
- ▶ (2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the officer or employee; and
- ▶ (3) The gift is not exempted by subsection (d) from reporting requirements under this subsection.

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of Ethics

Hawai`i County Code of Ethics (Chapter 2, Article 15, HCC) “Gift provision”

- ▶ (d) Excluded from the reporting requirements of this section are the following:
- ▶ (1) Gifts received by will or intestate succession;
- ▶ (2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
- ▶ (3) Gifts from a spouse, fiancé, fiancée, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
- ▶ (4) Political campaign contributions that comply with state law;

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Hawai`i County Code of Ethics (Chapter 2, Article 15, HCC) “Gift provision”

- ▶ (5) Anything available to or distributed to the public generally without regard to the official status of the recipient;
- ▶ (6) Gifts that, within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and
- ▶ (7) Exchanges of approximately equal value on holidays, birthday, or special occasions.
- ▶ (e) Failure of an officer or employee to file a gifts disclosure statement as required by this section shall be a violation of this article.

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Hawai`i County Code of Ethics (Chapter 2, Article 15, HCC) “Gift Disclosure ”

- ▶ Section 2-91.5
- ▶ Every officer and employee shall report gifts if conditions are met in 2-91.5(a).
- ▶ The exceptions to the reporting requirement are contained in 2-91.5(d).

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State Ethics - Gifts of Aloha

- ▶ Gifts of Aloha and other nominal gifts may be accepted.
- ▶ Gifts of Aloha are modest gifts of nominal value, which are traditionally given as part of our local culture as a gesture of aloha or goodwill. These include, but are not limited to: flowers or a flower lei, a box of candy, cookies, manapua or malasadas to share with the office. Other tangible gifts of nominal value that may be accepted include a calendar, coffee mug, or small promotional business items.
- ▶ Examples of prohibited gifts include, but are not limited to: cash, gift cards, computer or electronic equipment, jewelry, sports equipment, and gifts of personal benefit that are not of nominal or minimal value.

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Hawai`i County Code of Ethics (Chapter 2, Article 15, HCC) Gifts

Q. A member of the public calls the Department of Public Works to report a bridge needing repair near her home. The employee follows thru with the request and has the bridge repaired. In appreciation, a 50.00 gift card is given to the DPW employee. May the employee accept the gift card?

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
Gifts

Q. An employee who works at a counter helping the public went out on maternity leave. A member of the public who was previously helped by this employee wanted to give the employee a gift in celebration of the recent birth of her child. Since the employee was out on leave, a co-worker delivered the gift to the employee. Is it appropriate to accept the gift?

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
Gifts

Q. The fire department has been battling a fire in Waikoloa for 4 days. The community gets together and decides to prepare and serve the fire fighters meals and drinks for all of their hard work. Is it appropriate to accept the meals and drinks?

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Confidentiality provision



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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Confidentiality provision”

Section 2-91.6

“No officer or employee shall disclose information which by law or practice is not available to the public and which the officer or employee acquires in the course of the officer’s or employee’s official duties, or use the information for the officer’s or employee’s personal gain or for the benefit of anyone.”

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Hawai`i County Code of Ethics
(Chapter 2, Article 15, HCC)
“Confidentiality provision”

- ▶ Note this provision covers **both confidential and privileged** information.
- ▶ Note that a violation of this provision may result in (1) disciplinary action, (2) removal of elected officials, (3) civil action against the offending County officer or employee, and/or (4) criminal prosecution.

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“Confidential” and
“Privileged” Information

- ▶ “Confidential” information is protected as private by law.
- ▶ “Privileged” information is protected as private by the relationship of the attorney and client.



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“Confidential” and “Privileged” Information

Confidential Information

- ▶ Examples of “confidential” information are medical information protected by the medical privacy act, and criminal records protected by federal and state statute.
- ▶ We are required by law to protect this information as private, and cannot “waive” the privacy right. Only the subject of the information, under limited circumstances, may waive this privacy.

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“Confidential” and “Privileged” Information

Privileged information

- ▶ “Privileged” information may not necessarily be “confidential” information, but nonetheless is information intended to remain private.
- ▶ “Privileged” information is usually held private since its disclosure would adversely affect the functions and decision-making processes of the client.

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“Confidential” and “Privileged” Information

Release of confidential or privileged information

- ▶ If “confidential” information is released without proper authority and/or consent, there may be civil and criminal consequences.
- ▶ “Privileged” information may be released by the client, but there may be adverse personal and organizational consequences to the release.

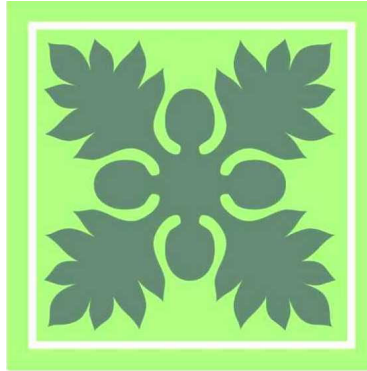
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Caveat/Disclaimer

This written outline is intended to accompany and supplement an oral presentation concerning the listed material. The outline should not be used as the sole basis for any legal conclusion or opinion concerning the subject matter. Please consult the Office of the Corporation Counsel if you have any legal questions.

Overview of
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Mahalo!



If you have any questions, please call us at (808) 961-8251, or email us

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